



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 12 August 2020  
SP Paper 778  
39th Report, 2020 (Session 5)

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

## **Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 11 August 2020**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

---

All documents are available on the Scottish  
Parliament website at:  
[http://www.parliament.scot/abouttheparliament/  
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact  
Public Information on:  
Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

# Contents

<b>Introduction</b>	<b>1</b>
<b>Instruments drawn to the attention of the lead committee</b>	<b>2</b>
<b>No points raised</b>	<b>4</b>
<b>Annex A</b>	<b>7</b>

# 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>



[dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot)



0131 348 5212

# Committee Membership



**Convener**  
**Bill Bowman**  
Scottish Conservative  
and Unionist Party



**Deputy Convener**  
**Stuart McMillan**  
Scottish National Party



**Mary Fee**  
Scottish Labour



**Gordon Lindhurst**  
Scottish Conservative  
and Unionist Party



**Gil Paterson**  
Scottish National Party

# Introduction

1. At its meeting on 11 August 2020, the Delegated Powers and Law Reform Committee considered the following instruments and agreed to draw them to the attention of the lead committee:
  - Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/188)
  - Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020 (SSI 2020/218)
2. The Committee's conclusions in relation to these instruments are set out later in the report.
3. The Committee also 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.
4. In relation to the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.7) Regulations 2020 (SSI 2020/210), the Committee has nevertheless noted some broader issues in the "No points raised" section of the report that the lead committee may wish to consider.

# Instruments drawn to the attention of the lead committee

## **Social Care Staff Support Fund (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/188)**

### Purpose

5. This instrument provides for the establishment, maintenance and administration of the Social Care Staff Support Fund.
6. The Fund has been created in order to ensure that relevant social care workers do not experience financial hardship due to being ill with coronavirus or because they are self-isolating in line with guidance.

### Committee Consideration

7. Regulation 4 of this instrument sets out that in order to make a claim on the Fund, a relevant social care worker must provide evidence to the Scottish Ministers or to such person appointed by the Scottish Ministers in accordance with regulation 2(3). This should be a reference to regulation 2(4) rather than regulation 2(3).
8. The Scottish Government proposes to deal with this error by way of a correction slip.

9. The Committee therefore reports this instrument to the COVID-19 Committee under the general reporting ground in respect of this cross-referencing error.

10. The Committee also notes the commitment to correct this error by way of correction slip.

## **Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020 (SSI 2020/218)**

### Purpose

11. This instrument makes provision in Scotland for changes to the age at which individuals in receipt of Disability Living Allowance are invited to claim for Personal Independence Payment – extending Disability Living Allowance awards to persons aged up to 18 years and 6 months in certain circumstances.

### Committee Consideration

12. The instrument was laid before the Parliament on 17 July 2020 and will come into force on 1 September 2020. This does not respect the requirement that at least 28 days should elapse between the laying of an instrument which is subject to the negative procedure and the coming into force of the instrument.
13. The Committee is therefore required under standing orders to draw the instrument to the attention of the Parliament under reporting ground (j) for failing to comply with

the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

14. The Committee therefore draws this instrument to the attention of the Social Security Committee under reporting ground (j) for failure to comply with section 28(2).
15. The Committee also considered the reasons for the breach of the 28 day rule, which in this case are set out in a letter to the Presiding Officer dated 17 July 2020 (see Annex A).
16. The letter explains that the regulations have taken time to be finalised due to an intensive exercise to determine the impact of Covid-19 on the Scottish Government's plans for the further devolution of social security powers relating to a range disability benefits. Both the Scottish Government and the Department for Work and Pensions needed time to consider whether the changes proposed in these regulations were deliverable in the current challenging environment.
17. The Committee is content with the reasons given for the failure to comply with section 28(2) in these circumstances.



# No points raised

## COVID-19 Committee

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/190)

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.6) Regulations 2020 (SSI 2020/199)

Care Homes Emergency Intervention Orders (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/201)

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.7) Regulations 2020 (SSI 2020/210)

- While this instrument is not being reported under any of the Committee's technical reporting grounds, the Committee would like to highlight to the lead committee, the COVID-19 Committee, some broader issues that have been raised.
- Graham Simpson MSP attended the Committee to highlight some concerns. These centred around two points:
  - that the instrument's provisions were unclear in relation to where face masks are and are not required to be worn (particularly in relation to shops which contain a Post Office or facilities which involve money transfer).
  - that the affirmative procedure should have been used to ensure effective parliamentary scrutiny.
- The Committee agreed that the Scottish Government had the power to lay this instrument subject to the made affirmative procedure, as this was permitted in the Coronavirus Act 2020, to which the Scottish Parliament consented. There is therefore no procedural inaccuracy on which the Committee would report. However, it agreed to bring these concerns to the attention of the lead committee in case this is helpful in its policy consideration.
- The Official Report of the meeting, setting out the contributions of Graham Simpson and Committee Members in full is available [here](#).

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 8) Regulations 2020 (SSI 2020/211)

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No.9) Regulations 2020 (SSI 2020/232)

Health Protection (Coronavirus, Restrictions) (Aberdeen City) Regulations 2020 (SSI 2020/234)

## Finance and Constitution Committee

Land and Buildings Transaction Tax (Tax Rates and Tax Bands) (Scotland) Amendment (No. 2) (Coronavirus) Order 2020 (SSI 2020/215)

Health and Sport Committee

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/209)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/221)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/224)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 6) Regulations 2020 (SSI 2020/229)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 7) Regulations 2020 (SSI 2020/233)

The Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) Order 2020 (SI 2020/776)

The Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) (No. 2) Order 2020 (SI 2020/777)

Education and Skills Committee

Abertay University and Robert Gordon University (Change of Names) (Miscellaneous Amendments) (Scotland) Order 2020 (SSI 2020/draft)

Period Products in Schools (Scotland) Regulations 2020 (SSI 2020/183)

Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/213)

Standards, Procedures and Public Appointments Committee

Representation of the People (Electoral Registers Publication Date) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/draft)

Justice Committee

Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2020 (SSI 2020/draft)

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2020 (SSI 2020/198)

Act of Adjournment (Criminal Procedure Rules 1996 Amendment) (Jury Ballot) 2020 (SSI 2020/200)

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Group Proceedings) 2020 (SSI 2020/208)

Environment, Climate Change and Land Reform Committee

Greenhouse Gas Emissions Trading Scheme Order 2020 (SI 2020/draft)

Local Government and Communities Committee

Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Amendment Regulations 2020 (SSI 2020/230)

Culture, Tourism, Climate Change and External Affairs Committee

UEFA European Championship (Scotland) Act 2020 (Commencement No. 2) Regulations 2020 (SSI 2020/189 (C. 17))

# Annex A

Letter to the Presiding Officer dated 17 July

## **THE PERSONAL INDEPENDENCE PAYMENT (TRANSITIONAL PROVISIONS) AMENDMENT (SCOTLAND) REGULATIONS 2020**

The Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020, SSI 2020/218, were made by the Scottish Ministers under sections 93 and 94 of the Welfare Reform Act 2012 today, 17 July 2020. They are being laid before the Scottish Parliament today, 17 July 2020 and come into force on 1 September 2020.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) that Act, this letter explains why.

### **Background to Instrument**

The instrument makes provision in Scotland for changes to the age at which individuals in receipt of Disability Living Allowance, payable under the Social Security Contributions and Benefits Act 1992, are invited to claim for Personal Independence Payment. The age at present, under the Welfare Reform Act 2012, is set at age 16.

As part of the devolution of powers in relation to disability benefits under the provisions of the Scotland Act 2016, the Scottish Government had previously given a commitment that the age at which an individual would be invited to claim would increase from 16 to 18 years of age. This is intended to reflect the fact that this time in a young person's life marks a key transition point, between child and adult services, and the change ensures continuity of financial support for disabled young people and their families. In connection with that, the instrument also makes provision for the extension of fixed term awards of Disability Living Allowance.

This instrument makes provision for the extension of Disability Living Allowance awards to age 18 years and 6 months for young people resident in Scotland who reach age 16 on or after 1 September 2020, as well as any young people who relocate from England and Wales to Scotland who also reach age 16 on or after 1 September 2020.

### **Reason for non-compliance**

The unique set of circumstances that the Scottish Government and its public sector partners have been operating in since 23 March 2020 has meant that the focus of Government has been on responding to the health and wellbeing of citizens in light of the Covid-19 pandemic.

As the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville MSP, set out in her statement to Parliament on 1 April the social security programme has been subject to an intensive exercise to determine the impact of Covid-19 on the Scottish Government's plans for the further devolution of social security powers relating to a range of disability benefits. The scale and scope of this exercise has been complex, and it is therefore essential to ensure that we have considered fully the changes we are proposing to make.

This work has been undertaken jointly with the Department for Work and Pensions (DWP), as a number of workstreams have dependencies upon DWP's ability to deliver change on behalf of the Scottish Government. In relation to the changes set out in these regulations, both the Scottish Government and DWP needed time to consider whether this policy change was deliverable in the challenging environment in which we are operating. This has been particularly challenging in light of the significant and sustained pressures upon the Scottish Government and its public sector partners. It has only now, therefore, been possible to finalise on these Regulations.

It is necessary, despite non-compliance with the 28 day rule, to lay these regulations at this time, as these changes need to be in place by 1 September 2020. This coming into force date cannot be delayed.

These provisions are the result of joint Ministerial agreement between Scottish and UK Ministers and will provide legislation to allow payment of Disability Living Allowance to continue for children in Scotland, and for those moving to Scotland, beyond their 16<sup>th</sup> Birthday until they can be transferred to the replacement Scottish Child Disability Payment. Without this amending legislation, DWP will need to continue the current process and invite these children to make an application for Personal Independence Payment and their Disability Living Allowance would end. DWP have communicated these changes to affected clients, and have put in place the necessary operational changes to deliver this from 1 September 2020.

The Scottish Government's previous announcement of this change to the eligibility criteria for both DLA and PIP will have created a legitimate expectation from clients that this change will occur for all clients who reach age 16 from 1 September in Scotland, and the Scottish Government's aim is to deliver a safe and secure transition during the devolution of disability benefits.

Failure to deliver this change from 1 September could cause considerable anxiety for vulnerable clients, and create potential confusion about when these changes will take place. Our priority is to ensure that clients continue to get the right payment, at the right time, in line with the changes that we have communicated to them.

The Scottish Government has sought to make, lay and bring into force this instrument as soon as possible following agreement on the scope of these changes. Stakeholders have been aware of the impact of wider changes to the social security programme as a result of Covid-19, and both the Scottish Government and DWP will continue to make clients affected by the change made in these regulations aware of the impact.

**DAVID GEORGE**

Policy Manager

Social Security Policy Division

