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**BY EMAIL**

12 October 2018

Dear Andrew,

**Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill at Stage 1**

I refer to your letter to James Hynd dated 19 September 2018 in respect of the above matter.

In my capacity as Bill Team Leader of the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill ("the Bill"), I am writing in response to the issues raised in your letter with regard to sections 2(6)(e)(ii) and 10 of the Bill.

**Section 2(6)(e)(ii) - Power to determine other person to determine "minimum income standard" ("MIS")**

**Power Conferred on: Scottish Ministers ("Ministers")**

**Power Exercisable by: Administrative Decision**

**Parliamentary Procedure: None**

- (a) Please explain the circumstances in which Ministers would rely on a MIS determined by a person other than the person currently set out in section 2(6)(e)(i)?

This would occur if the Centre of Research in Social Policy at Loughborough University in conjunction with the Joseph Rowntree Foundation were suddenly to cease to publish the current UK MIS. This is a non-statutory tool and these bodies have no obligation to publish it. They could announce that they were discontinuing it without giving a sufficient amount of notice to allow for subordinate legislation to be made. Alternatively, either or both of these bodies could cease to exist in their current form (for instance, due to something as simple as a name change). Were this to occur, the definition of MIS in section 2(6)(e)(i) would be rendered inoperable if there was no ability to replace it.

- (b) Please explain why the administrative power in section 2(6)(e)(ii) is considered necessary and appropriate.**

The grant to Ministers of an administrative power for use in the circumstances outlined in the response to question (a) above would allow Ministers to react quickly by designating another body or bodies to produce the MIS formerly produced by the Centre of Research in Social Policy at Loughborough University in conjunction with the Joseph Rowntree Foundation. This, in turn, would allow section 2(5) to continue as the litmus test for whether a sufficient standard of living has been achieved for the purpose of measuring whether a household is in fuel poverty.

- (c) Please explain the circumstances in which the regulation-making power in section 10(b) would be used instead to modify the definition of MIS and whether this could be clearer.**

Section 10(b) would be used if the decision were to be made to use a different source for MIS due to the current UK MIS changing in a such a manner that it was deemed no longer appropriate to use it in the measurement of fuel poverty in Scotland.

**Section 10(b) – Power to amend the definitions in section 2(6)**

**Power Conferred on: Ministers**

**Power Exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary Procedure: Affirmative**

**Please explain why the terms “adjusted” or “household” would need to change, whether to take account of changing economic circumstances or otherwise, over the lifespan of the legislation.**

Since the legislation is intended to have a lengthy lifespan, it is important to have flexibility to amend the meaning of the terminology used in the definition of fuel poverty without requiring primary legislation. For instance, there could be circumstances over the lifespan of the legislation which would make it appropriate to deduct costs in calculating “adjusted” net income other than those which are defined as housing costs in the Bill. This could arise if an expense currently deducted as a “housing cost” were to be replaced by something else which did not naturally fall within that term, meaning that it would need to be specified as a deduction separately. Living practices may change so as to make it desirable to alter the definition of “household”. If the meaning of “household” were to change under any forthcoming Census Order then, since its definition in the Bill is broadly the same as in the current Census Order, amendment to this definition may be appropriate.

**Section 10(c) – Power to make different provision in section 2(5) as to a household’s sufficient/ insufficient remaining net income**

**Power Conferred on: Ministers**

**Power Exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary Procedure: Affirmative**

**Please explain why it is necessary and appropriate that the scope of the power in section 10(c) is drafted widely to allow Ministers to adjust the figure of 90% of the MIS at which a household’s remaining adjusted net income is sufficient to maintain an acceptable standard of living in section 2(5).**



If the methodology by virtue of which the UK MIS is currently calculated were to change, this could result in higher or lower MIS levels. As a consequence of such change, it may become appropriate to treat a higher or lower percentage of MIS as determinative of the question of whether a household has sufficient remaining adjusted net income to maintain an acceptable standard of living after the deduction of the notional costs allocated as part of MIS which are contained in section 2(5)(a) – (e) of the Bill.

**Please explain why it is necessary for Ministers to have the powers in section 10 to alter a number of the key metrics that make up the definition of fuel poverty when a similar number of powers were not necessary in relation to the four poverty targets that make up the 2030 targets in the Child Poverty (Scotland) Act 2017 (“the 2017 Act”).**

While the Bill and the 2017 Act both set targets and provide for the monitoring of those targets, they measure different things and they do so in different ways. As such, the powers which are needed in order to ensure that the legislation can function effectively differ between the two.

As opposed to the position in respect of child poverty, in the measurement of fuel poverty, the Scottish Government is proposing to use a key metric (MIS) which is a non-statutory tool. Definitions may need to change if the definitions used in MIS change so that we are continuing to compare like with like.

In addition, the 2017 Act does not define certain components of the four types of poverty to which it refers, such as the meaning of “household”. Thus, these components would have an ordinary meaning which can evolve, which provides flexibility. In contrast, the components of the definition of fuel poverty are defined in the Bill. In order to achieve the same flexibility, it is therefore necessary to be able to adjust these defined terms. Further, given that the lifespan of the fuel poverty legislation is intended to be almost double that of the 2017 Act, it is important to retain an ability to amend the meaning of the key terms used in the definition of fuel poverty in order to take account of changing economic and/or social circumstances without requiring new primary legislation.

It should, however, be noted that the parliamentary procedure to be used in respect of any regulations introduced to alter these metrics is affirmative, thus involving a high level of parliamentary scrutiny and necessitating the approval of Parliament for any changes to be made.

I hope that the foregoing responses are helpful to the Committee. If you wish to raise any other matters in respect of the Bill, please do not hesitate to get in touch.

Yours sincerely



**ANNE CORNELIUS**  
Fuel Poverty Bill Team Leader