



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

14th Meeting, 2013 (Session 4)

Tuesday 7 May 2013

The Committee will meet at 10.00 am in Committee Room 1.

1. **Decision on taking business in private:** The Committee will decide whether to take item 4 in private.
2. **Fatal road collisions:** The Committee will take evidence from—

Stuart Cross, Senior Lecturer, Dundee Law School, University of Dundee;

Margaret Dekker, Scottish Campaign against Irresponsible Drivers;

Superintendent Iain Murray, Head of Road Policing, Police Scotland;

Stephen McGowan, Deputy Director of Serious Casework, and David Green, Head of Scottish Fatalities Investigation Unit, Crown Office and Procurator Fiscal Service.
3. **Subordinate legislation:** The Committee will consider the following negative instruments—

Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2013 (SSI 2013/126);

Firemen's Pension Scheme (Amendment) (Scotland) Order 2013 (SSI 2013/128);

Firefighters' Pension Scheme (Scotland) Amendment Order 2013 (SSI 2013/129).
4. **Transfer of prison healthcare to the NHS:** The Committee will consider its approach to its forthcoming round-table evidence session on the transfer of prison healthcare to the NHS.

Irene Fleming
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: irene.fleming@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk (private paper)

J/S4/13/14/1 (P)

[Research by the University of Dundee: Access in Europe to
by a bereaved family to information gathered during an
investigation into a fatal road collision](#)

[Correspondence](#)

Agenda item 3

SSI cover note

J/S4/13/14/2

[Freedom of Information \(Scotland\) Act 2002 \(Scottish Public
Authorities\) Amendment Order 2013 \(SSI 2013/126\)](#)

[Firemen's Pension Scheme \(Amendment\) \(Scotland\) Order
2013 \(SSI 2013/128\)](#)

[Firefighters' Pension Scheme \(Scotland\) Amendment Order
2013 \(SSI 2013/129\)](#)

Agenda item 4

Paper by the clerk (private paper)

J/S4/13/14/3 (P)

Justice Committee

14th Meeting, 2013 (Session 4), Tuesday, 7 May 2013

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:

Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2013 (SSI 2013/126);

Firemen's Pension Scheme (Amendment) (Scotland) Order 2013 (SSI 2013/128);
and

Firefighters' Pension Scheme (Scotland) Amendment Order 2013 (SSI 2013/129)

2. Further details of the procedure for negative instruments are set out in the Annexe attached to this paper.

**Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities)
Amendment Order 2013 (SSI 2013/126)**

Purpose of instrument

3. The purpose of the instrument is to: (a) insert the Criminal Courts Rules Council, the Scottish Civil Justice Council and the Mobility and Access Committee for Scotland into Schedule 1 to the Freedom of Information (Scotland) Act 2002 so that those bodies will be required to comply with the Act from the date the Order comes into force; (b) remove the entry for “The Central Advisory Committee on Justices of the Peace”; and (c) to substitute the entry “A justice of the peace committee” with “A Justice of the Peace Advisory Committee established under the Justices of the Peace (Scotland) Order 2007”.

4. According to the policy note, the Mobility and Access Committee for Scotland has existed for some time, but was not included in the Act through the previous order under section 4 of the Act (which was made in 2008) because its future as a body was uncertain at that time. However, given its continued existence, the Scottish Government proposes that it should now be made subject to freedom of information legislation. The Order will also apply to the amended Rules Councils. The new Scottish Civil Justice Council will be established on 28 May 2013, which is why the Scottish Government proposes that this Order should come into force on that date.

5. The Order also removes the Central Advisory Committee on Justices of the Peace from Schedule 1 of the Act because that Committee no longer exists. It also updates the reference in Schedule 1 to ‘a Justice of the Peace Advisory Committee’ (JPAC) to ‘Justice of the Peace Advisory Committees established under the Justices of the Peace (Scotland) Order 2007’ to clarify that it covers all JPACs as established under that 2007 Order.

6. The instrument comes into force on 28 May 2013.

7. Further details on the purpose of the instrument can be found in the policy note on pages 2-3 of this paper. An electronic copy of the instrument is available at: <http://www.legislation.gov.uk/ssi/2013/126>

Consultation

8. The policy note on the instrument confirms that the three bodies to be added to Schedule 1 have been consulted on their inclusion and are aware of their obligations and future responsibilities in terms of the Act and associated Regulations.

Subordinate Legislation Committee consideration

9. The Subordinate Legislation Committee considered this instrument at its meeting on 30 April and agreed that there was no need to draw the Parliament’s attention to the instrument on any grounds within its remit.

Justice Committee consideration

10. Members are invited to consider the instrument and make any comment or recommendation on it. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 27 May 2013.

Policy Note: Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2013 (SSI 2013/126)

The above Order was made in exercise of the powers conferred by section 4(1) of the Freedom of Information (Scotland) Act 2002 (“the Act”). That power provides, in section 4(1)(a), that the Scottish Ministers may, by order, add a body or office holder to those listed in Schedule 1 of the Act, so designating it as a “Scottish public authority” for the purposes of the Act. A body or office holder may only be added provided that, as set out in Section 4(1)(a), any such body or office holder is not for the time being listed in Schedule 1 and is either a part of the Scottish Administration or a Scottish public authority with mixed functions or no reserved functions (the definition of mixed functions or no reserved functions to be construed in accordance with paragraphs 1(4) and 2 of Part III of Schedule 5 to the Scotland Act 1998). The power also provides, in section 4(1)(b), that the Scottish Ministers may, by order, remove an entry for the time being listed in Schedule 1 to the Act. The Order is subject to negative parliamentary procedure, as set out under section 72(2)(a) of the Act.

Policy Objectives

The Order will insert three bodies – the Criminal Courts Rules Council, the Scottish Civil Justice Council and the Mobility and Access Committee for Scotland – within Schedule 1 to the Act so that those bodies will be required to comply with the Act from the date this Order comes into force. This will mean that anyone could, following that date, submit a request for information to these three bodies and they would have to respond in accordance with the requirements of the Act. The Order will also make two minor technical amendments to the Act, firstly, by removing the Central Advisory Committee on Justices of the Peace from Schedule 1 of the Act because that Committee no longer exists. Secondly, it will update the reference in Schedule 1 to ‘a Justice of the Peace Advisory Committee’ (JPAC) to ‘Justice of the Peace Advisory Committees established under the Justices of the Peace (Scotland) Order 2007’ to clarify that it covers all JPACs as established under that 2007 Order.

The Scottish Government supports freedom of information, seeing it as an essential part of open, democratic government and responsive public services. It is important that public bodies which are created and meet the legislative criteria for coverage are obliged to operate within the legislative framework of the Act, alongside all those already operating in this way. This will enable continued delivery of greater transparency, accountability and engagement, ensuring appropriate accessibility to information from such bodies. It is also important to remove reference to authorities which are no longer in existence.

In many instances where new bodies or office holders have come into existence since the commencement of the legislation (or have ceased to exist) Schedule 1 has been amended by the relevant legislation that either created or abolished the body. However this has not been the case with the three listed for addition to Schedule 1. The Mobility and Access Committee for Scotland has existed for some time, but was not included in the Act through the previous order under section 4 of the Act (which was made in 2008) because its future as a body was uncertain at that time. However, given its continued existence, the Scottish Government proposes that it should now be made subject to freedom of information legislation. The Order will also apply to the 2 amended Rules Councils. The new Scottish Civil Justice Council will be established on 28 May 2013, which is why the Scottish Government proposes that this Order should come into force on that date.

The three bodies to be added to Schedule 1 by this Order each meet the conditions set out in section 4(a) of the Act – they not already listed in Schedule 1 and they are either part of the Scottish Administration or a Scottish public authority with mixed functions or no reserved functions. The Act and the Regulations will apply to the bodies added to Schedule 1 as soon as the Order comes into force.

Consultation

Each of the three bodies to be added to Schedule 1 has been consulted on its inclusion and is aware of its obligations and future responsibilities in terms of the Act and associated Regulations.

The Scottish Information Commissioner has been consulted on the terms of the Order and is assisting the three authorities in preparing for the Act and associated regulations to apply to them.

Impact Assessments

An Equalities Impact Assessment has not been completed for this Order as the Order has no particular impact on any equalities groups.

Financial Effects

The Deputy First Minister & Cabinet Secretary for Infrastructure, Investment and Cities confirms that no Business and Regulatory Impact Assessment (BRIA) is necessary as the instrument has no financial effects on the Scottish Government, on local government or on business.

Scottish Government
Strategy and Constitution Directorate
April 2013

**Firemen's Pension Scheme (Amendment) (Scotland) Order 2013 (SSI 2013/128)
and Firefighters' Pension Scheme (Scotland) Amendment Order 2013 (SSI
2013/129)**

Purpose of the instruments

1. The Firemen's Pension Scheme (Amendment) (Scotland) Order 2013 (SSI 2013/128) applies increases to the pension contribution rates of firefighters who are members of the scheme set out in the Firemen's Pension Scheme Order 1992. The increases are effective from 1 May 2013.
2. The Firefighters' Pension Scheme (Scotland) Amendment Order 2013 (SSI 2013/129) applies the same levels of increases to the pension contribution rates of those members of the scheme set out in the Firefighters' Pension (Scotland) Order 2007 (the New Firefighters' Pension Scheme (Scotland)). Again, the increases are effective from 1 May 2013.
3. The pension scheme to which a member belongs depends on when he or she joined the service.
4. The main policy aim of these instruments is to apply the second stage of increases to members' pension contributions from 1 May 2013. The policy stems from the 2010 UK Spending Review, which set out the UK Government's intention to increase members' contribution rates in public service pension schemes by an average of 3.2 per cent by April 2014, with the increase spread across three years.
5. Both instruments also include a new band of pensionable pay, so that those firefighters who earn more than £15,000 and up to £21,000 will pay a lower rate than those earning more than £21,000 and up to £30,000.
11. Both instruments come into force on 1 May 2013.
12. Further details on the purpose of the instruments can be found in the policy note on page 6 of this paper.
13. Electronic copies of the instruments are available at:
SSI 2013/128: <http://www.legislation.gov.uk/ssi/2013/128>
SSI 2013/129: <http://www.legislation.gov.uk/ssi/2013/129>

Consultation

14. The policy note on the instruments confirms that a formal consultation with firefighters, employers and relevant Scottish and UK Government Departments between 20 December 2012 and 1 February 2013. It also indicates that unions remain opposed in principle to any increases to members' contributions.

Subordinate Legislation Committee consideration

15. The Subordinate Legislation Committee (SLC) considered the instruments at its meeting on 30 April and agreed to draw the Parliament's attention to them on reporting ground (j) that there was a failure to lay the instruments at least 28 days before they come into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. However, the SLC agreed that this failure was

acceptable, given the consequences of the instruments not coming into force on 1 May 2013 in line with the rest of the UK.

16. The relevant extracts of the SLC report on the instruments is reproduced on page 7 of this paper.

Justice Committee consideration

17. Members are invited to consider the instruments and make any comment or recommendation on them.

18. Under Rule 10.3A, the Committee is obliged to consider the explanation given to the Presiding Officer for the breach of laying requirements. It may also draw this explanation to the attention of the Parliament in any report on the instruments. A copy of the letter to the Presiding Officer is attached at page 9 of this paper.

19. As noted above, the SLC was satisfied with the reason given for this breach of the laying requirements.

20. If the Committee agrees to report to the Parliament on these instruments, it is required to do so by 27 May 2013.

Policy Note: Firemen's Pension Scheme (Amendment) (Scotland) Order 2013 (SSI 2013/128) and Firefighters' Pension Scheme (Scotland) Amendment Order 2013 (SSI 2013/129)

The above instrument was made in exercise of the powers conferred by the preserved section 26 (1) to (5) of the Fire Services Act 1947 (a) and sections 34 and 60 of the Fire and Rescue Services Act 2004 (a) and all other powers enabling them to do so. Functions under that Act as regards Scotland have been executively devolved to the Scottish Ministers. The instrument is subject to negative procedure.

Policy Objectives

The Firefighters' Pension Order 1992 (SI 1992/129) and the Firefighters' Pension (Scotland) Order 2007 (SSI 2007/199) require members of both firefighter pension schemes to pay contributions to the relevant scheme as a condition of membership. Although the Scottish Ministers have responsibility for the fire schemes, wider policy for occupational pensions is reserved to the UK Government.

The 2010 UK Spending Review set out the UK Government's intention to increase members' contribution rates in public service pension schemes by an average of 3.2 per cent of pay by April 2014 with the increases spread across three years. The first increase was applied with effect from 1 April 2012 and also introduced "tiered" contribution rates which reflect that higher earners generally receive larger scheme benefits from final salary defined benefit schemes. Following further consideration of this policy and whether there were any viable alternatives, Scottish Ministers determined to apply the second round of increases. The above instruments make provision to apply the second stage of increases to the members' contributions from 1 May 2013.

Consultation

A formal consultation was undertaken from 20 December 2012 to 1 February 2013. The consultation was issued to representatives of firefighters and employers and relevant Scottish and UK Government Departments. Unions remain opposed in principle to any increases to members' contributions. 79 responses were received to the consultation and a summary of the consultation responses will be made available on the Scottish Public Pensions Agency website www.sppa.gov.uk.

Impact Assessments

An equality impact statement is being finalised for this instrument which builds on the assessment undertaken for the first year of members' contribution increases and will be published when finalised.

Financial Effects

The increases, as designed, are expected to raise in the region of an additional £2 million a year from 1 May 2013. This will add to the additional yields arising from the increases introduced from April 2012.

No Business and Regulatory Impact assessment has been prepared because no impact on the private or voluntary sector is foreseen.

Scottish Public Pensions Agency
An Agency of the Scottish Government
18 April 2013

Extract from the Subordinate Legislation Committee 25th Report 2013

Firemen's Pension Scheme (Amendment) (Scotland) Order 2013 (SSI 2013/128) *(Justice Committee)*

The Order makes provision to apply the second stage of increases to the members' contributions from 1 May 2013, in relation to the Firefighters' Pension Scheme (Scotland) which is contained in the 1992 Order.

The Order will come into force on 1 May 2013.

As there has been a failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, the Scottish Ministers provided a letter to the Presiding Officer explaining that failure. The correspondence refers to both this instrument and SSI 2013/129 and is reproduced at Appendix 2.

It appears from the letter to the Presiding Officer that the contribution rates which are set by this instrument are required, as a matter of policy, to be aligned throughout the UK. The last paragraph narrates that the appropriate rates were communicated timeously in respect of the NHS and Teachers pension schemes, but the rates in respect of the firefighters' schemes were only confirmed to the Scottish Government by the Department for Communities and Local Government on 26 March 2013.

The Committee draws the instrument to the attention of the Parliament on reporting ground (j). There has been a failure to lay the instrument at least 28 days before it comes into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

The Committee recognises that, as a result of the policy adopted, the instrument required to come into force on 1 May 2013, given that its making was dependent upon receipt of confirmation from the Department for Communities and Local Government of the applicable contribution rates, which occurred on 26 March. It accordingly considers the failure to be acceptable, having regard to the circumstances in which the Scottish Ministers found themselves.

Firefighters' Pension Scheme (Scotland) Amendment Order 2013 (SSI 2013/129)
(Justice Committee)

The Order makes provision to apply the second stage of increases to the members' contributions from 1 May 2013, in relation to the New Firefighters' Pension Scheme (Scotland) which is contained in the 2007 Order.

The Order comes into force on 1 May 2013.

As there has been a failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, the Scottish Ministers provided a letter to the Presiding Officer explaining that failure. The correspondence refers to both this instrument and SSI 2013/128 and is reproduced at Appendix 2.

As for SSI 2013/128, it appears from the letter to the Presiding Officer that the contribution rates which are set by this instrument are required, as a matter of policy, to be aligned throughout the UK. The last paragraph narrates that the appropriate rates were communicated timeously in respect of the NHS and Teachers pension schemes, but the rates in respect of the firefighters' schemes were only confirmed to the Scottish Government by the Department for Communities and Local Government on 26 March 2013.

The Committee draws the instrument to the attention of the Parliament on reporting ground (j). There has been a failure to lay the instrument at least 28 days before it comes into force, as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

The Committee recognises that, as a result of the policy adopted, the instrument required to come into force on 1 May 2013, given that its making was dependent upon receipt of confirmation from the Department for Communities and Local Government of the applicable contribution rates, which occurred on 26 March. It accordingly considers the failure to be acceptable, having regard to the circumstances in which the Scottish Ministers found themselves.

Letter to Presiding Officer: breach of laying requirements:

The above instruments were made on 18 April 2013 under respectively section 26(1) to (5) of the Fire Services Act 1947 and sections 34 and 60 of the Fire and Rescue Services Act 2004. They are being laid before the Scottish Parliament on 22 April 2013 and come into force on 1 May 2013.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter sets out why it is necessary to lay the instruments less than 28 days before they are brought into force.

These instruments fix the pension contribution rates for firefighters in Scotland under two public sector schemes applicable to Scotland. These schemes are reserved under the Scotland Act 1998, although the making of subordinate legislation in relation to the schemes is executively devolved.

On 28 October 2010 the UK Government set out its intent on delivering savings of £2.8bn per annum across the public sector pension schemes by 2014/15 by increasing employee contribution rates by an average of 3.25% of pay in three annual increments starting April 2012. Despite Scottish Ministers' principled opposition to increasing employee contributions at this time and in this way the UK Government has refused to change its policy and indicated that if similar increases were not introduced to the schemes in Scotland then the Scottish Budget would be adjusted accordingly. Scottish Ministers reluctantly introduced the first year of increases in the Teachers', NHS, Police and Firefighters' schemes from 1 April 2012.

In a statement to Parliament on 28 November 2012, the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney, announced the Scottish Government's decision to implement the second annual increment of UK Government proposed employee contribution increases for the Teachers', NHS, Police and Firefighters' schemes in Scotland.

Whilst the UK rates for the NHS and Teachers schemes were confirmed to allow the subsequent statutory instruments for the Scottish schemes to be laid within the necessary Parliamentary time limits the revised rates for the firefighters' schemes in England were only confirmed to the Scottish Government by the Department of Communities and Local Government on 26th March. In the circumstances and given the shortness of notice, the Cabinet Secretary for Finance, Employment and Sustainable Growth, John Swinney decided that these two sets of Regulations should come into force on 1st May 2013 (rather than 1st April as originally planned). With the intervening Easter recess, it has not been possible to comply with the 28-day rule and still have the instruments brought into force on 1st May.

ANNEXE**Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.