



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
Room T1.01
Scottish Parliament
0131 348 5212
DPLR.Committee@scottish.parliament.uk

James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government

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Damages (Investment Returns and Periodical Payments) (Scotland) Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the above Bill on Tuesday 4 September and seeks an explanation of the following matters:

Part 2 – periodical payments of damages

Section 3 – Award, continuity and index linking

New section 2C of the 1996 Act – list of recognised bodies and office-holders

Power conferred on: the Scottish Ministers

Power exercisable by: regulations

Parliamentary procedure: negative

Section 2C(7)(a) of the 1996 Act (as inserted by section 3(2) of the Bill) provides the Scottish Ministers with a power to add to the list in new section 2C(6) of the 1996 Act of recognised bodies and office-holders that the court are able to assume are capable of reasonably secure continuity of payments under a periodical payments order. These new entries are limited to health service bodies or non-government bodies. The bodies and office holders originally listed in section 2C(6) are not capable of being removed from the list by virtue of section 2C(8).

Section 2C(7)(b) allows the Scottish Ministers to create exceptions to an entry which was originally contained in the list in new section 2C(6). A periodical payment order can only be made by the court where it is satisfied that the continuity of payment under the order would be reasonably secure.

In relation to the powers in section 2C(7) generally, the Committee asks the Scottish Government for a further explanation of why, given these powers allow primary legislation to be amended by subordinate legislation, it is appropriate for the powers to be subject to the negative rather than the affirmative procedure.

In relation to section 2C(7)(b), the Committee asks the Scottish Government for an explanation of the circumstances in which it anticipates this power will be used to provide for an exception to the entries in section 2C(6) and why it is appropriate for this power to be delegated.

I would be grateful if you could please email your response to the Delegated Powers and Law Reform Committee e-mail address above by 5pm on Tuesday 17 September.

Thank you.

Andrew Proudfoot
Clerk to the Delegated Powers and Law Reform Committee