DELEGATED POWERS AND LAW REFORM COMMITTEE

AGENDA

31st Meeting, 2018 (Session 5)

Tuesday 30 October 2018

The Committee will meet at 10.00 am in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to take item 3 in private.

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

   *Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2018 (SSI 2018/295).*

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

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The papers for this meeting are as follows—

**Agenda Item 2**

Briefing on Instruments (private)  
Instrument Responses

**Agenda Item 3**

*Census (Amendment) (Scotland) Bill - As Introduced*

*Census (Amendment) (Scotland) Bill - Delegated Powers Memorandum*

Briefing Paper (private)
DELEGATED POWERS AND LAW REFORM COMMITTEE

31st Meeting, 2018 (Session 5)

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Instrument Responses

INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2018 (SSI 2018/295)

On 8 October 2018, the Scottish Government was asked:

Initially, an informal agreement was reached with the Scottish Government Legal Directorate, as to the raising of the issue in connection with the Council Tax Reduction (Scotland) Regulations 2012 and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (i.e., whether a devolution issue is raised), when further instruments concerned with council tax reduction are laid. It was agreed informally that, since the Committee’s legal advisers are clear as to the Government views on the legal issue in point and the analysis on which that view is based, they would not seek clarification or additional comment on the matter in relation to any future instruments where this issue is raised. The legal advisers would continue to put the Government’s views before the Committee as part of their briefing. Therefore no question is asked on that issue.

New paragraph 11(a)(ii) of schedule 5 of the Council Tax Reduction (Scotland) Regulations 2012, inserted by regulation 4(a) of this instrument, makes provision to disregard, when calculating an applicant’s capital for the purposes of entitlement to council tax reduction, sums paid in order to rectify or compensate for an error on a point of law “made by an officer, person or body described in regulation 1(3)” of the Social Security and Child Support (Decisions and Appeals) Regulations 1999.

The definition of “official error” contained in that regulation 1(3) refers to certain officers, persons and bodies, and it expressly excludes any error of law shown to have been an error by virtue of a subsequent decision of the Upper Tribunal or the court.

(1) Is there any error or lack of clarity, in respect that regulation 1(3) of the 1999 Regulations (so far as applying to Scotland) contains definitions and descriptions of various persons and bodies (such as a “claimant” and a “couple”)? Is there any intention to refer, in the new paragraph 11(a)(ii), to an officer, person or body as described in the definition of “official error” in regulation 1(3)?

(2) Is there any error or lack of clarity, in respect that the new paragraph 11(a)(ii) does not specify whether or not “an error of law which is shown to have been an error by virtue of a subsequent decision of the Upper Tribunal or the court” is excluded or included within the ambit of the provision?

(3) Is any corrective action proposed?
The Scottish Government responded as follows:

**Question 1**
The Scottish Government accepts that there is a lack of clarity in the new sub-para (2)(a)(ii) of paragraph 11 of Schedule 5 of the Council Tax Reduction (Scotland) Regulations 2012 inserted by these amending Regulations.

Sub-para (2)(a)(ii) refers to an error on a point of law made by an “officer, person or body” described in regulation 1(3) of Social Security and Child Support (Decisions and Appeals) Regulations 1999 (S.I. 1999/991).

Regulation 1(3) contains various definitions which might be classified as an “officer, person or body.” The drafting of sub-para (2)(a)(ii) was intended only to cover those “officers, persons or bodies” referred to within the definition of “official error” contained in regulation 1(3).

Some of these additional definitions in regulation 1(3) (including “the board” and “designated authority”) overlap with the “officers, persons or bodies” which are referred to specifically in the definition of “official error” contained in regulation 1(3). Therefore, in relation to these definitions, the Scottish Government does not consider that the drafting of sub-para (2)(a)(ii) produces any unintended consequences.

However, some of the additional definitions (including “claimant” and “family”) may result in the unintended consequence that an “error on a point of law” by one of these categories is covered by sub-para (2)(a)(ii).

In practice, it is difficult to see how these additional “officers, persons or bodies” could make an “error on a point of law” that results in the type of substantial compensatory payment that the provision disregards. In the unlikely event of such an error, only the Scottish Government would be disadvantaged by the disregard of the compensation payment made as a result of that error.

However, the Scottish Government agrees that, in the interests of clarity, it is appropriate to amend sub-para (2)(a)(ii) to make clear that only those officers, persons or bodies referred to in the definition of “official error” in regulation 1(3) are included within its ambit.

**Question 2**
The new sub-para (2)(a)(ii) refers to “an error on a point of law.” This clearly will include any error of law which is found to have been an error by virtue of a subsequent tribunal or court decision.

New sub-para (2)(a)(ii) refers to the “officers, persons or bodies” in regulation 1(3). The reference contained in regulation 1(3) to “any error of law which is shown to have been an error by virtue of a subsequent decision of the Upper Tribunal or the Court” is irrelevant to the reference to “officers, persons or bodies”.

**Question 3**
In relation to question (1), the Scottish Government proposes bringing forward a corrective amendment in the next instrument which deals with council tax reduction. It is expected that the next instrument will be primarily concerned with annual up-rating in the council tax reduction scheme and laid early next year.
The amendment will make clear that the reference in sub-para (2)(a)(ii) to “officers, persons or bodies” covers only those “officers, persons or bodies” referred to within the definition of “official error” contained in regulation 1(3) of the 1999 Regulations and not to all “officers, persons or bodies” as defined in regulation 1(3) generally.

In relation to question (2), for the reasons described above, no corrective action is proposed. Further, the Scottish Government considers that it is not necessary to take any corrective action in relation to question (2) as a result of the corrective action which is proposed in relation to question (1).