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Pàrlamaid na h-Alba

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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Subordinate Legislation considered on 12 September 2017**



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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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# Committee Membership



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**Stuart McMillan**  
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Scottish Labour



**Convener**  
**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**David Torrance**  
Scottish National Party

# Introduction

1. At its meeting on 12 September 2017, the Committee agreed to draw to the attention of the Parliament the following instrument.

Universal Credit (Claims and Payments) (Scotland) Regulations 2017 (SSI 2017/227)

2. The Committee's recommendations and conclusions in relation to this instrument are set out in the following chapters of this report.
3. The Committee determined that it did not need to draw the Parliament's attention to the instruments set out by the relevant lead committee at the end of this report.

# Points raised: Instruments subject to negative procedure

Universal Credit (Claims and Payments) (Scotland) Regulations 2017 (SSI 2017/227)  
(Social Security)

## Purpose

4. These Regulations provide for two flexibilities in the operation of the claims and payments system for universal credit in relation to Scotland. Firstly, they provide the option for persons to request payments of Universal Credit twice-monthly rather than monthly, in arrears. Secondly, they provide the option for tenants to request that any Universal Credit housing costs element for rent or a service charge would be paid direct to social and private sector landlords.
5. Regulations 2 and 3 refer in various places to the entitlement of a person to request “twice-monthly” payments in arrears of universal credit. In terms of regulation 2(2), the Secretary of State must agree to such a request unless it is considered to be unreasonable to implement.
6. The Scottish Government has confirmed in its written response to the Committee that the policy intention is that, in place of the single monthly payment, a person entitled to universal credit should be able to choose to receive two payments during each month, roughly equally spaced apart (see Annex A). However, it is not intended that a person will have an entitlement to receive payments on set dates in a month. Accordingly, it is intended that the implementation of the payment dates would be a matter for the Secretary of State.
7. The Committee noted that “twice-monthly” is not an expression which is defined in the Regulations, or in the Social Security Administration Act 1992 under which the instrument is made.
8. The Committee also noted that, in relation to the current payment of universal credit monthly in arrears, regulation 47(2) of the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (S.I. 2013/380) makes provision for the specified payment date. Universal credit is paid within 7 days of the last day of the ‘assessment period’ (which is defined by other Regulations), but if it is not possible to pay universal credit within the 7 days, it is to be paid as soon as reasonably practicable thereafter.
9. **The Committee considered that the Regulations could more clearly implement that policy intention in relation to the payment dates, given that in terms of regulation 2(1) a person has an entitlement to request “twice-monthly” payments. That expression does not specify either the payment dates within a month, that the payments should be roughly equally spaced apart, how they may be calculated, or who may determine the dates.**

- 10. Accordingly, the Committee draws the Regulations to the attention of the Parliament on reporting ground (h) as the meaning of the Regulations could be clearer in a particular respect.**

# No points raised

## **Economy, Jobs and Fair Work**

Renewables Obligations (Scotland) Amendment Order 2017 [draft]

## **Justice**

Scottish Tribunals (Eligibility for Appointment) amendment Regulations 2017 (SSI 2017/274)

Limitation (Childhood Abuse) (Scotland) Act 2017 (Commencement) Regulations 2017 (SSI 2017/279)

## **Local Government and Communities**

Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order (SSI 2017/273)

# Annex A

## Universal Credit (Claims and Payments) (Scotland) Regulations 2017 (SSI 2017/227)

### On 30 August 2017, the Scottish Government was asked:

Regulations 2 and 3 refer in various places to the entitlement of a person to request “twice-monthly” payments in arrears of universal credit. “Twice-monthly” does not appear to be defined in this instrument, or in the Social Security Administration Act 1992 under which the instrument is made (although schedule 1 of the Interpretation Act 1978 defines “month” as calendar month.)

(a) Please clarify, in respect of the entitlement of a person conferred by regulation 2(1) to request payments “twice-monthly”, whether the Scottish Government’s policy intention is that a person may request payments on 2 fixed days in the month (for example, on the 1st and 15th); or any dates in a month separated by 2 weeks (for example, the 2nd and 16th); or any 2 dates at all in a month?

(b) In respect that “twice-monthly” does not specify two particular payment dates in a month, or specify a period or minimum period required between two payment dates in a month, would it be clearer if further definition was added? Otherwise please explain why the provision is considered to be appropriate to implement the policy intention, as clarified?

Regulation 3(1) provides that every person entitled to request twice-monthly payments must be advised that he or she can so request, and be given information about the implications of that choice. Regulation 5(1) makes a comparable provision, in relation to a request for direct payments under regulation 4(1).

(a) So far as those provisions specify obligations to advise and to provide information, who is to implement the obligations ?

(b) Would it be clearer if the person requiring to implement the obligations was specified? Otherwise please explain why the provisions are considered to be sufficiently clear.

### The Scottish Government responded as follows:

The Regulations referred to are made by the Scottish Ministers under powers devolved by sections 29 and 30 of the Scotland Act 2016, which empower them to introduce flexibilities in relation to delivery of Universal Credit (UC). The Secretary of State retains responsibility for delivery of that social security benefit. The operation of the Regulations falls to be understood in that context.

As set out in regulation 2(1), the default position for delivery of UC is a monthly payment, in arrears. That is provided for by the Universal Credit, Personal Independence Payment, Jobseeker’s Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013 (SI 2013/380). Those Regulations do not define what “monthly” means, but the meaning is plainly that of the Interpretation Act 1978, a calendar month. It can be contrasted with the provision in the same Regulations for payment of Personal Independence Payment, for which the default position is a payment four-weekly, in arrears.

The policy of the Scottish Government is that in place of the single monthly payment, a person entitled to UC should be able to choose to receive two payments during each

month, roughly equally spaced apart. Practical difficulties would emerge if the Secretary of State had to make payments on set dates in a month (not least that months vary on length and because of weekends) and the Scottish Ministers are content to leave implementation of payments to the Secretary of State, rather than to make detailed requirements as to timing.

In practice, the Secretary of State will operate requests similarly to how he operates his existing discretion to arrange for payments to be made other than monthly.

The information that the Regulations require to be provided about the Scottish UC flexibilities will be given by the Secretary of State. How the Secretary of State arranges for that information to be given is left for him to determine in terms of the Regulations, though it will be included in administrative discussions between the two Governments around delivery of the UC flexibilities.

The Scottish Government considers this to be clear in context, as the persons to whom the information is to be given are either persons who have applied to the Secretary of State for UC, or who are being paid UC by him. Also, only the Secretary of State would hold the data needed to determine the subset of persons to whom no information need be supplied, as set out in regulation 3(2). Nobody else could therefore arrange to provide the information.

The wording of the Regulations would allow the Secretary of State to agree with someone else for them to provide the required information.

Although the Scottish Ministers will be separately publicising the existence of the flexibilities that the Regulations create, it is not currently intended that they will provide the information that the Regulations require to be given.

