

Delegated Powers and Law Reform Committee
Tuesday, 28th January 2025
4th Meeting, 2025 (Session 6)

Instrument Responses

Disclosure (Scotland) Act 2020 (Incidental, Supplementary and Consequential Provision) Regulations 2025 (SSI 2025/Draft)

NB: the original instrument to which these questions relate was withdrawn by the Scottish Government on 21 January 2025. The instrument considered by the Committee at this meeting was re-laid on the same day to replace it.

On Friday 17th January 2025, the Committee asked the Scottish Government:

1. In the amendment made by schedule 1, part 1, paragraph 5 of the instrument, substituting paragraph 5 of schedule 2 of SSI 2010/181, should “(“or has been offered to carry out”)” be “(“or has been offered or supplied to carry out”)?
2. Schedule 1, part 3, paragraph 13(7)(e)(ii) of the instrument amends paragraph 3(b) of part II of schedule 2 of the principal regulations SSI 2010/208. Paragraph 3(b) currently provides that:
 - the applicant must include, “where required by [regulation 5(3)(f) of the principal regulations], any existing [disclosure] the applicant holds.”

As amended by the instrument, paragraph 3(b) will provide that:

- the applicant must include “when required by the Health Board under [regulation 5(3)(f) of the principal regulations], any existing [disclosure] the applicant holds” (emphasis added).

This could suggest that the Health Board has some discretion whether to require this to be done. However, regulation 5(3)(f) of the principal regulations suggests there is no discretion: it requires that, before determining an application, a Health Board “shall” obtain any disclosure required in respect of the application.

Is the insertion of “when required by the Health Board” intentional, and does it achieve the policy intention?

3. Schedule 2 of the instrument revokes three instruments which make provision in relation to criminal records checks on individuals (and members of their household) who provide accommodation to Ukrainian refugees (SSIs 2010/168, 2022/97 and 2022/158). Could confirmation be provided that provision for these checks is, or will be, made elsewhere, or that such provision is no longer required?

4. Please advise whether any corrective action is proposed, and if so, what action and when.

On 21st January 2025, the Scottish Government responded:

1. Yes, the amendment made by schedule 1, part 2, paragraph 5 of the instrument, substituting paragraph 5 of schedule 2 of SSI 2010/181, should be “(or has been offered or supplied to carry out)”. While the Scottish Government consider that this provision would still achieve its intended operative effect without the insertion of the words “or supplied”, as corrective action will be undertaken in relation to Question 2, this will be rectified at the same time.
2. No, the amendment made by schedule 1, part 3, paragraph 13(7)(e)(ii) of the instrument which amends paragraph 3(b) of part II of schedule 2 of the principal regulations (SSI 2010/208) to insert “when required by the Health Board” is not intentional and it does not achieve the current policy intention. Instead, the amendment to paragraph 3(b) of part II of schedule 2 of the principal regulations (SSI 2010/208) should read “where required by that regulation, any existing PVG Level 2 disclosure or scheme record the applicant holds.”
3. The provision in regulation 10 of SSI 2010/168 (as amended by SSIs 2022/97 and 2022/158) is now provided for in regulation 6(2)(i) and (j) of SSI 2024/315. That regulation prescribes the purposes for which Level 2 disclosures can be sought in relation to non-PVG Scheme members and will come into force on the same day as section 8 of the Disclosure (Scotland) Act 2020 (Level 2 disclosure).
4. Corrective action is proposed to address the points raised in questions 1 and 2 in relation to this instrument. The Scottish Government will seek to withdraw the instrument and lay a corrected version as a matter of urgency.