



The Scottish Parliament  
Pàrlamaid na h-Alba

## DELEGATED POWERS AND LAW REFORM COMMITTEE

### AGENDA

8th Meeting, 2016 (Session 4)

Tuesday 1 March 2016

The Committee will meet at 10.30 am in the Adam Smith Room (CR5).

1. **Instruments subject to negative procedure:** The Committee will consider the following—

[Police Pensions \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(SSI 2016/75\);](#)  
[Country of Origin of Certain Meats \(Scotland\) Regulations 2016 \(SSI 2016/84\);](#)  
[Act of Sederunt \(Fees of Sheriff Officers\) 2016 \(SSI 2016/100\);](#)  
[Act of Sederunt \(Fees of Messengers-at-Arms\) 2016 \(SSI 2016/101\);](#)  
[National Health Service Pension Scheme \(Scotland\) Amendment Regulations 2016 \(SSI 2016/97\);](#)  
[National Health Service Superannuation Scheme \(Miscellaneous Amendments\) \(Scotland\) Regulations 2016 \(SSI 2016/98\);](#)  
[Common Agricultural Policy \(Direct Payments etc.\) \(Scotland\) Amendment Regulations 2016 \(SSI 2016/104\);](#)  
[Non-Domestic Rate \(Scotland\) Order 2016 \(SSI 2016/113\);](#)  
[Non-Domestic Rates \(Levying\) \(Scotland\) Regulations 2016 \(SSI 2016/114\);](#)  
[Conservation of Salmon \(Scotland\) Regulations 2016 \(SSI 2016/115\);](#)  
[Salmon Carcass Tagging \(Scotland\) Regulations 2016 \(SSI 2016/116\);](#)  
[Tweed Regulation \(Salmon Carcass Tagging\) Order 2016 \(SSI 2016/117\);](#)  
[Tweed Regulation \(Salmon Conservation\) Order 2016 \(SSI 2016/118\);](#)  
[Non-Domestic Rates \(Enterprise Areas\) \(Scotland\) Regulations 2016 \(SSI 2016/119\);](#)  
[Non-Domestic Rates \(Steel Sites\) \(Scotland\) Regulations 2016 \(SSI 2016/120\);](#)  
[Non-Domestic Rates \(Telecommunication Installations\) \(Scotland\) Regulations 2016 \(SSI 2016/122\);](#)  
[Concession Contracts \(Scotland\) Amendment Regulations 2016 \(SSI 2016/125\);](#)  
[National Health Service \(Optical Charges and Payments\) \(Scotland\) Amendment Regulations 2016 \(SSI 2016/127\);](#)

[Non-Domestic Rates \(Telecommunications and Canals\) \(Scotland\) Amendment Order 2016 \(SSI 2016/129\).](#)

2. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

[Act of Adjournal \(Criminal Procedure Rules 1996 Amendment\) \(Miscellaneous\) 2016 \(SSI 2016/103\);](#)  
[Human Trafficking and Exploitation \(Scotland\) Act 2015 \(Commencement No. 1 and Transitory Provisions\) Regulations 2016 \(SSI 2016/128 \(C.12\)\).](#)

3. **Health (Tobacco, Nicotine etc. and Care) (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill after Stage 2.
4. **Lobbying (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill after Stage 2.

Euan Donald  
Clerk to the Delegated Powers and Law Reform Committee  
Room T1.01  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5212  
Email: [euan.donald@scottish.parliament.uk](mailto:euan.donald@scottish.parliament.uk)

The papers for this meeting are as follows—

**Agenda Items 1 and 2**

Briefing on Instruments (private)

DPLR/S4/16/8/1(P)

**Agenda Item 1**

Instrument Responses

DPLR/S4/16/8/2

**Agenda Item 3**

[Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Bill - as amended](#)

[Health \(Tobacco, Nicotine etc. and Care\) \(Scotland\) Bill - Supplementary Delegated Powers Memorandum](#)

Briefing Paper (private)

DPLR/S4/16/8/3(P)

**Agenda Item 4**

[Lobbying \(Scotland\) Bill - as amended](#)

[Lobbying \(Scotland\) Bill - Supplementary Delegated Powers Memorandum](#)

Briefing Paper (private)

DPLR/S4/16/8/4(P)

**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**8th Meeting, 2016 (Session 4)**

**Tuesday 1 March 2016**

**Instrument Responses**

**INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE**

**Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/75)**

**On 18 February 2016, the Scottish Government was asked:**

Regulation 18 of the instrument substitutes regulation 11 (retirement pensions) in the Police Pensions (Additional Voluntary Contributions) Regulations 1991 (“the 1991 regulations”).

(a) Substituted regulation 11(1) of the 1991 regulations enables a participator to make certain arrangements for the payment of benefits with “an insurer”. Regulation 11(3) provides that “the approved additional voluntary contributions provider” must provide a participator with an option to receive benefits under paragraph (1)(a) to (c). There are various other references in regulation 11 to “the approved additional voluntary contributions provider”, and one further reference to “an insurer” (paragraph (12)).

“Approved additional voluntary contributions provider” is defined in regulation 2 of the 1991 regulations. Is “an insurer” intended to have any special meaning in regulation 11, and if so, is any definition required?

(b) Regulation 3(4) of the 1991 regulations provides that a pension election under regulation 11(2) made after retirement may be accepted only if the police authority are satisfied as mentioned in regulation 11(2). Substituted regulation 11(2) does not however make provision for pension elections. Does the Scottish Government consider that regulation 3(4) requires to be amended in consequence of the substitution of regulation 11, and if so, is any corrective action proposed?

**The Scottish Government responded as follows:**

(a) The word “insurer” is not intended to have any special meaning in regulation 11 and no definition was thought to be required. The word is used in a similar context in regulation 11 of the National Health Service Superannuation Scheme (Scotland) (Additional Voluntary Contributions) Regulations 1998 (S.I. 1998/1451) (as substituted by S.S.I. 2015/96) and similarly there is no definition of the word in those Regulations.

(b) We are grateful to the Committee for drawing attention to regulation 3(4) of the 1991 Regulations. That is not a provision of any continuing utility (being concerned with retirements prior to 1st November 1999). It should, however, have

been revoked in the context of regulation 11 being substituted by these Regulations and this will be effected in a future amending instrument.

**Country of Origin of Certain Meats (Scotland) Regulations 2016 (SSI 2016/84)**

**On 18 February 2016, the Scottish Government was asked:**

In relation to this instrument, can you please explain why the terms “batch”, “batch code”, “mass caterer”, and “trimmings” which are the subject of definition within regulation 2 (Interpretation) are not referred to elsewhere in this short instrument. Further,

- (a) Are these defined terms superfluous, or is there any intention to use any of them in the operative provisions of the instrument?
- (b) Would any corrective action be proposed to remove the definitions (if they are superfluous)?

**The Scottish Government responded as follows:**

We thank the Committee for drawing these matters to our attention.

In the course of the drafting process of the Instrument, the inclusion of the above terms became superfluous. It is accepted by the Scottish Government that they serve no purpose. Whilst they have no effect, they will be removed at the next convenient legislative opportunity.

**Act of Sederunt (Fees of Sheriff Officers) 2016 (SSI 2016/100)****On 18 February 2016, the Lord President's Private Office was asked:**

In the preamble, the words “with such modifications as it thinks appropriate” appear in square brackets. Are these brackets included in error, or is it intended that the words within them should be omitted?

The preamble cites section 106(1) of the 2014 Act as the enabling power under which the instrument is made. Paragraph 3 of the instrument makes a savings provision, which does not appear to be enabled by section 106(1), but rather by section 106(3). Is it considered that the preamble should also cite section 106(3) as an enabling power? If so, what is the effect of omitting to cite that provision considered to be?

**The Lord President's Private Office responded as follows:**Question 1

The square brackets and the words within them should be omitted. This part of the preamble was included in error. The Lord President's Private Office identified this error shortly after the instrument was laid. As the preamble is an unamendable part of the instrument, we have requested a correction slip from the SI Registrar to resolve the matter.

Question 2

In our view, section 106(3) of the Courts Reform (Scotland) Act 2014 provides that an act of sederunt under subsection (1) may, among other things, make saving provisions. We consider that this is an extension of the power in section 106(1) rather than constituting a separate power. It is not the usual practice of this office to cite provisions which extend principal powers and we do not believe it to be the usual practice of the Scottish Ministers either.

However, if our view is incorrect then we observe that we have referred in the preamble to “all other powers enabling [the Court] to do so”. We consider that this would be sufficient to include section 106(3), particularly under reference to the judgment of the Court of Appeal of England and Wales in *Vibixa Ltd v Komori UK Ltd and others* [2006] EWCA Civ 536. In our view, the operative provisions of the instrument make it clear that the Court must have invoked section 106(3), as paragraph 3 contains a saving provision. Accordingly, we would rely on the inclusion of those words if our principal submission is not accepted.

**Act of Sederunt (Fees of Messengers-at-Arms) 2016 (SSI 2016/101)**

In the preamble, the words “with such modifications as it thinks appropriate” appear in square brackets. Are these brackets included in error, or is it intended that the words within them should be omitted?

The preamble cites section 105(1) of the 2014 Act as the enabling power under which the instrument is made. Paragraph 3 of the instrument makes a savings provision, which does not appear to be enabled by section 105(1), but rather by section 105(3). Is it considered that the preamble should also cite section 105(3) as an enabling power? If so, what is the effect of not citing that provision considered to be?

**The Lord President’s Private Office responded as follows:**

Question 1

The square brackets and the words within them should be omitted. This part of the preamble was included in error. The Lord President’s Private Office identified this error shortly after the instrument was laid. As the preamble is an unamendable part of the instrument, we have requested a correction slip from the SI Registrar to resolve the matter.

Question 2

In our view, section 105(3) of the Courts Reform (Scotland) Act 2014 provides that an act of sederunt under subsection (1) may, among other things, make saving provisions. We consider that this is an extension of the power in section 105(1) rather than constituting a separate power. It is not the usual practice of this office to cite provisions which extend principal powers and we do not believe it to be the usual practice of the Scottish Ministers either.

However, if our view is incorrect then we observe that we have referred in the preamble to “all other powers enabling [the Court] to do so”. We consider that this would be sufficient to include section 105(3), particularly under reference to the judgment of the Court of Appeal of England and Wales in *Vibixa Ltd v Komori UK Ltd and others* [2006] EWCA Civ 536. In our view, the operative provisions of the instrument make it clear that the Court must have invoked section 105(3), as paragraph 3 contains a saving provision. Accordingly, we would rely on the inclusion of those words if our principal submission is not accepted.