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

Subordinate Legislation considered on 28 March 2017



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Contents

Introduction	1
Points raised: instruments subject to negative procedure	1
No points raised	3
Annex A	3
Annex B	4

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>



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Convener
John Scott
Scottish Conservative
and Unionist Party



Deputy Convener
Stuart McMillan
Scottish National Party



Alison Harris
Scottish Conservative
and Unionist Party



Monica Lennon
Scottish Labour



David Torrance
Scottish National Party

Introduction

1. At its meeting on 28 March 2017, the Committee agreed to draw the attention of the Parliament to the following instrument—

Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017 (SSI 2017/85)

2. The Committee's recommendations in relation to the above instrument are set out in the next chapter of this report.
3. The Committee determined that it did not need to draw the Parliament's attention to the instruments set out at the end of this report.

Points raised: instruments subject to negative procedure

[Non-Domestic Rates \(Transitional Relief\) \(Scotland\) Regulations 2017 \(SSI 2017/85\)](#)
(Local Government and Communities)

Purpose

4. The purpose of the Regulations is to reduce the amount payable as non-domestic rates for certain properties, for 2017-18. These are properties wholly or mainly used for specified purposesⁱ, that were so used on 31 March 2017 (or, if unoccupied on that date, were so used when last occupied), subject to certain other conditions.
5. As explained in the Policy Note, the Regulations provide that, unless a property is shown in a split or reorganised entry on the valuation roll or a merged entry taking effect after 1 April 2017, any increase in the 'gross bill' for a day in 2017-18 is to be no more than 12.5 per cent (real terms) of the gross bill for 31 March 2017.
6. Irrespective of any such limitation of the gross bill, a separate 50% relief is applicable to properties (which are not shown in a split, reorganised or merged entry) for which on 31 March 2017 the rateable value was no more than £10,000, and the amount payable for that day was reduced to zero by any reliefs. If the property is shown in a split or reorganised entry taking effect at revaluation (i.e. on 1 April 2017), a reduction is applied to the gross bill and then uplifted by 12.5 per cent.
7. The Regulations are subject to the negative procedure. They come into force on 1 April 2017.

Breach of the "28 day rule"

8.

ⁱ The specified purposes are use as bed and breakfast accommodation, camping site, caravan or caravan site, chalet or holiday hut, guest house, hotel or hostel, public house, restaurant, small renewable energy generation (hydro) scheme, self-catering holiday accommodation, timeshare accommodation, and (in Aberdeen and Aberdeenshire only) offices.

The Regulations fail to comply with the “28 day rule” contained in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”). They were laid before the Parliament on 16 March and come into force on 1 April. The “28 day rule” provides that where a Scottish statutory instrument is subject to the negative procedure, it must be laid at least 28 days before the instrument comes into force.

9. The rule aims to secure a sufficient time for Parliamentary scrutiny of a negative procedure instrument, before it comes into force. It also provides for a minimum period between laying the instrument and the coming into force date, for persons to become aware of the provisions before they come into force. However, a breach of the rule does not affect the validity of the Regulations.
10. In accordance with section 31 of ILRA, the Head of non-domestic rates policy, Local Government and Analytical Services Division, Scottish Government wrote to the Presiding Officer on 16 March 2017, to explain why the requirements of section 28(2) have not been met in this case. The correspondence is reproduced at Annex A.
11. While the letter provides reasons for a delay in laying the Regulations, in relation to the breach of the 28 day rule it did not provide an explanation to the Committee of-
 - why a delay in laying was necessary between 3 March and 16 March when the instrument was laid before Parliament. (Laying on 3rd would have complied with the rule)
 - what inconvenience or detriment, if any, has been incurred by stakeholders or ratepayers as a result of the delay in laying and publishing the Regulations.
12. Accordingly, the Committee sought further information from the Scottish Government on those aspects. The correspondence is reproduced at Annex B.
13. In light of the explanation provided in the letter to the Presiding Officer, as supplemented by the written response, the Committee finds the breach of section 28(2) of ILRA acceptable in this particular instance.

The Committee draws the Regulations to the attention of the Parliament under reporting ground (j). The instrument fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

The Regulations were laid before the Parliament on 16 March, and come into force on 1 April 2017. They do not respect the requirement that at least 28 days should elapse between the laying of an instrument which is subject to the negative procedure and the coming into force of that instrument.

The Committee finds the failure to comply with section 28 to be acceptable in the circumstances, as outlined in the letter from the Local Government & Analytical Services Division in the Scottish Government to the Presiding Officer dated 16 March 2017 supplemented by a written response to the Committee on the Regulations.

No points raised

Local Government and Communities

Valuation Appeal Committee (Procedure in Appeals under the Valuation Acts) (Scotland) Amendment Regulations 2017 (SSI 2017/78)

Rural Economy and Connectivity

Roads (Scotland) Act 1984 (Environmental Impact Assessment) Regulations 2017 [draft]

Transport and Works (Scotland) Act 2007 (Environmental Impact Assessment) Regulations 2017 [draft]

Transport and Works (Scotland) Act 2007 (Applications and Objections Procedure) Amendment Rules 2017 (SSI 2017/74)

Little Loch Broom Scallops Several Fishery Order 2017 (SSI 2017/77)

Road Traffic (Permitted Parking Area and Special Parking Area) (Angus Council) Designation Order 2017 (SSI 2017/79)

Parking Attendants (Wearing of Uniforms) (Angus Council Parking Area) Regulations 2017 (SSI 2017/80)

Road Traffic (Parking Adjudicators) (Angus Council) Regulations 2017 (SSI 2017/81)

Road Traffic (Permitted Parking Area and Special Parking Area) (Stirling Council) Designation Order 2017 (SSI 2017/82)

Parking Attendants (Wearing of Uniforms) (Stirling Council Parking Area) Regulations 2017 (SSI 2017/83)

Road Traffic (Parking Adjudicators) (Stirling Council) Regulations 2017 (SSI 2017/84)

Annex A

Dear Presiding Officer

The Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017

The Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017, SSI 2017/85 were made by the Scottish Ministers under section 153 of the Local Government etc. (Scotland) Act 1994 on 16 March 2017. They are being laid before the Scottish Parliament today, 16 March 2017, and come into force on 1 April 2017.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) has not been complied with. To meet the requirements of section 31(3) that Act, this letter explains why.

The Regulations provide for a cap on increases in non-domestic rates bills for certain properties between 2016-17 and 2017-18, as announced in a ministerial statement on 21 February 2017 by the Cabinet Secretary for Finance and the Constitution, and associated

provisions. The policy intention, and the expectation of stakeholders, is for this measure to take effect from 1 April 2017.

Following non-domestic rating proposals in the 2017-18 Draft Budget published on 15 December 2016, further analysis was undertaken on the impact of the 2017 revaluation as the Assessors' provisional values continued to be revised ahead of valuation rolls being made up. There was also associated further engagement with business stakeholders and rating practitioners, and that work continued to finalise robust policy detail for these regulations following the ministerial statement.

The detail of the Regulations is complex, including provision for interaction with various rating provisions already in force under other enactments. This has taken longer than anticipated to consider, relating to the policy complexity, the level of analysis of evolving revaluation data to ensure budget clarity, and the need to engage key stakeholders to inform consideration of potential outcomes and practicability.

I apologise for the non-compliance referred to above, and hope that the above reasons provide a suitable explanation for the delay. I would be happy to provide any further information required.

Annex B

Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2017 (SSI 2017/85)

On 21 March 2017, the Scottish Government was asked:

The Head of non-domestic rates policy, Local Government and Communities Directorate, Scottish Government has sent a letter to the Presiding Officer dated 16 March to explain why section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 28 day rule”) has not been complied with. The last sentence of the letter states that any further information required could be provided.

1. In relation to the penultimate paragraph of the letter, we note that the instrument was laid on 16 March, and given the commencement date of 1 April it would have complied with the “28 day rule” had it been laid on 3 March. That paragraph explains that the policy complexity, etc. of the Regulations has taken longer than anticipated to consider.

Please provide further details as to why a laying date of 3 March could not be achieved, and what steps required to be taken from 3 March up to 16 March.

2. Please clarify what, if any, inconvenience or detriment has been incurred by stakeholders and non-domestic ratepayers, due to the Regulations being laid on 16 March and then published, rather than on 3 March.

On 23 March 2017, the Scottish Government responded as follows:

1. Until the taking by Ministers of the decisions which were announced on 21st February, it was not possible to begin work on the drafting of these Regulations. Whilst the decisions provided the broad scope of the transitional relief to be awarded, many of the details (particularly regarding the interaction between transitional relief and other provisions for relief from rates) required to be worked up. The last comparable transitional relief scheme introduced in Scotland was contained within the Non-Domestic Rates (Levying) (Scotland)

Regulations 2005 (SSI 2005/126). Whilst those Regulations provided a helpful template for the current Regulations, their provisions required to be worked through in detail to ascertain whether they remained fully apt for the current scheme. Throughout the process of producing and revising drafts of the Regulations, the Scottish Government considered it essential to seek input from assessors and local authority practitioners. In all the circumstances, the Scottish Government did not consider that the Regulations could be made at such a time as to allow the 28-day rule to be complied with without running substantial risks that the Regulations might contain flaws or would not fully deliver the policy.

2. The Scottish Government does not consider that any substantive inconvenience or detriment has resulted from these Regulations being laid on 16th March (rather than on 3rd March). The Regulations needed to be in final form so as to allow local authority billing to go forward and to enable authorities to receive applications for transitional relief. However, these activities were also dependent on final 1st April rateable values being available. Rateable values were not finalised until 15th March 2017.

