**Delegated Powers and Law Reform Committee**
**Tuesday 17 November 2026**
**11th Meeting, 2026 (Session 7)**

# Instrument Responses

## The Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2027

**On Friday 6 November 2026, the Committee asked the Scottish Government:**

The narration in the preamble of the statutory precondition in section 483 of the parent Act makes reference to both paragraphs (a) and (b) of subsection (2): (a) that the company exercises in or as regards Scotland functions of a public nature none of which relate to reserved matters; (b) that the company is entirely or substantially funded from a body having accounts falling within one of the paragraphs of subsection (3).

Could further information please be provided on the Scottish Government's assessment of which of paragraphs (a) and/or (b) of section 483(2) apply to the relevant companies?

**On Tuesday 10 November 2026, the Scottish Government responded:**

The companies specified in this Order are concerned with the delivery of lifeline ferry and air services in Scotland. Delivery of such services is a devolved matter and does not involve the exercise of any public function relating to reserved matters within the meaning in the Scotland Act 1998. The Scottish Government is therefore satisfied that the condition in section 483(2)(a) of the Companies Act 2006 is met by all of the specified companies.

The current funding arrangements for each company are as follows:

- David Macbrayne Ltd (DML) is the parent company of CalMac Ferries Ltd (CFL) and David Macbrayne HR (UK) Ltd (DML HR). CFL is substantially funded by the Scottish Ministers through funding for the delivery of Clyde and Hebrides Ferry Services contract (CHFS). DML and DML HR currently operate solely to support the delivery of CHFS and receive all of their funding from CFL for that role.

- Caledonian Maritime Assets Ltd (CMAL) receive funding from the Scottish Ministers by way of loans and grants, however, a significant amount of CMAL's funding comes from CFL for CMAL's role in delivery of CHFS.

- Highlands and Islands Airports Ltd (HIAL) is the parent company of Dundee Airport Ltd and Airport Management Services Ltd. HIAL is substantially funded by the Scottish Ministers by way of grants and loans. HIAL's subsidiaries are substantially funded by HIAL.

Accordingly, the Scottish Government is satisfied that the condition in section 483(2)(b) of the Companies Act 2006 is met in respect CFL and HIAL given that those companies are directly substantially funded by the Scottish Ministers and the Scottish Ministers' accounts are accounts to which section 21 of the Public Finance and Accountability (Scotland) Act 2000 applies.

## The Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 (Commencement No. 3) Regulations 2026 (SSI 2026/319 (C.35))

**On Wednesday 4 November 2026, the Committee asked the Scottish Government:**

1. The instrument is commencing section 18(3) and (4) of the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 ("2019 Act") which makes consequential amendments to sections 89 and 95 of the Housing (Scotland) Act 2001 ("2001 Act") to amend the statutory definition of fuel poverty. All but these provisions of the 2019 Act have been commenced by earlier instruments in 2019 and 2021. Please can you explain the reason why these provisions are only being commenced now, 7 years after the 2019 Act received Royal Assent. Is this an oversight?

2. Section 89 of the 2001 Act imposes a duty on local authorities, when required to do so by Scottish Ministers, to carry out an assessment and prepare and submit a local housing strategy. Among other things, the strategy must set out the local authority's policy for providing housing and related services in a manner which ensures, so far as reasonably practicable, that persons do not live in fuel poverty. The 2019 Act changes the definition of fuel poverty for this purpose, repealing the definition in section 95 of the 2001 Act and referring instead to the significantly more detailed definition in section 3 of the 2019 Act. What, if any, have been the practical implications for such strategies of the new definition not having been commenced until now?

**On Thursday 12 November 2026, the Scottish Government responded:**

1. Section 18 of the 2019 Act makes consequential amendments to the 2001 Act. Section 18(2) removes the requirement for local authorities to prepare and publish a statement on measures to ensure that persons do not live in fuel poverty. Section 18(3) amends section 89 of the 2001 Act to provide that references to "fuel poverty" in that section are to fuel poverty as defined in the 2019 Act. Section 18(4) repeals the existing definition of fuel poverty in section 95 of the 2001 Act as it is no longer required following the change made by section 18(3).

   The definition of fuel poverty in section 3 of the 2019 Act was not fully operational until the Scottish Ministers exercised their powers in section 3 to specify the types of households where enhanced heating temperatures and enhanced heating hours are appropriate. The section 3 power was exercised

in 2020 via the Fuel Poverty (Enhanced Heating) (Scotland) Regulations 2020.

Section 18(3) and (4) were not commenced in 2019 as the power in section 3 had not been exercised at that time. Following the coming into force of the 2020 regulations, Local Housing Strategies guidance was updated to reflect the definition in the 2019 Act. However, the consequential amendments in sections 18(3) and (4) were not commenced at that time. This was an oversight rather than a decision to defer commencement further.

2. Section 89 of the 2001 Act requires Local Authorities to prepare and submit a Local Housing Strategy. The Strategy must set out the LAs policy for exercising its functions with a view to accomplishing multiple purposes including ensuring, so far as reasonably possible, that persons do not live in fuel poverty. The Scottish Government guidance on Local Housing Strategies was updated in 2020 to reflect the definition of fuel poverty in section 3 of the 2019 Act and the new statutory fuel poverty targets. Other materials were also produced which drew attention to the provisions in the 2019 Act, for example a Fuel Poverty and Climate Change Advice note and then the Fuel Poverty Strategy. Local Authorities have since used that definition and the 2019 targets in their published strategies, notwithstanding the provisions in section 18(3) and (4) had not been commenced.

   The definition of fuel poverty under section 95 of the 2001 Act is “a person lives in fuel poverty if that person is a member of a household with a low-income living in a home which cannot be kept warm at a reasonable cost.” The amended definition of fuel poverty under the 2019 Act is multi-faceted. However, the broad summary of it is that a household will be in fuel poverty if: a) after having paid its housing costs, it would need more than 10% of its remaining net income to pay for its reasonable fuel needs, and b) having paid for its reasonable fuel needs, its childcare costs, and its housing costs, and disregarding the value of specific benefits which are received for a care need or disability, this then leaves the household unable to maintain an acceptable standard of living.

   Although the 2019 Act introduces a considerably more detailed and objective methodology for measuring fuel poverty, the underlying interpretation remains substantially the same: whether a household on a low income faces fuel costs that are disproportionately high relative to its available resources. The definition is not typically used to identify individual households. The strategy is ultimately a policy statement about measures the Local Authority intends take to ensure persons do not live in fuel poverty so it could be argued that the changing definition of fuel poverty is not likely to affect the measures that they take. Therefore, we do not consider that there have been any significant practical implications for the strategies. Commencement will bring the statutory framework into line with the approach already reflected in the guidance and applied in practice.