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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 24 May 2022**



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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.



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# Committee Membership



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**Convener**  
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Scottish Conservative  
and Unionist Party



**Craig Hoy**  
Scottish Conservative  
and Unionist Party



**Paul Sweeney**  
Scottish Labour

# **Introduction**

1. At its meeting on 24 May, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
  - Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/Draft)
2. The Committee's recommendations in relation to this instrument are set out in the next section of this report.
3. The Committee also determined that in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

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

## Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/Draft)

4. The instrument sets out provisions for transferring specified individuals in Scotland, currently in receipt of Disability Living Allowance, to become entitled to Adult Disability Payment and makes miscellaneous amendments to specified legislation.
5. In correspondence with the Scottish Government, which can be found in the **Annex**, the Committee highlighted errors identified in regulations 2, 5(1) and 19(10) of the instrument.
6. The error in regulation 2 concerned the omission of reference to Part 1 of the instrument in the introductory text to the regulation. In regulation 5(1) reference has been made to "daily living component" as opposed to the defined term which is "daily living component of Adult Disability Payment". Regulation 19(10) refers in error to regulation 63 rather than regulation 6 of the Social Security and Child Support (Decisions and Appeals) Regulations 1999.
7. The Scottish Government confirmed that it intends to correct the errors in regulations 2 and 19(10) by way of a correction slip. It will also correct the error in regulation 5(1) at the next legislative opportunity.
8. The Committee draws this instrument to the attention of the Parliament under the general reporting ground in respect of errors in regulations 2, 5(1) and 19(10) of the instrument.
9. The Committee nevertheless welcomes the Scottish Government's intention to correct the errors in regulations 2 and 19(10) by way of a correction slip while correcting the error in regulation 5(1) at the next opportunity.
10. The Committee also welcomes that the Scottish Government has taken this legislative opportunity to make a number of amendments in the instrument which give effect to the Committee's recommendations in relation to its consideration, at its meeting on 18 January 2022, of the Disability Assistance for Working Age People (Scotland) Regulations 2022 (SSI 2022/54).

# No points raised

At its meeting on 24 May, the Committee agreed that, under its remit, it did not need to draw the Parliament's attention to any of the instruments it considered. These instruments are:

## Criminal Justice Committee

Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2022 (SSI 2022/Draft)

- This instrument was originally laid on 4 May 2022. It was subsequently withdrawn and re-laid on 13 May 2022.

## Health, Social Care and Sport Committee

Food and Feed Safety (Fukushima Restrictions) (Scotland) Revocation Regulations 2022 (SSI 2022/166)

## Social Justice and Social Security Committee

First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2022 (SSI 2022/162)



# Annex

## **Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/Draft)**

On 13 May 2022, the Committee asked the Scottish Government:

The instrument sets out provisions for transferring specified individuals in Scotland currently in receipt of Disability Living Allowance to become entitled to Adult Disability Payment (Parts 2 and 3) and makes miscellaneous amendments to specified legislation (Part 4).

1. Regulation 2 in Part 1 of the instrument makes interpretation provisions. Some of the defined terms are used within other definitions in this Part of the instrument. Should reference be made in the opening words of regulation 2 to Part 1 in addition to the existing reference to Parts 2 and 3?
2. The term “daily living component” is used in regulation 5(1) but is not defined in this instrument. The defined term in regulation 2 of the instrument is “daily living component of Adult Disability Payment”. Should the reference in regulation 5(1) be to this defined term?
3. Regulation 19(10) of the instrument inserts a new paragraph (e) into regulation 48 of the Disability Assistance for Working Age People (Scotland) Regulations 2022. The new paragraph 48(e)(ii) refers to a supersession under regulation 63 of the 1999 Regulations. The 1999 regulations are defined in the preceding new subparagraph (i) as the Social Security and Child Support (Decisions and Appeals) Regulations 1999. Regulation 63 of the 1999 Regulations doesn’t appear to exist. Should this be reference to Regulation 6 or another regulation of the 1999 Regulations?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 17 May 2022, the Scottish Government responded:

The Scottish Government is grateful for the Committee drawing these points to our attention and would respond as follows:

1. We agree that Part 1 also uses defined terms so shall use a correction slip to include reference to Part 1 which was omitted in error.
2. We agree that it may have been clearer to include the words “of Adult Disability Payment” after “daily living component” in regulation 5(1) and shall ensure that it is amended at the next opportunity. Meantime however, we consider that the reference to “daily living component” in regulation 5(1) can be properly interpreted as meaning the daily living component of Adult Disability Payment when taken in the context of regulations 5 and 6. Regulation 5(1) refers to “the daily living component at the transitional rate specified in regulation 6(1)” and regulation 6(1) refers to the “rate of payment of the daily living component of Adult Disability Payment” so when both provisions are read together it is sufficiently clear what the daily living component means. In addition, regulation 5(2)(a) makes clear that the transitional rate given under a transfer determination is “the transitional rate of the daily living component of

Adult Disability Payment”. Therefore, we do not intend to take any corrective action at this time.

3. We confirm that the reference ought to have been to regulation 6 and intend to use a correction slip to remove the “3” which is a typographical error.

