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# **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 23 March 2021**



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# Contents

<b>Introduction</b>	<b>1</b>
<b>Scrutiny of instruments under the Committee’s remit: instruments drawn to the attention of the lead committee</b>	<b>2</b>
<b>No points raised</b>	<b>6</b>
<b>Annex 1</b>	<b>7</b>
<b>Annex 2</b>	<b>13</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.



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# Committee Membership



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**Joe FitzPatrick**  
Scottish National Party



**Gil Paterson**  
Scottish National Party

# Introduction

1. At its meeting on 23 March 2021, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the lead committee:
  - National Assistance (Assessment of Resources and Sums for Personal Requirements) Amendment (Scotland) Regulations 2021 (SSI 2021/115);
  - Red Rocks and Longay Urgent Marine Conservation Order 2021 (SSI 2021/131);
  - Council Tax Reduction (Scotland) Amendment (No. 3) (Coronavirus) Regulations 2021 (SSI 2021/137);
  - Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Amendment Regulations 2021 (SSI 2021/140);
  - Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Amendment Regulations 2021 (SSI 2021/142);
  - Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 (SSI 2021/145); and
  - Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2021 (SSI 2021/151).
2. The Committee's recommendations in relation to these instruments are set out in the next section of this report.
3. The Committee also determined that it did not need to draw the Parliament's attention to the instruments set out at the end of the report.

# Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the lead committee

4. The Committee raised issues with the Scottish Government on seven instruments that breached Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. This requires that instruments subject to the negative procedure are laid at least 28 days before they come into force, not counting recess periods of more than 4 days.
5. The Scottish Government wrote to the Presiding Officer explaining why the 28-day rule had not been complied with on all of these instruments.
6. A copy of all correspondence can be found in **Annex 1**.

## National Assistance (Assessment of Resources and Sums for Personal Requirements) Amendment (Scotland) Regulations 2021 (SSI 2021/115)

7. This instrument amends the National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2021 (SSI 2021/76) and the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2021 (SSI 2021/77). These relate to the assessment of a person's liability to pay for residential accommodation provided by a local authority. The instrument changes the date of commencement of those instruments from 6 April 2021 to 12 April 2021.
8. The Scottish Government said in correspondence with the Committee (see **Annex 2**) that the breach of the 28-day rule came about as a result of an oversight in not consulting the UK Government before making SSIs 2021/76 and 77 to check what the commencement dates were for the annual uprating exercise under section 150(10) of the Social Security Administration Act 1992.

9. **The Committee agrees to draw this instrument to the attention of the Parliament on reporting ground (j) in that it has been laid less than 28 days before coming into force and therefore has breached the laying requirements under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
10. **The Committee notes that the need to breach the 28-day rule came about as a result of an oversight in not consulting the UK Government before making SSIs 2021/76 and 2021/77.**
11. **The Committee welcomes that procedures have been put in place to ensure that relevant commencement dates are checked with the UK Government for the next financial year.**

## Red Rocks and Longay Urgent Marine Conservation Order 2021 (SSI 2021/131)

12. The Red Rocks and Longay Nature Conservation Marine Protected Area Order

2021 designated the Red Rocks and Longay area of the Inner Sound of Skye as a nature conservation marine protected area ('MPA').

13. This Order has been brought into force urgently to further the conservation objectives for the MPA in order to protect flapper skate and their eggs.
14. **The Committee agrees to draw this instrument to the attention of the Parliament on reporting ground (j) in that it has been laid less than 28 days before coming into force and therefore has breached the laying requirements under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
15. **The Committee is content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.**

Council Tax Reduction (Scotland) Amendment (No. 3) (Coronavirus) Regulations 2021 (SSI 2021/137)

16. This instrument amends the Council Tax Reduction (Scotland) Regulations 2012 and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012.
17. The instrument provides that a one-off £500 payment that is to be made to persons eligible for working tax credits is to be disregarded, for the purposes of council tax reduction, in calculating a person's capital. This follows an announcement by the UK Government on 3 March 2021.

18. **The Committee agrees to draw this instrument to the attention of the Parliament on reporting ground (j) in that it has been laid less than 28 days before coming into force and therefore has breached the laying requirements under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
19. **The Committee is content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.**

Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Amendment Regulations 2021 (SSI 2021/140)

20. The eligibility criteria for Carer's Allowance was relaxed to take account of the effects of coronavirus by the Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Regulations 2020.
21. Regulation 2 of those Regulations, which delivered the policy intention, was originally due to expire in December 2020 but was extended to 12 May 2021 by SSI 2020/350. This instrument further extends this period until 31 August 2021.

22. **The Committee agrees to draw this instrument to the attention of the Parliament on reporting ground (j) in that it has been laid less than 28 days before coming into force and therefore has breached the laying**



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

23. **The Committee is content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.**

Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Amendment Regulations 2021 (SSI 2021/142)

24. The main purpose of this instrument is to make provision for extension of the duration of planning permissions and consents granted during the coronavirus pandemic. It will be subject Scottish Government review and reporting every two months, as long as the Coronavirus Acts remain in force.
25. The instrument corrects drafting errors in earlier regulations extending the expiry date for relevant planning permissions and consents until 31 March 2022, and applies the saving provision in those regulations to conservation area consents, as well as listed building consents.

26. **The Committee agrees to draw this instrument to the attention of the Parliament on reporting ground (j) in that it has been laid less than 28 days before coming into force and therefore has breached the laying requirements under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**

27. **The Committee is content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.**

28. **The Committee also welcomes that the instrument fulfils a commitment to the Committee given by the Scottish Government to correct drafting errors in the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021 considered by the Committee on 9 March 2021.**

Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 (SSI 2021/145)

29. The purpose of this instrument is to provide that specified relief, in respect of non-domestic rates, that would otherwise be granted is not granted from 1 April 2021, if that relief added to any other prescribed relief would exceed 325,000 Special Drawing Rights.
30. The instrument was made after clarification was obtained following the recent UK Government budget on 3 March.

31. **The Committee agrees to draw this instrument to the attention of the Parliament on reporting ground (j) in that it has been laid less than 28 days before coming into force and therefore has breached the laying requirements under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**

- 32. The Committee is content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.**

Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2021 (SSI 2021/151)

33. This instrument provides for a 100% non-domestic rates relief for properties with specified uses in the retail, hospitality and leisure sectors, as well as properties used for newspaper publishing. It also provides a 100% relief for airports and handling service providers, and for lands and heritages occupied by Loganair Ltd.
34. The instrument was made once it was confirmed the Scottish Government would receive relevant funding from the UK Government budget on 3 March 2020.

- 35. The Committee agrees to draw this instrument to the attention of the Parliament on reporting ground (j) in that it has been laid less than 28 days before coming into force and therefore has breached the laying requirements under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**

- 36. The Committee is content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.**

# No points raised

## COVID-19 Committee

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 17) Regulations 2021 (SSI 2021/136)

## Environment, Climate Change and Land Reform Committee

UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (Commencement No. 1) Regulations 2021 (SSI 2021/141 (C.11))

## Justice Committee

Scottish Fire and Rescue Service (Appointment of Chief Inspector) Order 2021 (SSI 2021/132)

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Court Sittings) 2021 (SSI 2021/153)

## Rural Economy and Connectivity Committee

Animal Health (Notification and Control Measures) (Miscellaneous Amendments) (Scotland) Order 2021 (SSI 2021/130)

# Annex 1

## **National Assistance (Assessment of Resources and Sums for Personal Requirements) Amendment (Scotland) Regulations 2021 (SSI 2021/115)**

### **3 March 2020, Scottish Government to Presiding Officer**

The above instrument was made by the Scottish Ministers under sections 22(4) and 22(5) of the National Assistance Act 1948 on 3 March 2021. It is being laid before the Scottish Parliament today, 3 March 2021 and comes into force on 5 April 2021.

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.

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

Secondary legislation sets out the income and capital that can be taken into account when assessing an individual's contribution to their care home fees. There are three allowances that are up-rated each year in line with inflation: Personal Expenses Allowance (PEA), Savings Disregard, and Capital Limits.

The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2021 (S.S.I. 2021/76) and The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2021 (S.S.I. 2021/77) were laid before parliament on 18 February 2021. S.S.I. 2021/76 makes provision for the annual inflationary increase in the weekly rate of PEA from 6 April 2021 and S.S.I. 2021/77 makes provision for the inflationary increase in the upper capital limit and the weekly rate of savings credit disregard from 6 April 2021.

The coming into force date of 6 April 2021 was chosen in anticipation of it coinciding with the date of annual uprating of Department for Work and Pensions benefits. The annual uprating of Department for Work and Pensions benefits usually takes place under section 150(10) of the Social Security Administration Act 1992 which notes that changes to benefits take effect from the week beginning the first Monday in the tax year, or on such earlier date in April as may be specified.

The annual uprating of Department for Work and Pensions benefits will now take place on 12 April this year. The National Assistance (Assessment of Resources and Sums for Personal Requirements) Amendment (Scotland) Regulations 2021 will therefore come into force on 5 April 2021 and will allow for the changes described above to come into effect from 12 April 2021. This is to allow operational efficiencies to be achieved by local authorities in incorporating these changes into their financial reassessments of care home residents in 2021/2022. If the SSI did not proceed, the operational difficulties may negatively impact the ability of local authorities to carry out financial reassessments of care home residents in their locality.

I regret that it has not been possible to meet the 28-day laying rule on this occasion.

### **Red Rocks and Longay Urgent Marine Conservation Order 2021 (SSI 2021/131)**

## **10 March 2020, Scottish Government to Presiding Officer**

The Red Rocks and Longay Urgent Marine Conservation Order 2021, SSI <number> was made by the Scottish Ministers under sections 67(1)(a), 68, 69 and 79(1) of the Marine (Scotland) Act 2010 (“the Act”) on 10 March 2021. It is being laid before the Scottish Parliament today, 10 March 2021 and comes into force on 17 March 2021

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.

Under section 3 of the Marine (Scotland) Act 2010, when exercising any function under the Act that affects the Scottish marine area the Scottish Ministers and public authorities must act in the way best calculated to further the achievement of sustainable development, including the protection and, where appropriate, the enhancement of the health of the area. Scottish Ministers consider that this Marine Conservation Order, made on an urgent basis, is necessary to further the conservation objective, namely to conserve common skate, within the Red Rocks and Longay MPA.

The Scottish Government was notified of the presence of a flapper skate nursery area to the east of Scalpay in the Inner Sound in October 2020. NatureScot provided formal advice on 26 October 2020 and subsequently updated this on 18 December 2020. Flapper skate (part of the common skate complex) are on the OSPAR Threatened and/or Declining Species and Habitats List and the list of Priority Marine Features. Furthermore they are considered ‘Critically Endangered’ globally and in European waters by the International Union for Conservation of Nature (IUCN). Little is known about the breeding habits of flapper skate due to their rarity, however it is thought their eggs take around 18 months to hatch and are sensitive to disturbance from a number of marine activities.

This is of an urgent nature as this is the first flapper skate nursery area of this scale to be identified in Scotland and is of national importance for conservation of this species. NatureScot recommended that the Scottish Government implements permanent protection at this site, with an interim measure in place from 01 April 2021, when the current seasonal fisheries restrictions end. This would provide protection whilst proposals are drafted for permanent protection measures.

Where the Scottish Ministers consider that there is an urgent need to protect an area in respect of which a marine conservation order may be made then section 88 of the Act allows the Ministers to make a Marine Conservation Order on an urgent basis. In such cases the procedure set down for prior consultation under section 87 of the Act does not apply.

As the disturbance or removal of flapper skate eggs presents a significant risk of the conservation objective in respect of flapper skate not being achieved there is a legal duty on the Scottish Ministers to intervene. Therefore, the procedure at section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 is not being followed on this occasion. This is to remove the risk of further impacts on the flapper skate nursery area as soon as possible.

We will endeavour to follow the procedure at section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 for other MPA management proposals.

## **Council Tax Reduction (Scotland) Amendment (No. 3) (Coronavirus) Regulations**

**2021 (SSI 2021/137)**

**11 March 2020, Scottish Government to Presiding Officer**

The Council Tax Reduction (Scotland) Amendment (No. 3) (Coronavirus) Regulations 2021, SSI 2021/137 were made by the Scottish Ministers under section sections 80 and 113(1) and paragraph 1 of schedule 2 of the Local Government Finance Act 1992 on 11 March 2021. This instrument is subject to negative procedure. The Regulations are being laid before the Scottish Parliament today, 11 March 2021 and come into force on 5 April 2021.

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.

As part of the budget statement on 3 March 2021 the UK Government announced it would pay working households that receive tax credits a new one-off payment of £500. HMRC will start making the payments from 12 April 2021 to those who are eligible.

The drafting of these amending regulations was commenced immediately after this announcement, to ensure that no one who receives this new one-off payment would get a lower level of Council Tax Reduction as a result of the payment. Due to the time constraints between the announcement and when the Regulations need to come into force (reflecting the UK Government's timing) it has not been possible on this occasion to meet the 28 day requirement.

I am copying this letter to James Dornan, Convener of the Local Government and Communities Committee and Bill Bowman, Convener of the Delegated Powers and Law Reform Committee.

**Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Amendment Regulations 2021 (SSI 2021/140)**

**15 March 2020, Scottish Government to Presiding Officer**

Earlier today, the Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Amendment Regulations 2021 were made by the Scottish Ministers under section 70(8) and 175(1) of the Social Security Contributions and Benefits Act 1992 ("the 1992 Act"). The instrument is laid before the Scottish Parliament today and comes into force on 12 May 2021.

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 sitting days before the instrument comes into force. On this occasion, given the upcoming pre-election period, this has not been complied with, and, to meet the requirements of section 31(3) that Act, this letter explains why.

The function of administering an allowance to carers under section 70 of the 1992 Act ("carer's allowance") transferred to the Scottish Ministers on 03 September 2018 and since this date, the Secretary of State for Work and Pensions ("the Secretary of State") has administered Carer's Allowance on behalf of the Scottish Ministers pursuant to an agency agreement. The agency agreement sets out an undertaking by the Secretary of State and the Scottish Ministers to cooperate to ensure that Carer's Allowance is delivered to people

resident in Scotland on the same basis as people resident in England and Wales.

Following the announcement of the first lockdown in March 2020, the Scottish Government has been working with the Department of Work and Pensions to identify changes to Carer's Allowance which would ease pressures on carers in response to the effects of coronavirus. A number of easements were agreed that could be put in place through guidance. One easement required temporary changes to the application of legislation, to ensure that a person continues to receive Carer's Allowance during any break in caring caused by illness or isolation of the carer or cared for person due to coronavirus.

On 30 March 2020, the Secretary of State laid the Social Security (Coronavirus) (Further Measures) Regulations 2020, which add to the circumstances in which a carer is to be treated as regularly and substantially engaged in caring for the purpose of entitlement to Carer's Allowance. Scottish Ministers then laid the Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Regulations 2020 to make equivalent provision for carers in receipt of Carer's Allowance, for whom the Scottish Ministers have responsibility for payment. The provisions have since been extended for a further further six months to 12 May 2021 at 23:59 hours by further amending regulations in both Parliaments: The Social Security (Coronavirus) (Further Measures) (Amendment) and Miscellaneous Amendment Regulations 2020 and The Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Amendment Regulations 2020.

Given the ongoing impacts of the pandemic, we have been seeking the agreement of the DWP to extend the breaks in care provisions further. DWP have now indicated their intention to extend the relevant provision in England and Wales until 31 August 2021. The instrument laid today seeks to extend the operation of regulation 2 of The Carer's Allowance (Coronavirus) (Breaks In Care) (Scotland) Regulations 2020 until 31 August 2021 in line with the corresponding change which is to be made by the Secretary of State for Work and Pensions for carers in England and Wales.

The Scottish Government wishes to make sure that there is no gap period during which carers in Scotland will not have the benefit of the change in the break in care rules. These Regulations are therefore being laid in advance of the election. It has not been possible to do so earlier, due to the need for confirmation from DWP that they plan to make an equivalent extension. Laying the Regulations before, rather than after the election, should allow for greater opportunity for scrutiny of the Regulations by the Scottish Parliament.

A copy of this letter has been sent to the Convener of the Social Security Committee.

### **Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Amendment Regulations 2021 (SSI 2021/142)**

#### **15 March 2020, Scottish Government to Presiding Officer**

On 24<sup>th</sup> February 2021 the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021 were laid in the Scottish Parliament. The Regulations amend the definitions of "emergency period" and "extended period" in sections

58(3C) and 59(8C) of the Town and Country Planning (Scotland) Act 1997 ("the Act"). Those provisions are applied and inserted by provisions of the Coronavirus (Scotland) Acts and relate to the duration of planning permission, planning permission in principle, listed building consent and conservation area consent. The Regulations also make saving

provisions in respect of certain permissions and consents and following consideration of the Regulations by the Delegated Powers and Law Reform Committee it has been denied that certain changes require to be made.

On 26<sup>th</sup> February the Delegated Powers and Law Reform Committee wrote to the Scottish Government to highlight a number of errors with regards to the savings provisions within those regulations. We responded on 2nd March confirming that regulations to correct these errors would be brought forward before SSI 2021/100 comes into force on 30 March. Further consideration of the Regulations following from the points raised by the Committee has identified that the Regulations would benefit from additional changes. These ensure that the saving arrangements extend to conservation area consent and that references to permissions and consents are defined.

Given that SSI 2021/100 is due to come into force on 30 March 2021, the Scottish Government's view is that it is necessary to breach the 28 day laying requirement to ensure that the errors identified by the DPLRC are rectified and other changes are made to the Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Regulations 2021, before the Regulations come into force.

The Town and Country Planning (Emergency Period and Extended Period) (Coronavirus) (Scotland) Amendment Regulations 2021 has today been laid to make the changes including the correction of those errors highlighted by the DPLRC.

## **Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021 (SSI 2021/145)**

### **16 March 2020, Scottish Government to Presiding Officer**

The Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2021, SSI 2021/145 were made by the Scottish Ministers under section 153 of the Local Government etc. Scotland Act 1994 on 16 March 2021. This instrument is subject to negative procedure. The Regulations are being laid before the Scottish Parliament today, 16 March 2021 and come into force on 1 April 2021.

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.

The EU-UK Trade and Cooperation Agreement (TCA) has been applicable since 1 January 2021, and the Scottish Government wishes to ensure that from 1 April the restrictions on rates relief operate based on the framework it contains. All public authorities must now have regard to commitments therein as well as the Withdrawal Agreement, Northern Ireland Protocol, World Trade Organisation rules (including the Agreement on Subsidies and Countervailing Measures), and Trade Agreements between the UK and non-EU countries.

At the date of making these Regulations there is not a system for national subsidy controls established in domestic legislation, and these Regulations introduce a *de minimis* framework to the awarding of specified non-domestic rates reliefs in order to ensure that reliefs are aligned with the lower threshold set for *de minimis* relief by the TCA. The setting of the threshold at this level would not prevent grant of other subsidies where permitted by the TCA, but rates relief would be capped at the lower threshold.



The making of the Regulations was held back in case the recent UK Government Budget contained any announcements that were relevant to the system of subsidy control in 2021-22. The Budget did not in fact provide any significant information in that respect. Following further discussions between Scottish and UK Government officials, the Regulations have been finalised and made as swiftly as possible.

I am copying this letter to James Dornan, Convener of the Local Government and Communities Committee and Bill Bowman, Convener of the Delegated Powers and Law Reform Committee.

## **Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2021 (SSI 2021/151)**

### **18 March 2020, Scottish Government to Presiding Officer**

The Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2021, SSI 2021/151 were made by the Scottish Ministers under section 153 of the Local Government etc. Scotland Act 1994 on 18 March 2021. This instrument is subject to negative procedure. The Regulations are being laid before the Scottish Parliament today, 18 March 2021 and come into force on 1 April 2021.

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.

The Scottish Budget 2021-22 committed on 28 January to a three-month extension to 100% retail, hospitality leisure and aviation (RHLA) relief put in place in 2020-21 in response to the COVID-19 pandemic. On 16 February 2021 the Scottish Government confirmed its commitment to a full twelve-month extension of RHLA relief therefore covering all of 2021-22, including for news publishing, this being contingent on the Scottish Government receiving the funding already assumed from the UK Budget on 3 March, and the requisite funds being available to maintain existing support into 2021-22. This policy was therefore only confirmed after the UK Budget and the Regulations for this relief were made as soon as feasible immediately thereafter.

I am copying this letter to James Dornan, Convener of the Local Government and Communities Committee and Bill Bowman, Convener of the Delegated Powers and Law Reform Committee.

# Annex 2

## National Assistance (Assessment of Resources and Sums for Personal Requirements) Amendment (Scotland) Regulations 2021 (SSI 2021/115)

### On 11 March 2021, the Scottish Government was asked:

1. Please explain:
  - a. on what basis the annual uprating of Department for Work and Pensions benefits took place, to provide for commencement on 12 April 2021, if it did not occur under section 150(10) of the Social Security Administration Act 1992?
  - b. why this change happened?
  - c. when it became clear that the change was going to occur?
2. Please explain why the change of date could not have been established before SSIs 2021/76 and 2021/77 were laid before the Parliament. In particular, what steps, if any, were taken to liaise with the UK Government to ensure that the commencement dates chosen for SSIs 2021/76 and 2021/77 were correct.

### On 16 March 2021, the Scottish Government responded:

#### Question 1

1a. The annual uprating of Department for Work and Pensions (DWP) benefits took place in accordance with section 150(10) of the Social Security Administration Act 1992 (“the 1992 Act”). This permits a coming into force date of either: (1) in the week beginning with the first Monday in the tax year or (2) on such earlier date in April as may be specified in the relevant Order. For the purpose of section 150(10)(a), the 2021-2022 tax year begins on Tuesday April 6 2021. The week beginning with the first Monday in tax year 2021-2022 begins with Monday 12 April 2021.

1b&c. The annual uprating of the Department of Work and Pensions benefits took place in accordance with section 150(10) of the 1992 Act.

#### Question 2

2. The Scottish Government prepared SSIs 2021/76 and 2021/77 with a commencement date of 6 April 2021. This was the date of the new tax year for 2021-2022. SSIs 2021/76 and 2021/77 were made on 16 February 2021. After discussing this matter with COSLA on 23 February 2021, the Scottish Government decided to amend the commencement dates in SSIs 2021/76 and 2021/77 to 12 April 2021 to achieve parity with the commencement dates for the DWP annual uprating exercise. This would allow operational efficiencies to be achieved by local authorities in incorporating these changes into their financial reassessments of care home residents in 2021/2022. There was an oversight in not consulting with the UK Government before making SSIs 2021/76 and 2021/77 to check what the commencement were dates for the DWP annual uprating exercise. The Scottish Government regrets this oversight. Policy officials have put in place procedures to ensure relevant commencement dates are checked with the UK Government for the next financial year.

