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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 14 May 2024



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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 14 May, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
 - Carer’s Assistance (Carer Support Payment) (Scotland) Amendment Regulations 2024 (SSI 2024/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 Parliament

Carer's Assistance (Carer Support Payment) (Scotland) Amendment Regulations 2024 (SSI 2024/Draft)

4. The instrument amends the eligibility criteria for Carer Support Payment, which is a form of assistance for people who provide regular and substantial care to someone who is in receipt of a qualifying disability benefit.
5. This instrument makes various amendments to the Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 ("principal regulations") and the Carer's Assistance (Carer Support Payment) (Consequential and Miscellaneous Amendments and Transitional Provision) (Scotland) Regulations 2023 (SSI 2023/258). In summary, these
 - extend the availability of the benefit to further local authority areas in a phased approach, to be available across Scotland by November 2024,
 - bring forward the commencement date of existing provisions, from 1 October 2024 to 23 June 2024, to extend eligibility to a specific group of students in full-time non-advanced education,
 - provide that where a carer is in legal detention, this may be treated as a temporary break in care where it meets the criteria in regulation 40 of the principal regulations,
 - provide that certain individuals who are entitled to Carer Support Payment, but who would not have been entitled to Carer's Allowance, can have their entitlement backdated to the date that Carer Support Payment first became available, provided they were eligible at that time,
 - amend the effective date of a determination following a previous determination made in error,
 - make amendments to the schedule 2 (calculation of earnings) of the principal Regulations, and
 - provide that no individual who is able to apply for Carer Support Payment due to being resident in Scotland, or otherwise meeting the residence and presence conditions in the principal Regulations, may apply for Carer's Allowance.
6. In [correspondence with the Scottish Government](#), the Committee queried whether the instrument delivers the policy intention in one regard, in relation to when a carer is in legal detention for a period: that this can still qualify as a "temporary break in care".
7. In its [response](#), the Scottish Government advised that the wording of the amendment deliberately mirrors drafting language in the current provision on

temporary breaks in care for Carer's Allowance, which Carer Support Payment is replacing, and that users of the legislation are very familiar with this formulation. The current provision is regulation 4(2) of the Social Security (Invalid Care Allowance) Regulations 1976/409. The Scottish Government considers the regulations are in line with the intended policy and as such, does not plan any corrective action.

8. The Committee considers that the drafting could have the result that, where a carer is in legal detention for a period, that period only qualifies as a temporary break in care if all of the circumstances set out in regulation 40(1)(b) of the principal regulations also apply (that is, that the carer or the cared-for person was an in-patient).
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 reporting ground (h) – meaning could be clearer – in that the instrument could more clearly specify whether, where a carer is in legal detention for a period, that period only qualifies as a temporary break in care if all of the circumstances set out in regulation 40(1)(b) of the principal regulations (SSI 2023/302) also apply (that is, if they, or the person they care for, was an in-patient).

11. The Committee invites the Scottish Government to reconsider whether any action to address this point would be appropriate.

No points raised

Economy and Fair Work Committee

Scottish Pubs Code Adjudicator (Miscellaneous Listings) Order 2024 (SSI 2024/Draft)

Scottish Pubs Code Adjudicator (Duty to Publish Certain Information) Regulations 2024 (SSI 2024/Draft)

Tied Pubs (Scottish Arbitration Rules) Amendment Order 2024 (SSI 2024/Draft)

Protected Trust Deeds (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/Draft)

Tied Pubs (Scotland) Act 2021 (Commencement No. 2) Regulations 2024 (SSI 2024/136 (C.12))

