



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

**Tuesday 12 September 2017**

**Session 5**



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Pàrlamaid na h-Alba

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**24<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

**CLERK TO THE COMMITTEE**

Euan Donald

**LOCATION**

The Adam Smith Room (CR5)



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 12 September 2017*

*[The Convener opened the meeting at 10:07]*

### Decision on Taking Business in Private

**The Convener (Graham Simpson):** I welcome members to the Delegated Powers and Law Reform Committee's 24th meeting in 2017. Under agenda item 1, it is proposed that the committee takes in private item 6, which is consideration of its approach to the delegated powers provisions in the Social Security (Scotland) Bill. Does the committee agree to do so?

**Members** *indicated agreement.*

**The Convener:** I should have mentioned that apologies have been received from David Torrance.

## Instruments subject to Affirmative Procedure

### Renewables Obligation (Scotland) Amendment Order 2017 [Draft]

10:08

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

## Instruments subject to Negative Procedure

### Universal Credit (Claims and Payments) (Scotland) Regulations 2017 (SSI 2017/227)

10:08

**The Convener:** The regulations provide for two flexibilities in the operation of the claims and payments system for universal credit in relation to Scotland. First, they provide the option for persons to request payments of universal credit twice monthly, rather than monthly, in arrears. Secondly, they provide the option for tenants to request that any universal credit housing costs element for rent or a service charge be paid directly to social and private sector landlords.

Regulations 2 and 3 refer in various places to a person's entitlement to request "twice-monthly" payments of universal credit in arrears. Under regulation 2(2), the secretary of state must agree to such a request unless it is considered to be unreasonable to implement.

The Scottish Government's policy intention is that a person who is entitled to universal credit should be able to choose to receive, in place of the single monthly payment, two payments that are roughly equally spaced apart during each month. However, it is not intended that a person will have an entitlement to receive payments on set dates in a month. Accordingly, the implementation of the payment dates is intended to be a matter for the secretary of state.

Our legal advisers have identified that the regulations could more clearly implement the policy intention in relation to payment dates, given that, under regulation 2(1), a person has an entitlement to request "twice-monthly" payments. That expression does not specify the payment dates in a month, the fact that they should be roughly equally spaced apart, how they may be calculated or who may determine the dates. Accordingly, does the committee wish to draw the regulations to the Parliament's attention on reporting ground (h), as their meaning could be clearer in a particular respect?

**Members indicated agreement.**

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

### Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2017 (SSI 2017/273)

### Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2017 (SSI 2017/274)

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

**Members indicated agreement.**

## Instruments not subject to Parliamentary Procedure

### Limitation (Childhood Abuse) (Scotland) Act 2017 (Commencement) Regulations 2017 (SSI 2017/279 (C 20))

10:11

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

## Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill: Stage 1

10:11

**The Convener:** The purpose of item 5 is to consider the committee's approach to the scrutiny of the delegated powers in the bill at stage 1. Specifically, it provides an opportunity to identify matters that the committee might wish to raise with the Scottish Government in relation to the delegated powers that are contained in the bill.

The bill's overall policy aim is to improve access to justice in civil actions. It implements recommendations that Sheriff Principal Taylor made in his report "Review of Expenses and Funding of Civil Litigation in Scotland", which was published in September 2013. It also enacts some unimplemented recommendations on group proceedings and auditors of court that Lord Gill made in his "Report of the Scottish Civil Courts Review", which was published in September 2009.

It is suggested that the committee should raise questions on three of the delegated powers. I ask members to bear with me, as I have quite a lot to read out.

Section 5(1) provides that

"A success fee agreement must not be entered into in connection with a matter which may be the subject of—

(a) family proceedings, or

(b) other civil proceedings of a description specified by the Scottish Ministers in regulations."

Paragraph 20 of the delegated powers memorandum indicates that the Scottish Government's position is that the use of success fee agreements might be inappropriate in types of proceedings other than family proceedings. In those circumstances, the Scottish Government considers that it would be disproportionate for there to have to be further primary legislation to extend the categories of proceedings for which success fee agreements are not permitted to be used. However, with the exception of family actions, Sheriff Principal Taylor did not identify any areas in which it would be inappropriate to use success fee agreements.

Does the committee agree to ask the Scottish Government why it requires a power to exclude other types of civil proceedings in the future and, if there are other such areas, what prohibits the Scottish Government from identifying them now and including them in the bill?

**Members** *indicated agreement.*

**The Convener:** Section 7(3) provides that the Scottish ministers

“may by regulations make further provision about success fee agreements”.

In particular, they may make provision about the matters that are listed in paragraphs (a) to (e). Section 7(4) provides that regulations that are made under section 7(3) may modify part 1 of the bill. However, the delegated powers memorandum does not explain why a power of that breadth is necessary or proportionate.

Does the committee agree to ask the Scottish Government why the power in section 7(4) is necessary and proportionate, whether it could be expressed more narrowly and still obtain the policy objective of enhancing the certainty, predictability and transparency of success fee agreements, and why it is considered necessary to take a power to amend all of part 1 of the bill? Does the committee agree to request examples of the modifications that the Scottish Government considers might need to be made to part 1 under section 7(3)?

**Members indicated agreement.**

**The Convener:** Paragraphs 33 and 34 of the delegated powers memorandum indicate that the modifications that section 12 of the bill makes to sections 103(2) and 104(2) of the Courts Reform (Scotland) Act 2014 will, among other things, clarify that rules of court can make provision about the matters that are referred to in sections 9 to 11 of the bill. However, it is notable that, unlike in sections 8(6), 10(5) and 11(3) of the bill, no reference is made in section 9 to the possibility of further provision being made about the matters that are covered by that section—the ordering that expenses should be paid to a Scottish charity—by act of sederunt under sections 103 and 104 of the 2014 act. Does the committee agree to ask the Scottish Government why section 9 does not include a provision that is equivalent to those in sections 8(6), 10(5) and 11(3) of the bill?

**Members indicated agreement.**

10:16

*Meeting continued in private until 11:00.*



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