

Delegated Powers and Law Reform Committee

25th Meeting, 2023 (Session 6) Tuesday, 19 September 2023

Instrument Responses

Police Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/239)

On 8 September 2023, the Committee asked the Scottish Government:

1. In the preamble, should the reference to paragraph 7(a) of schedule 2 of the Public Service Pensions Act 2013 (which provides that scheme regulations for members of a police force may be made by the Secretary of State in or as regards England), be to paragraph 7(b) (which provides that such regulations made be made by the Scottish Ministers in or as regards Scotland)?
2. Regulation 10(c) and paragraph 1(1) of the schedule refer to an “immediate choice election” This term is not defined, although “immediate choice decision” and “section 6 election” are defined. Would it be clearer to use a defined term?
3. Regulations 13(4), 16(b) and paragraph 1(1) of the schedule refer to a “deferred choice election decision”. Should this be a reference to the defined term “deferred choice decision”?
4. In regulation 18(2), should the reference to regulation 23(3) and (4) be a reference to regulation 22(3)?
5. In regulation 24(1)(b)(i) should “the end section of the section 6 election period” be “the end of the section 6 election period” in line with the defined term?
6. Part 8 of the equivalent English regulations (SI 2023/831) which deals with “immediate detriment cases” has not been replicated in this instrument. Could you confirm that this is not required?
7. In the definition of “eligible decision-maker” in paragraph 1(1) of the schedule, should the references to regulations 5(2)(b), 7(2)(b) and 11(2)(b) be references to regulations 6(2)(b), 8(2)(b), and 12(2)(b) respectively?
8. In paragraph 3 of the schedule, the eligible decision-maker is a “guardian” (only). Should reference also be made to a parent?

On 12 September 2023, the Scottish Government responded:

1. Yes, this should be a reference to paragraph 7(b) of schedule 2 of the Public Service Pensions Act 2013.
2. Yes, this should refer to an “immediate choice decision”.

3. Yes, this should refer to a “deferred choice decision”.
4. Yes, this should refer to regulation 22(3).
5. Yes, this should refer to “the end of the section 6 election period”.
6. Confirm that this is not required due to Scottish policy approach.
7. Yes, this should refer to regulations 6(2)(b), 8(2)(b), and 12(2)(b).
8. Yes, this should refer to “parent or guardian”.

Following advice from the SI Registrar, we propose to amend these issues via an amending instrument.

Local Government Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/240)

On 7 September 2023, the Committee asked the Scottish Government:

1. The letter from the Scottish Public Pensions Agency to the Presiding Officer dated 30 August 2023 outlining the reasons for failure to comply with laying requirements refers to the Local Government Pension Scheme (Transitional Protection Remedy) (Scotland) Regulations 2023. The instrument which was laid before the Scottish Parliament alongside this letter is titled the Local Government Pensions (Remediable Service) (Scotland) Regulations 2023. We assume that the letter should refer to the instrument laid before the Scottish Parliament which is titled the Local Government Pensions (Remediable Service) (Scotland) Regulations 2023, but would be grateful if you could confirm.
2. Should the references to the Local Government Pension Scheme (Transitional Protection Remedy) (Scotland) Regulations 2023 in the following places be to the Local Government Pensions (Remediable Service) (Scotland) Regulations 2023?
 - regulation 2(4) of the instrument inserting regulation 4T(2) into the 2014 regulations;
 - regulation 3(13) of the instrument inserting regulation 76(A1)(b) into the 2014 regulations;
 - regulation 3(15) of the instrument inserting regulation 93(9) into the 2014 regulations; and
 - regulation 13(4) of the instrument inserting regulation 4I(11) into the 2014 regulations.

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 12 September 2023, the Scottish Government responded:

1. The title of the draft regulations was changed shortly before the date they were made and laid, from the Local Government Pension Scheme (Transitional Protection Remedy) (Scotland) Regulations 2023 to the Local Government Pensions (Remediable Service) (Scotland) Regulations 2023. We confirm that the letter dated 30 August 2023 from the Scottish Public Pensions Agency to the

Presiding Officer should have referred to the latter title, rather than erroneously referring to the former, original, title. This oversight is regretted.

2. We confirm that the references in the provisions specified at paragraph 2 above should be to the Local Government Pensions (Remediable Service) (Scotland) Regulations 2023.
3. The SI registrars have confirmed that the erroneous references identified at paragraph 2 above may be addressed by the issue of a correction slip. Therefore, the Scottish Government intend to issue a correction slip.

Teachers' Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/241)

On 7 September 2023, the Committee asked the Scottish Government:

1. The letter from the Scottish Public Pensions Agency to the Presiding Officer dated 30 August 2023 outlining the reasons for failure to comply with laying requirements refers to the Teachers' Pension Scheme (Transitional Protection Remedy) (Scotland) Regulations 2023. The instrument that was laid before the Scottish Parliament alongside this letter is titled the Teachers' Pensions (Remediable Service) (Scotland) Regulations 2023. We assume that the letter should refer to the instrument laid before the Scottish Parliament which is titled The Teachers' Pensions (Remediable Service) (Scotland) Regulations 2023, but would be grateful if you could confirm.
2. In regulation 2(1), "deferred choice decision-maker" is defined by reference to a "deferred choice election decision". Should this be a reference to the defined term "deferred choice decision"? Similarly, in schedule, paragraph 1(1), should the reference in two places to a "deferred choice election decision" be to "deferred choice decision"?
3. In regulation 23, "legacy scheme cash equivalent" is defined by reference to regulation 24(2)(b). Should this be 24(2)(a)? Similarly, "reformed scheme cash equivalent" is defined by reference to regulation 24(2)(a). Should this be 24(2)(b)?
4. In regulation 46(6) creates a defined term: "the compensation amount". In regulation 46(7) reference is made to "the compensatable amount". Should this reference be to "the compensation amount"? The does not appear to be any other reference in the Regulations to "compensation amount".
5. In regulation 55(1)(b), reference is made to regulation 4(2)(a) of the Teachers' Pension Scheme (Transitional Protection Remedy) (Scotland) Regulations 2023. Should this reference be to the Teachers' Pensions (Remediable Service) (Scotland) Regulations 2023?
6. In regulation 63(1)(c) reference is made to "regulation 623". Is this an incorrect cross-reference?
7. In regulation 64(2) & (5) reference is made to "regulation 622". Is this an incorrect cross-reference?

8. In the schedule, paragraph 1(1), reference is made to “immediate choice election as mentioned in regulation 8(2)(b)”. This term is not mentioned in regulation 8(2)(b), although regulation 8(2)(b) does mention “immediate choice decision”, which is defined in section 8(1). Is this sufficiently clear?
9. In the schedule, paragraph 3, the eligible decision-maker is a “guardian” (only), should reference also be made to a parent?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 12 September 2023, the Scottish Government responded:

1. The title of the draft regulations was changed shortly before the date they were made and laid, from the Teachers’ Pension Scheme (Transitional Protection Remedy) (Scotland) Regulations 2023 to the Teachers’ Pensions (Remediable Service) (Scotland) Regulations 2023. We confirm that the letter dated 30 August 2023 from the Scottish Public Pensions Agency to the Presiding Officer should have referred to the latter title, rather than erroneously referring to the former, original, title. This oversight is regretted.
2. The references in regulation 2(1) and paragraph 1(1) of the schedule to a deferred choice election decision should be to a deferred choice decision. But it is considered that the intended meaning in both cases is clear, in context.
3. The references in regulation 23 should be to regulation 24(2)(a) and regulation 24(2)(b), respectively. It is considered that the intended meaning should be clear, but these references will be corrected in the next amending instrument.
4. References in regulation 46(7) to “the compensatable amount” should be to “the compensation amount”. It is considered that taking into account the wording of regulation 46(7), the intended meaning is clear, but this will be corrected in the next amending instrument.
5. The reference in regulation 55(1)(b) should be to the Teachers’ Pensions (Remediable Service) (Scotland) Regulations 2023. This will be corrected in the next amending instrument
6. This reference is incorrect and should be to regulation 62. It is considered that this is an obvious typographical error, the intended meaning of which should be clear in context, but it will be corrected in the next amending instrument.
7. This reference is incorrect and should be to regulation 62. It is considered that this is an obvious typographical error, the intended meaning of which should be clear in context, but it will be corrected in the next amending instrument.
8. It is considered that the intended meaning of the reference in paragraph 1(1) of the schedule should be clear, but for the avoidance of any doubt, this will be corrected in the next amending instrument.
9. It is considered that in most cases, a child’s status as the sole beneficiary of death benefits, as referred to in that paragraph, would be as a result of the death of both of their parents. But to take account of circumstances where a child has a

surviving parent who is not a beneficiary of death benefits, for instance due to divorce, this reference will be amended to also refer to “parent” in the next amending instrument.

10. Corrective action is proposed, as detailed above.

Firefighters’ Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/242)

On 7 September 2023, the Committee asked the Scottish Government:

1. In the preamble, should the reference to paragraph 6(a) of schedule 2 of the 2013 Act (which provides that scheme regulations for fire and rescue workers may be made by the Secretary of State in or as regards England), be to paragraph 6(c) (which provides that such regulations made be made by the Scottish Ministers in or as regards Scotland)?
2. Regulation 2(1) provides that “eligible child”, in relation to the 1992 scheme, has the meaning given in Part 1 of schedule 2 of the 1992 Order. There does not appear to be a Part 1 of that schedule (its parts have letters rather than numbers). Is it sufficiently clear what “eligible child” means in the instrument?
3. In regulation 2(1), the definition of “immediate choice member” states that this means a member “with remedial service ...”. Should this be “remediable”, in line with the defined term in the parent Act? The phrase “remedial service” also appears in regulation 18(1) and in the phrase “remedial service statement” in regulation 14(2)(a)(i).
4. Regulation 10(c) and paragraph 1(1) of the schedule refer to an “immediate choice election” This term is not defined, although “immediate choice decision” and “section 6 election” are defined. Would it be clearer to use a defined term?
5. In regulation 12(8)(b), is the cross-reference to regulation 15 an error? It appears that regulation 15 contains additional requirements for the provision of information whereas the provision under which a section 10 election is deemed to have been made is regulation 16.
6. Regulation 12(11) provides (in the full-out) that in certain circumstances, “the beneficiary must pay an amount... to the beneficiary”. Is this an error? Should the payment instead be to the scheme?
7. Regulations 13(4), 16(b) and paragraph 1(1) of the schedule refer to a “deferred choice election decision”. Should this be a reference to the defined term “deferred choice decision”?
8. In regulation 24(1)(b)(i) should “the end section of the section 6 election period” be “the end of the section 6 election period” in line with the defined term?
9. In regulation 54(1)(b) refers to “surviving partner”. In the absence of a definition of “surviving partner” or “partner” in the instrument or the parent Acts, is the reference to “surviving partner” sufficiently clear? It is noted that “surviving adult” appears in the schedule of the instrument, and that “adult survivor” appears in PSPJOA 2022.

10. The provisions of the equivalent English regulations (SI 2023/843) which govern cases in which an “immediate detriment remedy” has been obtained have not been replicated in the instrument. Could you confirm that this is not required?
11. Regulation 62 concerns the power to waive amounts owed by a person to the scheme manager. Paragraph (2) glosses a reference in direction 4(1)(c) of the PSP Directions 2022 to refer to regulation 63 of the instrument. Is the reference to regulation 63 an incorrect cross-reference, given that regulation 63 applies when the amount is owed by (rather than to) the scheme manager?
12. In regulation 65(9), should the reference to an agreement under paragraph (5) be instead to an agreement under paragraph (6) and/or (7)?
13. In the schedule, paragraph 1(1), in the definition of “eligible decision-maker”, should the references to regulations 5(2)(b), 7(2)(b) and 11(2)(b) be references to 6(2)(b), 8(2)(b) and 12(2)(b) respectively?
14. the schedule, paragraph 3, the eligible decision-maker is a “guardian” (only), should reference also be made to a parent?
15. In the schedule, paragraph 11(2)(b)(ii) does not state who the eligible decision-maker is in the situation provided for (that is, where no decision has been received by the scheme manager by the relevant date). Who should this be?
16. The letter from the Scottish Public Pensions Agency to the Presiding Officer dated 30 August 2023 outlining the reasons for failure to comply with laying requirements refers to the Firefighters’ Pension Scheme (Remediable Service) (Scotland) Regulations 2023. We assume that this is intended as a reference

to the Firefighters’ Pensions (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/242) but would be grateful if you could confirm.

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 12 September 2023, the Scottish Government responded:

1. Yes, this should refer to paragraph 6(c) of schedule 2 of the Public Service Pensions Act 2013.
2. This cross-reference should be to Part D of Schedule 2 of the 1992 Order, which contains the relevant definition.
3. Yes, this should say “with remediable service” in the definition of immediate choice member at regulation 2(1) and “remediable service” at regulation 18(1) and “remediable service statement” at regulation 14(2)(a)(i).
4. Yes, this should refer to “immediate choice decision”.
5. Yes, this should refer to regulation 16.

6. This should read “to the scheme manager”, not “to the beneficiary”.
7. Yes, this should refer to the “deferred choice decision”.
8. Yes, this should read “the end of the section 6 election period”.
9. We agree that additional clarity would be beneficial. We propose the insertion of a new definition “surviving partner” at para 1(1) of the Schedule as follows:
““surviving partner” has the meaning given in regulation 76 of the 2015 Regulations.”
10. We confirm that immediate detriment provisions are not required due to the policy approach taken in respect of this particular scheme.
11. This should refer to regulation 65, not regulation 63.
12. Yes, this should refer to paragraphs (6) and (7), not paragraph (5).
13. Yes, this should refer to regulations 6(2)(b), 8(2)(b) and 12(2)(b).
14. Yes, this should refer to C’s “parent or guardian”, not just “guardian”.
15. This should refer to the scheme manager. There should be an additional “,the scheme manager” inserted at the end of this line.
16. Yes, we confirm that this should refer to the Firefighters’ Pensions (Remediable Service) (Scotland) Regulations 2023.

Following advice from the SI Registrar, we propose to amend these issues via an amending instrument, with the exception of point 10, which is merely a reflection of the policy position.

National Health Service Pension Schemes (Remediable Service) (Scotland) Regulations 2023 (SSI 2023/246)

On 12 September 2023, the Committee asked the Scottish Government:

1. In regulation 5(4) reference is made to regulation 3(4). Should this be regulation 3(5)?
2. Should the cross-reference at regulation 7(2)(a) to “8(2)(b)(ii)” read “8(2)(b)(i)”?
3. Regulation 18(12)(b) refers to paragraph 7(a) (only) in relation to a claim for compensation. Should this include reference to paragraph 5(a) also?
4. The provisions of the equivalent English regulations (SI 2023/985) which govern (i) cases in which an “2019/20 Pensions Annual Allowance Charge Compensation Scheme” has been obtained, and (ii) cases in which an “immediate detriment

remedy” has been obtained have not been replicated in the instrument. Could you confirm that these are not required?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 13 September 2023, the Scottish Government responded:

1. Yes. This will be corrected in the next amending instrument.
2. Yes. It has also been identified that regulation 7(2)(b) should include an additional cross-reference to “12(2)(b)(ii)”, and that the cross-references at regulations 7(2)(c) to “8(2)(b)(ii)” and “12(2)(b)(ii)” should be to “8(2)(b)(iii)” and “12(2)(b)(iii)”. These cross-references will be corrected in the next amending instrument.
3. Yes. An additional reference to paragraph (5)(a) will be inserted by the next amending instrument.
4. There was no Scottish scheme corresponding to the 2019/20 Pensions Annual Allowance Charge Compensation Scheme, which did not apply in Scotland. Therefore, no provision relating to this is required. There were no cases in Scotland corresponding to those in category (ii), so no provision relating to this is required either.
5. Corrective action in the next amending instrument is proposed, as detailed above.