

Delegated Powers and Law Reform Committee
Tuesday, 10th February 2026
6th Meeting, 2026 (Session 6)

Instrument Responses

Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 (SSI 2026/Draft)

On 29 January 2026 the Scottish Government was asked:

“Regulation 8 would require service providers to have regard to a code of practice published under section 78E of the Public Services Reform (Scotland) Act 2010 (inserted by the Care Reform (Scotland) Act 2025). The BRIA suggests that the Scottish Government intends to publish this code only after the Regulations come into force. If this is the case, (i) how long will the gap be, and (ii) what is the thinking behind bringing the Regulations into force first, given that providers are required to have regard to the Code when carrying out the duties imposed by the Regulations?”

On 3 February 2026 the Scottish Government responded:

“Section 78E(4) of the Public Services Reform (Scotland) Act 2010 (as inserted by the Care Reform (Scotland) Act 2025) allows for the code of practice to be published within one year of that section coming into force. The BRIA was drafted while policy development was ongoing and reflected thinking at that point in time. However, that thinking has developed and it is now the intention to publish the code of practice in advance of the regulations coming into force, so that providers can have access to it from the point that the regulations are commenced. This leaves no period during which the regulations apply without the code of practice being available.”

Care Leaver Payment (Scotland) Regulations 2026 (SSI 2026/Draft)

On 30 January 2026 the Scottish Government was asked:

1. Regulation 10 sets out what is to be done after an entitlement determination has been reviewed. Regulation 10(1) applies where a “responsible authority” made the determination and carried out the review. Regulation 10(2) applies where a “local authority” did so.
 - (i) Given that all responsible authorities are local authorities, should regulation 10(2) be restricted to a local authority which is reviewing a determination under regulation 7(4)?
 - (ii) Regulation 10(2) requires that, when a local authority has conducted a review and concluded that a care leaver payment is payable, the local authority must send the outcome of the review to the “responsible authority”. However, it appears that there will be no responsible authority in such cases given regulation 7(4) (under which the local authority is only dealing because no responsible authority can be identified). How is the responsible authority to be identified, or is the policy intention that in such cases the local authority which conducted the review should make the payment?
2. In regulation 11(2), should “responsible authority” be “relevant authority”, in order to include also a local authority acting under regulation 7(4) or 10(2)?
3. Should “responsible authority” in regulation 15(1) (in two places) and (3)(b) be “relevant authority”, if it is the case that a local authority which is not the responsible authority may nonetheless make payments (after determining that a person is eligible under regulation 7(4) or after a review)?
4. Please advise whether any corrective action is proposed, and if so, what action and when.

On 3 February 2026 the Scottish Government responded:

1. Thank you for your points in relation to regulation 10(2).
 - (i) We don't think this should be the case. Regulation 10(2) applies where a local authority (officer) is reviewing a determination in accordance with the duty set out in regulation 9(2). While the determination under review by a local authority officer can only ever be a determination made under regulation 7(4), we do not think it is necessary for regulation 10(2) to specify this.

The intention in separating the notification requirements in respect of responsible authorities and local authorities was to make clear that the notification from a local authority will not include details pertaining to how the care leaver payment will be made to the individual. A local authority who determines, on review, that the individual is deemed entitled to a care leaver payment will send the outcome of its review to the responsible authority for the individual.
 - (ii) Regulation 3(1) makes clear that eligible care leavers will receive a care leaver payment. Individuals who are eligible to receive a care leaver payment are care leavers. This means that their status will be known to local authorities and other organisations that were in place to provide support to them (e.g. schools, health facilities) and with whom they will have pre-existing relationships. Accordingly, it will be possible to identify a responsible authority for eligible individuals.

Regulation 7(1), however, entitles an individual to request a determination as to entitlement to a care leaver payment if they believe that they should have received a payment but didn't. Regulation 7(3)(b) and (4) deal with how that determination is to be made.

The local authority to whom such a request is made will take steps (in accordance with regulation 7(3)) to ascertain whether there is a responsible authority for the individual (i.e. they'll attempt to establish whether the individual was looked after and where). If a responsible authority is identified, then the local authority will send the request for a determination in relation to that request to the responsible authority. The responsible authority will notify the individual of the determination in accordance with regulation 6, including in relation to how the care leaver payment is to be made to the individual. Only responsible authorities will make care leaver payments to eligible individuals in accordance with regulations 3 to 5.

If a local authority has determined an individual's entitlement to a care leaver payment under regulation 7(4), then that is because it has taken the view that the individual is not eligible to a care leaver payment and accordingly, there is no responsible authority for the individual.

For completeness, an individual who has received notification of a determination made under regulation 7(4) is entitled to request a review of that determination under regulation 8. If a local authority (officer) determines, on review, that an individual is in fact eligible to receive a care leaver payment (because it has been able to confirm the individual's formerly looked after status and thus, responsible authority) then it will send the outcome of its review to the responsible authority for the individual. Under regulation 10(3), the responsible authority is required to notify the individual as to how the care leaver payment will be made.

National practitioner guidance, which will accompany the Regulations, will include practical details about handling and processing applications made under regulation 7 and the reasonable steps that local authorities should take to identify whether there is a responsible authority for the individual.

2. This is a cross-reference typographical error. Thank you for highlighting. While we consider it to be clear that regulation 11(1) applies where a relevant authority (i.e. responsible authority, or the local authority who made a determination under regulation 7(4)) is required to notify under regulations 6, 7 or 10, we are considering (with the Registrar) whether this may be addressed by correction slip. Otherwise, we would propose to address this point at the next suitable legislative opportunity.
3. Per the explanation in response 1(ii), only responsible authorities will make care leaver payments to eligible individuals in accordance with regulations 3 to 5. Accordingly, we consider the references to 'responsible authority' in regulation 15 to be correct.
4. We propose the corrective action outlined in response 2.

National Health Service (Functions of the Common Services Agency) (Miscellaneous Amendments) (Scotland) Order 2026 (SSI 2026/20)

On 29 January 2026 the Scottish Government was asked:

“The instrument is, amongst other things, making consequential amendments and repeals to primary legislation. Please can you explain what power is being relied upon to make these amendments and repeals and why it is considered that this is permitted by the enabling power.

Please confirm whether any corrective action is proposed, and if so, what action and when.”

On 3 February 2026 the Scottish Government responded:

“We are relying on the power at section 105(7) of the National Health Service (Scotland) Act 1978 to make consequential provision to make the consequential amendments and repeals to primary legislation in Part 1 of the schedule of the National Health Service (Functions of the Common Services Agency) (Miscellaneous Amendments) (Scotland) Order 2026 (SSI 2026/20).

This is a permitted and well-established use of the power at section 105(7), as evidenced, for instance, by the reliance on it to make consequential amendments and repeals to primary legislation in Part 1 of schedule 2 of the Public Health Scotland Order 2019 (SSI 2019/336). The Delegated Powers and Law Reform Committee considered that instrument at its meeting on 19 November 2019 (and did not raise an issue with the use of the power for these purposes).

No corrective action is proposed.”

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2026 (SSI 2026/30)

On 29 January 2026 the Scottish Government was asked:

1. Could an explanation please be provided for why the amending provisions are not in the usual order: the instrument first inserts a new provision after rule 100 and then inserts a new provision after rule 93.
2. In new rule 101(6)(d)(i), are the words "where the children's hearing considers it appropriate" redundant or are some other words missing? This contrast with rule 101(6)(d)(ii) which ends after "specify".
3. Please confirm whether any corrective action is proposed, and if so, what action and when.

I would be grateful if you could e-mail your response to me and the copy recipients by close of business on Tuesday 3 February.

On 3 February 2026 the Scottish Government responded:

1. We are grateful to the Committee for drawing this to our attention. The order of the amendments results from a late drafting change. While the amendments are not made in the usual order, the amendments will operate as intended and no correction is proposed.
2. In new rule 101(6)(d)(i) "where the children's hearing considers it appropriate" is a reference to the children's hearing's ability to specify a different time period to the 14 day period specified in the Rule. The condition to be met to allow an alternate time period is where the children's hearing considers it 'appropriate'. Rule 101(6)(d)(ii) is not a reference to specifying a different time period to the 7 days but in relation to the provision and intimation of written submissions as the children's hearing specifies. No condition is required to be met for this. Therefore, no corrections are proposed to the drafting.