



The Scottish Parliament
Pàrlamaid na h-Alba

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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 October 2023



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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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Introduction

1. At its meeting on 24 October, the Committeeⁱ considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
 - Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2023 (SSI 2023/268)
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.

ⁱ Mercedes Villalba MSP submitted apologies for this meeting.

Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament

Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2023 (SSI 2023/268)

4. The instrument makes amendments to the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 and the Council Tax Reduction (Scotland) Regulations 2021 to ensure certain types of payments, detailed in the bullet points below, are disregarded for the purposes of calculating entitlement to council tax reduction-
 - Grenfell Tower payments, Post Office compensation payments and Vaccine Damage payments (including payments to partners) to be disregarded indefinitely as capital and income.
 - Compensation payments under the Windrush Compensation Scheme to be disregarded.
 - Payments relating to redress for historic child abuse in care to be disregarded in calculating the income of a non-dependant adult, living with the council tax reduction applicant, for the purposes of calculating how entitlement to council tax reduction is affected by the presence of the non-dependant adult.
5. The instrument also makes provision to ensure the capital of a person liable to pay council tax has no impact on their entitlement to Second Adult Rebate.
6. In correspondence with the Scottish Government, the Committee asked whether it considers it appropriate to insert the new paragraph 46 under Part 5 of schedule 4 of the 2021 Regulations, under the heading "Payments", as this amendment does not concern a payment but the whole of a person's capital in relation to the entitlement of second adult rebate.
7. In its response, the Scottish Government recognised that it would be helpful to the reader to insert a new Part number and heading into schedule 4 of the 2021 Regulations at the next available opportunity, which it anticipates being February 2024, when other substantive amendments to the 2021 Regulations are expected to be made.
8. A copy of the correspondence can be found in the **Annex**.
9. The lead committee for this instrument is the Social Justice and Social Security Committee.
10. **The Committee draws the instrument to the attention of the Parliament on the general reporting ground, in that it inserts into Part 5 of schedule 4 of the Council Tax Reduction (Scotland) Regulations 2021, which is headed**

“Payments”, a new paragraph (paragraph 46) which concerns the whole of a person’s capital rather than a payment.

- 11. The Committee welcomed that the Scottish Government has undertaken to insert a new Part number and heading into schedule 4 at the next available opportunity.**

No points raised

Criminal Justice Committee

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Witness Citations in Solemn Proceedings) 2023 (SSI 2023/276)

Health, Social Care and Sport Committee

National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Miscellaneous Amendments) (Scotland) Regulations 2023 (SSI 2023/281)

Local Government, Housing and Planning Committee

Title Conditions (Scotland) Act 2003 (Conservation Bodies and Rural Housing Bodies) (Miscellaneous Amendment) Order 2023 (SSI 2023/278)

Net Zero, Energy and Transport Committee

Parking Prohibitions (Enforcement and Accounts) (Scotland) Regulations 2023 (SSI 2023/Draft)

Scottish Parliament

Social Security (Residence and Presence Requirements) (Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights and Lebanon) (Scotland) Regulations 2023 (SSI 2023/Draft)

- It has been agreed that the above instrument, which is subject to the affirmative procedure, will be considered under an expedited timetable. It was laid on Thursday 19 October, before being withdrawn and re-laid on Friday 20 October, to include people from Lebanon, and it is expected to be considered by the Scottish Parliament on Wednesday 25 October.

The purpose of this instrument is to amend secondary legislation in respect of the entitlement to devolved social security benefits in Scotland for people arriving from Israel, the West Bank, the Gaza Strip, East Jerusalem, the Golan Heights or Lebanon. The amendments remove the habitual residence test and the past presence test where they apply to a benefit, meaning that a person arriving in Scotland will be eligible for a benefit if they meet all other entitlement conditions.

This instrument also amends the Council Tax Reduction (Scotland) Regulations 2012 and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 by extending the classes of persons who do not need to meet residence criteria in the UK to qualify for a council tax reduction.

The UK Government is making equivalent regulations to also apply to people from the same areas fleeing the violence in the region.

Annex

Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2023 (SSI 2023/268)

On 22 September 2023, the Committee asked the Scottish Government:

Regulation 3(5)(a) inserts a new paragraph 46 into Part 5 of Schedule 4 of the Council Tax Reduction (Scotland) Regulations 2021 to provide that the whole capital of a person who is liable to pay council tax is disregarded when determining their entitlement to second adult rebate. Part 5 of Schedule 4 is headed “Payments”. However, it appears as though this amendment does not concern a payment. Please explain whether you consider it appropriate to insert the new paragraph 46 under the heading of “Payments”.

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

On 10 October 2023, the Scottish Government responded:

Schedule 4 of the Council Tax Reduction (Scotland) Regulations 2021 (“the 2021 Regulations”), into which paragraph 46 is to be inserted, is entitled “Capital to be disregarded”. The schedule is effectively a list for the purposes of regulation 69. However, we also recognise that it includes descriptive part headings and that the new paragraph 46 does not concern a “payment” but rather the whole of a person’s capital (where certain conditions are met). For this reason, the Scottish Government accepts that the current position may not be helpful to the reader.

We do not consider that the lack of a bespoke heading has any impact on the legal effect of regulation 3(5)(a) as it currently stands, nor on the legal effect of the 2021 Regulations as amended by regulation 3(5)(a). No immediate corrective action is therefore proposed.

We do, however, recognise that it would be helpful to the reader to insert a new Part number and heading into schedule 4 of the 2021 Regulations. For this reason, we will take this action at the next available opportunity when other substantive amendments to the 2021 Regulations are being made. We anticipate that amending Regulations will be laid in February 2024, and come into force on 1 April 2024.

