

Delegated Powers and Law Reform Committee
Tuesday, 1st April 2025
12th Meeting, 2025 (Session 6)

Instrument Responses

Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Amendment Regulations 2025 (SSI 2025/73 (C.7))

On Thursday 20th March 2025, the Committee asked the Scottish Government:

1. The instrument inserts new regulations 13 to 15 into the Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Regulations 2025 (SSI 2025/27 (C. 4)) (“the Principal Regulations”). The instrument comes into force on 31 March 2025 and amends the Principal Regulations at that point. However, there does not appear to be a commencement date for new regulations 13 to 15 themselves, because (i) the Principal Regulations do not have a general commencement date (only specific dates for regulations 1 to 12), and (ii) the instrument does not itself provide a commencement date for regulations 13 to 15. Is this an error?
2. Please confirm whether any corrective action is proposed, and if so, what action and when.

On Tuesday 25th March 2025, the Scottish Government responded:

1. Thank you for raising the point that there is no commencement date for inserted regulations 13 to 15.
2. Corrective action has been taken to ensure that inserted regulations 13, 14 and 15 come into force on 1 April 2025 as intended. The Scottish Ministers laid (on 24 March) an instrument, which amends the Principal Regulations, to make provision for commencement of regulations 13 to 15. The Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Amendment (No. 2) Regulations 2025 comes into force on 31 March 2025.

Recognition of Overseas Qualifications (Charges) (Scotland) Regulations 2025 (SSI 2025/67)

On Friday 21st March 2025, the Committee asked the Scottish Government:

We understand from the Policy Note that this instrument is connected with two wider legal issues. First, that a statutory basis has been lacking for fees which have been charged by the UK Government for services relating to the recognition of overseas qualifications. Second, that SI 2024/942 sought to rectify this, by providing a statutory basis for the UK Government to charge the fees in relation to the whole of the UK going forward, but it is now considered that the SI purported to rely on a

power which had transferred to the Scottish Ministers under section 53 of the Scotland Act 1998 in so far as it is exercisable within devolved competence.

The present instrument will provide a legal basis for the Scottish Ministers (or those acting on their behalf) to charge the relevant fees from 28 March 2025. The Policy Note explains that this function will in fact be carried out by UK Ministers on Scottish Ministers' behalf, and that a section 93 Order under the Scotland Act 1998 is therefore planned. However, no section 93 Order will be in place by 28 March 2025.

We understand that clause 51 of the UK Government's Border Security, Asylum and Immigration Bill (as numbered at introduction), if enacted, will retrospectively render lawful all relevant past fees, but that this applies only to fees which were charged at a time before the day on which the Bill is passed.

If the policy intention behind the present instrument is to be achieved, it appears necessary that the section 93 Order is in place before the day on which the Bill is passed, to avoid there being a period during which fees continue to be charged without a proper legal basis but can no longer be validated under the Bill.

If this is the case, could confirmation be provided that plans are in place to ensure that the section 93 Order is in place in time?

On Tuesday 25th March 2025, the Scottish Government responded:

The Scottish Government is of the view that it is the present instrument (S.S.I 2025/67) that provides the necessary legal basis for the charging of fees for these services in Scotland.

The section 93 Order is considered necessary to give a statutory basis to the agency arrangements between the Scottish Government and the UK Government for the latter to make arrangements on behalf of the Scottish Government for the services to be provided in Scotland. Although the section 93 Order will not be in place on the coming into force of this S.S.I, a Memorandum of Understanding is being agreed that will set out these arrangements until such time that the section 93 Order comes into force.

The Scottish Government highlights the correspondence between the Minister for Higher and Further Education and Veterans and the Secretary of State for Education, shared with the Committee on 12 March. Both Governments have agreed in principle to the drafting of an Order to put in place agency arrangements under section 93 of the Scotland Act 1998. Arrangements are being made for this section 93 Order to be considered at Privy Council in May 2025.

The Scottish Government would consider Clause 51 of the UK Government's Border Security, Asylum and Immigration Bill (as numbered at introduction) will only need to 'attach' to any fees charged in relation to services provided in Scotland prior to the coming into force of the present instrument.