



The Scottish Parliament  
Pàrlamaid na h-Alba

# DELEGATED POWERS AND LAW REFORM COMMITTEE

## MEETING DETAILS

19th Meeting, 2019

**09.50 am, Tuesday 04 June 2019**

Adam Smith Room (CR5)

## ADDITIONAL INFORMATION

All SSIs can be found here at:  
<http://legislation.data.gov.uk/ssi>

## COMMITTEE PAPERS

### Agenda

**Briefing on Instruments (private)**

**Instrument Responses**

**Census (Amendment) (Scotland) Bill (private)**

**Human Tissue (Authorisation) (Scotland) Bill (private)**

**Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill (private)**

## NOTICES

The meeting is expected to conclude at around 10.20am.

### Next meeting:

The Committee will meet again on 11 June.



The Scottish Parliament  
Pàrlamaid na h-Alba

## DELEGATED POWERS AND LAW REFORM COMMITTEE

### AGENDA

19th Meeting, 2019 (Session 5)

Tuesday 4 June 2019

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 items 4, 5 and 6 in private.

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

[National Health Service \(General Dental Services\) \(Scotland\) Amendment Regulations 2019 \(SSI 2019/174\);](#)  
[Environment \(EU Exit\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2019 \(SSI 2019/175\)](#)  
[Licensing \(Personal Licences: Supplemental and Transitional Provision\) \(Scotland\) Order 2019 \(SSI 2019/177\);](#)

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

[Energy Act 2011 \(Commencement No. 2\) \(Scotland\) Order 2019 \(2019/181 \(C.5\)\)](#)

4. **Census (Amendment) (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill after Stage 2.

5. **Human Tissue (Authorisation) (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill after Stage 2.

6. **Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill:** The Committee will consider the Scottish Government's letter regarding proposed new delegated powers provisions in this Bill at Stage 3.

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Clerk to the Delegated Powers and Law Reform Committee  
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The papers for this meeting are as follows—

**Agenda Items 2 and 3**

Briefing on Instruments (private)	DPLR/S5/19/19/1 (P)
Instrument Responses	DPLR/S5/19/19/2

**Agenda item 4**

Briefing (private)	DPLR/S5/19/19/3 (P)
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[Census \(Amendment\) \(Scotland\) Bill as amended](#)

[Revised Delegated Powers Memorandum Census \(Amendment\) \(Scotland\) Bill](#)

**Agenda Item 5**

Briefing paper (private)	DPLR/S5/19/19/4(P)
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[Human Tissue \(Authorisation\) \(Scotland\) Bill as amended](#)

[Supplementary Delegated Powers Memorandum Human Tissue \(Authorisation\) \(Scotland\) Bill](#)

**Agenda Item 6**

Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill Letter from the Minister	DPLR/S5/19/19/5
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[Fuel Poverty \(Targets, Definition and Strategy\) \(Scotland\) Bill as amended](#)

**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**19th Meeting, 2019 (Session 5)**

**Tuesday 04 June 2019**

**Instrument Responses**

**INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE**

**National Health Service (General Dental Services) (Scotland) Amendment Regulations 2019 (SSI 2019/174)**

**On 21 May the Scottish Government was asked:**

1. Regulation 3(e) inserts the definition of “domiciliary care dentist” in regulation 2(1) of the National Health Service (General Dental Services) (Scotland) Regulations 2010 (“the 2010 Regulations”). Paragraph (c) of the definition refers to a dentist whose information on the Health Board’s dental list indicates that they have been designated under paragraph 4 of schedule B1 (which is inserted by regulation 18).

Is there an error, as the designation is under paragraph 5 of schedule B1?

2. New regulation 13A(2) of the 2010 Regulations, inserted by regulation 13, provides:

“Where the Health Board considers that further information is required, a dentist who wishes to be designated again as a domiciliary care dentist must provide that further information and undertakings or, at the option of the Health Board, to submit a full request in accordance with paragraph 1 of schedule B1.”

Are words omitted between “the Health Board,” and “to submit”, or is it intended that “to submit” should be “must submit”?

3. Is corrective action proposed?

**On 28 May the Scottish Government responded as follows:**

1. Thank you for drawing this matter to our attention. This is a typographical error, the definition of “domiciliary care dentist” inserted by regulation 3(e) should refer to paragraph 5 of schedule B1 as the Committee suggests.

The Scottish Government notes that this same error occurs in regulation 4(d) which inserts regulation 3(4) into the principal regulations. Regulation 3(4)(a) should also refer to paragraph 5 of schedule B1.

The Scottish Government considers that both errors are minor and self-evident.

2. Thank you for drawing this matter to our attention. There are no words omitted between “the Health Board,” and “to submit”. This is a typographical error, in that the word “to” before “submit” is superfluous. The sentence should read:

“Where the Health Board considers that further information is required, a dentist who wishes to be designated again as a domiciliary care dentist must provide that further information and undertakings or, at the option of the Health Board, submit a full request in accordance with paragraph 1 of schedule B1.”

The Scottish Government's view is that this error is minor and self-evident.

3. The Scottish Government proposes to correct these errors by way of a correction slip.

### **Environment (EU Exit) (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/175)**

**On 23 May 2019, the Scottish Government was asked:**

The policy note for the instrument states in the second paragraph that the purpose of the instrument is to make corrections to the Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) (Scotland) Regulations 2018 and the Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019. However the instrument does not appear to amend those 2018 Regulations.

Is any corrective action proposed, whether in relation to the policy note or the instrument?

**On 29 May 2019, the Scottish Government responded as follows:**

There is an error in the policy note. The reference to the Environment, Food and Rural Affairs (Miscellaneous Amendments and Revocations) (Scotland) Regulations 2018 should be references to instruments which were amended by those Regulations. It is proposed to submit a corrected Policy Note.

### **Licensing (Personal Licences: Supplemental and Transitional Provision) (Scotland) Order 2019 (SSI 2019/177)**

**On 23 May 2019, the Scottish Government was asked:**

1. Section 145 of the Licensing (Scotland) Act 2005 ("the Act") enables the Scottish Ministers by order to make ancillary provisions for the purposes of or in consequence of the Act. Such an order may be a "stand alone" order, rather than an order which includes provisions which are ancillary to other provisions. Section 145, unlike for example section 95 of the Social Security (Scotland) Act 2018, does not provide that ancillary provisions can be made for the purposes of, or consequence of, any provision made under the Act.

Section 146(2) enables an order or regulations under the Act to include provisions ancillary to that instrument. Section 146(3) enables the modification of enactments.

Article 1(2)(b) combined with article 2 of the Order extends the period of effect of personal licences which were issued on 1 September 2009, other than during the "transitional period", as defined by article 2 of SSI 2007/454, and so issued after 0500 hours on that day. The date of 1 September 2009 therefore appears to result from provision of SSI 2007/454, rather than of the Act.

Please explain therefore:

- (a) Under which power is it considered that article 1(2)(b) combined with article 2 is properly made- is it section 145 alone, or both that section and section 146(2) and (3)?

(b) Why do article 1(2)(b) combined with article 2 properly make (per the title of the instrument) supplemental and/or transitional provision?

(c) Which provision/s of the Act (in accordance with the terms of section 145) are article 1(2)(b) combined with article 2 made “for the purposes of or in consequence of”, and why is it considered that this test is satisfied?

2. Article 2(2) modifies the effect of the Act “despite section 77(1)” in relation to the period of effect of a “relevant personal licence”. Had this been drafted as a textual amendment of the Act, then by virtue of section 146(5) of the Act, the Order would have required to be subject to the affirmative procedure rather than the negative procedure.

Please explain why it is considered to be an appropriate use of the powers to make supplemental and transitional provision, that article 2(2) modifies the effect of section 77(1) of the Act, without making a textual amendment or addition?

3. Article 23 of SSI 2007/454 provides that section 77 (in its entirety) of the 2005 Act has effect in respect of a personal licence issued during the “transitional period” as if the licence had been issued on 1st September 2009.

Please clarify why it is considered appropriate that article 2(2) is limited to modifying the effect of subsection (1) of section 77 of the Act, and does not extend to subsection (2), which has enabled further 10 year extensions on renewal of personal licences after the initial 10 year duration?

**On 28 May the Scottish Government responded as follows:**

*Question 1(a), (b) and (c)*

The Order principally makes supplemental and transitional provision under section 145 of the Licensing (Scotland) Act 2005 (‘the 2005 Act’) in respect of personal licences issued during the ‘transitional period’. That is the period from 0001 hours on 1 February 2008 until 0500 hours on 1 September 2009 (see article 23 of the Licensing (Transitional and Saving Provisions) (Scotland) Order 2007 (S.S.I. 2007/454)).

The Scottish Government is satisfied that provision may be made modifying the effect of section 77 of the 2005 Act in its application to this cohort of personal licences. This is on the basis that such provision may properly be characterised as making supplemental and transitional provision.

Section 146(2) of the 2005 Act enables an Order under the 2005 Act to include such provisions ancillary to that instrument as the Scottish Ministers think necessary or expedient. Paragraph (b) of the definition of ‘relevant personal licence’ in article 1(2) of the Order has the effect of applying article 2 of the Order to personal licences issued on 1 September 2009, other than during the transitional period. That is a personal licence issued on that day but after 0500 hours.

In response to question 1(a): The Scottish Government is of the view that article 1(2)(b) combined with article 2 of the Order is properly made under sections 145 and 146(2) and (3) of the 2005 Act, insofar as such provision is ancillary to the principal provision of the Order. The Scottish Ministers think that article 1(2)(b) combined with article 2 is expedient to give effect to the policy underlying the principal provision of the Order.

In response to question 1(c): While such personal licences were not issued during the transitional period, and were therefore not caught by article 23 of S.S.I. 2007/454, they expire on the same day and are part of the same nexus of events. It is not clear to

what extent Licensing Boards will be able to differentiate between personal licence renewal applications relating to licences deemed to have been issued on 1 September 2009 and those actually issued on that date. In order to ensure statutory certainty and to avoid placing a further administrative burden on Boards to differentiate between such applications for the purposes of prioritising consideration of the latter group of licences, article 2 applies to all personal licences with an expiry date of 31 August 2019. Furthermore, differential treatment of some licences which expire on 31 August 2019 may have caused confusion among licence holders. The Scottish Ministers think that article 1(2)(b) combined with article 2 of the Order is expedient to ensure the delivery of the policy underlying the making of the Order, and for the purposes of ensuring that the renewal process provided for by sections 77 and 78 of the 2005 Act is not frustrated.

In response to question 1(b): The Scottish Government is of the view that article 1(2)(b) combined with article 2 of the Order can be characterised as supplemental to the provision of the Order relating to personal licences issued during the transitional period in that it adds to that provision for the purpose of ensuring the policy is delivered.

### *Question 2*

Article 2(2) of the Order modifies the effect of section 77(1) of the 2005 Act in respect of a particular group of personal licences, rather than personal licences generally. Article 2(2) only applies to 'relevant personal licences', as defined in article 1(2), and further, only to a relevant licence in respect of which a personal licence renewal application is made on or before 31 May 2019. The Order does not apply to personal licences generally, and the cohort of personal licences to which it does apply will reduce over time. The provisions of the Order will therefore eventually become spent. In contrast, section 77(1) applies to personal licences generally and will continue to apply unmodified to any personal licence issued after 1 September 2009. For that reason the Scottish Government considered it more appropriate to make non-textual modification rather than textually amending the 2005 Act.

### *Question 3*

While article 23 of S.S.I. 2007/454 provided that section 77 of the 2005 Act (in its entirety) has effect in respect of a personal licence issued during the transitional period as if the licence had been issued on 1 September 2009, that was not necessary in respect of this Order. That article 2(2) of the Order is limited to modifying the effect of section 77(1) of the 2005 Act does not prevent extension on renewal under section 77(2).

Article 2(2) of the Order modifies the effect of section 77(1) of the 2005 Act in relation to those personal licences to which it applies, by providing that those licences continue in effect until the earlier of 28 days after the day on which the renewal application is determined or 29 February 2020.

Article 2(2) of the Order does not displace or modify the rest of section 77, which continues to operate to enable 10 year extensions on renewals of personal licences. Section 77(2) enables the extension of 'that period'. 'That period' refers to the period of effect of a licence as mentioned in section 77(1), and for the purposes of section 77(2), 'that period' is best read as that period mentioned in section 77(1), as modified and continued in effect by article 2(2) of the Order. Accordingly, any 10 year extension under section 77(2) would take effect on the expiry of the period determined in accordance with article 2(2) of the Order.



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Graham Simpson, MSP  
Delegated Powers and Law Reform Committee  
Room T1.01  
Scottish Parliament

30 May 2019

Dear Graham

**FUEL POVERTY (TARGETS, DEFINITION AND STRATEGY) (SCOTLAND) BILL – NEW POWERS TO MAKE SUBORDINATE LEGISLATION AT STAGE 3**

I am writing to inform you that I have lodged amendments to one of the regulation-making powers in the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill.

I have proposed an amendment to the power in section 9A(6) of the Bill which is a power which was introduced by non-Government amendment to make provision about the Scottish Fuel Poverty Advisory Panel (“the Panel”).

Currently, the rules about the governance, remuneration and membership of the Panel are to be laid down in regulations. However, there are a number of other matters about which provision may need to be made which will not fall within even these broad categories. For example, regulations may need to make provision about the legal status of the Panel. I have therefore proposed broadening the power in order to ensure that the proper functioning of the Panel can be guaranteed. The amendments also clarify that provision can be made about the appointment of members to the Panel, and provide that the regulations may make provision about matters such as membership, rather than the regulations themselves specifying the names of the appointed members.

I also proposed extending the power to allow for the dissolution of the Panel after the target year mentioned in section 1 of the Bill has passed and the Panel no longer has any functions. In reviewing the extent of the powers for Scottish Ministers to make provision about the Panel, it was thought that the dissolution of the Panel could not necessarily be provided for under the current power, as regulations “about” the Panel presuppose the existence of the Panel (the existence of which will be provided for by the Bill). However, the continued legal requirement to have a Panel, even though it then has no functions, could cause problems. Therefore, I have proposed an amendment to section 9A(6) so that this will be a separate power in itself. This will allow the necessary flexibility to wind the panel up

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after the target date has passed and the Panel has completed its work on reviewing the final periodic report (the precise date of which cannot be ascertained at the moment).

I have also proposed including a power to amend other enactments, including the Bill. This is to address the scenario where it is necessary or appropriate to make reference to the Panel in other legislation (for example, in applying freedom of information legislation to the Panel if that is considered appropriate) and to remove such references once the Panel is no longer in existence.

I am grateful for your consideration of the Government's proposals at this late stage. Should you require any further information in relation to this, please do not hesitate to ask.

Yours sincerely

**Kevin Stewart**  
**Minister for Local Government, Housing & Planning**

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