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Dear Mr Donald,

Thank you for your letter of 27 March 2018 to James Hynd, Head of Cabinet, Parliament and Governance Division, on behalf of the Delegated Powers and Law Reform Committee (“DPLRC”), requesting information on various aspects of the Social Security (Scotland) Bill (“the Bill”) as amended at Stage 2. Your correspondence has been passed to me to provide a reply, as my Division has policy responsibility for the Bill.

New schedule A1, paragraph 4(2)(c) – Access to information

The DPLRC ask if the Scottish Government would reconsider whether it would be more appropriate that the power in paragraph 4(2)(c) of schedule A1 of the Bill (regarding regulations specifying such persons/persons of a certain description to which the Scottish Commission on Social Security has a right of access to information) is made subject to the affirmative procedure, rather than the negative one as in the current Bill.

The Scottish Government is content to lodge an amendment at Stage 3 that will make regulations relating to the power in paragraph 4(2)(c) of schedule A1 of the Bill subject to the affirmative procedure.

New section 17A – Housing assistance

Relating to the housing assistance regulations for assistance relating to the removal of the bedroom tax, the DPLRC ask if there is any reason for the omission of the word “and” at the end of paragraph 1(2)(d) of schedule 8, compared with the inclusion of that word at the end of paragraph 1(3)(c).

The Scottish Government sees no risk of paragraph 1(2) being misunderstood as a result of there being no “and” at the end of a series of paragraphs which can only be read as conveying a single proposition.



New sections 55A and 55B – Scrutiny of certain regulations

The DPLRC request that the Scottish Government reconsiders sections 55A (“Further procedure for regulations about assistance”) and 55B (“Temporary disapplication of section 55A”) of the Bill in relation to a number of matters. These all concern the role of the independent Scottish Commission on Social Security (“the SCoSS”) and the super-affirmative procedure applied to regulations made under any section in Chapter 2 of Part 2 and section 45.

The Scottish Government has addressed the points raised by the DPLRC in a policy position paper sent to the Social Security Committee on 28 February. The contents of that paper are included at **Annex A**, for ease of reference.

Section 20(1) – Applications for assistance

The DPLRC note that the Bill, as introduced, provided that an application for assistance is to be in such form and accompanied by such evidence as Scottish Ministers may require, but that the amended Bill following Stage 2 provides, at section 20, that an application for assistance must be made to Scottish Ministers in such form as may be prescribed in regulations. The DPLRC ask if it would be more appropriate for the regulation-making power to be framed to require provision to be made both in relation to the form of the application and the evidence that is to accompany it.

The Scottish Government did not support the Stage 2 amendments that made this change and is currently considering section 20 as part of its on-going work in advance of Stage 3.

New section 44B – Duty to uprate carer’s, disability and employment-injury assistance

The DPLRC request an explanation as to why the SCoSS is not consulted on uprating regulations made under section 44B, given that Scottish Ministers are required to make a judgment as to whether the value of any of carer’s, disability and employment-injury assistance is materially below its inflation-adjusted level.

Section 44B is not a power to make regulations. Subsection (4) is clear that uprating regulations will be made using the general enabling powers conferred in Chapter 2 of Part 2. The SCoSS will therefore be consulted on uprating regulations, as they will be consulted on all regulations made under those powers.

Additionally, your letter highlights a cross-referencing error in section 44B(4). The DPLRC will be aware that it is the Parliament, not the Government, that is responsible for resolving cross-references to sections amended into a Bill. The Scottish Government therefore trusts that the parliamentary authorities will correct the errors for the as-passed print of the Bill.

New section 48C(2)(g) and (5) – Information-sharing

Finally, the DPLRC ask if the Scottish Government would consider whether it would be more appropriate that regulations made under the power in section 48C(2)(g) are made subject to the affirmative procedure, rather than the negative one as in the current Bill. This power allows Scottish Ministers to specify further persons who are to be subject to the requirement to provide to Scottish Ministers information that those persons hold, for the purpose of a social security function.

The Scottish Government is content to lodge an amendment at Stage 3 that will make regulations relating to the power in section 48C(2)(g) of the Bill subject to the affirmative procedure.

I trust that this information will be of assistance to the DPLRC.

Yours sincerely,

ANN McVIE
Deputy Director
Social Security Policy Division

**SOCIAL SECURITY (SCOTLAND) BILL
POLICY POSITION PAPER
SCRUTINY OF SOCIAL SECURITY REGULATIONS**

Summary

This paper is divided into parts as follows.

Part 1 summarises the work that has led up to the lodging of the Government’s amendments dealing with the scrutiny of social security regulations.

Part 2 explains the purpose and effect of the Government’s amendments, and in particular how they give effect to recommendations in the Social Security Committee’s Stage 1 report, and the recommendations of the Disability and Carers Benefits Expert Advisory Group.

Part 3 addresses the concern that has been expressed that the involvement of the Scottish Commission on Social Security in scrutinising legislative proposals somehow risks diminishing the Parliament’s role. It is explained that the Commission’s role is to provide independent, expert advice on proposed changes in order to facilitate the Parliament’s scrutiny of draft regulations. Having an independent, expert body to provide that advice was a recommendation in the Social Security Committee’s Stage 1 report.

Parts 4 and 5 directly address issues raised in the Delegated Powers and Law Reform Committee’s letter of 6 February. Specifically the issues of whether Government consultations should always be accompanied by draft regulations and whether the Scottish Commission on Social Security should have the power to decide that it does not need to be involved in scrutinising certain types of proposal. On both points, the Government will be happy to make adjustments at Stage 3 if that is members’ preference.

Part 6 explains, in response to a question raised in the Delegated Powers and Law Reform Committee’s letter of 6 February, that the Government has proposed exempting the regulations setting up early years assistance and funeral expense assistance from the process of scrutiny by the Scottish Commission on Social Security on the basis that the Government means to have those assistance types operating potentially before the Commission has been setup. Consultation on those regulations has been underway for some months already.

Part 7 addresses concerns that a Scottish Government might one day do what the UK Government recently did to reverse an Upper Tribunal decision by pushing through regulations on an urgent basis. The same thing could not happen at Holyrood. The Scottish Parliament’s processes are fundamentally different from the processes at Westminster. It would be impossible for a Scottish Government to make such regulations without being expressly authorised to do so by a vote of the whole Scottish Parliament, whereas the UK Government was able to make its regulations, and bring them into force, without the House of Commons having any vote at all.

1. Background

When devolving aspects of social security to Scotland, the UK Parliament took the decision that the existing UK Social Security Advisory Committee should have no role in relation to the Scottish social

security system.¹ Recognising that it may be desirable to have a similar expert body as part of the scrutiny arrangements for the new Scottish system, but that other models were possible, and conscious of the particular role committees play in the Scottish parliamentary system, the Minister for Social Security met with both the Social Security Committee and the Delegated Powers and Law Reform Committee prior to the Bill's introduction to invite members to consider how social security regulations ought to be scrutinised. The Minister set out the background in a letter to the convener of the Social Security Committee dated 22 June 2017.²

In the delegated powers memorandum, which was put before the Parliament alongside the Bill, the Government re-iterated that it saw a case for having additional scrutiny of social security regulations over and above that provided by the affirmative procedure.³ Recognising that the scrutiny of regulations is pre-eminently a matter for the Parliament, the Government invited members to offer a view on what further scrutiny processes, if any, would be appropriate.⁴

In its Stage 1 report on the Bill, the Social Security Committee stated that it wanted the Government to come forward with detailed proposals for the scrutiny of regulations. The Committee further affirmed its support for the creation of an independent advisory body, akin to the UK Social Security Advisory Committee, with a role in assessing draft social security regulations.⁵

Believing that the Government should not be left to devise its own arrangements for the scrutiny of regulations, the Minister for Social Security asked the chair of the Disability and Carer's Benefits Expert Advisory Group (DACBEAG), Dr Jim McCormick, if his group would prepare recommendations. On 12 December 2017, DACBEAG reported with its recommendations,⁶ having consulted both the Social Security Committee and the Delegated Powers and Law Reform Committee as well as others.

On 17 January 2018, the Government lodged amendments to give effect to the advisory group's recommendations. The Social Security Committee took evidence on the Government's amendments on 25 January 2018.⁷ In a letter dated 6 February 2018 to the convener of the Social Security Committee, the Delegated Powers and Law Reform Committee offered its views on the Government's amendments.⁸

2. Purpose and effect of amendment 131

The purpose of amendment 131 in the name of the Minister, and amendments 15 to 17 which setup the Scottish Commission on Social Security (the Commission), is to give effect to the call in the Social Security Committee's Stage 1 report for a super-affirmative procedure that ensures that when scrutinising social security regulations the Parliament has the benefit of advice from an independent expert body. On points of detail, the Government's amendments follow the recommendations in the DACBEAG's December report.

Super-affirmative procedure simply means a procedure for the scrutiny of regulations which includes steps beyond those required by the ordinary affirmative procedure.⁹ A super-affirmative procedure is

¹ [Scotland Act 2016, section 33.](#)

² http://www.parliament.scot/S5_Social_Security/General%20Documents/20170622_Minister_for_Social_Security_to_May_meeting.pdf.

³ [SP Bill 18-DPM Social Security \(Scotland\) Bill \[delegated powers memorandum\] Session 5 \(2017\)](#), paragraphs 4 to 6.

⁴ *Ibid*, and see also [SP OR DPLR 3 October 2017, cols 3–5.](#)

⁵ [Social Security Committee 3rd report, 2017, Stage 1 Report on the Social Security \(Scotland\) Bill \(SP Paper 244\)](#), paragraphs 94 and 106.

⁶ http://www.parliament.scot/S5_Social_Security/Inquiries/Scrutiny_Workstream_DACBEAG_final_report.pdf

⁷ [SP OR SC 25 January 2018.](#)

⁸ http://www.parliament.scot/S5_Social_Security/Inquiries/20180206_DPLR_Letter_to_the_Social_Security_Committee.pdf

⁹ The affirmative procedure is defined in the [Interpretation and Legislative Reform \(Scotland\) Act 2010, section 29.](#)

adopted when the ordinary affirmative procedure is not thought to be adequate. As the point of having a super-affirmative procedure is to cater for the special circumstances surrounding a particular enabling power, the additional steps that are required have to be chosen on a case-by-case basis. In general though, the process for making regulations subject to a super-affirmative procedure typically has 4 steps:

- Step 1: The Government consults on its proposals for regulations, either publically or with specified bodies.
- Step 2: Having reflected on the views expressed during step 1, the Government produces draft regulations which it lays before the Parliament, along with an explanation of what the Government has or has not done in light of the views expressed.
- Step 3: The draft regulations are considered in the usual way by the Parliament's lead committee and by the Delegated Powers and Law Reform Committee. The committees can call for evidence and hold hearings in the usual way.
- Step 4: The whole Parliament votes on whether or not to approve the draft regulations, after the lead committee has reported.

The Government's amendments will subject social security regulations to this 4 step process as described below.

Step 1 is described in subsection (2) of the new section that amendment 131 would insert. It provides that the Government must:

- (a) inform the Commission of the Government's proposals for regulations;
- (b) notify the Parliament that they have done so; and
- (c) publicise the proposals.

The primary purpose of step 1 of the process is to have the Commission submit its views on the Government's proposals. This gives effect to the first part of the recommendation set out in paragraph 106 of the Social Security Committee's Stage 1 report, in which the Committee states:

"The Committee supports the creation of an independent Scottish Social Security Committee with a role similar to the UK Social Security Advisory Committee (SSAC) and a statutory basis. The Scottish SSAC should have an initial focus on assessing the draft regulations produced under the Bill and Ministers should be obliged to consult it on them."

Indeed, amendment 131 goes beyond what section 172 of the Social Security Administration Act 1992 requires of the UK Government. The UK Government is under no statutory obligation to tell the Westminster Parliament that proposals for regulations have been referred to the Social Security Advisory Committee, nor is there any requirement for the UK Government to make public the proposals that it has referred. By requiring that proposals are put in the public domain at the point of being referred to the Commission, amendment 131 creates an opportunity for members of the Parliament, and others, to make representations about the Government's proposals before draft regulations are brought forward. The issues of timing around this are discussed in part 3 of this paper.

Furthermore, as discussed in part 5 of this paper, in contrast to the position under the 1992 Act, amendment 131 provides very few exceptions to the circumstances in which the Government must

refer proposals to the independent advisory body. This accords with another of the key recommendations in the DACBEAG's December report.

Step 2 is expressed in subsections (6) and (7) of the new section that amendment 131 would insert. Respectively, they require the Commission to make public any report it produces on government proposals and the Government to account to the Parliament for what it has or has not done in light of the Commission's reports. This gives effect to the recommendation set out in paragraph 106 of the Social Security Committee's Stage 1 report that:

“[the Commission's] reports and recommendations should be made public and that, if it disagrees with them, the Scottish Government must set out an explanation.”

Steps 3 and 4 are what the affirmative procedure ordinarily requires, and so are not discussed in further detail in this paper.

3. Parliament's role in the process

During its evidence session on 25 January, members of the Social Security Committee questioned the extent to which the Parliament, and particularly its committees, would have an opportunity to be involved at step 1 of the process. Concern was expressed that if the Parliament was not involved at that point, members would have little influence over the final shape of social security regulations.

In its letter dated 6 February, the Delegated Powers and Law Reform Committee expresses the view that by only providing for Parliament to be notified of proposals at step 1 of the process, amendment 131 will render the work of the Parliament an adjunct to the work of the Commission.

In point of fact, by requiring that the Government tell the Parliament that it has submitted proposals to the Commission, and requiring that those proposals be made public, amendment 131 creates an opportunity for Parliament to be involved from the very beginning, at step 1 of the process. Whether or not members individually, or collectively on a committee basis, wish to get involved at that point, and if so how, is a matter for them. It would be unprecedented for a statute to compel parliamentary involvement.

In the Government's view, it is clear that it is the Commission's work that will be the adjunct to the Parliament's. It is the Parliament that will ultimately determine whether or not a set of social security regulations can be made. The point of having the Commission look at what the Government proposes first is so that the Parliament can then perform its work informed by the views of independent experts. That is how the UK Social Security Advisory Committee feeds its expertise into the work of the Westminster Parliament, and having something akin to that is what the Social Security Committee called for in its Stage 1 report. The Government's amendment 118 goes further in making clear that part of the Commission's purpose is to assist the Parliament by enabling the Parliament to request the Commission's input directly. This creates a direct statutory relationship between the Parliament and the Commission: a relationship which has no parallel in the UK system.

Presumably with a view to ensuring that there is time for the Parliament to become involved during step 1 of the process, the Delegated Powers and Law Reform Committee has suggested that the Bill lay down a minimum period for step 1. The precedent the Committee cites for this is section 15 of the Alcohol etc. (Scotland) Act 2010. (Similar provision can be found in the Public Services Reform Act.) As mentioned in part 2, a super-affirmative procedure is adopted where there is perceived to be some special need to supplement the parliamentary scrutiny afforded by the ordinary affirmative procedure. By definition then, the extra procedural elements of any super-affirmative procedure

need to be chosen to address the perceived scrutiny deficit of having the ordinary affirmative procedure apply in the particular context; in other words, as the Delegated Powers and Law Reform Committee recognises in its Stage 1 report on the Bill, there can be no one-size-fits-all approach when devising a super-affirmative procedure. The Alcohol Act requires that before draft regulations imposing a social responsibility levy on licence holders can be laid before the Parliament for approval, certain bodies must be given a fixed period in which to comment on the proposals. The context in which the procedure laid down by the Alcohol Act operates is materially different from the context for social security regulations in two key respects.

First, the aim in the Alcohol Act is to provide an opportunity for certain private, as well as public, bodies to comment on proposals. They may or may not do so, and the regulation-making process cannot be put on hold indefinitely while it is ascertained whether each body who has a right to be consulted has anything to contribute. The only practical solution is to give the bodies a specified period in which to comment, after which the regulation-making process can continue. The purpose of step 1 in the social security context is different. It is to have a statutory body offer its views on the proposals for regulations, and that body has a statutory duty to provide its views. There is no need to leave a prescribed period of time to wait and see whether the Commission will respond to proposals submitted to it. It will be legally required to do so.

Second, the power in the Alcohol Act to set up a social responsibility levy is not the sort of power that is likely to be exercised often. In fact, to date, it has never been exercised. The same will not be true of the powers contained in the Social Security Bill. At the very least, beyond the initial setup phase, there are likely to be annual inflationary uprating regulations. It is also likely that other small but important revisions and refinements will need to be made periodically (as is inevitable with any complex statutory scheme and perhaps especially one that will overlap and interact with the larger and even more complex UK social security system). This is a critical difference between the nature of the social security regulation-making powers and the powers conferred by the Alcohol Act or the Public Services Reform Act. The powers conferred by the latter Acts are, by their nature, powers that will only be exercised infrequently. Having a relatively cumbersome and inflexible scrutiny procedure apply to those powers is therefore not a significant problem.

In its 6 February letter, the Delegated Powers and Law Reform Committee suggests following the model of the Alcohol Act by having a 60 day minimum period for step 1 of the process. It is important to appreciate that the 60 days referred to in the Alcohol Act are not simple calendar days, because days that fall during a parliamentary recess or dissolution are not counted. Suppose that on 4 June this year it emerged that the wording of a particular regulation was having unintended consequences for some individuals. There may be a unanimous view across the Parliament that the problem should be fixed and quickly, but under the approach advocated by the Delegated Powers and Law Reform Committee it could take until 18 December for the change to be made. Taking over 6 months to make an uncontroversial amendment has the potential to be damaging for the individuals affected, and also the potential to damage public confidence in the Parliament's ability to conduct business efficiently and effectively.

Not having a fixed period for step 1 of the process provides flexibility, allowing the Parliament to take a proportionate approach to its scrutiny of social security regulations. Since some regulations will be short and straightforward, and others long and complex, having flexibility is, in the Government's view, more appropriate than adopting a rigid approach that operates in the same way for all regulations. Under the Government's amendments, the duration of step 1 will depend on how long the Commission reasonably needs to consider and report on a given set of proposals.

While not having a fixed period for step 1 of the process does create a possibility that draft regulations may be put before the Parliament before a committee has taken its own evidence on the Government's proposals, the reality is that because the Parliament will have the final say on whether the regulations can be made, it would be extremely unwise for any administration to plough on without waiting to hear from a committee that has indicated that it wants to have its say early in the process. It is, however, worth observing that the evidence from a review of how lead committees have responded this session and last when presented with early stage proposals for orders under the Public Services Reform (Scotland) Act 2010 shows that it is the exception rather than the rule that parliamentary committees undertake significant evidence gathering of their own at step 1 of the process.

The concern that if members wait until step 3 of the regulation-making process to get involved they will have missed the chance to influence the shape of the regulations is not well founded. By default, when draft regulations come before the Parliament for approval, the lead committee has 40 days (not counting recesses) in which to decide whether to recommend to the Parliament as a whole that the regulations should be made.¹⁰ The Minister responsible for the regulations will always appear before the lead committee during this period.¹¹ The committee can call any other witnesses it wishes, or indeed make an open call for evidence. In the social security context, members might also seek further advice from the Commission. If it appears to the committee that the default 40 sitting days will not provide enough time for it to scrutinise the draft regulations as closely as it would wish, the Parliament can allow the committee more time.¹²

If the lead committee concludes that it can only recommend the approval of draft regulations if certain changes are made, the committee can make that clear to the Government. As the Government will not be able to make the regulations unless they have been approved in draft by the Parliament, it is the Government that will have to act to resolve the impasse. Unless the Government is willing to abandon its proposals altogether, the Government would have little option but to lay a new draft of the regulations with suitable adjustments made.

4. **Proposals to make regulations**

In describing step 1 of the regulation-making process, amendment 131 refers to proposals, rather than draft regulations, being put to the Commission. This is consistent with the approach taken in section 172 of the Social Security Administration Act 1992. The wording does not require the Government to present its proposals in the form of draft regulations, nor does it prevent that.

In its 6 February letter, the Delegated Powers and Law Reform Committee asks whether the Government should not always be required to present its proposals at step 1 of the process in the form of draft regulations.

The Government's recent consultations on best start grant¹³ and funeral expenses assistance¹⁴ reflect the sort of material the Government expects would be produced at step 1 of the process — namely, a policy paper accompanied by a set of draft regulations.

¹⁰ Standing Orders, rule 10.6.4 read with rule 10.11.1.

¹¹ *ibid*, rule 10.6.2.

¹² *ibid*, rule 17.2.1(b).

¹³ <http://www.gov.scot/Publications/2017/10/9898>

¹⁴ <http://www.gov.scot/Publications/2017/12/7870>

If members feel that the Bill needs to be prescriptive about the form of what is produced at step 1 of the process, to ensure that future administrations follow this model, the Government will be happy to amend the Bill at Stage 3 to create a requirement for draft regulations to be produced at step 1.

5. Commission's power to disapply enhanced scrutiny

Subsection (9)(b) of the new section that amendment 131 would insert would allow the Commission to decide that there are certain types of proposal that it does not need to be notified about. In its 6 February letter, the Delegated Powers and Law Reform Committee expresses concern about the Commission having that power. If members feel strongly that the power is not one which the Commission should have, the Government would be content to remove it.

The reason for suggesting that the Commission should have the ability to say that it does not need to look at certain types of proposal was to give the Commission a tool to help it manage its workload. The Commission will be a relatively small body, and as Dr McCormick said when he gave evidence to the Social Security Committee on 25 January, its workload will fluctuate. It will have the ability to expand its capacity by setting up committees. Giving it the power to choose not to look at certain types of proposal would be another tool in its box.

The UK Social Security Advisory Committee has a similar power to help it manage its workload.¹⁵ That is in addition to the Secretary of State's discretion not to refer proposals, and a long statutory list of types of proposals that need not be referred.¹⁶ In line with the recommendations of the DACBEAG's December report,¹⁷ these exceptions are not a feature of amendment 131.

Whether proposals have been looked at by the Commission or not, any regulations will still need parliamentary approval. If draft regulations came before the Parliament without the Commission having commented on them, and the Parliament felt it would benefit from having the Commission's input, the Parliament will have the power to require the Commission to report. That is in addition to the lead committee's inherent powers to call members of the Commission, or anyone else, to give evidence. Allowing the Commission to choose not to consider all proposals of a certain kind does not, therefore, mean that the Parliament could not solicit the Commission's views on particular proposals if it wanted.

However, as stated, if the Parliament's preference is to rule out the possibility of the Commission excusing itself from having to look at certain kinds of proposals, the Government is entirely willing to bring forward a Stage 3 amendment to give effect to that.

6. Amendment 132

The Government's amendment 132 would disapply the requirement to consult the Commission in relation to regulations for early years assistance and funeral expense assistance until such date as the Commission confirms it is ready to begin its work.

In its letter of 6 February, the Delegated Powers and Law Reform Committee invites the Social Security Committee to explore the impact of amendment 132.

The rationale behind amendment 132 is simply that if early years assistance and funeral expense assistance are to be taken live when planned, the Commission will not be in place in time to scrutinise the relevant regulations. This does not mean, however, that those regulations will go

¹⁵ [Social Security Administration Act 1992, section 173\(1\)\(b\)](#).

¹⁶ *ibid*, section 173(3) and part 1 of schedule 7.

¹⁷ n 6.

without independent scrutiny. As already mentioned, consultation is already underway.¹⁸ The Government informed the committee of those consultations when they were launched, and it is of course entirely a matter for the committee whether it wants to begin its scrutiny work in relation to the proposals at this point in the process.

There are two features of amendment 132 that are worth briefly highlighting. First, the amendment leaves it to the Commission, not the Government, to say when it is ready to start its scrutiny work (which marks the point at which the amendment ceases to have effect). Second, because amendment 132 relates only to early years assistance and funeral expense assistance, the Government will not be able to begin providing any other types of assistance until the Commission is ready to start its scrutiny work. Thus not only will it not be for the Government to decide how long amendment 132 has effect, the Government has every reason to want the period during which it has effect to be short so that the Government can get on with making the regulations that will be needed for it to start delivering all of the other assistance types.

7. The Social Security (Personal Independence Payment) Amendment Regulations 2017

Throughout the discussion of the Bill, concerns have been expressed about a repeat in the Scottish context of the UK Government's handling of the Social Security (Personal Independence Payment) Amendment Regulations 2017.¹⁹ It should be understood that the very different practices for the scrutiny of subordinate legislation at Holyrood, compared to those operating at Westminster, make what happened in relation to those regulations impossible in the context of the Scottish social security system.

The UK Government's PIP Amendment Regulations reversed the effect of the Upper Tribunal's decision in *MH v Secretary of State for Work and Pensions*.²⁰ The Secretary of State chose not to refer his proposals to the Social Security Advisory Committee before making the regulations. Section 173(1)(a) of the Social Security Administration Act 1992 allows the Secretary of State not to refer proposals to that Committee if, in the Secretary of State's opinion, the situation is one of urgency. The Scottish Government's amendment 131 will give the Scottish Government no such latitude to bypass the Commission.

The Secretary of State was able to make the PIP Amendment Regulations, and have them come into force, without the UK Parliament's approval. This was possible because the regulations were subject to Westminster's version of the negative procedure. The negative procedure at Westminster gives Parliament far less control over subordinate legislation than Holyrood's version of the negative procedure. At Westminster it is possible for the annulment period (i.e. the period during which Parliament can vote down regulations) to expire before MPs have had an opportunity to debate the regulations, and indeed that was what happened in the case of the PIP Amendment Regulations.²¹ Even if Scottish social security regulations were subject to the negative procedure, the same thing could not happen at Holyrood because all negative instruments are looked at as a matter of course within the annulment period by both the Delegated Powers and Law Reform Committee and the lead subject committee.²²

¹⁸ See n 13 and 14.

¹⁹ [S.I. 2017/194](#).

²⁰ [\[2016\] UKUT 531 \(AAC\)](#).

²¹ The House of Lords debated the PIP Amendment Regulations before the end of the annulment period, but as the unelected House concluded that it would be constitutionally improper for it to bring down the elected Government's legislation; it instead passed a motion regretting the Government's decision to make the Regulations ([HL Deb 27 March 2017](#)).

²² Standing Orders, rules 10.1.2 and 10.4.3.

In any case, any equivalent Scottish social security regulations would be subject to the affirmative procedure not the negative procedure. That means the regulations could not be made, let alone be brought into force, without the Scottish Parliament's express approval.

