



The Scottish Parliament
Pàrlamaid na h-Alba

DELEGATED POWERS AND LAW REFORM COMMITTEE

AGENDA

9th Meeting, 2020 (Session 5)

Tuesday 10 March 2020

The Committee will meet at 9.50 am in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 4 and 5 in private.
2. **Instruments subject to affirmative procedure:** The Committee will consider the following—

[Representation of the People \(Annual Canvass\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2020 \(SSI 2020/draft\);](#)
[Scottish Landfill Tax \(Standard Rate and Lower Rate\) Order 2020 \(SSI 2020/65\);](#)
[Local Government Finance \(Scotland\) Order 2020 \(SSI 2020/draft\)](#)

3. **Instruments subject to negative procedure:** The Committee will consider the following—
[Local Government Pension Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2020 \(SSI 2020/31\);](#)
[Council Tax Reduction \(Scotland\) Amendment \(No. 2\) Regulations 2020 \(SSI 2020/64\)](#)

4. **Tied Pubs (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill at Stage 1.
5. **Consumer Scotland Bill:** The Committee will consider the delegated powers provisions in this Bill after Stage 2.

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DELEGATED POWERS AND LAW REFORM COMMITTEE**9th Meeting, 2020 (Session 5)****Tuesday 10 March 2020****Instrument Responses****INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE****Local Government Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/31)****On 27 February, the Scottish Government was asked:****1. Regulation 1(1)**

Regulation 1(1) provides that, “subject to paragraph (2)” the Regulations come into force on 31 March 2020. Paragraph (1) is not in fact subject to paragraph (2), because paragraph (2) does not concern the coming into force of any regulations, it concerns only the date from which one of the regulations (regulation 3) has effect. Could it have been clearer that the date on which all the regulations (including regulation 3) come into force is 31 March 2020?

2. Regulation 2(2)

(a) New paragraph 2A of schedule 4 of the 2018 Regulations provides that the Scottish Ministers may, on the application of an administering authority, by a written direction “substitute a different fund maintained by that administering authority as the appropriate fund for the Scheme employer”. Is the intention that “appropriate fund” in this paragraph means the appropriate fund as specified in the table in schedule 4 (reading new paragraph 2A together with regulation 51(3) and schedule 4 paragraph 1 of the 2018 Regulations)? If so, given that each entry for “appropriate fund” in column 2 of the table refers only to the “fund maintained by [a particular authority]”, and not to a particular fund maintained by a particular authority, could you explain how a direction could specify a different fund maintained by the same authority? If “appropriate fund” in paragraph 2A is not intended to refer to the appropriate fund as specified in the table, to what is “appropriate fund” in new paragraph 2A intended to refer, and could this be clearer?

(b) Should “a Scheme employer” in new paragraph 2A instead be a reference to a member? Regulation 51(3), schedule 4 paragraph 1 and the table in schedule 4 all refer to the appropriate fund for a member rather than employer.

(c) Is it intended that the reference to “substituted fund” in paragraph 5 of schedule 4 is a reference to a fund substituted by a direction under new regulation 2A, and if so, would it be clearer to insert a definition of “substituted fund” in new paragraph 2A?

(d) Paragraph 6 of schedule 4 specifies what may be done by a fund-substitution direction under paragraph 3, but paragraph 3 has been revoked. Could you confirm that it is not intended that paragraph 6 should apply to a direction

under new paragraph 2A? Does the Scottish Government intend to revoke paragraph 6, which appears otherwise to be redundant?

3. Is any corrective action proposed?

On 3 March, the Scottish Government responded as follows:

In relation to question 1, it is agreed that what is suggested would have been a more felicitous way of drafting. However, it is not thought that the current drafting will lead to any confusion.

In relation to question 2(a), the appropriate fund would be the fund specified in column 2 of the table. However, an administering authority usually administers a main fund but also other funds ("sub-funds"). The new direction would allow one of the sub-funds to be specified.

In relation to question 2(b), it is thought that "a Scheme employer" in new paragraph 2A is the correct reference. It is the Scheme employer who makes the request as in one under paragraph 2 of schedule 4.

In relation to question 2(c), it is not thought that any further definition is required because it can only mean a fund substituted under a direction under paragraph 2A.

In relation to question 2(d) it is accepted that paragraph 6 is now redundant as it refers to a fund substitution under the now repealed paragraph 3. This provision should have been repealed.

In relation to question 3, the Scottish Ministers would intend to repeal paragraph 6 the next time the Local Government Pension Scheme (Scotland) Regulations 2018 are amended.