

# DELEGATED POWERS AND LAW REFORM COMMITTEE

**16th Meeting, 2022 (Session 6)  
Tuesday, 17 May 2022**

## Instrument Responses

### **Local Government Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2022 (SSI 2022/153)**

On 6 May 2022, the Committee asked the Scottish Government:

1. The preamble to the instrument states that it is made in exercise of the powers conferred by sections 1 and 12 of the Public Service Pensions Act 2013, and all other powers enabling them to do so. Section 1 allows for pension schemes to be set up in relation to a number of listed professions, one of which is local government workers for England, Wales and Scotland (specifically section 1(2)(c)). The instrument is only making provision for local government workers in Scotland. Section 12 provides that an employer cost cap must be set as a percentage to be used for the purpose of measuring changes in the cost of the scheme.

Notably, section 2 outlines that the persons responsible for making scheme regulations are contained in schedule 2, and for local government workers in Scotland this is the Scottish Ministers (paragraph 3(b) of schedule 2). In addition, the provisions of the instrument have effect from several different dates, with some regulations having effect from 1 April 2015, some from 1 June 2018, some from 8 April 2019, and the rest from 1 June 2022. The instrument therefore makes retrospective provision and the specific enabling power to do that appears to be contained within section 3(3)(b) with the considerations applicable in section 23. Page 49 of SSIDM states that “Specific statutory enabling powers should be identified and cited in the preamble for every provision to be made in the instrument.” For example, the Local Government Pensions Scheme (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/31) cites sections 1, 2 and 3, and paragraph 3(b) of schedule 2 of the Public Services Pensions Act 2013. Other pensions instruments considered recently include SSIs 2022/100, 101, 102 and 103, which also identified all enabling powers more specifically. Please explain whether and why you consider that the instrument has specifically referred to all the enabling powers relied upon to make the provisions contained in this instrument and conforms to proper drafting practice, given the above?

2. Regulation 4(a) of the instrument amends regulation 17(4) of the Local Government Pension Scheme (Transitional Provisions and Savings) (Scotland) Regulations 2014 by amending reference to paragraphs “(9) to (15)” to “(9) to (16)” in relation to survivor benefits. Regulation 4(c) of the instrument omits paragraphs (10)-(12). Both amendments made by the instrument have effect from 1 April 2015. Given the omission of paragraphs (10)–(12), is it intentional that the amendment made by regulation 4(a) of the instrument still includes reference to them?
3. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 10 May 2022, the Scottish Government responded:

1. In reply to question 1, it is agreed that another approach would have been to cite sections 1, 2 and 3, and paragraph 3(b) of schedule 2 of the Public Services Pensions Act 2013. The view had been taken, however,(as in some UK instruments) that only the main enabling power, namely section 1, needed to be cited, taking the view that section 3 merely described the scope of regulations made under section 1, rather than being a self-standing enabling power and section 2 similarly describing the mechanics. Under scope would also come the latitude to make retrospective provision. Sections 2 and 3 are not clearly free-standing powers. Even if they should have been cited, however, it is thought that despite the lack of a specific citation, the inclusion of the reference to ‘all other powers’ can be read as referring to sections 2 and 3. That is because the operative provisions of the SSI make it clear that the drafter must have invoked those provisions. The Scottish Government therefore does not consider that the instrument needs to be amended.
2. In reply to question 2, It is thought that only one meaning is possible given that both amendments come into play simultaneously namely that the reference to paragraphs “(9) to (15)” to “(9) to (16)” is to be read as with omission of paragraphs (10)-(12). The amendments are effected in their natural and logical order. No action is proposed other than checking if the correct change has been effected in Westlaw.
3. In reply to question 3, see answers to questions 1 and 2.