



The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

Room T1.01  
Scottish Parliament  
0131 348 5212

[DPLR.Committee@scottish.parliament.uk](mailto:DPLR.Committee@scottish.parliament.uk)

Jeane Freeman MSP  
Minister for Social Security

25 January 2018

Dear Jeane

### **Social Security (Scotland) Bill**

At its meeting on 23 January, the Delegated Powers and Law Reform Committee considered the Scottish Government's response to its report at Stage 1 of the Social Security (Scotland) Bill.

The Committee agreed to write to you in regard to two particular areas of that response: eligibility criteria and discretionary housing payments. The Committee will, however, continue to consider all the delegated powers in the Bill following amendments made at Stage 2.

#### *Eligibility criteria*

The Committee called for a "reasonable level of detail" on eligibility criteria and the assistance to be given to be set out on the face of the Bill. The Committee's reasoning for this recommendation was that such detail would allow the Parliament to debate the policy options properly whilst ensuring that the rules are clear and that there is an appropriate level of flexibility.

The Committee welcomes the application of a form of super-affirmative procedure to the regulations. The Committee also notes that the Government has lodged amendments relating to the provision of assistance in a form other than money. However, these amendments do not provide the level of detail the Committee is seeking.

The Committee understands the need for flexibility to apply to eligibility criteria. However, it is of the view that more could be done to improve the balance between primary and secondary legislation in this matter.

In its response to the Social Security Committee's call for evidence on the Bill, Citizens Advice Scotland referred to the Welfare Reform Act 2012, which it stated goes into a "reasonable level of detail" about the rules for Universal Credit (sections 1 to 12) and Personal Independence Payment (sections 78 to 89).

In addition, we note from paragraph 13 of the Government's response to the Social Security Committee's Stage 1 report that it "will continue to reflect, ahead of Stage 2, on the suggestion, made by some stakeholders, that more may be said in relation to the purpose of each type of assistance on the face of the Bill."

The Committee encourages the Scottish Government to reconsider the level of detail provided on the face of the Bill in relation to both eligibility criteria and the assistance to be provided for each of the types of assistance set out in sections 11 to 17 of the Bill. This could include further detail on the purpose of each of those types of assistance and on the sorts of matters set out in the 2012 Act in respect of Universal Credit and Personal Independence Payment.

### *Discretionary Housing Payments*

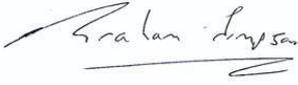
The Committee called for the guidance to be issued under section 52 of the Bill to be subject to the negative procedure. The Committee argued that this guidance is analogous to the regulations made under section 69 of the Child Support, Pensions and Social Security Act 2000, which are subject to the negative procedure.

The Government's response indicates that you do not consider this analogy to be appropriate and that the wording of section 52(1) of the Bill requires local authorities to have regard to the guidance issued by Scottish Ministers but that they are not legally obliged to follow it. The response suggested a closer comparator would be the guidance issuing power under section 6 of the Welfare Funds (Scotland) Act 2015. This guidance is not subject to the negative procedure and, unlike the guidance under section 52 of the Bill, there is no requirement to lay it before the Parliament.

The Committee remains concerned that parliamentary scrutiny in relation to discretionary housing payments in the Bill will be sacrificed compared to the UK position on discretionary housing assistance. The Committee considers that as these forms of assistance relate to the same subject matter they are a better comparator than provision made in section 6 of the 2015 Act. The Bill dispenses with the regulation-making power contained in the equivalent section 69 of the Child Support, Pensions and Social Security Act 2000, and instead provides for matters covered by such regulations to be set out in guidance. As such guidance is laid but not subject to any parliamentary procedure, the Committee considers that parliamentary scrutiny is sacrificed as a result. Accordingly, the Committee calls on the Government to amend the Bill so that either regulations subject to the negative procedure are provided for in addition to guidance, or the guidance is subject to the negative procedure, thereby ensuring parliamentary scrutiny.

The Committee would be grateful if you would give consideration to these issues during Stage 2.

Yours,

A handwritten signature in black ink, appearing to read "Graham Lyson". The signature is written in a cursive style with a horizontal line underneath.

**Convener, Delegated Powers and Law Reform Committee**