

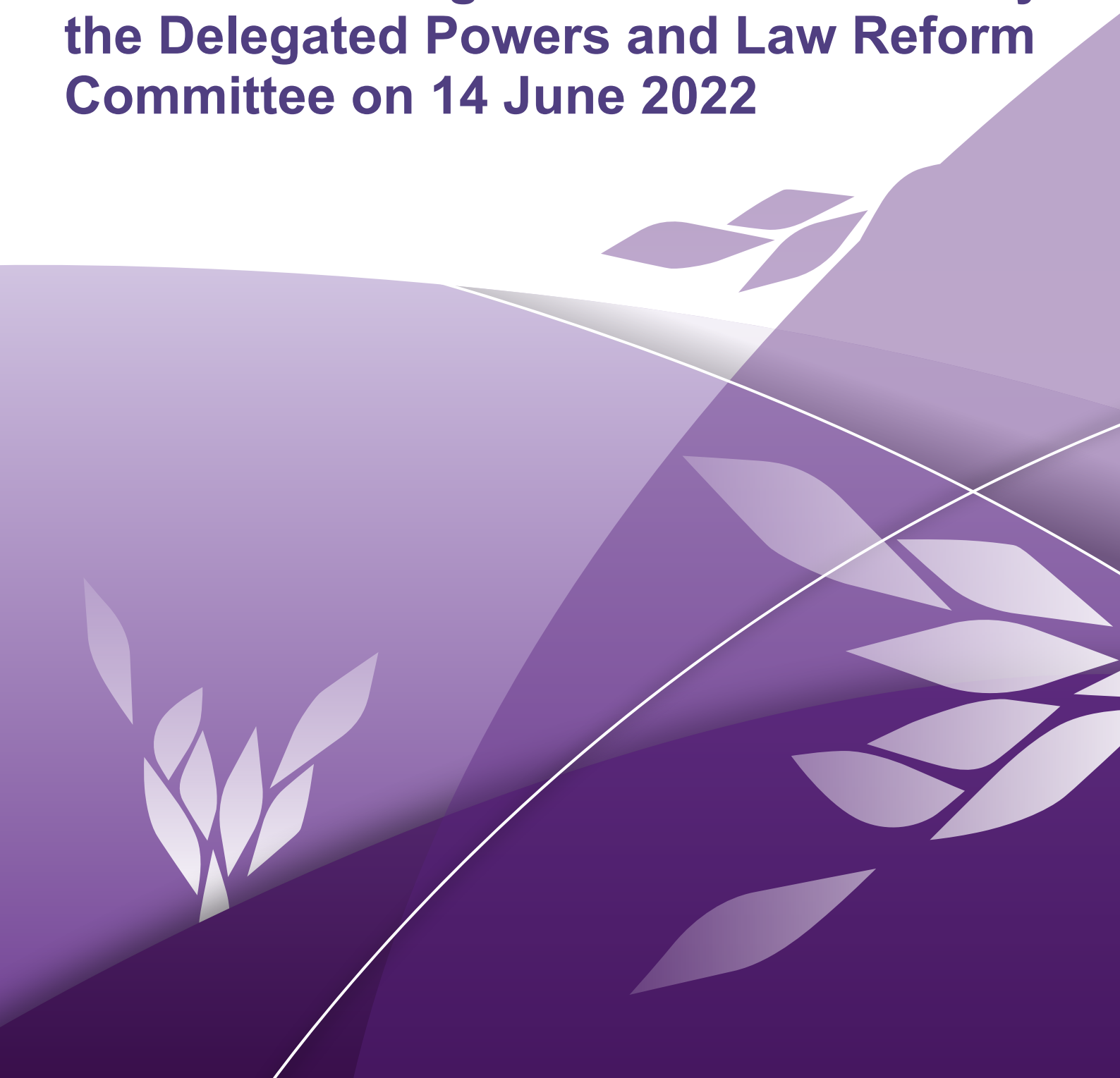


The Scottish Parliament
Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 14 June 2022



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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;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(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



Convener
Stuart McMillan
Scottish National Party



Deputy Convener
Bill Kidd
Scottish National Party



Graham Simpson
Scottish Conservative
and Unionist Party



Paul Sweeney
Scottish Labour



Jeremy Balfour
Scottish Conservative
and Unionist Party

No points raised

At its meeting on 14 June, 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:

COVID-19 Recovery Committee

Coronavirus (Scotland) (No. 2) Act 2020 (Suspension: Termination of Student Residential Tenancy) Regulations 2022 (SSI 2022/192)

Criminal Justice Committee

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2022 (SSI 2022/194)

Equalities, Human Rights and Civil Justice Committee

Justice of the Peace Court Fees (Scotland) Order 2022 (SSI 2022/179)

Sheriff Court Fees Order 2022 (SSI 2022/181)

High Court of Justiciary Fees Order 2022 (SSI 2022/182)

Sheriff Appeal Court Fees Order 2022 (SSI 2022/183)

Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2022 (SSI 2022/184)

Court of Session etc. Fees Order (SSI 2022/185)

- A copy of correspondence between the Committee and the Scottish Government in relation to the above six instruments, can be found in the annex.

Local Government, Housing and Planning Committee

Town and Country Planning (Fees for Applications) (Scotland) Amendment Regulations 2022 (SSI 2022/190)

Rural Affairs, Islands and Natural Environment Committee

Meat Preparations (Import Conditions) (Scotland) Amendment Regulations 2022 (SSI 2022/193)

Annex

SSI 2022/179 The Justice of the Peace Court Fees (Scotland) Order 2022 – regulation 4(1)(d)(i)

SSI 2022/181 The Sheriff Court Fees Order 2022 – article 9(1)(d)(i)

SSI 2022/182 The High Court of Justiciary Fees Order 2022 – article 4(1)(d)(i)

SSI 2022/183 The Sheriff Appeal Court Fees Order 2022 – article 4(1)(d)(i)

SSI 2022/184 The Adults with Incapacity (Public Guardian’s Fees) (Scotland) Regulations 2022 – regulation 4(1)(d)(i)

SSI 2022/185 The Court of Session etc. Fees Order 2022 – article 5(1)(d)(i)

On 31 May 2022 the Scottish Government was asked:

Each instrument contains a regulation/article headed “Exemption of certain persons from fees: social security” (the provision number in each is noted above). It provides, in each case, that a fee is not payable by a person if they or their partner is in receipt of working tax credit, provided that child tax credit is being paid to the person or their partner, or otherwise following a claim for child tax credit made jointly by the members of “a couple (as defined in section 3(5A) of the Tax Credits Act 2002)” which includes the person or their partner.

Section 3(5A) of the 2002 Act defines “couple” in such a way that it does not include people who are in a same sex marriage or an opposite sex civil partnership.

Please explain, including with reference to Convention rights if applicable, why it is not necessary also to exempt persons who would otherwise qualify for an exemption under the provision but who are in a same sex marriage or an opposite sex civil partnership?

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

On 7 June 2022 the Scottish Government responded:

Section 3(5A) of the Tax Credits Act 2002 has been amended by paragraph 23(2) of schedule 3 of the Civil Partnership (Opposite-sex Couples) Regulations 2019 (“the 2019 Regulations”) so that “couple” means-

(a) two people who are married to, or civil partners of, each other and are neither—

(i) separated under a court order, nor

(ii) separated in circumstances in which the separation is likely to be permanent, or

(b) two people who are not married to, or civil partners of, each other but are living together as if they were a married couple or civil partners.

That amendment extends to Scotland by virtue of regulation 2(4), read in conjunction with section 69 of the Tax Credits Act 2002. The footnote relating to the Tax Credits Act 2002 in

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each of the 6 instruments will be updated by correction slip to include reference to the 2019 Regulations.

We note that the Westlaw version of section 3(5A) of the Tax Credits Act 2002 is showing an out of date version of the provision that does not include people who are in a same sex marriage or an opposite sex civil partnership.

