DELEGATED POWERS AND LAW REFORM COMMITTEE

AGENDA

6th Meeting, 2018 (Session 5)

Tuesday 27 February 2018

The Committee will meet at 10.30 am in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to take items 4, 5 and 6 in private.

2. **Instruments subject to affirmative procedure:** The Committee will consider the following—

   Local Government Finance (Scotland) Order 2018 [draft].

3. **Instruments subject to negative procedure:** The Committee will consider the following—

   Council Tax Reduction (Scotland) Amendment Regulations 2018 (SSI 2018/69);
   Carers (Scotland) Act 2016 (Transitional Provisions) Regulations 2018 (SSI 2018/34);
   Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018 (SSI 2018/60);
   Parking Attendants (Wearing of Uniforms) (Midlothian Council Parking Area) Regulations 2018 (SSI 2018/61);
   Road Traffic (Parking Adjudicators) (Midlothian Council) Regulations 2018 (SSI 2018/62);
   Non-Domestic Rates (Telecommunication Installations) (Scotland) Amendment Regulations 2018 (SSI 2018/63);
   Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2018 (SSI 2018/64);
   Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018 (SSI 2018/65);
   National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2018 (SSI 2018/68).

4. **Prescription (Scotland) Bill:** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.
5. **Planning (Scotland) Bill**: The Committee will consider further the delegated powers provisions in this Bill at Stage 1.

6. **Social Security (Scotland) Bill**: The Committee will consider correspondence from the Minister for Social Security.

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The papers for this meeting are as follows—

**Agenda Items 2 and 3**  
Briefing on Instruments (private)  
DPLR/S5/18/6/1(P)

**Agenda Item 3**  
Instrument Responses  
DPLR/S5/18/6/2

**Agenda Item 4**  
Prescription (Scotland) Bill - As Introduced  

Prescription (Scotland) Bill - Explanatory Notes

Prescription (Scotland) Bill - Policy Memorandum


Briefing Paper (private)  
DPLR/S5/18/6/3(P)

**Agenda Item 5**  
Planning (Scotland) Bill - As Introduced  

Planning (Scotland) Bill - Delegated Powers Memorandum

Briefing Paper (private)  
DPLR/S5/18/6/4(P)

**Agenda Item 6**  
Letter from the Convener to the Minister for Social Security dated 25 January 2018

Response from the Minister for Social Security to the Convener dated 19 February 2018

Briefing Paper (private)  
DPLR/S5/18/6/5(P)
Carers (Scotland) Act 2016 (Transitional Provisions) Regulations 2018 (SSI 2018/34)

On 13 February 2018, the Scottish Government was asked:

1. Is there provision for the situation where a person has made a request for a carer’s assessment under section 12AA of the Social Work (Scotland) Act 1968 or section 24 of the Children (Scotland) Act 1995 but that assessment has not been completed by the time the new system of adult carer support plans and young carer statements comes into force?

2. If not, why is it considered unnecessary to have provision?

The Scottish Government responded as follows:

In response to question 1, we confirm that the Carers (Scotland) Act 2016 (Transitional Provisions) Regulations 2018 (SSI 2018/34) do not make provision in relation to the situation where a person has made a request for a carer’s assessment under section 12AA of the Social Work (Scotland) Act 1968 or section 24 of the Children (Scotland) Act 1995 but that assessment has not been completed by the time the new system of adult carer support plans and young carer statements comes into force.

In relation to question 2, we respond as follows.

It is foreseeable that a person could make a request to a local authority for a carer’s assessment before the appointed day for the Carer’s (Scotland) Act 2016 (“the 2016 Act”) coming into force (i.e. 1 April 2018) which, at the appointed day, is still yet to be carried out. However, it is not considered that the absence of any provision within the Regulations to deal with this situation creates any gap in the ability of such carers who have requested a carer’s assessment to access support after the appointed day.

Section 12AA of the Social Work (Scotland) Act 1968 (“the 1968 Act”) enables a carer who provides, or intends to provide, a substantial amount of care on a regular basis for another person aged eighteen or over to request a local authority to make an assessment of the carer’s ability to provide, or to continue to provide, such care for that person. A local authority is then, under subsection (2) of that section, required to comply with that request where it appears to them that the person cared for is a person for whom they (the local authority) must or may provide, or secure the provision of, community care services.
Section 24 of the Children (Scotland) Act 1995 (“the 1995 Act”) makes similar provision in relation to persons who provide care to a disabled child. The obligation on a local authority to comply with a request for a carer’s assessment depends on the child appearing to them to be a person for whom they (the local authority) must or may provide services under section 22 of the 1995 Act.

Sections 12AA of the 1968 Act and 24 of the 1995 Act are to be repealed in their entirety with effect from 1st April 2018. Consequently, without any savings provision, the duty on a local authority to carry out a carer’s assessment in response to a request for one no longer applies after that date. However, simultaneously with the repeal of section 12AA of the 1968 Act and section 24 of the 1995 Act, sections 6 and 12 of the 2016 Act take effect.

Section 6(2) of the 2016 Act provides that if a responsible local authority (defined in subsection 6 as the local authority for the area in which the cared-for person resides) identifies a person as an adult carer, the responsible local authority must offer the person an adult carer support plan. Section 6(3) of the 2016 Act then requires the responsible local authority to prepare an adult carer support plan where that offer of one has been accepted by the adult carer.

Section 12(2) of the 2016 Act provides that if a responsible authority (having the meaning set out in sections 19 and 20 of the 2016 Act) identifies a person as a young carer, the responsible authority must offer the person a young carer statement. Section 12(3) of the 2016 Act then requires the responsible authority to prepare a young carer statement where the offer of one has been accepted by the young carer.

It is considered, therefore, that any person who has made a request to a local authority for a carer’s assessment which, come the appointed day has not been carried out, will nonetheless be a person who, by virtue of that request, is known to that local authority as a carer, or potential carer. Accordingly, where the local authority to whom the request for a carer’s assessment has been made is the responsible local authority in relation to that adult carer, or responsible authority in relation to that young carer, it must instead offer that adult an adult carer support plan or young carer a young carer statement. It is considered to be in a carer’s interest to be offered and, if accepted, provided with an adult carer support plan or young carer statement as opposed to a carer’s assessment because the prospect of obtaining support is greater under the adult carer support plan / young carer statement schemes than it is under the current carer’s assessment and support provisions.

In addition to the requirements to offer a carer an adult carer support plan or young carer statement, sections 6(4) and 12(4) of the 2016 Act allow for a carer/young carer to request an adult carer support plan or young carer statement. Therefore, even where the local authority to whom the request for a carer’s assessment has been made is not the responsible local authority or responsible authority in relation to the carer, such that the duty to offer that carer an adult carer support plan or young carer statement doesn’t apply, the carer can still make a request for one from the relevant authority, which the relevant authority must comply with. Guidance will advise local authorities to signpost such carers to their relevant authority to enable their request for a support plan / statement to be progressed.