Subordinate Legislation Committee

12th Report, 2012 (Session 4)

Subordinate Legislation

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Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament; 

(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; and

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

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The Committee reports to the Parliament as follows—

1. At its meeting on 6 March 2012, the Committee agreed to draw the attention of the Parliament to the following instruments—

   - Patient Rights (Treatment Time Guarantee) (Scotland) Regulations 2012 [draft]; and

2. The Committee’s recommendations in relation to these instruments are set out below. The instruments that the Committee determined it did not need to draw the Parliament’s attention to are set out at the end of this report.
Patient Rights (Treatment Time Guarantee) (Scotland) Regulations 2012 [draft] (Health and Sport Committee)

3. The treatment time guarantee (TTG) set out in section 8 of the Patient Rights (Scotland) Act 2011 provides that an eligible patient is to start to receive an agreed treatment within the maximum waiting time. Section 10 sets out the steps which Health Boards must take where the TTG is not complied with.

4. This instrument sets out various matters relating to the operation of the TTG. In particular, the instrument sets out: which patients are eligible for the TTG; how waiting time is to be calculated; in what circumstances a patient can be referred back to the referring clinician; the treatments and services to which the TTG does not apply; the steps which must be taken by a health board where it is unable to meet the TTG; and what information about the TTG must be provided to patients.

5. The instrument is subject to the affirmative procedure. If approved, it will come into force on 1 October 2012.

6. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced in Appendix 1. Where no further comment is made on a question, the Committee is content with the Government’s response.

7. In relation to regulations 5 and 6(2), which permit a health board to reset the calculation of waiting time to zero in certain circumstances, the Scottish Government was asked what effect such a resetting has if the statutory maximum time has already been exceeded.

8. The Scottish Government responded that, in such a situation, any resetting of the calculation of the waiting time would “effectively be irrelevant as the Health Board would already be in breach” and that section 10 of the 2011 Act would apply.

9. The Committee notes that the Regulations make no provision that prevents a Health Board from resetting the waiting time to zero in such circumstances. It considers that the resulting conflict between regulations 5 and 6(2) and section 10 of the 2011 Act raises an undesirable lack of clarity in relation to what is intended to be a new right.

10. In relation to regulation 1(2), the Scottish Government was asked whether the definition of “ophthalmic medical practitioner” is clear as it seeks to adopt the definition of “a medical practitioner within the meaning of [SSI 2006/135]”. There is no definition of “medical practitioner” in that regulation, which provides a definition of “ophthalmic medical practitioner”.

11. In its response, the Scottish Government confirmed that the intention is that the definition of “ophthalmic medical practitioner” in SSI 2006/135 is to be adopted for these Regulations. It stated its belief that, although the meaning could be clearer, a court would be likely to arrive at the correct interpretation.
12. The Committee agrees that a court would be likely to arrive at the intended interpretation of the Regulations, but it considers that there is a drafting error.

13. The Committee notes that the Scottish Government does not propose to withdraw and relay the draft Regulations to correct this mistake, but that it has undertaken to correct the error at the next appropriate opportunity.

14. The Committee therefore draws the instrument to the Parliament's attention under reporting ground (h) because the instrument could be clearer in the following respect. Regulations 5 and 6 set out the circumstances in which a Health Board may reset the calculation of waiting time to zero. The Regulations do not make clear the Scottish Government's intention that this should not have any effect where the Health Board is already in breach of the treatment time guarantee.

15. The Committee also draws the instrument to the Parliament’s attention under the general reporting ground because it contains a drafting error in the definition of “ophthalmic medical practitioner”. Reference should have been made to the definition of “ophthalmic medical practitioner” in the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006. Instead, reference was made to the definition of “medical practitioner” in those Regulations when there is no such definition. The Committee notes that the Scottish Government has undertaken to correct this error at the next appropriate opportunity.
16. This instrument makes provision about the arrangements under section 15 of the Patient Rights (Scotland) Act 2011 which NHS bodies have to put in place for the handling of feedback, comments and concerns received in relation to health care.

17. The principal requirements are: the appointment of a feedback and complaints officer and a feedback and complaints manager; the keeping of written records; and time limits of three days for acknowledging and 20 days for reporting on complaints.

18. The Regulations also specify who may give feedback or raise complaints and which complaints are not to be covered by the section 15 arrangements (primarily because they are dealt with under a different scheme).

19. The Regulations are subject to the negative procedure and come into force on 1 April 2012.

20. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced in Appendix 2.

21. Section 15(3)(a) of the 2011 Act provides that complaints can be made by or on behalf of patients, and section 15(4)(a) permits the Scottish Ministers to extend the scope of the scheme by specifying “other persons” who may make a complaint or on whose behalf a complaint can be brought. This power is exercised by regulation 4, which specifies “any person who is, or is likely to be affected by an act or omission of responsible body”—that is, a relevant NHS body or service provider.

22. The Scottish Government was asked why it considers such an extension to the scheme compatible with the right to privacy under Article 8 of the European Convention on Human Rights, given that there is no requirement for the patient to which the complaint relates to consent to the complaint or any other restriction on those persons who may complain in relation to care received by someone else.

23. The Scottish Government was also asked whether regulation 4 is competent, given that it specifies “any person who is, or is likely to be affected by an act or omission of a responsible body”. That would seem to include persons who could make a complaint by or on behalf of a patient by virtue of section 15(3)(a)(i) of the 2011 Act, although it is clear from the terms of section 15(3)(b)(ii) that such persons cannot be specified using the power in section 15(4)(a).

24. In its response, the Scottish Government stated that the responsible body will have to take the circumstances of a complaint into account and be satisfied that it is acting in accordance with the ECHR and any other law, such as the Data Protection Act 1998. The Committee notes that such obligations will also be highlighted in good practice guidance that is being issued to support the implementation of the legislation.
25. The Scottish Government also accepted that regulation 4 could have been more clearly expressed to clarify its intention. However, it considered that regulation 4 falls to be interpreted as specifying persons only to the extent that they are “other persons” than those referred to in section 15(3)(a)(i).

26. The Committee accepts that responsible bodies are under a separate statutory duty to exercise their functions in a way that is compatible with the ECHR and must fulfil their obligations under the Data Protection Act 1998. However, it considers that there is a lack of clarity within these Regulations regarding the restrictions on responsible bodies in their dealing with and reporting on complaints.

27. Similarly, the Committee accepts the Scottish Government’s view that what is specified in regulation 4 must be read as excluding what could not be specified, even though that is not expressly stated. However, the Committee considers that the drafting is not as clear as it could be.

28. The Scottish Government was also asked about the intended effect of the consequential provisions made in the Schedule to the Regulations and an explanation of the powers used to make such provision.

29. In its response, the Scottish Government explains that some of the provision made in the Schedule is supplemental to other provisions of the 2011 Act more generally, rather than consequential upon the provision being made in this instrument in relation to section 15 of the Act. The Scottish Government explains that it relies on the power in section 25(1)(c) of the 2011 Act, which when added to the power in section 15 allows the Scottish Ministers to make such consequential, supplemental, incidental, transitional, transitory or saving provision as appears to the Scottish Ministers to be necessary or expedient in conjunction with the exercise of the power in section 15.

30. The Committee notes that the drafting of the instrument does not refer to making supplemental provision: the Schedule is headed and regulation 9(4) refers to “consequential provisions” only. That is also reflected in the title of the instrument. However, the Committee agrees with the Scottish Government that some provisions appear to be supplemental to the Act as a whole rather than consequential upon the exercise of powers in section 15. For example, the amendment in paragraph 1(5) of the Schedule provides that health boards can vary contracts without the contractor’s consent in order to comply with any section of the 2011 Act, rather than solely the complaints scheme under section 15.

31. The Committee notes that such amendments are not consequential on the provision made by the instrument in relation to section 15 but that they could well be an expedient consequence of the remainder of the 2011 Act. The Committee considers this could be beyond the scope of the limited ancillary power available in section 25(1)(c). The Committee notes however that there is a stand-alone ancillary power in section 24 of the 2011 Act, which was provided for the specific purpose of making provision which is consequential or supplemental to the Act as a whole. As such, the Committee accepts that the instrument is within vires but considers that the Scottish Government has not cited the correct powers in the preamble to the instrument. Furthermore, it notes that the Scottish Government now advises that it is making supplemental as well as consequential provision,
although the instrument was drafted on the basis that it makes only “consequential provision”.

32. Finally, the Scottish Government was asked to clarify where copies of “the 2005 Directions” could be found. The Directions contain part of the current complaints procedure and are relevant to the transitional arrangements made for former complaints. It was not evident from the instrument where they could be found, but further helpful details are provided in the Scottish Government’s response. The Committee notes that it would have been helpful to readers if that information had been provided in the Explanatory Note in accordance with the Scottish Government’s drafting guidance.

33. The Committee therefore draws the instrument to the Parliament’s attention under reporting ground (h) as the following matters could have been more clearly expressed. First, the instrument could have made clearer the limitations on the investigation and reporting duties imposed on responsible bodies by regulation 6 necessary to ensure compliance with article 8 of the ECHR and the Data Protection Act 1998 and to maintain patient confidentiality. Secondly, the specification of the additional persons who may make complaints or give feedback in regulation 4 includes persons already covered by section 15 of the 2011 Act.

34. The Committee also draws the instrument to the Parliament’s attention under the general reporting ground as there has been a failure to follow normal drafting practice in the following respects. The instrument makes supplemental provision in addition to consequential provision but the powers relied on to do this have not been expressly cited in the preamble, nor does the instrument itself refer to supplemental provisions being made. Additionally, information as to where copies of the 2005 Directions can be obtained was not provided in the instrument or the explanatory note, contrary to normal drafting practice.
No points raised

35. At its meeting on 6 March 2012, the Committee also considered the following instruments and determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit.

**Education and Culture Committee**
Children’s Hearings (Scotland) Act 2011 (Safeguarders Panel) Regulations 2012 (SSI 2012/54)

**Local Government and Regeneration Committee**
Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2012 (SSI 2012/48) [relevant correspondence reproduced in appendix 3]

**Parliament**
Local Government Finance (Scotland) Amendment Order 2012 [draft]
APPENDIX 1

Patient Rights (Treatment Time Guarantee) (Scotland) Regulations 2012 [draft]

On 15 February 2012, the Scottish Government was asked:

1. To explain why the provision made by regulation 8(3) in relation to liability for costs is within vires since section 9(3) of the 2011 Act specifies distinct matters which can be specified by regulations and which do not concern responsibility for patient costs. If the ancillary powers in section 25(1) are being relied upon can the Scottish Government explain why such provision is considered necessary or expedient directly as a result of specifying matters under section 9(3)?

2. Does the Scottish Government consider the meaning of “ophthalmic medical practitioner” in regulation 1(2) is clear since the definition provided adopts the meaning of “a medical practitioner within the meaning of regulation 2 of [SSI 2006/135]” and there is no definition of “medical practitioner” in that regulation? Is it intended that the definition of “ophthalmic medical practitioner” in the 2006 regulations is to be adopted for the purposes of these regulations?

3. Regulation 5 and regulation 6(2) permit a Health Board to reset the calculation of waiting time to zero in certain circumstances. Is the date on which that action takes effect sufficiently clear so as to ensure accurate calculation of the waiting time which applies? What effect does the resetting of the calculation of the waiting time have if the statutory maximum waiting time has already been exceeded?

4. Calculation of waiting time will be affected by action by patients or a failure to take certain action – for example the circumstances specified in regulation 6(1)(a) to (c). Where a patient does not have the capacity to act, will action on the patient’s behalf by a competent person (e.g. a parent of a child) suffice? If so do the regulations provide for this clearly?

The Scottish Government responded as follows:

1. The Scottish Government considers that the provision made by regulation 8(3) is within vires. The ancillary powers in section 25(1)(c) are being relied upon and the Scottish Government considers that this provision is expedient as a result of specifying matters under section 9(3)(b). Section 9(3)(b) provides that the Scottish Ministers may by regulations specify action that a Health Board is to take to ensure that it complies with a treatment time guarantee. The Scottish Government considers it is expedient to make use of the ancillary powers in section 25(1) to specify the responsibility for costs as per regulation 8(3) where a patient is treated outside the area of the responsible Health Board (as part of a step which a Health Board may take to comply with the treatment time guarantee).

2. The Scottish Government can confirm that the intention is that the definition of “ophthalmic medical practitioner” in SSI 2006/135 is to be adopted for the purposes of these regulations, and thanks the committee for drawing this error to
their attention. The Scottish Government considers, however, that, whilst the meaning of “ophthalmic medical practitioner” in regulation 1(2) could be clearer, given there is no definition of “a medical practitioner” in the 2006 Regulations but only of “ophthalmic medical practitioner”, a court would be likely to arrive at the correct interpretation of the Regulations. Further, as an ophthalmic medical practitioner is always a “medical practitioner”, such persons are in any case included in the references to “medical practitioner” in the regulations, and accordingly the omission of “ophthalmic” does not affect the legal effect of the regulations. The Scottish Government will amend the definition of “ophthalmic medical practitioner” for clarification purposes at the next appropriate opportunity.

3. The Scottish Government considers that the date on which the action takes effect is sufficiently clear so as to ensure accurate calculation of the waiting time which applies. Section 11(2) of the 2011 Act enables the Scottish Ministers to direct a Health Board to take specified action in relation to its compliance with the treatment time guarantee (including, in particular, the steps it must take). The Scottish Government intends to issue Directions to Health Boards in accordance with this power to specify the steps which a Health Board must take for the purposes of monitoring each treatment time guarantee. These Directions will ensure that Health Boards keep a record of the date on which the action referred to in regulations 5 and 6(2) takes effect.

In circumstances where the statutory maximum waiting time has been exceeded, the Health Board will be in breach of the treatment time guarantee and section 10 of the 2011 Act will apply. The Health Board must therefore take steps in accordance with that section. Any resetting of the calculation of the waiting time will effectively be irrelevant as the Health Board will already be in breach.

4. In circumstances where a patient does not have the capacity to act, for example, in circumstances specified in regulation 6(1)(a) to (c), the general law in Scotland in terms of adults with incapacity will apply. Where action is taken on the patient’s behalf by a competent person, that action will suffice for the purposes of, for example, regulations 5 and 6. The Scottish Government does not consider it is necessary for the regulations to provide for this point specifically. For example, where a person is legitimately acting on a patient’s behalf (e.g. a parent for a child), and refuses two or more offers of an appointment for the agreed treatment on behalf of that child, in so far as the person is legally entitled to act on behalf of that child, it is clear that that action will suffice for the purposes of regulation 6(1). In such circumstances, Health Boards will have to consider on a case by case basis whether it is reasonable and clinically appropriate to refer the patient back to that patient’s referring clinician.
APPENDIX 2

Patient Rights (Complaints Procedure and Consequential Provisions) (Scotland) Regulations 2012 (SSI 2012/36)

On 15 February 2012, the Scottish Government was asked:

1. To explain why the Scottish Government considers the scheme for handling complaints which includes the requirement for a report of investigations to be issued to any complainant is compatible with Article 8 of ECHR, given that there is no requirement that the patient who received the health care to which the complaint relates has consented to the complaint being made or otherwise restricting those persons who may act as a complainant on the patient’s behalf or in relation to health care provided to another person (for example a parent of a child), in contrast to the existing complaint schemes which these regulations replace – see for example paragraph 83 of SSI 2004/115.

2. Whether regulation 4 is considered to be competent given that it prescribes “any person who is, or is likely to be affected by an act or omission of a responsible body” for the purposes of section 15(3)(a)(ii) of the 2011 Act. Regulation 4 would appear to include persons who could make a complaint by or on behalf of a patient by virtue of section 15(3)(a)(i) but it is clear from the terms of section 15(3)(a)(ii) that such persons cannot be specified using the power in section 15(4)(a).

3. In relation to the consequential amendments made by the Schedule, is it intended that the arrangements specified must operate in accordance with any regulations or directions made under any section of the 2011 Act rather than those made under section 15? Regulations and directions made under other parts of the Act do not directly relate to the arrangements for complaints procedures. If this wider requirement is intended can the Scottish Government explain the vires for making such provision? In particular, if the ancillary power in section 25(1) is relied upon, can the Scottish Government explain why such provision is considered necessary or expedient in consequence of the exercise of the power under section 15(4)?

4. Is the omission of reference to regulations and directions made under section 15 (or the 2011 Act) from the amendment made by paragraph 3(5) of the Schedule intentional?

5. Why is the reference to the 2005 Directions considered sufficiently precise to identify them and where copies of the 2005 Directions can be obtained?
The Scottish Government responded as follows:

**Question 1**

The general policy intention behind the regulations is not to restrict those who may make a complaint in relation to services provided under the health service. If a complaint is made on behalf of another person, for example, where the patient is a child, or where the patient does not consent to the investigation of the complaint, the responsible body would have to take that into account when handling and responding to a complaint. In such circumstances, the responsible body may well be constrained as to what it can do in terms of investigating any such complaint, or in terms of the information which can be included in the report of such an investigation.

Regulation 6(1)(c) provides that the responsible body must send the complainant a report of the investigation into the complaint. In handling a complaint, and in issuing the report, the responsible body must be satisfied that it is acting in accordance with its obligations under Article 8 of the ECHR, and indeed any other obligations it has under the ECHR, or any other law such as the Data Protection Act 1998. These obligations will be highlighted in the revised good practice guidance which is being prepared for issue to the NHS to help support the implementation of the requirements within the legislation.

**Question 2**

The Scottish Government considers that regulation 4 is competent. The Government accepts that regulation 4 could have been more clearly expressed to clarify that, in specifying such other persons for the purposes of section 15(3)(a)(ii), the intention was not to include persons who could make a complaint by or on behalf of a patient, given that such persons are already specifically referred to in section 15(3)(a)(i) of the Act. However, given that the function of complaining is conferred on certain persons by section 15(3)(a)(i), the Scottish Government considers that it would not be possible to confer that function upon those persons again by means of regulation 4. As such, it is considered that regulation 4 falls to be interpreted as specifying persons only to the extent that they are ‘other persons’ than those referred to in section 15(3)(a)(i).

**Question 3**

In relation to the consequential amendments made by the Schedule it is intended that, where specified, the arrangements must operate in accordance with any regulations or directions made under any section of the 2011 Act rather than only those made under section 15. The Scottish Government consider that the vires for making such provision can be found in the ancillary powers under section 25(1)(c).

Section 25(1)(c) provides that any power conferred by the Act on the Scottish Ministers to make regulations includes power to make such consequential, supplemental, incidental, transitional, transitory or saving provision as appears to the Scottish Ministers to be necessary or expedient. The Scottish Government is
relying on section 25(1)(c) to make supplemental provisions. If we take SSI 2004/115 as an example, the Scottish Government intends that contractors must establish a complaints system which operates pursuant to section 15, and any regulations or directions made under section 15 of that Act. In addition to that, however, the Scottish Government considers it is expedient to make clear that to the extent that any other regulations or directions made under the Act are relevant to contractors as providers of services under the Health Service, they must act in accordance with such provisions.

Paragraph 94 of SSI 2004/115 is also amended to make clear that the Health Board may vary the contract without the contractor’s consent where it is reasonably satisfied that it is necessary to vary the contract so as to comply with the Patient Rights (Scotland) Act 2011, any regulations made pursuant to that Act, or any direction given by the Scottish Ministers pursuant to that Act. The Scottish Government considers that in addition to enabling a Health Board to vary a contract so as to comply with section 15 of the Patient Rights (Scotland) Act 2011, it is expedient to use the supplemental power to ensure that a Health Board is able to vary a contract with a contractor under a general medical services contract in order to comply with the 2011 Act generally. This reasoning carries across to other equivalent amendments made in the Schedule.

To the extent that the Subordinate Legislation Committee does not agree with the Scottish Government’s analysis of the scope of section 25(1), the Scottish Government is still satisfied that the provisions in the Schedule are within vires as a consequence of the general enabling powers cited (i.e. “and all other powers enabling them to do so”). The Court of Appeal’s conclusions in the Vibixa case\(^1\) confirm that general enabling powers in the preamble to a statutory instrument may be interpreted as referring to an enabling power, not expressly invoked in situations such as where, in order for the SI to have effect, the maker of the instrument must necessarily have invoked the power. Whilst Vibixa is an English case, the Scottish courts are likely to find it persuasive. The Scottish Government is therefore able to rely on powers under the National Health Service (Scotland) Act 1978 in taking forward the amendments in the Schedule (namely sections 17E, 17N, 25, 26, 27, 105(7) and 108(1) of the 1978 Act) by virtue of the general enabling powers cited.

**Question 4**

The omission of reference to regulations and directions made under section 15 of the 2011 Act is intentional in the amendment made by paragraph 3(5) of the Schedule. The same is true of the amendments made by paragraphs 5(4) and 6(4) of the Schedule. These paragraphs relate to amendments made to provisions about the co-operation with investigations of a complaint by a Health Board. If we take the amendments to SSI 2006/135 as an example, the Scottish Government considers that the wording “shall cooperate with any investigation of a complaint by the Board in accordance with the procedures which it operates in accordance with section 15 of the Patient Rights (Scotland) Act 2011” is sufficient to capture any regulations or directions made under section 15 of the 2011 Act. In this

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\(^1\) Vibixa Ltd v Komori UK Ltd & Ors [2006] EWCA Civ 536, see paragraphs 13 and 21.
instance the Scottish Government does not intend to capture regulations and directions made under any section of the 2011 Act, only those under section 15.

**Question 5**

The Scottish Government considers that the reference to the 2005 Directions is sufficiently precise to identify the Directions. Regulation 1(2) specifies the title of the Directions, the date when the Directions were made and the date when the Directions were brought into force. There are no other Directions given to Health Boards, Special Health Boards and the Agency on Complaints Procedure which were made and brought into force on these dates. Copies of the 2005 Directions are available at: [http://www.sehd.scot.nhs.uk/mels/HDL2005_15.pdf](http://www.sehd.scot.nhs.uk/mels/HDL2005_15.pdf) and are also included as Part 5 of the 2005 “Can I Help You?” guidance available at: [http://www.show.scot.nhs.uk/App_Download/pdf/1guidance010405.pdf](http://www.show.scot.nhs.uk/App_Download/pdf/1guidance010405.pdf). Copies of the 2005 Directions can be obtained from the Scottish Government Health Directorate.
APPENDIX 3

Non-Domestic Rates (Enterprise Areas) (Scotland) Regulations 2012 (SSI 2012/48)

On 24 February 2012, the Scottish Government was asked:

(1) By regulation 3, rating relief operates where a person occupies lands and heritages for the sole or main purpose of carrying on an activity listed in the parts of the Schedule. In those parts, activities are listed in separate lines containing business operations.

(a) For those lines which list 2 or more such operations (for example on the last page, manufacture of aircraft and spacecraft and related machinery) is it intended, as such listing indicates, that the required activity is all of those operations, or is it intended to be any one of them?

(b) If any one of those operations is intended, could this have been made clearer, or to give effect to the intended policy, by making provision to that effect?

(2) Regulation 3 and 5(1) apply to provide a person with rates relief in the circumstances set out in regulation 4. The circumstance in regulation (a)(i) is that a new entry in respect of the lands and heritages is made in the valuation roll after 1 April 2012. The circumstance in regulation 4(b) is that an application for relief is made in accordance with regulation 6.

(a) By what date do these circumstances require to be implemented for the rates relief to apply, in the absence of such provision in regulation 4 and 6 (and what is the basis of that assessment)?

(b) Could the meaning and effect have been made clearer in that respect, by providing for the intended date by when these circumstances require to be implemented, or to give effect to the intended policy?

The Scottish Government responded as follows:

With regard to the first question, the Scottish Government confirms that the policy position is that where a number of activities are listed in an entry in the Schedule business rates relief is available to a person engaged in all, some or only one of those activities. For example, a person engaged in the manufacture of machinery related to aircraft may be eligible for relief even if that person does not manufacture aircraft, spacecraft or machinery related to spacecraft. The Scottish Government does not consider that the reference in regulation 3 to an activity is a reference to a whole entry in the Schedule; it is a reference to any activity mentioned in any of the entries. It considers that regulation 3 has that effect without the need for specific provision, and that it is sufficiently clear.

With regard to the second question, the time limits within which the circumstances in regulation 4(a)(i) and (ii) must have taken place are contained in the provisions
themselves and there is no time limit within which an application is made under regulation 4(b). The relief will apply from the date on which the application for relief is made in accordance with regulation 6 because that will be the latest date on which one of the circumstances occurs. The Scottish Government considers that the provisions as drafted are clear and effective and it does not consider that any other dates are required.
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