



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

**Tuesday 31 October 2017**

**Session 5**



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**Tuesday 31 October 2017**

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**29<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Graham Simpson (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Stuart McMillan (Greenock and Inverclyde) (SNP)

**COMMITTEE MEMBERS**

\*Alison Harris (Central Scotland) (Con)  
\*Monica Lennon (Central Scotland) (Lab)  
\*David Torrance (Kirkcaldy) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Ailsa Heine (Scottish Government)  
Lynne McMinn (Disclosure Scotland)

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

The Adam Smith Room (CR5)



**Scottish Parliament**  
**Delegated Powers and Law**  
**Reform Committee**

*Tuesday 31 October 2017*

*[The Convener opened the meeting at 10:02]*

**Decision on Taking Business in**  
**Private**

**The Convener (Graham Simpson):** I welcome everyone to the 29th meeting in 2017 of the Delegated Powers and Law Reform Committee.

Agenda item 1 is a decision on whether to take in private item 4, which is consideration of the contents of a report to the Social Security Committee on the Social Security (Scotland) Bill; item 5, which is consideration of the contents of a report to the Rural Economy and Connectivity Committee on the Islands (Scotland) Bill; and item 6, which is consideration of the evidence we will hear on the Draft Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018. Does the committee agree to take those items in private?

**Members** *indicated agreement.*

**Draft Police Act 1997 and the**  
**Protection of Vulnerable Groups**  
**(Scotland) Act 2007 Remedial**  
**Order 2018**

10:03

**The Convener:** Agenda item 2 is consideration of the proposed draft Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial Order 2018.

The proposed draft order has been laid in response to the Court of Session judgment in the case of P v the Scottish ministers, which found that certain provisions of the Protection of Vulnerable Groups (Scotland) Act 2007 were incompatible with article 8 of the European convention on human rights. It has been laid under the general procedure for such remedial orders, which is set out in section 13 of the Convention Rights (Compliance) (Scotland) Act 2001. That requires that a proposed draft of the order be laid before the Parliament for 60 days for comments before a finalised draft is laid before the Parliament at a later date.

I welcome to the meeting Lynne McMinn, policy manager, Disclosure Scotland, and Ailsa Heine, senior principal legal officer, Scottish Government. Shall we move straight to questions?

**Lynne McMinn (Disclosure Scotland):** Yes.

**The Convener:** We will do so. Can you explain why the Scottish Government has laid the proposed draft order, and how does it respond to the Court of Session's judgment in the case that I previously mentioned of P v the Scottish ministers?

**Ailsa Heine (Scottish Government):** As you have said, convener, the Scottish ministers have laid the proposed draft order in response to the case of P v the Scottish ministers, in respect of which the court found that the automatic disclosure of the petitioner's conviction was incompatible with his article 8 rights. As the Scottish ministers are unable to act incompatibly, amending legislation needs to be introduced in relation to the disclosure system.

We consider that the proposed draft order addresses the issues raised by the court in P v the Scottish ministers. The court was concerned about the automatic disclosure of a fairly old conviction that had been obtained when the person in question was a 14-year-old child, and the proposed remedial order seeks to address those particular issues by providing a right of review to a person with a disclosure that contains an offence

listed in schedule 8A to the Police Act 1997. That is the list of more serious offences.

The refinement that we are making will provide a right of appeal for an application to be made to a sheriff court to have a conviction removed if the schedule 8A conviction is more than 15 years old if the person was 18 at the time of conviction or after seven and a half years if the person was aged under 18 at the time of conviction. We consider that the measure addresses the two particular issues raised in P v the Scottish ministers: the age of the person at the time of conviction and the length of time since the conviction was obtained.

**The Convener:** Why are you responding to the Court of Session's judgment through the remedial order process, and why have you chosen to follow the general procedure?

**Ailsa Heine:** We felt that a remedial order was the most appropriate way of responding to a court judgment identifying the specific defect. The Convention Rights (Compliance) (Scotland) Act 2001 gives the Scottish ministers powers to remedy primary legislation in these circumstances, and the court gave us nine months to fix the defect. Therefore, it seemed to us that this approach was the most appropriate means of introducing legislation. It allows us not only to respond within the timescale but to use the general procedure, which gives an opportunity for full consultation to be undertaken before any amendments to the primary legislation come into force.

**The Convener:** The Faculty of Advocates has said:

"The proposed changes partially address the issues of ECHR compatibility. However, the opportunity to seek an independent review of disclosure of serious offences on the basis of time elapsed since the date of conviction will not necessarily guarantee that the disclosure system is in accordance with the law and proportionate in every case."

What is your response to that?

**Lynne McMinn:** We have noted the comments of the Faculty of Advocates, and we will review them along with other comments that we get from the consultation. However, we believe that the provisions meet Lord Pentland's judgment on the case involving P and that, in so far as we can say, they are ECHR compliant.

We also believe that the offences that we aim to disclose are so serious that they should be disclosed during the 15-year or seven-and-a-half-year period that we have set out. Disclosure Scotland's fundamental job is about safeguarding, and we are trying to balance safeguarding the most vulnerable in society with the right to a private life of those individuals who apply to work

with them. We believe that, with the proposed provisions, we have got the balance right.

**The Convener:** So you have as yet no detailed response to the point made by the Faculty of Advocates, but you will come back to it.

**Lynne McMinn:** Yes.

**Ailsa Heine:** Our view is that we have addressed the issues that the Court of Session raised in the case of P v the Scottish ministers and that the provisions in the draft order will make the system ECHR compatible. Ultimately, of course, only a court will be able to determine whether the amended provisions are ECHR compatible.

**The Convener:** Absolutely.

**Lynne McMinn:** We will respond, as Scottish ministers will respond, to all responses to the consultation. A consultation report will be published at the end of the review of the responses, which will be in early December.

**The Convener:** What sort of responses have you received so far to the consultation and what points have been raised about the compatibility issue?

**Lynne McMinn:** To date, we have had 11 responses to the consultation, four from organisations and seven from individuals. Three of the responses have raised concerns about the lack of information disclosed on the certificate, and seven respondents overwhelmingly support the decision to allow an appeal mechanism for individuals with schedule 8A offences.

**The Convener:** Okey-doke. I call Stuart McMillan.

**Stuart McMillan (Greenock and Inverclyde) (SNP):** Good morning. Can you explain why the periods of 15 years and seven and a half years were chosen for the proposed remedial order? Were other time periods considered?

**Lynne McMinn:** The periods of 15 years and seven and a half years have been derived in the context of the periods for disclosure in current rehabilitation of offenders legislation. We have also looked at how long a person's criminal conviction history is kept on the criminal history system. We believe that the time periods that we have chosen are appropriate and proportionate, given that the offences disclosed are very relevant to regulated work and work with vulnerable adults and children. We looked at other timeframes, but we believe that the ones that we have chosen are the most appropriate because of the nature of the work involved and the offences that would be disclosed in those time periods. Under the Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 Remedial (No 2) Order 2015, a number of minor offences are not disclosed after

they are spent, but the offences covered in the proposed draft order are more serious ones that relate to regulated work.

**Ailsa Heine:** The periods of 15 years and seven and a half years reflect to an extent the periods relating to offences set out in schedule 8B to the Police Act 1997, which are less serious than those in schedule 8A. When those provisions were introduced, we chose periods of 15 years and seven and a half years for ending the disclosure of those less serious convictions—the so-called protected convictions. The new provision in relation to the schedule 8A offences ties in to an extent with the provisions that relate to schedule 8B, and it relates to the periods in the Rehabilitation of Offenders Act 1974 after which convictions become spent.

The longest period of rehabilitation under the Rehabilitation of Offenders Act 1974 for someone aged over 18 is 10 years. Therefore, if we had chosen a period of less than 10 years, the conviction would not actually be spent before the person was able to appeal. We feel that, given the maximum 10-year rehabilitation period, 15 years is an appropriate period before someone has the right to make an application for removal of the conviction.

10:15

**Stuart McMillan:** Since the 2015 remedial order, have any concerns been raised regarding the proportionality of the 15-year time period?

**Ailsa Heine:** No. Nothing has been raised with us about that period.

**Stuart McMillan:** Does the Scottish Government consider that hard cases that fall very close to the line will be adequately addressed by the proposed changes? By “hard cases”, I mean those where someone is about 14 and a half years down the line—or where the period is seven and a half years, someone who is seven years down the line—so they are close to the line but have not managed to get over it at that point.

**Ailsa Heine:** Do you mean that, in relation to the schedule 8A convictions, there could be somebody who then has no right to make an application for another six months?

**Stuart McMillan:** Yes.

**Ailsa Heine:** The difficulty is that, wherever we draw the line, there will be a potential hard case that falls on the other side of it. The courts have been clear that the Government is entitled to draw bright lines, and they have also made it clear that it is not necessary for a right of appeal to be provided in every individual case. We feel that we have drawn the line in the right place. Potentially, there might be hard cases that fall on either side

but, if we had drawn the line at 14 years, we would have had the same issue for somebody with a conviction that was 13 and a half years old.

**Stuart McMillan:** Obviously, the line has to be drawn at some point, and there will be individuals who fall just a bit short. However, there has to be a level of consistency. If each case was considered on its merits, I imagine that that could open up other challenges.

**Ailsa Heine:** Yes—potentially. The courts have clearly stated that they do not consider it necessary for the disclosure system to have an individual right of appeal for every single person who applies for a disclosure. Therefore, the lines can be drawn somewhere; the courts have said that it is appropriate to have a filtering system.

We have to bear in mind that the offences in schedule 8A are serious. They were chosen specifically at the time of the 2015 remedial order as offences that involve serious harm to victims, a breach of trust or violence or reckless conduct causing potential or actual harm. With all of the offences on the list, the behaviour involved is highly relevant to disclosure when someone is being employed in regulated work with children or protected adults or in other professions or situations where higher-level disclosure is required. Therefore, where the conviction is not particularly old, disclosure is appropriate to protect the rights of vulnerable groups.

**Stuart McMillan:** Thank you.

**David Torrance (Kirkcaldy) (SNP):** I have a couple of questions on the level of sentence and the relevance of conviction. The proposed draft order provides for an appeal to the sheriff against the disclosure of schedule 8A offences based on the period of time that has passed since conviction. Did the Scottish Government consider also providing for a right to appeal based on the level of the sentence imposed and on the relevance of the conviction to the employment being sought?

**Ailsa Heine:** We considered whether there should be any other criteria for making an application to the sheriff and we concluded that it was sufficient to provide for an application simply on the basis of the length of time since the conviction and the age at the time of conviction.

Schedule 8A lists serious offences so, if someone is convicted of one of them, we consider that an employer or other organisation seeking a high-level disclosure should have that information available to them, although that does not necessarily preclude employment. We decided that it was unnecessary to make any specific provision regarding the length of the sentence.

In relation to the relevance of the offence to the disclosure, because the offences were specifically chosen as being serious ones that involve certain types of behaviour, we consider that they are all relevant when somebody is seeking high-level disclosure.

**David Torrance:** Would you consider that the provision would be beneficial in helping to ensure the proportionality of the disclosure scheme?

**Ailsa Heine:** What type of provision do you mean?

**David Torrance:** What we are talking about, such as provisions on the length of the conviction.

**Ailsa Heine:** So you mean further criteria.

**David Torrance:** Yes.

**Ailsa Heine:** We are certainly happy to consider those kinds of comments, but when we laid the draft order we were of the view that it was not necessary to make any additional provision. One reason for that relates to the P v the Scottish ministers judgment, in which Lord Pentland discussed possible solutions and designing a more nuanced disclosure system. He said:

“There are other possible ways in which some greater element of flexibility might be built into the scheme as it applies to the type of conviction which the present case involves”—

which was obviously a schedule 8A conviction. He went on:

“For example, provision could be made for a cut-off date for automatic disclosure of convictions such as the petitioner’s after the expiry of an appropriate length of time following the conviction; or there could be derogation from automatic disclosure where the offence was committed during the offender’s childhood and a suitable period has elapsed since then.”

Lord Pentland described those options for a solution, and that is what the draft remedial order provides for: the cut-off point of 15 years or seven and a half years, depending on age, allowing a person to go to the sheriff for a review of whether the information in the disclosure is still relevant. We think that we have addressed what Lord Pentland set out in his judgment. He set out those possible solutions without setting out any further criteria. Obviously, those remarks were obiter in his judgment, but we have to take some guidance from what he set out.

**Alison Harris (Central Scotland) (Con):** Good morning. Our predecessor committee noted a number of concerns about the sheriff review procedure as it applied to schedule 8B convictions. The committee’s concerns related to the perceived need for practical assistance for individuals in understanding and negotiating the sheriff review procedure, and to whether the sheriff review procedure has the potential to alert a

prospective employer to the existence of spent conviction information. Have any particular issues been identified with the existing system for appeals to the sheriff?

**Lynne McMinn:** No specific concerns or issues about the appeal mechanism have been raised with us. Since the appeal mechanism was introduced, the numbers have been so small that it has been difficult to draw any concrete conclusions. However, as part of the review of the protecting vulnerable groups scheme, we are contacting individuals who have intimated that they are going to a sheriff review, in order to get some feedback on the process and see whether there is any way that we can improve it or make it easier.

**The Convener:** You say that the numbers have been small. How many appeals have there been?

**Lynne McMinn:** Since 2015, there have been 24 appeals regarding schedule 8B offences.

**Alison Harris:** The proposed draft order contains transitional provision to deal with the transition from the existing to the proposed new regime. How will those provisions work, and what considerations informed them?

**Lynne McMinn:** If you mean operational transition arrangements, we will continue to process applications until midnight on 16 February under the old regime. Any cases that are in the system and new cases from Friday 17 February will be processed under the new regime. We have internal procedures in place to deal with that.

**The Convener:** Before Alison Harris moves on to her next question, I will jump back to appeals. The way in which the system works is that somebody applies for a job that requires disclosure, the potential employer makes an application for disclosure, a form comes to the person who has applied for the job, and that person then appeals.

**Lynne McMinn:** Yes.

**The Convener:** That will delay the job application and alert an employer to a potential problem.

**Lynne McMinn:** No issues have been raised with us about that. If an applicant states that they are not going to appeal, their certificate is released. In 90 per cent of cases, we meet a 14-day service level agreement for employer certificates to be released to them. With regard to individuals, they have to have that discussion with their employers. Some may have already discussed a conviction history with an employer; some may even have shown their certificate to an employer. We cannot comment on that, because we have no feedback to say that there are any concerns.



There are a number of reasons why an applicant's certificate might be delayed. They might have filled it in incorrectly. The delay is not necessarily because they have intimated that they want to make an appeal.

**The Convener:** You have said that there is not much of a delay, in any case.

**Lynne McMinn:** It depends. If someone takes forward an appeal, the delay is down to sheriffs' timescales. The person can ask for an expedited hearing under the summary procedure, but there is no delay if they ask for their certificate to be released and they are not going to appeal.

**Ailsa Heine:** There might be other reasons why a certificate is delayed. For enhanced disclosures or PVG scheme records, the police are asked whether there is other relevant information; if there is, that sometimes takes quite a long time to be processed. It would not be clear to an employer why disclosure is not received quickly, as the delay could be for a number of reasons. However, once an applicant appeals, it takes many months to deal with. We have had no feedback, so it is difficult to know what employers think in those situations.

We have had a substantial number of notifications of people going to appeal, but not all those people appeal so, presumably, their job applications are at an end. We do not have the information.

**The Convener:** So we have no idea whether the fact that somebody has appealed, and it has taken months to deal with that, has caused them to lose out on a job.

**Lynne McMinn:** We do not have that evidence.

**The Convener:** Is there no way to find out?

**Lynne McMinn:** We are trying to find out as part of the PVG review. We have started conversations with those individuals to get feedback and find out whether they are still in regulated work and what the impact of the appeal has been on them.

**Alison Harris:** It was helpful to expand on that point.

Am I correct in thinking that you said that there would be one regime up to midnight on one day and then a different regime the following morning?

**Lynne McMinn:** Yes.

**Alison Harris:** Is that deemed to be the best way forward? It seems rash to draw a line there. At 5 o'clock, do you just stop processing the bundle and then resume processing it under a new regime the following morning?

**Lynne McMinn:** We process 24 hours a day in Disclosure Scotland. We think that that is the best way forward. It also reduces the amount of backlog and will ensure that we can move through the process and deal with the certificates quickly. Having a cut-off date makes it easier for us and the applicants.

10:30

**Alison Harris:** Okay.

**The Convener:** Are you happy with that, Alison?

**Alison Harris:** I am not sure. I do not know where I would stand if I were an applicant. Perhaps it should be held back a day or two.

**Ailsa Heine:** The difficulty is that there always has to be a cut-off point when the new provisions come into force.

**Lynne McMinn:** If we hold back applications, that will delay the process. If an applicant is waiting for the certificate for a job prospect, that is a problem. We felt that this was the best way to ensure that there was not a delay in the production of certificates that individuals require for jobs.

**Ailsa Heine:** Around 1,000 applications are dealt with every day.

**Alison Harris:** I appreciate that you have a volume of applications.

**Ailsa Heine:** If we were to hold back for several days, that would mean that several thousand people would be waiting.

**Alison Harris:** I understand but, from what I hear, for individuals it seems to boil down to the luck of the draw as to whether they will be processed under the new or old regime.

**Lynne McMinn:** Yes.

**Monica Lennon (Central Scotland) (Lab):** The committee understands that the Scottish Government proposes to lay the required draft affirmative instrument, which makes connected changes to the requirement for self-disclosure of past offences under the rehabilitation of offenders legislation, before the Parliament following the end of the initial 60-day scrutiny period for the proposed draft order. In order to assist the committee in scrutinising how the newly amended higher-level disclosure regime—including self-disclosure—is intended to work overall, would the Scottish Government be willing to share with the committee a proposed draft of that instrument during the initial 60-day scrutiny period for the proposed draft order?

**Ailsa Heine:** We have not yet considered that. We will take it back and consider further when we will be in a position to provide a draft during the 60

days. Our intention is that the final draft remedial order will be laid at the same time as the draft affirmative order dealing with the changes to the rehabilitation of offenders legislation. At that point, Parliament will be able to consider both pieces of legislation and how they operate together. We can consider whether it would be possible to provide a draft earlier.

**Monica Lennon:** Thank you. I am sure that the committee appreciates your offer to consider that.

In the statement of reasons supplied with the proposed draft order, you refer to a wider review of the higher-level disclosure system. Can you explain more about that review and how it might impact on the changes that are being made by the proposed draft order?

**Lynne McMinn:** The review is taking place currently. The Scottish ministers made a commitment to review the PVG scheme and the general disclosure regime in Scotland in general. The terms of reference were published in February 2017 and the review is on-going. It has been a collaborative approach involving a large number of stakeholders. Any outcomes of the review and any required changes to legislation are unlikely to happen any time soon.

Any amendments that we make to the legislation under the remedial order that we are discussing and that were made under the previous remedial order will also be considered. As part of the review, we will look at whether the appeal mechanism is appropriate and is working. As I said, it is unlikely that there will be any major changes to the disclosure regime any time soon. The immediate impact of the review on the remedial order is non-existent.

**Monica Lennon:** Just for clarity, can you explain why it is unlikely that there will be major changes?

**Lynne McMinn:** We are still engaging with stakeholders to determine what amendments, if any, need to be made to the current system. As I have said, we have been engaged in a wholly collaborative approach. We have engaged with more than 300 individuals and organisations involved in the disclosure regime in Scotland. That includes individual members of the scheme as well as organisations that use PVG. There is an awful lot of work involved. We would still have to go to formal consultation on any proposed changes that might come out of that review. Basically, it is a matter of the length of time that it takes to go through the consultation process. Obviously, if any changes to the legislation have to be made as a result of the review, we would have to go through a bill process, which would also take time.

**Monica Lennon:** Is it informal consultation at the moment?

**Lynne McMinn:** Yes. There is a pre-consultation. We are trying to figure out exactly what we might want to change and what issues there are, if any, with the current system before we go to formal consultation.

**Monica Lennon:** How long will the dialogue with stakeholders run for?

**Lynne McMinn:** It has been running since January this year. We hope to go to formal consultation in the spring of next year.

**Monica Lennon:** Okay. Thank you.

**The Convener:** As members do not have any follow-up questions, I thank the witnesses very much for their time.

I suspend the meeting briefly.

10:36

*Meeting suspended.*

10:37

*On resuming—*

## Instruments subject to Negative Procedure

### Council Tax Reduction (Scotland) Amendment (No 2) Regulations 2017 (SSI 2017/326)

**The Convener:** Agenda item 3 is instruments subject to the negative procedure. The Council Tax Reduction (Scotland) Amendment (No 2) Regulations 2017 make further amendments to the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319), which are the principal regulations.

Our legal advisers have suggested that the regulations raise a devolution issue for the same reasons that were previously discussed by the committee when it considered the Council Tax Reduction (Scotland) Regulations 2012, the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012, and subsequent amending instruments. That is to say, the regulations raise a devolution issue, as they may relate to matters that are reserved by section F1 of part II of schedule 5 to the Scotland Act 1998, in relation to social security schemes. It is recognised that the Scottish Government takes a contrary view.

Since September last year, a new exception 10 to the social security reservation has given the Scottish Parliament powers to create new benefit schemes in areas of devolved responsibility in which the requirements of the exception are satisfied, including that the new scheme must be funded from the Scottish consolidated fund.

In relation to the Council Tax Reduction (Scotland) Amendment Regulations 2017 (SSI 2017/41), which the committee considered on 7 March this year, the committee suggested to the Scottish Government that framing a new discrete scheme could avoid the committee's concern were that scheme to comply with the requirements of exception 10. The committee also highlighted that a new discrete scheme would have a further benefit of accessibility to readers if consolidated regulations could be produced.

The principal regulations are well in need of consolidation, as the instrument is the 12th amending instrument. The Cabinet Secretary for Finance and the Constitution wrote to the committee on 4 October and undertook to be in touch on the potential to consolidate the principal regulations and to update the committee on that issue in the next few months.

Do members have any comments?

**Members:** No.

**The Convener:** Does the committee wish to draw the regulations to the attention of the Parliament on reporting ground (f), on the basis that they raise a devolution issue?

**Stuart McMillan:** The position of members of the committee on such instruments is well documented. I disagree with the suggestion that we should draw the regulations to the attention of the Parliament, because I do not think that they raise a devolution issue.

**The Convener:** I advise members that I intend to vote in accordance with the advice that the regulations raise a devolution issue. In the event of a tied vote, I will use my casting vote in the same manner. Does anyone else have anything to say?

The proposition is—

**Monica Lennon:** I am sorry, convener—I had my hand up, but I know that you did not notice.

I agree with the convener's position. For me, the legal advice is important. We must make sure that the regulations are competent, because we want people to be able to claim what they are entitled to and we do not want there to be any challenge to what is proposed. I am concerned about the fact that the legal advice has not been fully taken on board by the Government.

**The Convener:** The proposition is, that the committee considers that the regulations raise a devolution issue and should be drawn to the attention of the Parliament on that basis. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Harris, Alison (Central Scotland) (Con)  
Lennon, Monica (Central Scotland) (Lab)  
Simpson, Graham (Central Scotland) (Con)

**Against**

McMillan, Stuart (Greenock and Inverclyde) (SNP)  
Torrance, David (Kirkcaldy) (SNP)

**The Convener:** The result of the division is: For 3, Against 2, Abstentions 0. The proposition is agreed to.

Secondly, does the committee agree to seek an update on the consolidation of the principal regulations when the Minister for Parliamentary Business attends the committee in December to respond to issues that are raised in the committee's annual report?

**Members** *indicated agreement.*

**Council Tax Reduction (Scotland)  
Amendment (No 2) Amendment  
Regulations 2017 (SSI 2017/357)**

**The Convener:** The regulations make a specific amendment to the Council Tax Reduction (Scotland) Amendment (No 2) Regulations 2017 (SSI 2017/326) to fully implement the policy intention that underlies those regulations.

SSI 2017/326 includes amendments to the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) to enable income from the new bereavement support payment to be disregarded when an applicant's level of council tax reduction is calculated.

SSI 2017/326 was laid on 6 October. The Scottish Government has explained that, shortly after that date, it was identified that those regulations did not fulfil the policy intention that income from bereavement support payments should be wholly ignored in the council tax reduction scheme when an applicant's income is calculated. Unless SSI 2017/326 is changed, it would have the effect that only £20 of someone's bereavement support payment would be disregarded, rather than the full payment.

The regulations that are under consideration address that issue. The aim is to ensure that the original policy intention is met, so that income from such support payments is disregarded in full for those of working age for 52 weeks from the date of the first payment.

Our legal advisers make the same suggestion as they did for SSI 2017/326, by which I mean that they consider that the regulations raise a devolution issue, as they may relate to matters that are reserved under section F1 of part II of schedule 5 to the Scotland Act 1998. Again, it is recognised that the Scottish Government takes a contrary view.

Does the committee wish to draw the regulations to the attention of the Parliament on reporting ground (f), on the basis that they raise a devolution issue for the reasons that the committee has previously considered?

**Stuart McMillan:** I disagree with that recommendation.

10:45

**The Convener:** The proposition is, that the committee considers that the regulations raise a devolution issue and should be drawn to the attention of the Parliament on that basis. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Harris, Alison (Central Scotland) (Con)  
Lennon, Monica (Central Scotland) (Lab)  
Simpson, Graham (Central Scotland) (Con)

**Against**

McMillan, Stuart (Greenock and Inverclyde) (SNP)  
Torrance, David (Kirkcaldy) (SNP)

**The Convener:** The result of the division is: For 3, Against 2, Abstentions 0. The proposition is agreed to.

Furthermore, the regulations were laid before the Parliament on 25 October and they come into force on 19 November, so they do not respect the requirement that at least 28 days should elapse between the laying of an instrument that is subject to the negative procedure and the coming into force of that instrument.

As regards its interest in the Scottish Government's decision to proceed in this manner, the committee may wish to find the failure to comply with section 28 of the Interpretation and Legislative Reform (Scotland) Act 2010 to be acceptable in the circumstances. The reasons for it doing so are outlined by the Scottish Government's local government and communities directorate in its letter to the Presiding Officer of 25 October.

Does the committee wish to draw the regulations to the attention of the Parliament on reporting ground (j), as they fail to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010?

**Members indicated agreement.**

**The Convener:** No points have been raised by our legal advisers on the following three instruments.

**Road Traffic (Permitted Parking Area and  
Special Parking Area) (North Lanarkshire  
Council) Designation Order 2017 (SSI  
2017/342)**

**Parking Attendants (Wearing of Uniforms)  
(North Lanarkshire Council Parking Area)  
Regulations 2017 (SSI 2017/343)**

**Road Traffic (Parking Adjudicators) (North  
Lanarkshire Council) Regulations 2017  
(SSI 2017/344)**

**The Convener:** Is the committee content with the instruments?

**Members indicated agreement.**

10:47

*Meeting continued in private until 11:14.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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