



The Scottish Parliament
Pàrlamaid na h-Alba

Published 20 June 2017
SP Paper 177
33rd report (Session 5)

Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Subordinate Legislation considered on 20 June 2017



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- (a) any—
 - (i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - (ii) [deleted]
 - (iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- (b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- (c) general questions relating to powers to make subordinate legislation;
- (d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- (e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;
- (f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;
- (g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and
- (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.
- (i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meeting on 20 June 2017, the Committee agreed to draw to the attention of the Parliament the following instruments—
 - Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180)
 - Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017 (SSI 2017/182)
 - Building (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/188)
2. The Committee's recommendations and conclusions in relation to these instruments are set out in the next chapter of this report.
3. The Committee determined that it did not need to draw the Parliament's attention to the instruments set out by the relevant lead committee at the end of this report.

Instruments subject to negative procedure

Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180) (Education and Skills)

Purpose

4. The purpose of this instrument is to make a number of amendments to seven sets of regulations relating to student fees, allowances, loans and bursaries.
5. The instrument is subject to the negative procedure and comes into force on 1 August 2017.

Comment

6. The drafting of new paragraph (4)(b)(i) of regulation 2 of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (inserted by regulation 3(b) of the Regulations) could be clearer.
7. In particular, it could be clearer that the words “that person” in the final line of sub-paragraph (b)(i) are intended to refer to the person who will be undertaking a course of study, rather than to that person’s parent(s), guardian(s) or any other person having parental responsibility or care of them when a child.
8. The Committee wrote to the Scottish Government seeking additional information on this issue. The Scottish Government considers that the amendment is sufficiently clear for the purpose of this instrument. However, it intends to consolidate and update the various instruments of secondary legislation which regulate student fees and student support in the higher education sector to ensure greater clarity and consistency. (See Annex A for a further information).
9. Nonetheless, it is the Committee's view that the multiple references to “a person”, “that person”, “any person” and “any other person” in sub-paragraph (b)(i) affect the clarity of the provision.

Recommendation

10. **Accordingly, the Committee draws the instrument to the attention of the Parliament under reporting ground (h), on the basis that the drafting of new paragraph (4)(b)(i) of regulation 2 of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (inserted by regulation 3(b) of the Regulations) could be clearer.**

Comment

11. The instrument makes detailed technical amendments to the eligibility criteria for student support and tuition fee loans, in part in response to a judgement of the UK Supreme Court upholding a challenge to the existing eligibility criteria (applicable under the equivalent England and Wales regulations) on human rights grounds.

12. This being the case, the Committee considers that the provision of a more detailed Policy Note or further supporting documentation explaining in full the policy intention underlying the provisions would have assisted the Committee in its scrutiny of this instrument. In light of the detailed technical changes to eligibility criteria being made by the instrument, the Committee is disappointed that such further documentation was not provided, and is concerned to note that the Scottish Government did not consider a consultation to be necessary due to the nature of the amendments.

Recommendation

- 13. The Committee therefore expresses its disappointment that fuller supporting documentation or an impact assessment was not supplied, and its concern that a consultation was not considered necessary.**

Comment

14. The instrument also contains the following four drafting errors:
1. The word “the” is omitted from the beginning of sub-paragraph b(ii) of new regulation 4(2) of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006, inserted by regulation 3(b).
 2. In new paragraph (9)(a) of regulation 2 of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006, inserted by regulation 3(c), and in new paragraph (8)(a) of regulation 2 of the Education (Student Loans) (Scotland) Regulations 2007, inserted by regulation 16(b), the references to “paragraph 2(4)(b)” should be references to “regulation 2(4)(b)”.
 3. The references in regulation 10(b) to paragraphs “(5)(b)” and “(6)(a)(iii) and (b)” of schedule 1 of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 should be references to paragraphs “5(b)” and “6(a)(iii) and (b)” of schedule 1 of those Regulations.
 4. The references to “regulation 2(3) and (4)” in regulation 22 should be to “regulation 2(2) and (3).”

Recommendation

- 15. The Committee also draws the instrument to the attention of the Parliament under the general reporting ground as it contains the four drafting errors outlined at paragraph 14.**

- 16. The Committee welcomes that the Scottish Government has committed to amend these provisions the next time it makes regulations in the area of student support.**

Purpose

17. This instrument makes amendments to the Education (School Lunches) (Scotland) Regulations 2009 (*“the 2009 Regulations”*) and the Provision of Early Learning and Childcare (Specified Children) Order 2014 (*“the 2014 Order”*).
18. The amendments to the 2009 Regulations introduce a maximum earned income threshold, for entitlement to free school lunches where a child or a child’s parent is in receipt of Universal Credit. The threshold is £610 per month, whether the income is earned by an individual or by a couple. Those amendments are made by regulation 2.
19. The amendments to the 2014 Order introduce a maximum earned income threshold for entitlement to free early learning and childcare for 2 year old children, where the child’s parent is in receipt of Universal Credit. The threshold is similarly £610 per month, whether earned as an individual or as a couple. Those amendments are made by regulation 3.
20. The instrument is subject to the negative procedure and comes into force on 1 August 2017.

Comment

21. The Regulations are made under powers conferred by sections 1 and 3 of the Welfare Reform (Further Provision) (Scotland) Act 2012 (*“the 2012 Act”*). Those powers enable consequential changes to subordinate legislation, as a result of the introduction of universal credit by Part 1 of the Welfare Reform Act 2012. However, regulation 2 amends provisions in the Education (School Lunches) (Scotland) Regulations 2009 which were made under powers contained in section 53(3)(a) and (b) of the Education (Scotland) Act 1980.
22. Regulation 3 amends provisions in the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 which were made under powers to make an order contained in sections 47(2)(c) of the Children and Young People (Scotland) Act 2014.
23. Through correspondence with the Scottish Government, the Committee raised questions in relation to this instrument. This correspondence has been reproduced in full at Annex B.
24. The Committee considers that it would have been a usual and expected use of powers for the Scottish Government to have selected the powers contained in those 1980 and 2014 Acts to make the provisions of this instrument, rather than the powers contained in the 2012 Act. In this instance it is considered that the relevant powers contained in the 1980 and 2014 Acts which were used to make the principal 2009 Regulations and 2014 Order should also have been used to make the amendments contained in these Regulations.
25. If the Scottish Government had chosen to use the powers in section 47(2)(c) of the 2014 Act to make the provisions contained in regulation 3, the Parliament would have been enabled to consider the amendments of the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 with the higher scrutiny level which the affirmative procedure allows. The effect of choosing to use the powers in the 2012 Act is to downgrade the scrutiny procedure, for the

consideration of regulation 3 of the instrument, to the negative procedure. The use of the powers in the 2014 Act would also have involved laying a separate Order in draft.

26. As regards regulation 2, the use of the powers contained in the 2012 Act, rather than those in the 1980 Act, appears to have had no different effect.
27. The Committee accepts however that the Regulations are validly made under the powers contained in the 2012 Act (and are therefore '*intra vires*'). In reporting that the Regulations appear to have been made by an unusual or unexpected use of the powers conferred by the parent statute, the Committee considers in relation to the choice of powers that was available to make the Regulations, which enabling powers are the more appropriate.

Recommendation

28. **The Committee accordingly draws the Regulations to the attention of the Parliament on the reporting ground (g). They have been made by what appears to be an unusual or unexpected use of the powers conferred by the parent statute.**

Building (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/188) (Local Government and Communities)

Purpose

29. The purpose of the instrument is to amend the Building (Scotland) Regulations 2004, the Building (Procedure) (Scotland) Regulations 2004, the Building (Fees) (Scotland) Regulations 2004 and the Building (Forms) (Scotland) Regulations 2005, in connection with:
 - changes to building standards procedures to allow for the digital processing of building warrant applications and completion certificate submissions;
 - changes to building warrant fees; and
 - the addition of a new description of building and work that does not require a building warrant in certain circumstances.
30. The Regulations are subject to the negative procedure and come into force on 1 July 2017.

Comment

31. Regulation 2(3) of the instrument inserts a new regulation 2A into the Building (Procedure) (Scotland) Regulations 2004 (S.S.I 2004/428), which sets out the criteria to be met before a document can be sent by electronic communication. One such criterion is that the document must be "legible in all material respects". That expression is defined in paragraph (7) of the new regulation 2A. The word "sent" has been omitted from the definition.
32. Through correspondence with the Scottish Government, the Committee has acknowledged this error. (See Annex C for further information).

Recommendation

33. The Committee draws the Regulations to the attention of the Parliament on the general reporting ground, in respect of the drafting error outlined at paragraph 31.

34. The Committee welcomes that the Scottish Government has indicated that an amending instrument will be laid during this week to correct this error.

No points raised

Environment, Climate Change and Land Reform

Community Empowerment (Scotland) Act 2015 (Commencement No. 8) Order 2017 (SSI 2017/192 (C.16))

Justice

Advice and Assistance (Proceedings for Recovery of Documents) (Scotland) Regulations 2017 [draft]

Rural Economy and Connectivity

Marketing of Fruit Plant and Propagating Material (Scotland) Regulations 2017 (SSI 2017/177)

Standards, Procedures and Public Appointments

Lobbying (Scotland) Act 2016 (Commencement No. 1) Regulations 2017 (SSI 2017/201 (C.18))

Annex A

Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/180)

On 9 June 2017, the Scottish Government was asked:

1. New paragraph (4) of regulation 2 of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (inserted by regulation 3(b)) provides, at sub-paragraph (b)(i), that:

*“a person shall be treated as having been ordinarily resident in the area specified and for the period specified.. if the Scottish Ministers are satisfied that **the person** was born and has spent the greater part of his or her life in the relevant area and that either of his or her parents, either of his or her guardians or **any other person** having parental responsibility for **that person**, or **any other person** having care of them when he or she is a child, has been ordinarily resident in the relevant area throughout the specified period and **that person** is not an independent student..”*

In the absence of a more detailed Policy Note or further supporting documentation explaining in full the policy intention underlying this provision, please confirm whether the words “that person” in the final line (who may not be an independent student for the purposes of the ordinary residence test) are intended to refer to the person who will be undertaking a course of study, or to that person’s parent(s), guardian(s) or any other person having parental responsibility or care of them when a child.

Is it considered that sub-paragraph (b)(i) is sufficiently clear in this regard?

2. Sub-paragraph (b)(ii) of new paragraph (4) of regulation 2 of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 (inserted by regulation 3(b)) provides that:

*“..a person shall be treated as having been ordinarily resident in the area specified and for the period specified.. if the Scottish Ministers are satisfied that the person was born and has spent the greater part of his or her life in the relevant area and that- (ii) **person** has been ordinarily resident in the relevant area for at least 1 year of the specified period..”*

Is there a word (either “the” or “that” as the case may be) missing from the start of sub-paragraph (b)(ii)? If so, is any corrective action proposed?

3. In new paragraph (9)(a) of regulation 2 of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006, inserted by regulation 3(c), and in new paragraph (8)(a) of regulation 2 of the Education (Student Loans) (Scotland) Regulations 2007, inserted by regulation 16(b), are the references to “**paragraph 2(4)(b)**” intended to be references to “**regulation 2(4)(b)**”. If so, is any corrective action proposed?

4. With regard to the references to “advance postgraduate award” in new paragraph (9)(b)(v) of regulation 2 of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006, and in new paragraph (8)(b)(v) of regulation 2 of the Education (Student Loans) (Scotland) Regulations 2007, it is noted that this phrase does not appear to be defined in either set of amended regulations nor in the Education (Scotland) Act 1980. Please confirm where a definition of “advance postgraduate award” may be found.

5. Regulation 10(b), substituting references to “the United Kingdom” with references to “Scotland” in schedule 1 to the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007, refers to (amongst others) paragraphs (5)(b) and (6)(a)(iii) and (b) of schedule 1. Are these references intended to be references to paragraphs 5(b) and 6(a)(iii) and (b) of that schedule? If so, is any corrective action proposed?

6. Regulation 22, substituting references to “paragraph (1)(a)” with references to “paragraph 1(a)” in the Education Maintenance Allowances (Scotland) Regulations 2007, refers to regulation 2(3) and (4) of those Regulations. Is this reference intended to be a reference to regulation 2(2) and (3) of those Regulations? If so, is any corrective action proposed?

The Scottish Government responded as follows:

1. The Scottish Government confirms that the final reference to “that person” in new regulation 2(4) of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 is to the person undertaking the course of study. The purpose of making this amendment through regulation 3(b) is to ensure that a student is regarded as being ordinarily resident in the area (in which residence is required to be eligible for a student loan) where he or she has spent the greater part of his or her life in that area even though the student may not actually have been resident there for the required period. In making that assessment, regulation 2(4)(b) of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 also requires the person(s) having parental responsibility to have been ordinarily resident in that area for the required period unless the student is regarded as an independent student. Alternatively, the additional requirement is satisfied instead by the student having lived in the required area for at least 1 year.

The format of the amendment has been chosen to ensure consistency with the other instruments of secondary legislation governing student fees and student support in Scotland, most notably the Nursing Midwifery Students Allowances (Scotland) Regulations 2007 and the Students’ Allowances (Scotland) Regulations 2007. The Scottish Government considers that the amendment is sufficiently clear but would draw the Committee’s attention to the note below.

2. The Scottish Government agrees that the addition of the definite article at the beginning of sub-paragraph b(ii) of new regulation 4(2) of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 would enhance the reading of the provision but does not consider that its omission has any legal effect. The Scottish Government will further amend this provision at the next time it makes regulations in the area of student support.

3. The Scottish Government agrees that the reference to “paragraph 2(4)(b)” in the inserted paragraph (9)(a) of regulation 2 of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 should be a reference to “regulation 2(4)(b)” and will correct this the next time it makes regulations in the area of student support.

4. The reference to “advance postgraduate award” in the newly inserted paragraph (9)(b)(v) of regulation 2 of the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 and the newly inserted (8)(b)(v) of regulation 2 of the Education (Student Loans) (Scotland) Regulations 2007 is not to a defined term. The same reference is also used in a similar context in both of the Nursing and Midwifery Students’ Allowances (Scotland) Regulations 2007 (see paragraph 3 of schedule 2) and the Students’ Allowances (Scotland) Regulations 2007 (see paragraph 3 of schedule 2) . The Scottish Government has adopted use of the same reference in both the Education (Student

Loans) (Scotland) Regulations 2007 and the Education (Student Loans for Tuition Fees) (Scotland) Regulations 2006 in order to ensure consistency across the legislation. Advance postgraduate awards do not have a statutory basis so it is not possible to use a pre-defined term but it is accepted within the higher education sector that they are awards given in respect of advanced research level postgraduate courses such as a PhD. The matter is further explained for affected parties in the SAAS Guide to undergraduate funding (see, for example, the statement on the independent students' bursary on page 16: https://www.saas.gov.uk/_forms/sas4.pdf).

5. In regulation 10(1)(b), the references to paragraphs “(5)(b)” and “(6)(a)(iii) and (b)” of schedule 1 of the Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 should be references to paragraphs “5(b)” and “6(a)(iii) and (b)” of schedule 1 of those Regulations. The Scottish Government will correct these references the next time it makes regulations in the area of student support.

6. In regulation 22, the references to “regulation 2(3) and (4)” should be to “regulation 2(2) and (3)”. The Scottish Government will correct this reference the next time it makes regulations in the area of student support.

Note: The Committee will wish to note that the Scottish Government wishes to consolidate and update the various instruments of secondary legislation which regulate student fees and student support in the higher education sector in Scotland with a view to ensuring greater clarity and consistency. The Scottish Government is committed to doing so at the next opportunity but is awaiting the findings of the independent review of the further and higher education support package prior to doing so (see: <http://www.gov.scot/Topics/Education/UniversitiesColleges/studentssupportreview>).

Annex B

Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017 (SSI 2017/182)

On 9 June 2017, the Scottish Government was asked:

This instrument amends the Education (School Lunches) (Scotland) Regulations 2009 (SSI 2009/178) and the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 (SSI 2014/196). SSI 2009/178 was made under the powers contained in section 53(3)(a)(iv) and (b)(iii) of the Education (Scotland) Act 1980. SSI 2014/196 was made principally under the powers contained in section 47(2)(c)(ii) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”). The Parliament by means of enactment of section 99 of the 2014 Act determined that the exercise of the powers in section 47(2)(c)(ii) of that Act should be by order, subject to the affirmative procedure.

Regulation 2(3) prescribes amended circumstances in which universal credit is prescribed as a benefit, the receipt of which entitles a pupil to a free school lunch. Regulation 3(3) amends certain conditions on which a child is of a “specified description” to be entitled to be provided with a mandatory amount of early learning and childcare, so far as those conditions are set out in article 2(2) to (5) of SSI 2014/196. Regulation 3(3) amends the conditions on which universal credit is a “qualifying benefit” for the purposes of the ‘specified description’ of a child. Accordingly:

(1) Please fully explain why it is considered that these Regulations are properly made under the powers contained in sections 1 and 3 of the Welfare Reform (Further Provision) (Scotland) Act 2012 (“the 2012 Act”) and which provisions within those powers are being relied upon, rather than the powers referred to above in the Education (Scotland) Act 1980 and the 2014 Act.

(2) Given that the Parliament has determined as above that the exercise of the powers in section 47(2)(c)(ii) of the 2014 Act should be by means of an order which is subject to the affirmative procedure, and that it appears that regulation 3 could have been made under those powers, why has it been considered appropriate to select the use of the powers in the 2012 Act to make regulations which are subject to the negative procedure?

(3) Please explain why it has been considered appropriate to omit the citation of the powers in section 53(3)(a)(iv) and (b)(iii) of the Education (Scotland) Act 1980 from the preamble, given that it appears that regulation 2 is made (or also made) in exercise of those powers?

The Scottish Government responded as follows:

In response to the first question, it is considered that the Welfare Reform (Consequential Amendments) (Scotland) Regulations 2017 (SSI 2017/182) are properly made under the powers contained in sections 1 and 3 of the Welfare Reform (Further Provision) (Scotland) Act 2012 (“the 2012 Act”) for the reasons set out below:

Section 1 of the 2012 Act provides powers to make provision in consequence of the introduction in 2013 of universal credit^[1] and the abolition of some existing social security benefits by the Welfare Reform Act 2012 (“the UK Act”)^[2]. In particular, it sets out a power

for the Scottish Ministers to make such provision (for devolved purposes) as they consider appropriate in consequence of the provisions in Part 1 of the UK Act which creates universal credit and abolishes these existing social security benefits. Section 1, as read with section 3(3)(a)[3] gives the Scottish Ministers the power to make different provision for different cases or purposes.

The Explanatory Notes for the 2012 Act provide at paragraph 11 that:

*“The power set out in section 1 of the 2012 Act is needed because the existing benefits, which will be abolished, have links to devolved areas, the main one being that they are used as an eligibility hook for a variety of devolved, Scottish “passported benefits”. These include benefits in kind such as **free school lunches** and cash benefits such as the education maintenance allowance. When the existing benefits are abolished, so too will the current, associated eligibility hooks. The Scottish Ministers may use the power provided by this section to make changes for a devolved purpose such as to refer consequentially to some aspect of the new universal credit or to supplement the gap left by the abolition of the hook benefit, for example by creating new eligibility criteria for certain passported benefits conferred in devolved areas such as health or access to justice. Existing social security benefits also impact on other devolved areas such as pre-action requirements where a landlord’s grounds for possession include rent arrears and cancellation of adoption allowances. The Scottish Ministers could also make free-standing provision using this power provided it were for a devolved purpose and was required in consequence of provision made by or under Part 1 of the UK Act”.*

The regulation making powers in sections 1 and 3 are therefore designed to be used in circumstances where a consequential change is required to subordinate legislation, as a result of the introduction of universal credit and the abolition of existing social security benefits by Part 1 of the UK Act. It is therefore the Scottish Government’s view that it is appropriate to use these powers, to amend both the Education (School Lunches) (Scotland) Regulations 2009 (SSI 2009/178) and the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 (SSI 2014/196). It is also considered that it is appropriate to use these powers, given that they can be used to amend both SSI 2009/178 and SSI 2014/196 in one instrument (this also being appropriate, given both instruments require broadly the same amendments to be made to them).

The particular provisions within those powers which are relied on are:

- section 1(1)(a) of the 2012 Act which allows the Scottish Ministers by regulations to make such provision as they consider appropriate in consequence of any provision of Part 1 (universal credit) of the UK Act[4]; and
- section 3(3)(a), which allows such regulations to make different provision for different cases or purposes (in this case, introducing an income threshold, below which those in receipt of universal credit would retain eligibility for two different passported benefits, free school lunches, and early learning and childcare).

In response to the second question, and as stated in response to the first question, the powers in section 1 and 3 of the 2012 Act are designed to be used to amend secondary legislation in consequence of the introduction of universal credit and the abolition of the various existing social security benefits. While section 47(2)(c)(ii) would also allow for an amendment to be made to the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014 (SSI 2014/196), given the policy relates to the increased roll out of universal credit in Scotland (and the need to introduce an income threshold to

ensure a cost neutral impact on education authorities), it is considered that the powers in sections 1 and 3 of the 2012 are more appropriate/in point.

As stated in response to the first question, by means of section 1(1) of the 2012 Act, the Scottish Parliament conferred power on the Scottish Ministers to make provision in consequence of the introduction of universal credit and the abolition of some existing social security benefits by the UK Act and section 1(2) and (3) allows for such regulations to amend secondary legislation and for such regulations to be subject to negative procedure.

In response to the third question, it is not considered necessary to cite the powers in section 53(3)(a)(iv) and (b)(iii) of the Education (Scotland) Act 1980 in the preamble to these regulations. While these provisions give the Scottish Ministers the power by regulations to prescribe any benefit other than those listed within section 53(3)(a) and (b), the receipt of which (either by the pupil's parent or by the pupil themselves) entitles a pupil to a free school lunch, as stated in response to questions 1 and 2, section 1 of the 2012 Act allows the Scottish Ministers to make provision in consequence of the introduction of universal credit and the abolition of some existing social security benefits by the UK Act, and section 1(2) allows for such regulations to amend secondary legislation. Such an amendment, in this case, is to introduce an income threshold, the effect of which is that only those pupils who or whose parents are in receipt of universal credit and who earn less than the income threshold are eligible to receive a free school lunch. The Scottish Government therefore considers it to be competent for regulation 2 to be made by regulations under section 1 of the 2012 Act.

Annex C

Building (Miscellaneous Amendments) (Scotland) Regulations 2017 (SSI 2017/188)

On 8 June 2017, the Scottish Government was asked:

There appears to be an error in regulation 2A(7) of the Building (Procedure) (Scotland) Regulations 2004, as inserted by regulation 2(3) of this instrument. Some words appear to be omitted within the definition of “legible in all material respects”, which expression is used in the inserted new regulation 2A(2)(b). Is corrective action proposed?

The Scottish Government responded as follows:

The Scottish Government accept that the word “sent” ought to have been included (after the word “if”) in the definition of “legible in all material respects” in inserted regulation 2A(7). However, this error is not considered to have a material impact on the operation of the regulations as there is no doubt as to the intended meaning of the provision. No corrective action is considered to be required at this time. The Government will keep the possibility of an amendment to correct this drafting error under review when considering future regulations in this area.

[1] Universal credit is a new, integrated benefit and tax credit which is being rolled out across the UK from April 2013-2017.

[2] The existing social security benefits which will be abolished by section 33 of the UK Act and replaced by universal credit are: Income support under section 124 of the Social Security Contributions and Benefits Act 1992, Housing benefit under section 130 of the 1992 Act, Jobseeker’s allowance under the Jobseekers Act 1995 (where income-based), Employment and support allowance under Part 1 of the Welfare Reform Act 2007 (where income-related), Child tax credit under the Tax Credits Act 2002, and Working tax credit under the Tax Credits Act 2002.

[3] Section 3 contains general, ancillary powers which apply to any regulations made under section 1.

[4] Section 1(2) provides that regulations under section 1 can modify any enactment – which includes primary and secondary legislation, provided that it is for a devolved purpose. This would therefore include the Education (School Lunches) (Scotland) Regulations 2009 and the Provision of Early Learning and Childcare (Specified Children) (Scotland) Order 2014. Section 1(3) provides that regulations under section 1 are subject to negative procedure (unless they add to, replace or omit any part of the text of an Act).

