

DELEGATED POWERS AND LAW REFORM COMMITTEE

19th Meeting, 2022 (Session 6) Tuesday 14 June 2022

Instrument Responses

SSI 2022/179	The Justice of the Peace Court Fees (Scotland) Order 2022 – regulation 4(1)(d)(i)
SSI 2022/181	The Sheriff Court Fees Order 2022 – article 9(1)(d)(i)
SSI 2022/182	The High Court of Justiciary Fees Order 2022 – article 4(1)(d)(i)
SSI 2022/183	The Sheriff Appeal Court Fees Order 2022 – article 4(1)(d)(i)
SSI 2022/184	The Adults with Incapacity (Public Guardian’s Fees) (Scotland) Regulations 2022 – regulation 4(1)(d)(i)
SSI 2022/185	The Court of Session etc. Fees Order 2022 – article 5(1)(d)(i)

On 31st May the Scottish Government was asked:

Each instrument contains a regulation/article headed “Exemption of certain persons from fees: social security” (the provision number in each is noted above). It provides, in each case, that a fee is not payable by a person if they or their partner is in receipt of working tax credit, provided that child tax credit is being paid to the person or their partner, or otherwise following a claim for child tax credit made jointly by the members of “a couple (as defined in section 3(5A) of the Tax Credits Act 2002)” which includes the person or their partner.

Section 3(5A) of the 2002 Act defines “couple” in such a way that it does not include people who are in a same sex marriage or an opposite sex civil partnership. Please explain, including with reference to Convention rights if applicable, why it is not necessary also to exempt persons who would otherwise qualify for an exemption under the provision but who are in a same sex marriage or an opposite sex civil partnership?

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

On 7 June, the Scottish Government responded:

Section 3(5A) of the Tax Credits Act 2002 has been amended by paragraph 23(2) of schedule 3 of the Civil Partnership (Opposite-sex Couples) Regulations 2019 (“the 2019 Regulations”) so that “couple” means-

- (a) two people who are married to, or civil partners of, each other and are neither—
 - (i) separated under a court order, nor
 - (ii) separated in circumstances in which the separation is likely to be permanent, or

(b) two people who are not married to, or civil partners of, each other but are living together as if they were a married couple or civil partners.

That amendment extends to Scotland by virtue of regulation 2(4), read in conjunction with section 69 of the Tax Credits Act 2002. The footnote relating to the Tax Credits Act 2002 in each of the 6 instruments will be updated by correction slip to include reference to the 2019 Regulations.

We note that the Westlaw version of section 3(5A) of the Tax Credits Act 2002 is showing an out of date version of the provision that does not include people who are in a same sex marriage or an opposite sex civil partnership.