

Delegated Powers and Law Reform Committee
Tuesday, 18th February 2025
6th Meeting, 2025 (Session 6)

Instrument Responses

Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2025 (SSI 2025/Draft)

NB: the original instrument to which these questions relate was withdrawn by the Scottish Government on 10th February 2025. The instrument considered by the Committee at this meeting was re-laid on the same day to replace it.

On Thursday 30th January 2025, the Committee asked the Scottish Government:

1. Paragraph 2 of the schedule to the instrument makes saving provision in respect of the Welfare Foods (Best Start Foods) Regulations 2019. It appears that the provision is intended to apply so that the previous value of the benefit continues to be payable in respect of the period on or after 1 April 2024 and before 1 April 2025.

Paragraph 2 of the schedule states that “despite regulation 4, regulation 10 [kinds of assistance] of the Best Start Foods Regulations 2019, continues to have effect”, however regulation 10 has not been amended by this instrument. Should paragraph 2 refer instead to regulation 13 of the Best Start Foods Regulations [value of benefit], which has been amended by this instrument?

2. Please confirm whether any corrective action is proposed, and if so, what action and when.

On Friday 7th February 2025, the Scottish Government responded:

Paragraph 2 of the schedule of the Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2025 (“the Regulations”) is intended to make provision so that the previous value of payments under the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (“the 2019 Regulations”) continues to apply in certain circumstances. The value is set out in regulation 13 of the 2019 Regulations, which is amended by regulation 4.

We are grateful to the Committee for drawing our attention to the typographical error in paragraph 2(2) of the schedule of the Regulations, and confirm that this should refer to regulation 13 of the 2019 Regulations, and not regulation 10.

We propose to correct this error by withdrawing and re-laying a corrected version of the Regulations. While we consider that the provision would properly be interpreted as intended notwithstanding the error, it is considered appropriate in the circumstances to take this corrective action.

Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2025 (SSI 2025/Draft)

NB: the original instrument to which these questions relate was withdrawn by the Scottish Government on 10th February 2025. The instrument considered by the Committee at this meeting was re-laid on the same day to replace it.

On Thursday 30th January 2025, the Committee asked the Scottish Government:

1. This question concerns the sequencing of the commencement of this instrument and of the Scottish Pubs Code Regulations 2024 (“the Code”), specifically in relation to the commencement of Parts 3 and 4 of the Code. Regulation 1 of the Code (as amended by SSI 2024/245, which is already in force), will bring the whole of the Code into force on 31 March 2025. The draft instrument seeks to postpone the commencement of Parts 3 and 4 of the Code to 30 June 2025, by amending regulation 1. By operation of ILRA s. 3, both regulation 1 (as amended by SSI 2024/245) and the amendment made by the draft instrument come into force at the same moment (the beginning of the day on 31 March 2025). Once Parts 3 and 4 have commenced their commencement cannot be undone by amendment. Therefore, should the amendment made by the draft instrument be timed to come into force before 31 March 2025, in order to be effective in postponing the commencement of Parts 3 and 4?
2. Please advise whether any corrective action is proposed, and if so, what action and when.

On 6th February 2025, the Scottish Government responded:

1. Thank you for drawing attention to the concern on the sequencing of the commencement date in the draft instrument with the commencement date of the Scottish Pubs Code Regulations 2024 (“the Code”), and the potential impact upon the legal effect of the draft instrument.
2. The Scottish Government have carefully considered the matter and to avoid any potential ambiguity in commencement of Parts 3 and 4 of the Code advise that we intend to withdraw the draft instrument, revise the coming into force date of the draft instrument and relay the draft instrument.

Prisoners (Early Release) (Scotland) Act 2025 (Commencement) Regulations 2025 (SSI 2025/17 (C. 3))

On Thursday 30th January 2025, the Committee asked the Scottish Government:

While the Committee is aware that this was an emergency Bill and its passage was expedited, could an explanation please be provided in relation to the unusually short period between Royal Assent and commencement by this instrument, given the convention that this period should not usually be shorter than two months?

On Tuesday 4th February 2025, the Scottish Government responded:

The Scottish Government acknowledges the convention in relation to the period between Royal Assent for an Act and its commencement and note that it is in place, principally, to allow those affected by the new legislation time to prepare for its implementation. However, the Scottish Government considers that commencing this Act within 2 months of Royal Assent is both proportionate and necessary and has taken steps to ensure that those affected by commencement are prepared for it.

The Scottish Parliament agreed to treat the Bill under the emergency procedure due to the risks associated with the prison population reaching critical levels. When the Bill was passed by the Scottish Parliament, the prison population was 8289. When these Regulations were made on 27 January, the prison population was 8225. As well as remaining at critically high levels, the complexities of the prison population requires that many groups are required to be accommodated separately from others putting considerable strain on the Scottish Prison Service's (SPS) ability to maintain the safety and security of prisoners and staff. These pressures are impacting on SPS's ability to run rehabilitative programmes for prisoners.

The Scottish Government considers that commencement of the Act requires to be swift and coordinated to ensure the prison population can be reduced both immediately and sustainably. Since the Bill was passed by the Scottish Parliament, the Scottish Government has worked with SPS and other partners to prepare for commencement and ensure that plans are in place for those due to be released in the initial tranches provided for in the Act. This has involved coordinated work across the public and third sector with weekly meetings including representatives from social work, housing, courts, employment services, and victim support organisations. Together with partners, the focus is on ensuring a smooth transition to the new process and coordinated release planning. Work is continuing with victim support organisations to ensure that victims are aware of the victim notification scheme and provided with the necessary support.