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

Carer's Allowance Supplement (Scotland) Bill: Stage 1



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Contents

Introduction	1
Overview of the Bill	2
Delegated powers	3

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.



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Introduction

1. At its meeting on 7 September 2021, the Delegated Powers and Law Reform Committee considered the delegated powers provisions in the [Carer's Allowance Supplement \(Scotland\) Bill](#) ("the Bill") at Stage 1.
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of the Standing Orders.
3. The Scottish Government has provided the Parliament with a [Delegated Powers Memorandum](#) ("DPM") on the delegated powers provisions in the Bill.

Overview of the Bill

4. The Scottish Government Bill was introduced by the Cabinet Secretary for Social Justice, Housing and Local Government, Shona Robison MSP, on 22 June 2021. The lead committee is the Social Justice and Social Security Committee.
5. The Bill will provide unpaid carers who receive carer's allowance with extra financial support in recognition of the loss of income and increased costs many have faced as a result of the coronavirus outbreak. This additional financial support would cover the period from 1 October 2021 to 31 March 2022.
6. Section 81 of the Social Security (Scotland) Act 2018 enables the Scottish Ministers to make payment of a carer's allowance supplement by reference to a formula which is set out in section 81(4) of that Act. The Bill will increase the amount calculated under the 2018 Act by £231.40. The amount of carer's allowance supplement in respect of the period of 1 April 2020 to 30 September 2020 was previously modified by the Coronavirus (Scotland) (No.2) Act 2020 so that it was £230.10 greater than the amount calculated according to the formula in section 81 of the Social Security (Scotland) Act 2018.
7. The Bill also adds a delegated power to the 2018 Act to allow the Scottish Ministers to increase the amount of a carer's allowance supplement going forward by regulations rather than by primary legislation.

Delegated powers

8. There are two provisions in the Bill conferring power to make subordinate legislation. The Committee considered each in turn.

Section 2(a) – Power to increase amount of carer's allowance supplement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

9. Section 2(a) of the Bill adds a new delegated power to section 81 of the Social Security Act 2018. The new power will allow future increases of carer's allowance supplement to be set out in regulations rather than in primary legislation.
10. Section 2(b) of the Bill amends section 96 of the 2018 Act so that any regulations under the new power are subject to the affirmative procedure.

11. The Committee was content with the proposed power in principle and also that the exercise of the power will be subject to the affirmative procedure.

Section 3(2) – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: laid, no procedure

12. Section 3 of the Bill sets out when the provisions of the Bill come into force. Sections 1, 3 and 4 come into force on the day after Royal Assent (see section 3(1)).
13. Section 3(3) allows for transitional, transitory and savings provisions to be included in commencement regulations made under section 3(2).
14. The Committee noted that section 3(2) is in standard form for a commencement provision of a Bill. It allows the Scottish Ministers to bring section 2 of the Bill into force at a future date by regulations. It is also standard that commencement regulations are laid before the Parliament but are not subject to either the negative or the affirmative procedure.
15. The Committee was however unclear from the DPM or the Explanatory Notes why section 2 cannot be commenced with the rest of the provisions of the Bill on the day after Royal Assent.
16. Given the expedited nature of the Bill, it was not possible for the Committee to question the Scottish Government on why section 2 cannot be commenced with the rest of the provisions of the Bill on the day after Royal Assent.

17. The Committee therefore calls on the Scottish Government to respond to the Committee ahead of Stage 2 on why the power in section 3(2) is necessary and whether section 2 of the Bill could be commenced at the same time as the other provisions of the Bill.

