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Equalities, Human Rights and Civil Justice Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

- a. matters relating to equal opportunities, and upon the observance of equal opportunities within the Parliament; and
- b. matters relating to human rights.
- c. matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice and Home Affairs.

2. In these Rules

(a) “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions; and

(b) “human rights” includes Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights as for example contained in any international convention, treaty or other international instrument ratified by the United Kingdom.

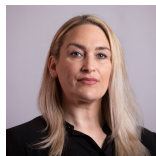


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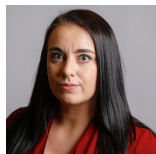
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Introduction

1. This report concerns the following four affirmative instruments:

- The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2024 [draft]
- The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2024 [draft]
- The Scottish Tribunals (Listed Tribunals) Regulations 2024 [draft]
- The Damages (Review of Rate of Return) (Scotland) Regulations 2024 [draft]

The instruments, which were all laid in draft, are subject to the affirmative procedure – which means they cannot be made unless they have been approved by a resolution of the Parliament.

2. It is for the Equalities, Human Rights and Civil Justice Committee, as lead committee, to decide whether or not to recommend approval of the instruments.

About the instruments

The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2024 [draft]

3. The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2024 [draft] was laid on 18 April 2024 under the [Equality Act 2010](#). If approved, the instrument comes into force on 1 July 2024.
4. The purpose of the instrument is to add the Patient Safety Commissioner for Scotland (“PSCS”) and Community Justice Scotland (“CJS”) to the list of public authorities in Part 3 of schedule 19 of the 2010 Act. Listed public authorities are required to comply with the public sector equality duty.
5. The public sector equality duty is a duty to have regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act, to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic and persons who do not share that protected characteristic.
6. This Order also removes community justice authorities and the chief officer of a community justice authority from the list of Scottish public authorities in Part 3 of schedule 19 of the Act. All community justice authorities were dissolved on 31 March 2017 by section 36(1) of the Community Justice (Scotland) Act 2016.

The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2024 [draft]

7. The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2024 [draft] was laid on 18 April 2024 under the [Equality Act 2010](#). If approved, the instrument comes into force on 1 July 2024.
8. The purpose of the instrument is to make the Patient Safety Commissioner for Scotland (“PSCS”) and Community Justice Scotland (“CJS”) listed authorities for the purpose of the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 (“the 2012 Regulations”). Listed authorities have specific duties which enable them to better perform the public sector equality duty (the “equality duty”) under section 149 of the Equality Act 2010.
9. The 2012 Regulations place the following specific duties on listed authorities, to support them to better perform the equality duty set out in the 2010 Act:
 - To report progress on integrating the equality duty into the authority’s other work
 - To publish equality outcomes which the authority has decided to work on in particular and report on progress made to achieve those outcomes

- To assess and review policies and practices against the needs which form the equality duty
- To gather and use employee information
- To publish gender pay gap information, where the authority has more than 20 employees
- To publish statements on equal pay and occupational segregation, where the authority has more than 20 employees
- To consider whether award criteria and conditions in relation to public procurement should include consideration of whether a bid will help the authority better perform the equality duty
- To publish these statements and reports in an accessible manner
- To consider other matters which the Scottish Ministers may further specify.

Consideration by the DPLR Committee

10. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the “reporting grounds” set out in Rule 10.3 of the Parliament’s standing orders.
11. The DPLR Committee considered both the above instruments at its meeting on 30 April 2024 and reported on them in its [31st Report 2024](#). The DPLR Committee agreed that they did not need to be drawn to the Parliament’s attention on any of the reporting grounds.

Consideration by the Equalities, Human Rights and Civil Justice Committee

12. At its meeting on 21 May, the Equalities, Human Rights and Civil Justice Committee took evidence on both instruments from the Minister for Victims and Community Safety and officials.
13. Following the oral evidence, the Minister moved the following motions—

S6M-12908 - That the Equalities, Human Rights and Civil Justice Committee recommends that The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2024 [draft] be approved; and

S6M-12909 - That the Equalities, Human Rights and Civil Justice Committee recommends that The Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2024 [draft] be approved;
14. The motions were agreed to.

15. Accordingly, the Equalities, Human Rights and Civil Justice Committee recommends to the Parliament that the draft Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2024 and the draft Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2024 be approved.

The Scottish Tribunals (Listed Tribunals) Regulations 2024 [draft]

16. The Scottish Tribunals (Listed Tribunals) Regulations 2024 [draft] was laid on 15 April 2024 under the [Tribunals \(Scotland\) Act 2014](#). If approved, the instrument comes into force on 10 June 2024.
17. These Regulations add the Transport Tribunal to the tribunals listed in schedule 1 of the Tribunals (Scotland) Act 2014 whose functions may be transferred to the Scottish Tribunals under that Act.
18. This instrument amends schedule 1 of the Tribunals (Scotland) Act 2014 ('the 2014 Act') to include the Transport Tribunal. The instrument also specifies the functions exercisable by the Transport Tribunal to which the entry in schedule 1 relates. The functions are those exercisable by the Transport Tribunal by virtue of section 39(6) of the Transport (Scotland) Act 2001 ('the 2001 Act') in relation to a penalty imposed under any paragraph of section 39(1) of that Act except paragraph (d).
19. The Scottish Ministers intend to transfer the specified functions of the Transport Tribunal into the Scottish Tribunals. The intention is to transfer the specified appeal functions under section 39 of the 2001 Act as they relate to devolved matters. The only appeal functions under section 39 which are not to be transferred to the Scottish Tribunals are those relating to a penalty imposed under section 39(1)(d). Appeals of penalties imposed for a failure to comply with a requirement of regulations made under section 181A of the Equality Act 2010 will remain in the Transport Tribunal, as they relate to reserved matters.
20. A further set of regulations will be brought forward to transfer the specified functions of the Transport Tribunal into the Upper Tribunal for Scotland.

Consideration by the DPLR Committee

21. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the "reporting grounds" set out in Rule 10.3 of the Parliament's standing orders.
22. The DPLR Committee considered The Scottish Tribunals (Listed Tribunals) Regulations 2024 [draft] at its meeting on 23 April 2024 and reported on it in its [28th Report, 2024](#). The DPLR Committee agreed that they did not need to be drawn to the Parliament's attention on any of the reporting grounds.

Consideration by the Equalities, Human Rights and Civil Justice Committee

23. At its meeting on 21 May, the Equalities, Human Rights and Civil Justice Committee took evidence on the instrument from the Minister for Victims and Community Safety and officials.

24. Following the oral evidence, the Minister moved motion S6M-12847—

That the Equalities, Human Rights and Civil Justice Committee recommends that the Scottish Tribunals (Listed Tribunals) Regulations 2024 [draft] be approved.

25. The motion was agreed to.

26. Accordingly, the Equalities, Human Rights and Civil Justice Committee recommends to the Parliament that the draft Scottish Tribunals (Listed Tribunals) Regulations 2024 be approved.

The Damages (Review of Rate of Return) (Scotland) Regulations 2024 [draft]

27. The Damages (Review of Rate of Return) (Scotland) Regulations 2024 [draft] was laid on 25 April 2024 under the [Damages Act 1996](#). If approved, the instrument comes into force on 1 July 2024

28. These Regulations alter some of the parameters which are to be used by the official rate-assessor in setting the rate of return for the purposes of section B1(1) of the Damages Act 1996. That rate is known as the Personal Injury Discount Rate and is used in the calculation of awards of damages for future pecuniary loss in actions for personal injury.

29. In terms of the aforementioned schedule B1 of that Act, the rate is to be set so as to reflect the return which a hypothetical investor could reasonably be expected to achieve if investing in a notional investment portfolio over a notional period, subject to a number of standard adjustments.

30. The changes made by these regulations to the legislation for calculating the discount rate are as follows:

- the index for impact of inflation will change to the average weekly earnings (AWE) index
- the standard adjustment for tax and costs was last reviewed in 2019 and will change from 0.75% to 1.25%
- the period of investment will change from 30 to 43 years.

Consideration by the DPLR Committee

31. The Delegated Powers and Law Reform (DPLR) Committee is required to consider every instrument laid before the Parliament and decide whether to draw it to the attention of the Parliament on any of the "reporting grounds" set out in Rule 10.3 of the Parliament's standing orders.
32. The DPLR Committee considered The Damages (Review of Rate of Return) (Scotland) Regulations 2024 [draft] at its meeting on 7 May 2024 and reported on it in its [32nd Report, 2024](#). The DPLR Committee agreed that they did not need to be drawn to the Parliament's attention on any of the reporting grounds

Consideration by the Equalities, Human Rights and Civil Justice Committee

33. Ahead of the Committee's consideration of this instrument on 21 May 2024, written submissions were received from three stakeholders. The submissions expressed concerns over the adjustment from 0.75% to 1.25% and the potential to lead to over-compensation in some cases. They suggest that the Scottish Government may be better placed to adopt the approach by the Government's Actuary Department (GAD) in England and Wales to help address the element of over-compensation.
34. All submissions are available at [Annexe B of Paper 1 from the Committee's meeting on 21 May 2024](#).
35. At its meeting on 21 May, the Equalities, Human Rights and Civil Justice Committee took evidence on the instrument from the Minister for Victims and Community Safety and officials.
36. Following the oral evidence, the Minister moved motion S6M-12994—

That the Equalities, Human Rights and Civil Justice Committee recommends that The Damages (Review of Rate of Return) (Scotland) Regulations 2024 [draft] be approved.
37. After debate, the motion was agreed to by division (For 5, Against 2, Abstentions 0).
38. In agreeing the motion by division, the Committee agreed to bring to the attention of the Scottish Government concerns raised during the meeting over direct or unintended financial consequences of the instrument, especially in regard to the functionality of the NHS.

Recommendation

39. Accordingly, the Equalities, Human Rights and Civil Justice Committee recommends to the Parliament that the draft Damages (Review of Rate of Return) (Scotland) Regulations 2024 be approved.

