



F/T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Graham Simpson MSP  
Convener  
Delegated Powers and Law Reform Committee

[dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot)

19 February 2018

Thank you for your letter of 25 January 2018 regarding the Delegated Powers and Law Reform Committee's (DPLRC's) further consideration of the Social Security (Scotland) Bill, in particular on the subjects of eligibility criteria and Discretionary Housing Payments (DHPs).

You state that the DPLRC would encourage 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*". The foundation of this concern appears to be that the DPLRC consider the Bill to still not strike an appropriate balance between what is included in primary legislation and what will be included in regulations.

My view on this is that the final decision on the level of detail which should appear on the face of the Bill is, rightly, for Parliament to take and it is for the Parliament, not the Government, to decide what details should appear in primary legislation and what should be left to subordinate legislation. Quite properly, members of the Social Security Committee are carefully considering these matters now by debating the merits of specific amendments to the Bill.

Regarding DHPs, you note the DPLRC's concern "*that parliamentary scrutiny in relation to discretionary housing payments in the Bill will be sacrificed compared to the UK position on discretionary housing assistance*", and ask that the Bill be amended so that either regulations subject to the negative procedure are provided for alongside guidance, or that the guidance itself is subject to the negative procedure.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh [www.lobbying.scot](http://www.lobbying.scot)

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Taigh Naomh Anndrais, Rathad Regent, Dùn Èideann EH1 3DG  
St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)

As I have said the Government's view is that requiring Parliament to scrutinise guidance which does not have the force of law would not be a good use of parliamentary time. Furthermore, the analogy that you draw with regulations under UK legislation is not sound in my opinion, because regulations do carry the force of law.

For example, the Department for Work and Pensions (DWP) regulations are proscriptive in how Local Authorities (LAs) operate their discretionary housing schemes. Regulation 3 of the Discretionary Financial Assistance Regulations 2001 states situations in which making a DHP (for the purposes of section 69(2)(a) of the Child Support, Pensions and Social Security Act 2000) is prohibited. In such a system, I agree that it would be entirely appropriate for the Scottish Parliament to scrutinise regulations (as the UK Parliament monitors the Secretary of State for Social Security in relation to those 2001 regulations).

However, that is not the system we are working to set up in Scotland. Instead, we are giving LAs a power to make DHPs and letting them decide how to use it. Section 52(4) of the Bill requires consultation with an LA body before issuing guidance, in recognition that such guidance is likely to involve the dissemination of good practice. As guidance is just that (something LAs must have regard to but can decide not to follow in operating their particular local scheme, if something else works better for their population), the advantage of Parliamentary consideration in this regard is not apparent.

I want to thank you again for bringing the DPLRC's further concerns to my attention. I am pleased that the DPLRC are continuing with their scrutiny of the Bill, and I trust that your members will find this information to be of use in that regard. I look forward to the DPLRC's future scrutiny of the Bill following the completion of Stage 2.

Kind regards



**JEANE FREEMAN**

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