DELEGATED POWERS AND LAW REFORM COMMITTEE

AGENDA

26th Meeting, 2018 (Session 5)

Tuesday 11 September 2018

The Committee will meet at 11.45am in the Adam Smith Room (CR5).

1. **Transport (Scotland) Bill (in private):** The Committee will consider its approach to the delegated powers provisions in this Bill at Stage 1.

2. **Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill (in private):** The Committee will consider its approach to the delegated powers provisions in this Bill at Stage 1.

3. **Age of Criminal Responsibility (Scotland) Bill (in private):** The Committee will consider the contents of a report to the Equalities and Human Rights Committee.

   _Not before 12.30 pm_

4. **Decision on taking business in private:** The Committee will decide whether to take items 7 and 8 in private.

5. **Trade Bill (UK Parliament legislation):** The Committee will take evidence on legislative consent memorandum LCM(S5) 12 from—

   Michael Russell, Cabinet Secretary for Government Business and Constitutional Relations; Helen Clifford, Senior Policy Adviser, Legislation and Policy Team; Stephen Sadler, Head of Trade Policy Team, Scottish Government.

6. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

   - Social Security (Scotland) Act 2018 (Commencement No. 1) Regulations 2018 (SSI 2018/250 (C.17));
7. **Trade Bill (UK Parliament legislation):** The Committee will consider the evidence it heard earlier.

8. **Prescription (Scotland) Bill:** The Committee will consider further, written evidence that it has received on the Bill.

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The papers for this meeting are as follows—

**Agenda Item 1**

*Transport (Scotland) Bill - As Introduced*

*Transport (Scotland) Bill - Delegated Powers Memorandum*

Briefing Paper 1 (private) DPLR/S5/18/26/1(P)

Briefing Paper 2 (private) DPLR/S5/18/26/2(P)

**Agenda Item 2**

*Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill - As Introduced*

*Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill - Delegated Powers Memorandum*

Briefing Paper (private) DPLR/S5/18/26/3(P)

**Agenda Item 3**

*Age of Criminal Responsibility (Scotland) Bill - As Introduced*

*Age of Criminal Responsibility (Scotland) Bill - Delegated Powers Memorandum*

DPLR/S5/18/26/4(P)

**Agenda Items 5 and 7**

*Trade Bill (UK Parliament legislation) - As Introduced*

*Trade Bill (UK Parliament legislation) - Delegated Powers Memorandum*

*Trade Bill (UK Parliament legislation) - Legislative Consent Memorandum*

Briefing Paper (private) DPLR/S5/18/26/5(P)

**Agenda Item 6**

Briefing on Instruments (private) DPLR/S5/18/26/6(P)

Instrument Responses DPLR/S5/18/26/7
Agenda Item 8

Prescription (Scotland) Bill - As Introduced

Prescription (Scotland) Bill - DPLR Committee Stage 1 Report

Briefing Paper (private)
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Instrument Responses

INSTRUMENTS NOT SUBJECT TO ANY PARLIAMENTARY PROCEDURE

Social Security (Scotland) Act 2018 (Commencement No.1) Regulations 2018 (SSI 2018/250 (C.17))

On 28 August 2018, the Scottish Government was asked:

Regulation 2(2) commences section 76 of the Social Security Act 2018 on 3rd September, "but only so far as is necessary for the purpose of enabling the Scottish Ministers to consult publicly on a draft code of practice as required by section 76(3) [of that Act] and to publish a code of practice."

The Scottish Parliament has chosen to make provision in section 76(4) requiring the Scottish Ministers to lay before the Parliament a copy of the code of practice as soon as practicable after its publication.

Please explain whether the Government considers that the provision made in regulation 2(2) has the effect of commencing section 76(4). If so, please consider whether this is sufficiently clear. Alternatively, if the Government does not consider that that is the effect, please explain why it is considered appropriate that the requirement to lay the code before the Parliament is not commenced at the same time as the commencement of the requirement to publish the code.

The Scottish Government responded as follows:

The Regulations commence section 76 because the Scottish Ministers have recently begun consulting on a code of practice on investigations to be carried out by virtue of section 75 of the Act (section 75 is not commenced by the Regulations). Commencement ensures the consultation will meet the statutory requirement to consult in section 76(3).

The Scottish Government may, or may not, wish to publish the code before section 76 is more fully commenced. That depends on the outcomes of the consultation and timetables for implementation of other provisions. The purpose for which section 76 is being commenced therefore allows Ministers to publish the code if they so wish. The duty to publish in section 76(1) is not commenced, nor is the duty to lay a copy before the Parliament in section 76(4).

The Scottish Government does not consider there to be any lack of clarity in what the Regulations provide. They enable consultation and publication; they do not require them. It would not make sense to commence the duty to lay the code in the Parliament, without also commencing the duty to publish a code.
That said, there is no necessity to commence section 76(4) to enable a copy of the code to be laid before the Parliament. The Scottish Ministers would in practice lay a copy of the code in the Parliament, as soon as practicable after any publication, regardless of whether or not the duties to publish and lay a copy of the code have been commenced at that time.