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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—

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

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<th>Convener</th>
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<td>John Scott</td>
<td>Stuart McMillan</td>
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<td>Scottish Conservative and Unionist Party</td>
<td>Scottish National Party</td>
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<th>Alison Harris</th>
<th>Monica Lennon</th>
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<td>Scottish Conservative and Unionist Party</td>
<td>Scottish Labour</td>
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<th>David Torrance</th>
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Introduction

1. At its meeting on 7 March 2017, the Committee agreed to draw the attention of the Parliament to the following instrument—
   Council Tax Reduction (Scotland) Amendment Regulations 2017 (SSI 2017/41)

2. The Committee’s recommendations in relation to the above instrument are set out below.

3. The Committee determined that it did not need to draw the Parliament’s attention to the instruments which are set out at the end of this report.
Points raised: instrument subject to negative procedure

**Council Tax Reduction (Scotland) Amendment Regulations 2017 (SSI 2017/41) (Social Security)**

4. The Regulations make further amendments to the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319) ("the principal Regulations").

5. The Regulations are subject to the negative procedure. They come into force on 1 April 2017.

6. In January 2013, the Scottish Government introduced measures by way of the principal Regulations to reduce the council tax liability of people who have a low income. Following the UK Government’s abolition of council tax benefit from April 2013, people who were previously in receipt of council tax benefit received an equivalent reduction in liability for council tax, provided their circumstances remained the same.

7. The Regulations uprate certain applicable amount allowances, premium amounts and income thresholds, which are used in the principal Regulations in the calculation of council tax reduction which a claimant is entitled to receive.

8. The Regulations also modify the treatment of payments received by, or in respect of, a person who acquired HIV or hepatitis C as a result of treatment with blood or blood products within the National Health Service for the purposes of the council tax reduction scheme. Such payments may in future be made out of arrangements additional to those which are specifically listed in the principal Regulations. The Policy Note (at paragraph 10) explains that the policy objective in that respect is to ensure that any payments made under any future additional arrangements are treated in the same way as at present.

9. The Policy Note for the instrument states that “overall, these Regulations are consistent with the original policy intention of the Council Tax Reduction Scheme to ensure that no household is worse off as a consequence of the UK Government’s abolition of council tax benefit” (paragraph 13 of the Note).

10. The Committee considers that these Regulations, which amend the principal Regulations, raise a devolution issue. This is for the same reasons that the Committee considered apply to the Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2016 (SSI 2016/253). The Committee considered those Regulations in September 2016.
11. The question before the Committee is whether or not these Regulations relate to the reserved matter of “a scheme supported from central or local funds which provides assistance for social security purposes to or in respect of individuals by way of benefits”, as defined in Section F1 (social security schemes) of Part 2 of Schedule 5 to the Scotland Act 1998.

12. The Regulations amend and further the objective of the principal Regulations. The principal Regulations had as their objective the establishment of a scheme which replicated existing entitlements to council tax benefit support for persons as far as possible, for the financial year commencing 1 April 2013 and subsequent years.

13. The Committee notes that “providing assistance for social security purposes” at the end of the Section F1 reservation is defined to expressly include providing assistance in relation to an individual’s liability for local taxes. The council tax is a local tax. The Committee also notes that the term “benefits” includes any form of financial assistance. The previous reserved social security scheme, council tax benefit, provided assistance primarily in the form of a deduction from council tax, which is the mechanism applied in the principal Regulations. The Committee therefore concludes that there is a question as to whether the principal Regulations (and regulations which modify them) can therefore be said to fall within the F1 reservation.

14. The Committee recognises that the Scottish Government takes a contrary view. The Scottish Government contends that no question is raised as to whether the Regulations relate to matters which are reserved by Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998 (social security schemes) In relation to the principal Regulations, the Scottish Government has contended that they were properly made under section 80 of the Local Government Finance Act 1992. Section 80 gives the Scottish Ministers powers to prescribe conditions under which an individual’s liability for council tax may be reduced. The Scottish Government has contended that this allows the Scottish Ministers to make provision which takes into account detailed information about an individual’s financial situation in order to determine entitled to a reduced council tax liability. The Scottish Government has contended that the principal Regulations make provision for a reduction for individuals with low income and some factors indirectly related to needs arising out of disability or other needs if, as a result of that disability or need, an individual is on a low income. The Scottish Government contends that the purpose of the Regulations is as described above and is not to provide assistance for social security purposes or by way of benefits.

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1 The council tax benefit scheme was previously contained in the Council Tax Benefit Regulations 2006 (SI 2006/215).
15. Ultimately the question can only be resolved by the courts. The Committee’s function is to consider whether or not to draw attention to any potential devolution issue.

16. Since 5th September 2016, a new Exception 10 to the social security reservation in Section F1 mentioned above has given the Scottish Parliament powers to create new, discrete benefit schemes in areas of devolved responsibility where the requirements of the exception are satisfied, including that the new scheme must be funded from the Scottish Consolidated Fund.

17. Following the Committee’s normal practice as to when a consolidating instrument may be useful, it can also be noted that the principal Regulations are much in need of consolidation, as this is the 11th amending instrument.

18. The Committee therefore recognises that there may be an opportunity for the Scottish Government to re-frame a new discrete scheme in a consolidating set of Regulations. This may avoid the Committee’s concern, were that scheme to comply with the requirements of Exception 10. In the usual way however, the Committee would require to scrutinise any instruments which may be laid in future concerning the council tax reduction scheme, on the individual merits of each instrument.

19. The Committee’s function in reporting on the Regulations is not to determine the answer to the issue which is raised, but to identify matters within its remit which it considers the lead Committee and the Parliament should consider carefully in the course of their scrutiny of the subordinate legislation.

20. The Convener proposed that the Committee considers that the Regulations raise a devolution issue and should be drawn to the attention of the Parliament on that basis.

21. The proposal was agreed to by a division (For 3, Against 2, Abstentions 0).

22. Accordingly, the Committee draws the Regulations to the attention of the Parliament on reporting ground (f). The Committee considers that the Regulations raise a devolution issue as they may relate to matters which are reserved by Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998 (social security schemes).

23. The Committee also agreed to suggest to the Scottish Government that framing a new discrete scheme could avoid the Committee’s concern were that scheme to comply with the requirements of Exception 10.

24. Furthermore, the Committee agreed to highlight to the Scottish Government that a new discrete scheme would have a further benefit of accessibility to readers, if consolidated Regulations could be produced which comply with the requirements of Exception 10.
No points raised

25. At its meeting on 7 March 2017, the Committee considered the following instruments. The Committee determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit:

**Environment, Climate Change and Land Reform**
Carbon Accounting Scheme (Scotland) Amendment Regulations 2017 [draft]

**Health and Sport**
Sale of Tobacco and Nicotine Vapour Products by Persons Under 18 (Scotland) Regulations 2017 (SSI 2017/50)
Sale of Tobacco (Register of Tobacco Retailers) (Scotland) Amendment Regulations 2017 (SSI 2017/51)

**Justice**
International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2017 [draft]

**Local Government and Communities**
Participation Request (Procedure) (Scotland) Regulations 2017 (SSI 2017/39)
Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2017 (SSI 2017/43)
Community Empowerment (Scotland) Act 2015 (Commencement No. 7) Order 2017 (SSI 2017/40 (C.5))

**Parliament**
Local Government Finance (Scotland) Order 2017 [draft]

**Rural Economy and Connectivity**
Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Outer Hebrides) Order 2017 (SSI 2017/48)
Scottish Road Works Register (Prescribed Fees) Regulations 2017 (SSI 2017/49)