



The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

27th Meeting, 2012 (Session 4)

Tuesday 27 November 2012

The Committee will meet at 10.30 am in Committee Room 5.

1. **Instruments subject to affirmative procedure:** The Committee will consider the following—

[Pollution Prevention and Control \(Scotland\) Regulations 2012 \[draft\];](#)
[Judicial Pensions and Retirement Act 1993 \(Scottish Land Court\) Order 2013 \[draft\].](#)

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

[Council Tax Reduction \(Scotland\) Regulations 2012 \(SSI 2012/303\);](#)
[Housing \(Scotland\) Act 2001 \(Assistance to Registered Social Landlords and Other Persons\) \(Grants\) Amendment Revocation Regulations 2012 \(SSI 2012/306\);](#)
[Criminal Legal Aid \(Scotland\) \(Fees\) Amendment \(No. 2\) Regulations 2012 \(SSI 2012/305\);](#)
[Rural Development Contracts \(Rural Priorities\) \(Scotland\) Amendment Regulations 2012 \(SSI 2012/307\);](#)
[Diligence against Earnings \(Variation\) \(Scotland\) Regulations 2012 \(SSI 2012/308\).](#)

3. **Marine Navigation (No.2) Bill (UK Parliament legislation):** The Committee will consider the powers to make subordinate legislation conferred on Scottish Ministers in the Marine Navigation (No 2) Bill (UK Parliament legislation).
4. **High Hedges (Scotland) Bill:** The Committee will consider its approach to the delegated powers provisions in this Bill at Stage 1.

SL/S4/12/27/A

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The papers for this meeting are as follows—

Agenda Items 1 and 2

Legal Brief (private)

SL/S4/12/27/1 (P)

Agenda Items 1 and 2

Instrument Responses

SL/S4/12/27/2

Agenda Item 3

[Legislative Consent Memorandum](#)

[Marine Navigation \(No. 2\) Bill \(UK Parliament legislation\)](#)

Briefing Paper (private)

SL/S4/12/27/3 (P)

Agenda Item 4

[High Hedges \(Scotland\) Bill \(as introduced\)](#)

[High Hedges \(Scotland\) Bill
\(Delegated Powers Memorandum\)](#)

[High Hedges \(Scotland\) Bill \(Explanatory Notes\)](#)

Briefing Paper (private)

SL/S4/12/27/4 (P)

SUBORDINATE LEGISLATION COMMITTEE

27th Meeting, 2012 (Session 4)

Tuesday 27 November 2012

Instrument Responses

INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE

Pollution Prevention and Control (Scotland) Regulations 2012 [draft]

On 16 November 2012, the Scottish Government was asked:

Regulation 67 sets out a list of offences under this instrument. It then details the penalties which are applicable, with penalty levels differing depending on the offence concerned, as set out in paragraphs (2) and (3). Liability in respect of an offence committed under regulation 67(1)(j) is however uncertain, given the inclusion of a reference to that sub-paragraph both at paragraph (2) and at paragraph (3).

Given the importance of clarity when specifying penalties to which persons guilty of an offence are liable, can you confirm the intended penalty in this case and whether an appropriate correction will be made?

The Scottish Government responded as follows:

The Scottish Government can confirm that the intended penalty for an offence committed under regulation 67(1)(j) is that specified in regulation 67(2). It agrees that it is important that this is clarified in these Regulations, and thanks the Parliament for identifying this issue. It has therefore withdrawn the draft laid on 9 November 2012, and laid a new draft on 20 November 2012 that corrects both regulation 67 and other minor errors.

INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE**Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303)**

On 16 November 2012, the Scottish Government was asked:

(1) The objective of this instrument as stated in the Policy Note is for entitlement to support for council tax (for persons of working age) to reflect so far as possible the present entitlement to council tax benefit ("CTB"). This is implemented by "establishing a scheme of reductions to council tax ... [to] ensure that recipients of council tax benefit will...receive the same level of support, provided that their circumstances remain the same, by way of a reduction in liability for council tax". This shall replicate as far as possible, from and after 1 April 2013, the existing entitlement to council tax support (which entitlement has been prescribed by the Council Tax Benefit Regulations 2006), following the abolition of CTB in terms of section 33 of the Welfare Reform Act 2012. The scheme of reductions will be funded by the Scottish Government, with a contribution from local government funds (Paragraphs 3, 4, 7 and 11 of the Policy Note.)

Section 54(2) of the Scotland Act provides that it is outside competence to make any provision by subordinate legislation which would relate to reserved matters, by reference to the purpose of the provision. Section F1, Part II of Schedule 5 reserves schemes supported from central or local funds which "provide assistance for social security purposes to or in respect of individuals" by way of "benefits". The administration and funding of CTB is expressly reserved. "Benefits" expressly includes any form of financial assistance. "Providing assistance for social security purposes" expressly includes (among other things) providing assistance to or in respect of individuals who qualify for any of the reasons set out in paragraphs (a) to (c) of the interpretation provision in Section F1. Those matters include in relation to liabilities for local taxes (which include council tax), and other matters which are similarly relevant for entitlement to CTB in terms of the 2006 Regulations and entitlement to reduction of tax liability in terms of these Regulations.

Please fully explain therefore why, by reference to the purpose of the provisions, the Regulations do not relate to any of the reserved matters described in Section F1?

(2) In regulation 2(1), "academic year" is defined for the purpose of the Regulations. It means "the period of 12 months beginning on 1 January, 1 April, 1 July or 1 September according to whether the course in question begins in the winter, the spring, the summer or the autumn respectively...." The start and end dates of the seasons are not further defined in either these Regulations, the Local Government Finance Act 1992 ("the 1992 Act"), or the Interpretation Act 1978.

As the start and end date of the seasons can be considered variable (for instance the start of summer might be taken as 1 June or on the solstice on 21 June), and those start dates may not coincide with the dates stated in regulation 2(1), how are persons to determine which start and end dates apply for the purposes of this definition? Would it have been clearer if, for example, the definition of "summer" had

been specified as the period of 3 months starting with 1 June (assuming that is to be taken as the start date)?

(3) In the definition of “additional statutory paternity pay” in regulation 2(1), is the reference to section 171ZEA(a) an error and should refer to section 171ZEA(1)? If you agree, would you propose to correct this timeously by an amendment?

(4) Regulation 4(3) extends the definition of “young person” for the purposes of the Regulations to include “a child or young person in respect of whom section 145A of the 1992 Act applies for the purposes of entitlement to child benefit but only for the period prescribed under subsection (1) of that section”. (Specific provision is made for such a child or young person, in connection with disabled child premium, in schedule 1, para 13).

That section 145A(1) provides for the entitlement of persons to child benefit in respect of a child or young person for a prescribed period following the week in which the death of the child or young person occurs. However the remainder of the Regulations in various places refer to a “young person” for the purpose of the council tax reduction rules, in connection with the entitlement of another person to a reduction, in terms which require the young person to be doing specified acts or activities on the day/s for which the tax reduction is to be (ultimately) assessed.

For example, regulation 18(3)(b)(ii) and (5) prescribe certain rules to disregard a person’s temporary absence from Great Britain for up to 6 months, where the person accompanies a “young person” for the latter’s treatment. In regulation 10(1) a person is to be treated as responsible for a “young person” who normally lives with that person.

Please therefore-

(a) explain the intended purpose and effect of the extension of the definition of “young person” in regulation 4(3), and

(b) how it is capable of having effect, in relation to those provisions in the Regulations which refer to an act or activity requiring to be done by a “young person”, as part of the rules for entitlement to council tax reduction ? Could this be clearer?

(5) Paragraph (3)(j) of regulation 20 sets out in subparagraphs (i) to (v) certain categories of student to which paragraph (2) does not apply (so that those categories are not excluded from a possible council tax reduction in respect of a day and a dwelling of which the student is resident). Paragraph (3)(j)(iv) requires a student to be one in respect of whom a grant for living or other costs has been made under regulation 38 of the Education (Student Support) Regulations 2011, regulation 25 of the Assembly Learning Grants and Loans (Higher Education) (Wales) (No. 2) Regulations 2011 **“and”** regulation 5 of the Education (Student Support) (No 2) Regulations (N.I) 2009. This contrasts with the provisions in subparagraphs (iii) and (v) which both refer to types of payment to, or supplementary requirement for, a student as alternatives, for the sub--paragraph to be applicable- using **“or”**.

(a) Is it intended that only one of the grant payments requires to be made under one of the regulations specified in subparagraph (iv), for that subparagraph to be applicable to a student?

(b) If so should that intention be given effect in subparagraph (iv), by timeously correcting this, by amending “and” to “or”?

(6) Regulation 39(7) to (10), which have rules assessing where payments to students are taken into account in the calculation of income, refer in various places to a “relevant course of study”. “Relevant payments” are defined by regulation 39(10) but “relevant course of study” does not appear to be defined in the Regulations?

What meaning is to be given to this term and does it require further definition? Is it intended to refer to any course of study undertaken by the student, or to define particular courses in some way for the purposes of regulation 39?

(7) (i) In regulation 41(4)(c), is the reference to “regulation 17A(7) of *those Regulations*” an error, because it appears from the footnote (b) that it is intended to refer to the “Jobseeker’s Allowance Regulations”, but the title of the Regulations previously stated is the Employment and Support Allowance Regulations in regulation 39(4)? If you agree would you propose to correct this timeously by an amendment?

(ii) Could the opportunity also be taken to correct the further reference to regulation 17A(7) of “*those Regulations*” in regulation 48(4)(b), because to identify that this refers to the Jobseeker’s Allowance Regulations, it is necessary to identify the reference to those Regulations in regulation 41(7) in the previous chapter?

(8) In regulation 64(3), which word is omitted in “that applicant or a member of the applicant’s is liable”, and what is the effect of the omission? Would you propose to correct this by amendment?

(9) In Schedule 7, paras 1(2), 2 and 4, consequential amendments are made to the Council Tax (Administration and Enforcement) (S) Regulations 1992, the Council Tax (Reductions for Disabilities) (S) Regulations 1992, and the Council Tax (Reduction of Liability) (S) Regulations 1994, which refer to the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012.

Please explain the basis on which that consequential provision is considered to be properly made, given that the State Pension Credit Regulations have not yet been made as at the date of making this instrument, and it appears that those provisions in Schedule 7 are consequential on those Regulations rather than these Regulations?

The Scottish Government responded as follows:

(1) The reservation at Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998 (“the 1998 Act”) relates to schemes supported from central or local funds which provide assistance for social security purposes to or in respect of individuals by way of benefits. At present the administration and funding of council tax benefit is stated as an illustration of that reservation, but the reference to council tax benefit in Section F1 is to be omitted by Schedule 14 of the Welfare Reform Act 2012, which will be commenced by the UK Government in consequence of the abolition of that benefit next year.

Once that revocation is made, the extent of reserved competence with regard to local taxes will be as stated in the interpretation provision of Section F1, i.e. providing assistance for social security purposes to or in respect of individuals in relation to their liabilities for local taxes. However, council tax is specifically excluded from the reservation of fiscal, economic and monetary policy at Section A1 of Part 2 of Schedule 5 to the 1998 Act, and in those circumstances any scheme that provides for reduction of council tax liability (as opposed to assisting a person to meet such liability) is not reserved. Under section 80 of the Local Government Finance Act 1992 (“the Act”), as adjusted by section 53 of the Scotland Act 1998, the Scottish Ministers may make regulations which provide that a person is liable to pay less council tax than the amount for which he or she would otherwise be liable.

Section 80 gives Scottish Ministers the power to prescribe conditions under which an individual’s liability for council tax may be reduced. The conditions may be prescribed by reference to such factors as the Scottish Ministers think fit and may be prescribed by reference to a number of factors, including the circumstances of, or other matters relating to, the person concerned. This allows Scottish Ministers to make provision which takes into account detailed information about an individual’s financial situation in order to determine entitlement to a reduced council tax liability. The Regulations make provision for a reduction for individuals with low income and some factors indirectly related to needs arising out of disability or other needs if, as a result of that disability or need, an individual is on a low income. The reduction in liability under the Regulations supplements existing provision made under the Act for a reduction in liability by reason of disability.

The purpose of the Regulations is as described above and is not to provide assistance for social security purposes or by way of benefits.

As regards funding, the Scottish Government will not directly meet the costs of the reductions in council tax liability that these Regulations introduce. Rather, and to support local authorities’ ability to deliver public services, the Scottish Government will increase the revenue support grant paid to each local authority under section 108 of the Act. That grant is presently calculated and adjusted to reflect the demographics and service delivery needs of each local authority. This practice will continue, with additional funding allocated by a pre-determined formula not directly linked to the shortfall in council tax revenue each authority will experience as a consequence of applying the Regulations.

(2) The definition of “academic year” has been used in council tax benefit regulations since 2001 and the Scottish Government is not aware of any problems in its practical application.

(3) In the definition of “additional statutory paternity pay” in regulation 2(1), “(a)” after the reference to section 171ZEA is the result of an oversight. It was originally a reference to a footnote and when the footnote was moved removal of the reference to it was overlooked. Given that section 171ZEA deals only with additional statutory paternity pay the Scottish Government believes that the meaning of “additional statutory paternity pay” is clear. The otiose reference will be removed at the next opportunity so that the reference is to section 171ZEA, which is consistent with the reference to section 171ZEB.

(4) On further consideration the Scottish Government is of the view that regulation 4(3) is unnecessary. Regulations 10(2)(a) and (b) and 18(3)(b)(ii) refer to young persons who are living with or accompanied by another person, in which case section 145A of the Social Security Contributions and Benefits Act 1992 is not relevant to those provisions. Paragraphs 12(2) and 13(c) of Schedule 1 refer only child benefit payable under section 145A and they are specific in that regard. In those circumstances regulation 4(3) is otiose. The Scottish Government proposes to lay an amending instrument in the first quarter of next year. Although regulation 4(3) has no adverse effect on the operation of the Regulations the Government will take that opportunity to remove it.

(5) In regulation 20(3)(j) (iv) “and” in the third line should be “or”. This error will be corrected in the amending instrument referred to above.

(6) In regulation 39(7) to (10) the “relevant course of study” is the course of study in relation to which the relevant payment would have been payable. The Scottish Government is of the view that this is clear from the provisions themselves.

(7) Regulations 41(4)(c) and 48(4)(b) should refer to the Jobseeker’s Allowance Regulations. These omissions will be corrected in the amending instrument referred to above.

(8) Regulation 64(3) should refer to any council tax or water charges for which that applicant or a member of the applicant’s “family” is liable. The Scottish Government is of the view that that is clear from regulation 64(3) as a whole but will take the next opportunity to correct the omission.

(9) The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 will be laid before the Scottish Parliament on 23 November 2012 and will come into force on 28 January 2013, the same date that the Council Tax Reduction (Scotland) Regulations 2012 come into force. The Scottish Government considers that as the consequential amendments for each set of Regulations amend the same instruments it is appropriate to have one set of consequential amendments.

Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Revocation Regulations 2012 (SSI 2012/306)

Breach of laying requirements: letter to Presiding Officer

The above instrument was made by the Scottish Ministers under sections 93(2) and 109(1) and (2) of the Housing (Scotland) Act 2001 on 13 November 2012. It is being laid today and is due to come into force on 18 November 2012.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act this letter explains why.

These Regulations revoke the Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Amendment Regulations 2012 ("the first Regulations"). They do no more than that. The decision to revoke the first Regulations stems from concerns expressed by members of the Subordinate Legislation Committee and the Infrastructure and Capital Investment Committee. The first Regulations were made on 19 September 2012, laid before the Scottish Parliament on 21 September 2012 and are due to come into force on 19 November 2012. The Minister and Officials were invited to appear before the Infrastructure and Capital Investment Committee on 7 November 2012 but the decision was taken shortly before that date that the first Regulations should be revoked.

The first Regulations need to be revoked on or before the date on which they come into force. Consequently these Regulations need to be in force on, or preferably before, 19 November 2012. It has therefore not been possible to lay these Regulations in sufficient time to comply with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. However parties with an interest in these Regulations who responded to the statutory consultation on the first Regulations have been informed of Ministers' intentions and have also been consulted in accordance with section 93(4) of the 2001 Act.

Consideration is currently being given to progressing with a further set of Regulations to take account of the issues raised by the Subordinate Legislation Committee and the Infrastructure and Capital Investment Committee.