24 April 2018

I am pleased to write to you following the Delegated Powers and Law Reform Committee’s report on the Social Security (Scotland) Bill, as amended at stage 2. I note that the Committee published its report on 18 April, after the deadline (by convention) for government amendments to the Bill had passed.

You will find the Scottish Government’s response to the Committee’s report enclosed with this letter. I trust that it is helpful. A copy of this letter, and its attachment, is also being sent to the Convener of the Social Security Committee.

I would like to thank both you and the other members of the Committee for your contribution to the Parliamentary scrutiny of this ground-breaking and historic Bill.

Kind regards

JEANE FREEMAN
Social Security (Scotland) Bill (as amended at stage 2)

Report of the Delegated Powers and Law Reform Committee

Scottish Government Response

The Scottish Government is grateful to the Delegated Powers and Law Reform Committee ("the Committee") for its further consideration of the delegated powers provisions in the Social Security (Scotland) Bill, as amended at stage 2, and for its report – which the Scottish Government notes was not published until 18 April, after the deadline (by convention) for government amendments had passed.

Further to its letter to the Committee, of 9 April¹, the Scottish Government is pleased to respond to Committee's report, as follows:-

Para. 18 - the Scottish Government is pleased that the Committee has welcomed its commitment to amend the Bill at Stage 3, so that the affirmative procedure applies to the power in paragraph 4(2)(c) of new schedule A1 of the Bill rather than the negative procedure, and notes that a government amendment (amendment 97 in the marshalled list) to that effect has been lodged. The Scottish Government hopes that the Committee will support this amendment.

Para. 33 - the Scottish Government notes that an amendment (amendment 101 in the marshalled list), which requires draft regulations to be produced at the consultation stage, has been lodged in the name of Adam Tomkins. The Scottish Government supports this amendment and hopes it will also be supported by Committee members.

Para. 33 - in respect of the Committee's recommendation that "the amendment includes a provision to the effect that an explanatory document . . . is produced with the draft regulations to assist the Parliament in the scrutiny of the policy underlying the regulations" – the Scottish Government has always been clear that this is its intention. The Scottish Government said as much in its position paper, which was sent to the Social Security Committee on 28 February, and sent again to the DPLRC as an attachment to its letter of 9 April. The position paper says, under heading 4 ("Proposals to make regulations"), that the material which the Government would produce at stage 1 of the consultation process would comprise, "a policy paper accompanied by a set of draft regulations". No additional text in the Bill is required to deliver that intention.

Para. 45 - in respect of the Committee's recommendation that "the Scottish Government consider amending the Bill at Stage 3 to specify a period for the Commission to report to the Parliament on the initial draft regulations establishing each of the types of assistance under sections 11 to 18 and 45 (except early years assistance regulations for Best Start Grant under section 15 and funeral expenses assistance regulations under section 17)." – the Scottish Government's position remains that which is set out in its position paper.

Para. 46 - in respect of the following recommendations which the Committee makes in this paragraph of its report –

a) that the Scottish Government should consider amending the Bill to remove the ability conferred on the Scottish Ministers in section 55A(7)(b) to lay the initial draft regulations establishing each type of assistance (except early years assistance regulations for Best Start Grant under section 15 and funeral expenses assistance regulations under section 17) before the Commission has reported; and

b) that the Scottish Government should give consideration to amending section 55A(8)(b) to include a requirement for the Scottish Ministers to consider any other representations received.

- the Scottish Government's position remains that which is set out in its position paper.

Para 46 - in respect of the Committee's final recommendation in this paragraph, that the Scottish Government should also ensure that the Commission cannot decline to consider the draft regulations establishing each type of assistance under section 55A(9)(b) – the Scottish Government notes that an amendment (amendment 16 in the marshalled list) with this effect has been lodged in the name of Pauline McNeill. The Scottish Government supports this amendment and hopes it will also be supported by Committee members.

Para 53 - in respect of the Committee's recommendation that the Scottish Government should "consider amending the Bill at Stage 3 to insert a power to make regulations prescribing the types of proposal that the Commission does not need to be notified about" – the Scottish Government's position remains that which is set out in its position paper.

Para 58 - the Scottish Government is grateful to the Committee for its encouragement to, "do all that it can to enable the Committee to conduct its scrutiny function at the earliest available opportunity", and would like to offer the Committee its assurance that this has always been its intention.

Para 66 – in respect of its position in relation to section 20, the Scottish Government draws the Committee's attention to government amendment 69, in the marshalled list, which (when taken together with amendments 58, 59, 60, 61, 63, 64, and 98) would restore the ability set requirements for evidence to accompany applications and allow an individual to appeal an administrative decision by the Ministers – i.e. that an application is invalid. As the Government indicated in its response to the Committee's Stage 2 report, the Government agrees with the Committee that it is unsatisfactory that the Bill was amended at Stage 2 to remove all reference to setting requirements for the evidence that has to accompany an application for assistance. The Scottish Government's amendments will restore clarity on that point, while providing an effective route for resolving any dispute about whether or not the requirements for making an application have been fulfilled in a particular case.

Para 75 – the Scottish Government is pleased that the Committee has welcomed its commitment to amend the Bill, so that regulations made under the power in section 48C(2)(g) are subject to the affirmative procedure rather than the negative procedure, and notes that a government amendment (amendment 96 in the marshalled list) to that effect has been lodged. Indeed, the amendment goes further and also makes regulations under the power in section 48C(5) subject to the affirmative procedure. The Scottish Government hopes that the Committee will support this amendment.

Para 91 – in respect of the Committee's recommendations in this paragraph:

a) that the Scottish Government should, "consider amending the Bill at Stage 3 to provide that the guidance issued under section 52 is subject to negative procedure to enable the Parliament to exercise sufficient oversight"; and

b) that the Scottish Government should "consider amending the Bill at Stage 3 to secure the involvement of the Commission in the scrutiny of guidance to be issued under section 52".
– the Scottish Government’s position remains that which was set out in paragraphs 28 - 33 of its response to the Committee’s report at stage 1².

The Scottish Government trusts that this response has been helpful.

Scottish Government
April 2018