



LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

AGENDA

10th Meeting, 2017 (Session 5)

Wednesday 29 March 2017

The Committee will meet at 10.00 am in the Robert Burns Room (CR1).

1. **Post-Legislative Scrutiny of the Disabled Persons' Parking Places (Scotland) Act 2009:** The Committee will take evidence from—

Morven Brooks, Chief Executive Officer, Scottish Disability Equality Forum;

Linda Bamford, Convener, and Keith Robertson, Member, Mobility and Access Committee for Scotland;

Vycki Ritson, Traffic Management and Road Safety, Aberdeen City Council.

2. **Public petitions: PE1539:** The Committee will consider the following petition—

[PE1539](#) by Anne Booth, on Housing Associations to come under the Freedom of Information Act (Scotland) 2002.

3. **Subordinate legislation:** The Committee will consider the following negative instruments—

The Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017 (SSI 2017/61);

The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2017 (SSI 2017/64);

The Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2017 (SSI 2017/66);

The Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017 (SSI 2017/85).

4. **Consideration of evidence (in private):** The Committee will consider the evidence heard at agenda item 1.
5. **Work programme (in private):** The Committee will consider its work programme.

Clare Hawthorne
Clerk to the Local Government and Communities Committee
Room T3.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5232
Email: Clare.Hawthorne@parliament.scot

The papers for this meeting are as follows—

Agenda item 1

Note by the Clerk

LGC/S5/17/10/1

PRIVATE PAPER

LGC/S5/17/10/2
(P)

Agenda item 2

Note by the Clerk

LGC/S5/17/10/3

Agenda item 3

Note by the Clerk

LGC/S5/17/10/4

Agenda item 5

PRIVATE PAPER

LGC/S5/17/10/5
(P)

PRIVATE PAPER

LGC/S5/17/10/6
(P)

Local Government and Communities Committee

10th Meeting 2017 (Session 5), Wednesday 29 March 2017

**Post-Legislative Scrutiny of the Disabled Persons' Parking Places (Scotland)
Act 2009 – Note by the Clerk**

Purpose

1. This paper provides background information on the Committee's scene-setting evidence session as part of its post-legislative scrutiny of the Disabled Persons' Parking Places (Scotland) Act 2009.

Background

2. At its meetings on 1 and 8 February 2017, the Committee agreed its approach to the work it wished to undertake as part of post-legislative scrutiny of the Disabled Persons' Parking Places (Scotland) Act 2009.
3. On 6 February 2017, the Committee launched a call for written views from all interested individuals and organisations on how they feel the Act is working. The call for views ran until 20 March 2017 and the Committee received 17 submissions in total. The written submissions can be viewed at the following link:

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/103556.aspx>

Local Government and Communities Committee Consideration

4. At its meeting on 8 February 2017, the Committee agreed to hold an initial scene-setting evidence session with a number of organisations. At its meeting on 29 March 2017, the Committee will take evidence, in two panels, from representatives from Glasgow City Council, Aberdeen City Council, the Scottish Disability Equality Forum and the Mobility and Access Committee for Scotland.
5. Written submissions from Glasgow City Council, Aberdeen City Council and the Scottish Disability Equality Forum (jointly with Guide Dogs Scotland) have been received and are attached at **Annexe A**.

Next Steps

6. Following the evidence session on 29 March 2017, the Committee will consider the evidence it received during the session and the written submissions received before deciding what next steps it wishes to take as part of this work.

Written Submission from Glasgow City Council

1.0 Introduction

Glasgow City Council, like most other Local Authorities in Scotland, has now set its budget for the next financial year 2017/ 2018. This has been achieved in a very challenging economic environment - which continues to put public spending under pressure.

In Glasgow, that has meant bridging a £53 million funding gap for the next 12 months. Most of that spending gap has been plugged through the ambitious Transforming Glasgow programme; which continues to deliver major back-office reforms and efficiencies.

The Council has implemented many changes on how we work across the council family to make us more efficient, make best use of our resources to prevent problems rather than curing them and transform how the vital services Glasgow needs are delivered.

To enable this, the Council has adopted 'LEAN' principles to increase efficiency, remove waste, improve processes and cut out unnecessary administration or duplication.

It is within this background that the Council will respond to the call on whether the Disabled Persons' Parking Places Act 2009 (the Act) has achieved its objective.

2.0 Background

As part of the Scottish Government's Bill making process, Glasgow City Council provided evidence to the Scottish Government's Committees.

Although the Council broadly supported the objective of the Act, it did so whilst outlining a number of difficulties.

The council also noted that the main promoters of the Bill highlighted that one of the main issues was with off-street private car parks e.g. supermarket/ retail parks.

The Council's response at that time highlighted the following: -

- That there was not a significant issue with the system in place for public roads or the Council's off-street car parks at that time;
- The additional administrative burden as a result of the Bill;
- The additional financial burden as a result of the Bill;
- The demand and expectation for enforcement of mandatory disabled bays and the additional burden on existing enforcement resources.

The Council argued at the time that there was a more productive, less administrative and much cheaper way to achieve the main aim of the Act. This would have been achieved by a change in the Regulations governing the use of the disabled bay road marking and the complementary sign.

This view has not changed and there is significant precedence within the Regulations to accommodate this.

The precedence was in the provision of both yellow box markings and bus stop markings. Both markings originally required to be backed by a traffic regulation order (TRO), but this requirement was revoked by changes to the Regulations.

The Council also argued that the provision of the complementary sign was not required as the disabled bay was a 24hr 365 day use. The requirement for a complementary sign has now been revoked following the publication of the 2016 Regulations.

3.0 Current Situation

The financial and administrative burden of the Act on Local Authorities should not be underestimated. This is further demonstrated by Scottish Government's **Annual Report on Local Authorities' Functions: 1 April 2015 to 31 March 2016 and published on 30 September 2016.**

The Council continues to roll out mandatory disabled bays within its Restricted Parking Zones (RPZ), where parking problems are most acute within the city.

There are currently 1938 bays within residential area in Glasgow and we receive very few complaints per annum in this regard.

4.0 Call for Evidence

The Council would provide the following comments with regards to the specific questions noted in the Scrutiny Committee's call for evidence.

1. *Do you think the Act has achieved its aim of preventing disabled person's parking spaces being used by those who are not entitled to?*

The DPPPA has not been fully enacted within Glasgow's residential areas but we continue to roll this out with the extension of RPZs.

However, where there are disabled bays backed by a traffic regulation order (TRO) the Council's Parking Attendants have taken a proactive role with enforcement. These bays are within the city centre inner and outer zones, existing restricted parking zones and bus corridors.

The introduction of the Disabled Persons' Parking Badges (Scotland) Act 2014 has improved enforcement by allowing Local Authority Parking Attendants to confiscate blue badges where they are being mis-used.

The Council has reviewed how it deals with the fraudulent use of Blue Badges and introduced a new process involving different Service Departments and ALEOs to reduce fraud. The process now involves the Council's Corporate Fraud Team.

Since April 2015, the new process has investigated 1518 cases where misuse of a Blue Badge is expected in pay and display or dedicated disabled bays. This has resulted in 711 Blue Badges being confiscated.

The ongoing process helps ensure that spaces are available to those most in need.

2. *How well is the local authority in your area carrying out its duties required by the Act to convert all advisory on-street disabled persons' parking places into enforceable parking places, unless they are no longer required?*

The view on how well Glasgow is carrying out its duties would best be answered by others, however, given the large numbers of bays within Glasgow and the low number of complaints received then the system in Glasgow would appear to be working well.

3. *Any other issues relating to the Act which you wish to bring to the attention of the Committee?*

There are two main area that the Council would like the Committee to consider: -

- a) Support the proposal to amend the current Regulations and allow Local Authorities to provide disabled bays without the need for a TRO. By removing this administrative burden, Council's would be able to provide the current service and allow immediate enforcement.
- b) Revoke Section 8 "Disabled off-street parking orders: ongoing duties" of the Act. The Council has undertaken these duties on a number of occasions which is a considerable administrative burden. Since 2009, no private off-street car park owner has requested that the Council promote an off-street TRO to allow enforcement of any disabled bays. The vast majority of private car parks do not have disabled bays and those that do, mostly supermarkets and retail parks employ private parking enforcement contractors.

5.0 Conclusion

Glasgow City Council prides itself in being a city that looks after its vulnerable people. It is doing this within a very challenging economic climate. The Council has reviewed many of its processes and implemented many changes to make it more efficient, make best use of our resources to prevent problems rather than curing them and transform how the vital services Glasgow needs are delivered.

It is the Council's view that the Act introduced an unnecessary financial and administrative burden to all Local Authorities.

The Council would ask the Committee to note that there is a more streamlined way to fully implement the Act and carry out the ongoing duties within the Act and it would ask that the Scottish Government considers this.

George Gillespie
Acting Executive Director of Land and Environmental Services
Glasgow City Council

Written Submission from Aberdeen City Council

1. Do you think the Act has achieved its aim of preventing disabled person's parking spaces being used by those who are not entitled to?

Answer - Whilst the views of individual users, or indeed disability groups, may be more useful with regards to judging the success of the Act, in terms of its impact on the level of abuse of DPPPs by non-Blue Badge holders, Aberdeen City Council are still keen to share their views on this matter.

The Act has certainly achieved its aim of preventing disabled person's parking spaces being used by those who are not entitled to in certain circumstances. Such instances include those on-street bays located in the city centre, or other areas with high trip generation characteristics and in council owned off-street car parks. These are areas where enforcement levels are high and regular patrols are carried out (Aberdeen City Council has been operating Decriminalised Parking Enforcement since 2003).

However, with regards to privately owned and maintained commercial off-street car parks the introduction of the Act has not resulted in a substantial proportion of the advisory bays located within such facilities being made legally enforceable through the promotion of the required Traffic Regulation Order (TRO). This means little can be done to prevent these spaces being utilised by non-Blue Badge holders, unless the car parks in question operate private enforcement schemes. Private owners/managers have been invited to make a request to the Council to consider making these bays enforceable through a TRO however no requests have been made in this regard.

2. How well is the local authority in your area carrying out its duties required by the Act to convert all advisory on-street disabled persons' parking places into enforceable parking places, unless they are no longer required?

Answer - A review of records and a street audit were undertaken to establish the extent of existing on and off-street DPPPs within car parks regulated and managed by Aberdeen City Council. A programme of works commenced in September 2012 to re-line and sign the existing on-street advisory disabled bays identified through this process, and all lining work completed in August 2013, with the installation of required signage completed in January 2014. The TRO for all spaces taken through this process came into operation in February 2014.

With regards to new disabled bay applications, spaces are initially installed as advisory whilst a TRO is sought, with council officers undertaking the statutory legal process required to make the necessary TRO on a regular basis, with three or four additional orders made each year to cover any newly implemented bays.

3. Any other issues relating to the Act which you wish to bring to the attention of the Committee?

Answer - The statutory legal process for making the necessary TROs for a bay to be legally enforceable is an onerous one, taking a significant length of time, as

well as resource, to complete. As a result there are cases whereby an advisory bay, installed whilst the TRO process is undertaken, is open to abuse by non-badge holders. Whilst council officers make efforts to ensure the statutory legal process is completed as quickly as possible in these instances, it can still take a number of months for a bay to be made enforceable due to the timescales and resource associated with the TRO process.

To remove this issue, if following post-legislative scrutiny there is still a requirement for all bays to be made legally enforceable, consideration should be made to the Scottish Government utilising its powers, under Section 41 of the Scotland Act 2016, to amend the Traffic Signs Regulations and General Directions (TSRGD) 2016, to allow the markings for a disabled bay to be enforced without the need for TRO (in a similar manner to bus stop clearways).

Vycki Ritson
Traffic Management and Road Safety
Aberdeen City Council

Written Submission from the Scottish Disability Equality Forum and Guide Dogs Scotland

Introduction

This paper represents a joint response from Scottish Disability Equality Forum, and from Guide Dogs Scotland.

About Us

Scottish Disability Equality Forum

Scottish Disability Equality Forum (SDEF) is a member-led organisation, representing individuals with any type of impairment, disability organisations, groups and individuals who share our values. We work to ensure the voice of disabled people is heard and acted upon. SDEF is involved in a wide range of work on a local and national level. We work to bring real change to the lives of disabled people, to inspire and to motivate others to be inclusive and informed in their attitudes towards disabled people and to bring the message of equality to all.

Our aim is to ensure that our members and wider public are as informed as possible about the issues affecting disabled people in Scotland. SDEF has launched a series of online 'hubs' which include information and advice on Inclusive Communication, Inclusive Design and Accessible Travel.

SDEF actively engages with its members so that we understand what the key issues are for disabled people in Scotland and hold events to give advice on disability and access related issues.

SDEF is also the umbrella body for the national network of Access Panels in Scotland. Access Panels can be found in all regions and are made up of groups of disabled volunteers who work together to improve physical access and wider social inclusion in their local communities. We offer support and training opportunities to help them operate efficiently, link together as a network and learn from each other. We work to the principles of positivity, promotion, and partnership, working collaboratively with partners to promote best practice, and achieve awareness of disability equality across Scotland.

Guide Dogs Scotland

Guide Dogs Scotland are experts in the area of independent mobility for blind and partially sighted people and our work has been transforming lives of many sight impaired people on a daily basis. This mobility can often be limited by the environment in which blind and partially sighted people must live. We believe that

blind and partially sighted people should be able to move around safely and independently. This is currently often not the case and barriers may be physical, operational or attitudinal.

How evidence was gathered

Scottish Disability Equality Forum created an online survey, which was open from 8 February until 15 March 2017. The survey had 29 responses. Below we report on the responses to each of the questions, and offer verbatim comments from our members.

Guide Dogs Scotland have gathered their evidence from members through anecdotal feedback and have offered some commentary on the key points, with which Scottish Disability Equality Forum agrees.

Question 1

Do you think the Act had achieved its aim of preventing disabled persons' parking spaces being used by those who are not entitled to? (n=29)

- No – 86% (25 respondents)
- Yes – 10% (3 respondents)
- Unsure – 3% (1 respondent)

Policy is clear that non-blue badge holders should not park in bays marked for disabled people. That blue badges should not be used by anyone other than the holder.

The Disabled Persons' Parking Places (Scotland) Act 2009 aimed to reinforce this message and made provisions to bring disabled bays to an enforceable standard. It also made provision for enforcement of private off-street disabled parking by placing a duty on all local authorities to enter negotiating with the owners to make the bays enforceable, and, if needed repeat this offer every two years. This Act does not change the actual parking enforcement system or penalty. The overall aim of the Act is to prevent and deter misuse of disabled parking bays by strengthening enforcement opportunities.

“No-one monitors the use of these spaces by non-blue badge holders” (SDEF member)

“No evidence of enforcement by police or local authority, particularly with off street parking” (SDEF member).

Tackling abuse of Blue Badges was strengthened via another Member's Bill, which became the Disabled Persons' Parking Badges (Scotland) Act 2014. This made further provisions for local authorities to more easily tackle abuse of blue badges by improvements to who can check and confiscate badges. In addition, to the process of producing and issuing blue badges to minimise the opportunity for fakes.

Irrespective of these Acts abuse of disabled people's parking bays still occurs. We hear from blind blue badge holders that their drivers sometimes cannot find a free disabled parking bay, but parked cars are not always displaying a blue badge.

"Public mind-set believes they have an option to partake, especially if it's the last place available" (SDEF member).

"The Act has helped raising awareness of the issue, but there is still abuse of on-street parking and the blue badges are still misused" (SDEF member).

"Up to a point; there are still people who chance it, thinking they will only be a minute" (SDEF member).

It is often cited, that in private off-street car parks, such as supermarkets and other large retailers, there is no obvious enforcement of disabled parking bays being carried out. We are aware that it might be uncomfortable for employees to challenge a person's use of a blue badge, particularly since many disabilities are hidden ones. This highlights the need for retailers to invest in equality and disability training opportunities for their staff, so that good disability customer care procedures and policies can be developed and applied.

There is nothing to make us believe that the public who abuse disabled parking bays are doing so unknowingly.

We strongly feel that there are two elements to reducing disabled parking bay abuse, firstly clear enforcement law and secondly effective parking enforcement.

Parking enforcement levels differ across Scotland. Some local authorities now carry out their own schemes via decriminalised parking enforcement (DPE) powers. We believe there are 16 local authorities that have DPE schemes, six are in the midst of gaining DPE, and this leaves a further 10 who are relying on other means to enforce parking. We assume that these 10 rely on Police Scotland to carry out parking enforcement.

In 2014, Police Scotland started to withdraw their Traffic Warden provision, leaving some areas without any, or very limited provision. Some local authority areas brokered deal with Police Scotland who provide a couple of days a week, or agree to

target certain trouble spots. This level of enforcement allows abuse to happen, of not only disabled bays but also any other inconsiderate parking, such as on yellow lines.

Question 2

How well is the local authority in your area carrying out its duties required by the Act to convert all advisory on-street disabled persons' parking places into enforceable parking places, unless they are no longer required?

We have heard anecdotally from local authorities, that at the beginning of the audit process there was no extra provision of costs and this hampered the audit process and bring the bays to enforcement standard. We assume that in 2017 this is now not the case and that Councils have in place systems and process to update that initial audit.

We appreciate that to take away no longer required disabled bays, particularly in residential areas, will be a difficult task for local authorities. This relies more on the disabled individual or their family to update the local authority, for example, when they move away. We hope that local authorities have information on this type of processes, which is provided when disabled residents apply for a disabled parking bay.

We are also aware that in the past disabled residents, having requested and been provided with a disabled parking bay, were under the, understandable, impression that this would be for their exclusive use.

When the provisions in the Disabled Persons' Parking Places (Scotland) Act 2009 were being implemented this topic emerged that disabled bay can be used by any blue badge holder. We are under the impression that in the main residential disabled parking bays are used by the disabled resident. However, in the residences near town centres or community facility areas, we can see that this might pose problems if parking spills into residential streets.

The majority of SDEF members felt their local authority did not enforce parking restrictions.

"This is not the fault of the legislation, more how the rules are enforced" (SDEF member).

"Cars are parked overnight in disabled parking bays, but there is no parking attendants working to enforce" (SDEF member).

SDEF members also reported that they did not notice any difference in the availability of disabled parking spaces.

“I have not noticed any changes to on-street parking” (SDEF member).

Question 3

Are there any other issues relating to the Act that you wish to bring to the attention of the Committee?

The majority of SDEF members raised issues regarding abuse or misuse of blue badges. SDEF members felt strongly that the Act does not go far enough to address the misuse of blue badges and that there is a need for a campaign, similar to that of drink driving, to make the use of disabled persons' parking bays as socially unacceptable.

“Local authorities need to be encouraged to make civil enforcement” (SDEF member).

“There is a constant abuse of the scheme by people without the blue badge parking in designated disabled bays. There is a misuse of the blue badge by people other than the official holder” (SDEF member).

SDEF members suggested that the biggest issue is the lack of enforcement of the illegal use of disabled persons' parking spaces. The most common places for the mis-use of spaces are supermarket car parks and health centres.

“The main abuse of disabled persons' parking bays take place in car parks, as opposed to on-street parking, particularly in supermarket car parks. Management are reluctant to punish offenders in case they take their custom elsewhere” (SDEF member).

“At health centres, there are clearly defined disabled parking spaces. However, it is a free for all for taxis and vans. There is no enforcement” (SDEF member)

We would also draw attention to the duty that local authorities have in negotiating and offering private off-street owners of car parking to upgrade their disabled parking bays to enforceable standard. We noted from some other responses that the 'offer' is being done by information on the local authority website. No car-parking owners has taken up this offer, which might lead to the decision that those provisions in the Act are not required. Before drawing conclusions, we would reckon that this area requires further thought.

We support views around the requirements for signs and lines on enforceable disabled parking bays. It is often mooted that we have too many poles for signs cluttering up footways. Poles in themselves can hinder the free movement of many

disabled people, such as mobility impairment, wheelchair and scooter users, and people with sight impairments. We would query the belt and braces approach to enforcement design for bays needing both lines and a sign.

“Signage put up in our area is too high for people to read, or in places where people can’t see them. There is a lack of information about the Act and the consequences of parking in disabled parking bays” (SDEF member).

“Wording on the signs is confusing. Signs are dirty and faded, making them hard to read. Use of the blue badge is confusing due to the height and limited information on street signs. There is not enough monitoring. Lineage in the bays is faded” (SDEF member).

What is important however is that, the non-blue badge owners know that they should not park in a disabled parking bay, and that the bay has all the features to enable enforcement to occur.

“People are unaware of the Act and that it is enforceable” (SDEF member).

“Disabled parking bays are routinely used by non-disabled people” (SDEF member).

Local Government and Communities Committee

10th Meeting 2017 (Session 5), Wednesday 29 March 2017

PE1539

Introduction

1. The Committee will consider petition PE1539, which was referred to it by the Session 4 Infrastructure and Capital Investment Committee.

[PE1539](#), lodged on 17 October 2014:

Calling on the Scottish Parliament to urge the Scottish Government to make an Order under Section 5 of the Freedom of Information Act (Scotland) 2002 to make all housing associations subject to the provisions of that Act. This will ensure that housing associations are more open, transparent and accountable to all their stakeholders, i.e. tenants and factored homeowners.

Petitioner: Anne Booth

2. The list of the Scottish Public Authorities covered by the [Freedom of Information \(Scotland\) Act 2002](#) (FOISA) can be extended by means of an order made under Section 5 of the Act. This petition seeks to make such an order to extend FOISA to all Housing Associations (which are referred to in this paper as Registered Social Landlords (RSLs) to reflect terminology taken forward by the Scottish Government in its current consultation).

Background

Session 4 Public Petitions consideration

3. This petition was first introduced and considered by the Public Petitions Committee on [9 December 2014](#). During its consideration, it wrote to the Scottish Government, the Scottish Information Commissioner, a number of RSLs, tenants' organisations and other interested parties.

4. Tenant representatives and FOI proponents were generally in favour of the proposals. RSL representatives were generally supportive of RSLs being open and transparent to their tenants and customers. However, many argued that RSLs already have duties to be open and transparent under the Scottish Social Housing Charter (SSHC) and expressed concerns regarding further legislative, administrative and financial burdens being placed on them.

5. The Scottish Information Commissioner was supportive of the petition, referring to a [special report published in January](#) recommending that Scottish Ministers bring forward a Section 5 order to extend the coverage of FOISA to include RSLs.

6. In its [letter of 16 April 2015](#), the Scottish Government reiterated that it intended to consult on extending the coverage of FOISA later that year. It indicated, however, that it did not consider factoring to be services of a public nature and therefore doubted whether the factoring activities of RSLs would come under FOISA, even if the RSLs became subject to the Act. [The petitioner wrote to the Public Petitions](#)

[Committee on 24 April 2015](#), challenging the Scottish Government's view that factoring services are not of a public nature.

7. On 13 May 2015, the Public Petitions Committee referred the Petition to the Session 4 Infrastructure and Capital Investment Committee, under Standing Order Rules 15.6, 15.7 and 15.8, as it was responsible for the scrutiny of policy matters in relation to housing.

Scottish Government consultation on extension of FOISA

8. In the meantime, on 12 June 2015, the [Scottish Government launched a further consultation on the extension of FOISA to further bodies](#) under a Section 5 order.

9. Whilst it did not formally consult on extending FOISA to RSLs, the Scottish Government encouraged RSLs, tenants and representative bodies to respond to the consultation on whether RSLs should be included in future consultations on extension of FOISA.

10. At that time, the Scottish Government cited the regulatory burdens placed on social landlords under the Scottish Housing Charter as one reason for not extending FOISA cover to RSLs at this stage. It also stated that given the Charter has yet to complete 5 years of operation, it would "suggest a full assessment of the effectiveness of the Charter" is "undertaken before any potential imposition of freedom of information legislation is formally proposed."

Previous ICI Committee Scrutiny

11. Following consideration of the petition, the [ICI Committee wrote to the Scottish Government](#) on 17 July 2015 urging it to engage with the petitioner's views in respect of extension of FOISA to RSLs. The Committee also requested that the Scottish Government update it on how it intends to take forward the petitioners views to its review of the SHC and how it will assess whether RSLs should be included in the next FOISA section 5 consultation.

12. The Scottish Government [wrote to the Committee with a copy of its biennial section 5 order-making powers report on 2 November 2015](#). In its letter, the Scottish Government confirmed that approximately half the responses to its consultation on which types of bodies should be considered for future inclusion in section 5 orders made reference to RSLs. In recognition of the strong interest, the Scottish Government agreed to formally consult the sector on extending FOISA to RSLs in the future. It stated "that review of the SSHC provides the opportune time to formally consult the sector with a view to extending the Act in tandem with complementary changes to the Charter."

13. The ICI Committee considered the petition at its [meeting on 18 November](#). At that meeting, the Committee agreed that as the Scottish Government has now agreed to formally consult on extending FOISA to include RSLs and to review the SSHC, [it would seek the petitioner's views](#) on whether it would be happy for the Committee to close the petition on that basis. The petitioner replied expressing a [preference for the Committee to keep the petition open](#).

14. Given that the then upcoming consultation from the Scottish Government would begin following the start of Session 5, the petition was added to the Session 4 ICI

Committee's legacy paper for its successor committee (the Local Government and Communities Committee) to consider the petition further.

Local Government and Communities Committee consideration

15. Following its Business Planning discussions, the Local Government and Communities Committee wrote to the Scottish Government on 1 September 2016 asking it to provide a timeline for its consultation. The Scottish Government confirmed that it anticipated consulting with the housing sector in late autumn 2016 for 12 weeks. It confirmed that timescales after that will be dependent on the number of responses to the consultation and the range of substantive issues raised. Extract from the letters to the Scottish Government and responses are attached at Annexe A. Letters updating the petitioner are attached at Annexe B.

16. On 1 December 2016, [the Scottish Government subsequently wrote to the Committee](#) announcing that it would carry out its consultation between 1 December and 23 February 2017 and that a summary of responses and what action the Scottish Government will take would be published early in 2017.

17. The Committee agreed at a further discussion of its work programme on 7 December 2016 to defer consideration of the petition to following close of the Scottish Government's consultation.

18. The Committee considered the revised SSHC, which was subject to minimal changes and taken forward as a separate, at its meeting on 1 February 2017. Following positive comments from witnesses and the Minister for Local Government and Housing on its operation, the Committee agreed to recommend to Parliament that the revised SSHC be approved by Parliament.

19. The Scottish Government [closed its consultation on extending FOI to RSLs on 23 February](#) and published 71 responses on 23 March 2017. Many bodies representing tenants, proponents of FOI and the Information Commissioner are generally in favour of RSLs coming under FOI, given that they provide services of public nature and receive public funding. Many RSLs and their representative organisations are against the proposals. Some reasons given by RSLs for not increasing FOI were the costs and resource associated with further regulatory burden, concerns it could impact smaller RSLs and a concern that any additional costs could have an impact on rent levels. Some also commented that should the proposals be agreed to, the timescale for implementing the proposals should be extended from April 2018 to April 2019.

20. It is less clear at this stage when the Scottish Government will be in a position to provide a formal response to the consultation as the Scottish Government will need to consider all issues at hand. On its consultation page it states—

“Following consultation, responses will be analysed with engagement from relevant stakeholders. In due course the Government will issue a formal response paper. In the event of a decision being taken to extend coverage to Registered Social Landlords an order will be laid in the Scottish Parliament - but can only come into force following Parliamentary scrutiny and approval.”

21. Should it be proposed that FOI be extended to RSLs, then the Section 5 order would be laid under the affirmative procedure and it is likely that it would fall within the remit of the Local Government and Communities Committee.

22. The Committee might wish to consider whether it wishes to take any action in relation to this petition in the meantime, including whether it wishes

- **wait until the Scottish Government provides a formal response before considering its next steps;**
- **write to the Scottish Government for an update and indicative timescale in relation to the outcome of its consultation and update the petitioner; or**
- **close the petition.**

Annexe A

Extract from a letter from the Local Government and Communities Committee to the Scottish Government dated 1 September 2016

Another issue discussed at the Committee was the outstanding Session 4 petition – PE1539 by *Anne Booth Calling on the Scottish Parliament to urge the Scottish Government to make an Order under Section 5 of the Freedom of Information Act (Scotland) 2002 to make all housing associations subject to the provisions of that Act. This will ensure that housing associations are more open, transparent and accountable to all their stakeholders, i.e. tenants and factored homeowners.*

The Committee noted that in November 2015, the Scottish Government confirmed to the Session 4 Infrastructure and Climate Change Committee (who previously considered this petition) that it was intending to consult on the issues raised in the petition. In January 2016 that Committee agreed to keep the petition open and include it in its legacy paper given the petitioner's concerns that the Scottish Government consultation would have no predetermined outcome so might not result in the action called for by the petitioner.

At our Business planning event the Local Government and Communities Committee agreed to seek an update from you on when the Scottish Government consultation, on whether to make all housing associations subject the Freedom of Information (Scotland) Act 2002, will begin. It would be helpful if in responding you could also confirm what the subsequent anticipated timescales are for consideration of any consultation responses and any Scottish Government decision on this issue.

The Committee would welcome a response by the 30 September but if you or your officials have any queries about this then please contact a member of the clerking staff to the Committee using the contact details above.

Extract from a letter from the Scottish Government to the Local Government and Communities Committee dated 28 September 2016

Extending the FOI Act to Housing Associations

The Scottish Government anticipates consultation with the housing sector (to include registered social landlords, tenant organisations, representative bodies etc) to start in late autumn. The consultation will run for the standard period of 12 weeks. Timescales after that will be dependent on the number of responses to the consultation and the range of substantive issues raised.

Annexe B

Letter from the Local Government and Communities Committee to the Petitioner dated 8 September 2016

As you will be aware, your petition was considered by the Infrastructure and Capital Investment Committee in Session 4 and remained outstanding at the end of the Session. As your petition now falls within the remit of the Session 5 Local Government and Communities Committee, it will be that Committee which considers your petition going forward.

You will recall that the Session 4 Infrastructure and Capital Investment Committee agreed to defer your petition until the Scottish Government's consultation on extending the Freedom of Information (Scotland) Act 2002 to RSLs is launched. That consultation is expected to take place this autumn with the outcome not expected until 2017. As a result the Session 5 Committee, in noting that your petition remains outstanding, has written to the Scottish Government to seek confirmation when it proposes to consult this change to Freedom of Information legislation.

The clerks to the Committee will contact you again in due course to let you know when your petition will go on the Committee's agenda but if you have any queries in the meantime please contact them using the details noted above.

Letter from the Local Government and Communities Committee to the Petitioner dated 30 September 2016

Further to my letter of 8 September 2016, the Committee has received a response from the Scottish Government setting out when it intends to consult on whether Housing Associations should come under Freedom of Information.

In its response, the Scottish Government confirms that it anticipates consultation with the housing sector (to include registered social landlords, tenant organisations, representative bodies etc) to start in late autumn 2016. The consultation will run for the standard period of 12 weeks. Timescales after that will be dependent on the number of responses to the consultation and the range of substantive issues raised.

The Committee will consider your petition at a future meeting and at that time the Clerks will contact you again to let you know when your petition will go on the Committee's agenda. If you have any queries in the meantime please contact them using the details noted above.

Local Government and Communities Committee

10th Meeting, 2017 (Session 5), Wednesday 29 March 2017

Subordinate Legislation

Overview of instruments

1. The following instruments, subject to negative procedure, are being considered at agenda item 3 today's meeting:
 - The Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017 (SSI 2017/61);
 - The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2017 (SSI 2017/64);
 - The Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2017 (SSI 2017/66);
 - The Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017 (SSI 2017/85).

Procedure

2. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds). Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament.
3. If that is also agreed to, Scottish Ministers must revoke the instrument. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendation on it.

Background

The Non-Domestic Rates (District Heating Relief) (Scotland) Regulations 2017

4. These Regulations make provision to reduce the amount payable as non-domestic rates in respect of subjects in Scotland used wholly or mainly for the purposes of a district heating network. They apply from the start of the 2017-2018 financial year.

5. Regulation 3 provides for a 50% reduction in rates where the lands and heritages are used wholly or mainly as a district heating network. Regulation 4 provides for a reduction in relief if the enactments listed already provide for a reduction and that any relief must be compatible with state aid rules.
6. Regulation 5 provides that an application must be made to obtain the relief. Regulation 6 allows for exemptions and discretionary reductions. The policy note for this instrument is attached at **Annexe A**.
7. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2017/61/made>.
8. There are no associated impact assessments for this legislation.
9. There has been no motion to annul this instrument.

Delegated Powers and Law Reform Committee Consideration

10. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 21 March 2017 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

The Representation of the People (Absent Voting at Local Government Elections (Scotland) Amendment Regulations 2017

11. These Regulations amend regulation 11 of the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007. They allow for an application for a proxy vote to be accepted if received no later than 5 p.m. on the day of the poll where the application is made on grounds relating to the applicant's occupation, service or employment and the applicant became aware of those grounds after 5 p.m. on the sixth day before the poll. The policy note for this instrument is attached at **Annexe B**.
12. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2017/64/made>.
13. There are no associated impact assessments for this legislation.
14. There has been no motion to annul this instrument.

Delegated Powers and Law Reform Committee Consideration

15. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 21 March 2017 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

The Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2017

16. These Regulations amend the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007. They substitute increased annual amounts for different categories of local authority remuneration to their members. These changes are effective from 4th May 2017 being the date of the next ordinary election. The policy note for this instrument is attached at **Annexe C**.
17. An electronic copy of the instrument is available at:

<http://www.legislation.gov.uk/ssi/2017/66/made>.
18. There are no associated impact assessments for this legislation.
19. There has been no motion to annul this instrument.

Delegated Powers and Law Reform Committee Consideration

20. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 21 March 2017 and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

The Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017

21. These Regulations make provision as to the amount payable in certain circumstances as nondomestic rates in respect of non-domestic subjects in Scotland. They apply only to the financial year 2017-18 (“the relevant year”) and to subjects which are used wholly or mainly for the purpose specified in the schedule (“relevant lands and heritages”). The Regulations cease to apply where a non-domestic subject is shown in a merged, split or reorganised entry in the valuation roll which takes effect during the relevant year. The policy note for this instrument is attached at **Annexe D**.
22. An electronic copy of the instrument is available at:

<http://www.legislation.gov.uk/ssi/2017/85/made>.
23. There are no associated impact assessments for this legislation.
24. There has been no motion to annul this instrument.

Delegated Powers and Law Reform Committee Consideration

25. The Delegated Powers and Law Reform Committee will consider this instrument at its meeting on 28 March 2017. The instrument has not been laid within 28 days of it coming into force. A letter from the Scottish Government to the Presiding Officer explaining the reason for the delay is attached below.

Letter from the Scottish Government to the Presiding Officer on SSI 2017/85

Dear Presiding Officer

THE NON-DOMESTIC RATES (TRANSITIONAL RELIEF) (SCOTLAND) REGULATIONS 2017

The Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017, SSI 2017/85 were made by the Scottish Ministers under section 153 of the Local Government etc. (Scotland) Act 1994 on 16 March 2017. They are being laid before the Scottish Parliament today, 16 March 2017, and come into force on 1 April 2017.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) has not been complied with. To meet the requirements of section 31(3) that Act, this letter explains why.

The Regulations provide for a cap on increases in non-domestic rates bills for certain properties between 2016-17 and 2017-18, as announced in a ministerial statement on 21 February 2017 by the Cabinet Secretary for Finance and the Constitution, and associated provisions. The policy intention, and the expectation of stakeholders, is for this measure to take effect from 1 April 2017.

Following non-domestic rating proposals in the 2017-18 Draft Budget published on 15 December 2016, further analysis was undertaken on the impact of the 2017 revaluation as the Assessors' provisional values continued to be revised ahead of valuation rolls being made up. There was also associated further engagement with business stakeholders and rating practitioners, and that work continued to finalise robust policy detail for these regulations following the ministerial statement.

The detail of the Regulations is complex, including provision for interaction with various rating provisions already in force under other enactments. This has taken longer than anticipated to consider, relating to the policy complexity, the level of analysis of evolving revaluation data to ensure budget clarity, and the need to engage key stakeholders to inform consideration of potential outcomes and practicability.

I apologise for the non-compliance referred to above, and hope that the above reasons provide a suitable explanation for the delay. I would be happy to provide any further information required.

Yours sincerely

Douglas McLaren
Head of non-domestic rates policy.

Committee Consideration

26. The Committee is **not required** to report on negative instruments, but should it wish to do so, the deadline for reporting on SSI 2017/61 is **27 April 2017**, for reporting on SSI 2017/64 and SSI 2017/66 is **3 May 2017** and for reporting on SSI 2017/85 is **10 May 2017**.

27. **The Committee is invited to consider the above instruments and whether it wishes to report on any issues to the Parliament in relation to them.**

POLICY NOTE**THE NON-DOMESTIC RATES (DISTRICT HEATING RELIEF) (SCOTLAND)
REGULATIONS 2017****SSI 2017/61**

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 153 of the Local Government etc. (Scotland) Act 1994 and all other enabling powers. The instrument is subject to negative procedure.

Purpose of the Instrument

The purpose of this instrument is to provide a new rates relief of 50% in respect of district heating.

Background

This measure forms part of a wider package of support for renewables in relation to non-domestic rates set out in a statement in Parliament on 21 February 2017 by the Cabinet Secretary for Finance and the Constitution, Derek Mackay. Other related measures are being addressed in separately proposed legislation.

Policy objective

District heating allows the efficient use of a range of heat sources, creating a heat network which can result in lower carbon emissions and more affordable heating, and supply long-term investment in infrastructure which can be adapted to meet changing energy demands.

The rates relief is 50% for rateable properties used wholly or mainly for the purposes of a district heating network, subject to possible reduction in respect of certain other applicable reliefs.

Consultation

There is no statutory requirement to formally consult on these Regulations.

Business and Regulatory Impact Assessment

No Business and Regulatory Impact Assessment has been carried out.

Financial Implications

The decrease in the amount of non-domestic rates payable is in line with the policy objective as outlined above, and is subject to State aid *de minimis*.

Local Government & Analytical Services Division
March 2017

POLICY NOTE**THE REPRESENTATION OF THE PEOPLE (ABSENT VOTING AT LOCAL GOVERNMENT ELECTIONS) (SCOTLAND) AMENDMENT REGULATIONS 2017****SSI 2017/64**

The above instrument was made by Scottish Ministers in exercise of the powers conferred by sections 33 and 61(2) of the Local Electoral Administration and Registration Services (Scotland) Act 2006. The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to amend the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 (“the 2007 Regulations”).

Regulation 10 of the 2007 Regulations was amended by the Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment (No. 2) Regulations 2016 so as to allow for an application for a proxy vote on the basis of occupation, service or employment to be made on an emergency basis.

The Electoral Commission have highlighted a potential loophole in the legislation. Whilst the 2016 Regulations give electors the right to apply for an emergency proxy vote on the grounds of occupation, service or employment, they do not explicitly give electoral registration officers the power to grant their applications. These amendment regulations clarify that electoral registration officers have the power to grant those applications.

Regulation 11 of the 2007 Regulations is amended so as to allow for the application of a proxy vote to be accepted if received no later than 5pm on the day of the poll where the application is made on grounds relating to an applicant’s occupation, service or employment and the applicant became aware of those grounds after 5pm on the sixth day before the poll.

Consultation

This is a technical change which clarifies a policy which was the subject of earlier consultation. Consultation has therefore been limited to the Electoral Commission. However electoral administrators, including electoral registration officers, are aware of the Scottish Government’s intention to make this amendment.

Impact Assessments

A Business Regularity Impact Assessment is deemed not be required in this instance as policy changes will not lead to costs or savings for business, third or public sector organisations, regulators or consumers. There is no additional cost on the public sector as the Scottish Government would continue to meet the costs of associated activity whether or not it was in the legislation and there is no transfer of costs or benefits from one group to another.

The Order has no impact on the equality, environment, privacy or children's rights and therefore no impact assessments are required for those areas.

Financial Effects

This is a minor change with no discernible financial costs.

The instrument has no financial effects on business.

Scottish Government Directorate for Strategy and Constitution
March 2017

POLICY NOTE**THE LOCAL GOVERNANCE (SCOTLAND) ACT 2004 (REMUNERATION)
AMENDMENT REGULATIONS 2017****SSI 2017/66**

The above instrument is made by the Scottish Ministers in exercise of the powers conferred by sections 11 and 16(2) of the Local Governance (Scotland) Act 2004 and all other powers enabling them to do so.

Policy Objectives

This instrument makes provision in relation to the remuneration of local authority councillors. It amends the Local Governance (Scotland) Act 2004 (Remuneration) Regulations 2007 to increase the level of remuneration payable to local authority councillors by 0.2%, which increase will take effect from 4 May 2017.

Consultation

There is no requirement for the Scottish Ministers to undertake a consultation before making a recommendation on councillors' salaries. However Ministers have had discussions with the Convention of Scottish Local Authorities (COSLA), who are aware of the 0.2% increase.

Impact Assessments

An equality impact assessment has not been undertaken as the increase in councillors' remuneration applies to all local authority members. The Scottish Ministers have decided that a Business Regulatory Impact Assessment is not required as there is no impact on business or the third sector and the impact on the public sector (council budgets) is not expected to cause a significant financial pressure. The salary increase would be met from existing council budgets: it is estimated that for 2017-18 the total cost would be around £52,000 across all 32 councils.

Local Government and Analytical Services Division
The Scottish Government

March 2017

POLICY NOTE**THE NON-DOMESTIC RATES (TRANSITIONAL RELIEF) (SCOTLAND)
REGULATIONS 2017****SSI 2017/85**

The above instrument is made in exercise of the powers conferred on the Scottish Ministers by section 153 of the Local Government etc. (Scotland) Act 1994 and all other enabling powers. The instrument is subject to negative procedure.

Purpose of the instrument

The purpose of this instrument is to reduce the amount payable as non-domestic rates for certain properties for 2017-18.

These are properties wholly or mainly used for specified purposes, that were so used on 31 March 2017 (or, if unoccupied on that date, were so used when last occupied), subject to certain other conditions. The specified purposes include use as a hotel, restaurant, pub, small hydro¹ scheme and (in Aberdeen and Aberdeenshire only) offices.²

Unless the property is shown in a split or reorganised entry, or a merged entry taking effect after 1 April 2017, any increase in the 'gross bill'³ for a day in 2017-18 is to be no more than 12.5 per cent (real terms)⁴ of the gross bill for 31 March 2017.

Irrespective of any such limitation of the gross bill, a separate 50% relief is applicable to properties (which are not shown in a split, reorganised or merged entry) for which on 31 March 2017 the rateable value was no more than £10,000 and the amount payable for that day was reduced to zero by any reliefs.

If the property is shown in a split or reorganised entry taking effect at revaluation (i.e. on 1 April 2017), a reduction is applied to the gross bill and then uplifted by 12.5 per cent (real terms).

The above measures interact with reductions to the amount payable under other legislation.

If the property is shown in a split, reorganised or merged entry taking effect after 1 April 2017, these Regulations are not applicable. If the property has zero rateable value or had zero rateable value on 31 March 2017, these Regulations are not applicable.

¹ up to 1 MW capacity

² The full list is in the Schedule to the Regulations.

³ The gross bill for the purposes of this note is the rateable value on that day multiplied by a poundage factor; the poundage factor being the non-domestic rate for that year plus, where applicable, the large business supplement for that year.

⁴ Accounting for inflation at 2%.

Background

These measures relate to a ministerial statement in the Scottish Parliament on 21 February 2017 by the Cabinet Secretary for Finance and the Constitution, Derek Mackay.

Policy objective

The objective is to target further support in light of the 2017 revaluation and a wider consideration of relevant issues informed by stakeholder engagement. Accordingly, national support is targeted within the hospitality sector and within the renewables sector. Occupiers of office space are supported in Aberdeen and Aberdeenshire, being the area most affected by adverse changes in the oil and gas sector.

Consultation

There is no statutory requirement to formally consult on these Regulations. However the proposals were informed by stakeholder engagement.

Business and Regulatory Impact Assessment

No Business and Regulatory Impact Assessment has been carried out.

Financial implications

The decrease in the amount of non-domestic rates payable is in line with the policy objective as outlined above, and is subject to State aid *de minimis*.

Local Government & Analytical Services Division
March 2017