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

Subordinate Legislation considered on 16 May 2017



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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>



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Introduction

1. At its meeting on 16 May 2017, the Committee agreed to draw to the attention of the Parliament the following instruments—
 - M90/A90 Trunk Road (Admiralty Interchange to Dalmeny) (Variable Speed Limits, Actively Managed Hard Shoulder and Bus Lane) Regulations 2017 (2017/129)
 - Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 2) Regulations 2017 (2017/149)
2. The Committee's recommendations in relation to the above instruments are set out in the following chapter of this report.
3. The Committee determined that it did not need to draw the Parliament's attention to the instruments set out by the relevant lead committee at the end of this report.

Points raised: instruments subject to negative procedure

[M90/A90 Trunk Road \(Admiralty Interchange to Dalmeny\) \(Variable Speed Limits, Actively Managed Hard Shoulder and Bus Lane\) Regulations 2017 \(2017/129\) \(Rural Economy and Connectivity\)](#)

Purpose

4. The Regulations provide for variable speed limits, a bus lane and an actively managed hard shoulder on various sections of the M90/A90 Edinburgh to Fraserburgh Trunk Road, from Admiralty Interchange to Dalmeny. These Regulations are connected to the Forth Replacement Crossing project. Construction of the Crossing was authorised by the Forth Crossing Act 2011.
5. Contravention of the Regulations is an offence under the Road Traffic Regulation Act 1984 (section 17). The Regulations also apply the requirements of the Motorways Traffic (Scotland) Regulations 1995 to the various sections of road mentioned above, as if they have been modified to provide for “an actively managed hard shoulder”, which may be driven on in certain circumstances. The only vehicles permitted to drive on the actively managed hard shoulder, apart from authorised emergency uses, are motor vehicles constructed or adapted to carry more than 23 seated passengers, exclusive of the driver.
6. The Regulations are subject to the negative procedure and come into force on 26 May 2017.

Comment

7. Through correspondence with the Scottish Government, the Committee has identified a drafting error in the Regulations, which the Scottish Government has acknowledged (See Annex A).
8. Regulation 6 applies the Motorways Traffic (Scotland) Regulations 1995 (“the 1995 Regulations”) to the “relevant road”, as if they have been modified to provide for an actively managed hard shoulder. The “relevant road” is the M90/A90 Edinburgh – Fraserburgh Trunk Road from Admiralty Interchange to Dalmeny. This will permit the use of an actively managed hard shoulder on the new Queensferry Crossing by specified buses in certain circumstances.
9. Regulation 6 among other things modifies the 1995 Regulations, in their application to the “relevant road”, to make provision for how restrictions on stopping and other traffic restrictions apply to an “emergency refuge area”. The definition of that expression in regulation 6(a)(i) appears to be defectively drafted. It is defined as “a part of the relevant special road which” meets certain criteria set out in heads (a) and (b).
10. The “relevant special road” is not defined by this instrument, the Road Traffic Regulation Act 1984 by virtue of which it is made, or the 1995 Regulations.

11. The Scottish Government has indicated to the Committee that it “will keep the possibility of an amendment to correct this drafting error under review when considering future regulations in this area.” Given that Regulation 6 of the instrument makes provision for the actively managed hard shoulder on the new Queensferry Crossing, which is a development of major significance, the Committee is of the view that the error should be corrected by amendment as soon as possible.

Recommendation

12. **The Committee accordingly draws the Regulations to the attention of the Parliament on reporting ground (i), as the definition of “emergency refuge area” in regulation 6(a)(i) appears to be defectively drafted.**
13. **The Committee also recommends that the error should be corrected by amendment as soon as possible.**

Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 2) Regulations 2017 (2017/149) (Local Government and Communities)

Purpose

14. The purpose of these Regulations is to correct defects which the Committee reported on at its meeting on 9 May 2017 in relation to the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (S.S.I. 2017/120).
15. The Regulations are subject to the negative procedure and come into force on 31st May 2017, apart from regulation 2 which comes into force on 1st June 2017.

Comment

16. 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 10th May 2017 and come into force on 31st May 2017, apart from regulation 2 which comes into force on 1st June 2017.
17. 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. A breach of the rule does not affect the validity of the Regulations.
18. In accordance with section 31 of ILRA, the Scottish Government wrote to the Presiding Officer, to explain why the requirements of section 28(2) have not been met in this case. The reason for the breach of the section is to correct timeously the defects which the Committee identified in S.S.I 2017/120. (See Annex B)

19. **Accordingly, 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.**

20. **The Committee finds the failure to comply with section 28 to be acceptable in the circumstances as the Regulations correct timeously defects which the Committee previously identified in the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017.**
21. **In accordance with the Committee's objective of reducing the number of outstanding instruments that need to be amended wherever possible, the Committee welcomes the fact that the Scottish Government has brought forward an amending instrument so promptly.**

No points raised

Economy, Jobs and Fair Work

Insolvency (Regulation (EU) 2015/848) (Miscellaneous Amendments) (Scotland) Regulations 2017 [draft]

Education and Skills

Academic Awards and Distinctions (University of the Highlands and Islands) (Scotland) Order of Council 2017 (2017/146)

Justice

Human Trafficking and Exploitation (Scotland) Act 2015 (Relevant Trafficking or Exploitation Offences and Relevant UK Orders) Regulations 2017 [draft]

Criminal Justice (Scotland) Act 2016 (Consequential and Transitional Provisions) Regulations 2017 [draft]

Human Trafficking and Exploitation (Scotland) Act 2015 (Commencement No. 3 and Transitional Provisions) Regulations 2017 (2017/140)

Annex A

M90/A90 Trunk Road (Admiralty Interchange to Dalmeny) (Variable Speed Limits, Actively Managed Hard Shoulder and Bus Lane) Regulations 2017 (SSI 2017/129)

On 2 May 2017, the Scottish Government was asked:

Regulation 6 applies provisions of the Motorways Traffic (Scotland) Regulations 1995 (SI 1995/2507), as modified, to the “relevant road”, which term is defined by regulation 2 as the road known as the M90/A90 Edinburgh – Fraserburgh Trunk Road from Admiralty Interchange to Dalmeny.

Regulation 6(a)(i) among other provisions inserts the same definition of the “relevant road” into the 1995 Regulations, for the purpose of the application of those Regulations, and inserts a definition of “emergency refuge area” for the same purpose.

“Emergency refuge area” is defined to mean a part of the “relevant *special* road” which is further described in regulation 6(a), but it appears that this term is not defined by the 1995 Regulations or this instrument.

(1) Please clarify whether it was intended to refer to the “relevant road” (as further defined in regulation 6(a)) within the definition of “emergency refuge area”?

(2) Is it agreed there is an error, and is corrective action proposed?

The Scottish Government responded as follows:

(1) The term “relevant special road” within the definition of “emergency refuge area” in regulation 6(a)(i) is a drafting error. This error is not considered to have a material impact on the operation of the regulations. The Government considers that the term “relevant special road” can in the circumstances only be read as applying to that part of the M90/A90 special road defined and referred to as the “relevant road” in regulations 2 and 6 of the Regulations and in modified regulation 2 of the 1995 Regulations.

(2) For the foregoing reasons no corrective action is considered to be required at this time. The Government will keep the possibility of an amendment to correct this drafting error under review when considering future regulations in this area.

Annex B

Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment (No. 2) Regulations 2017 (SSI 2017/149)

Breach of laying requirements: letter to the Presiding Officer

The above instrument was made under section 252 of the Town and Country Planning (Scotland) Act 1997. It is being laid before Parliament today. The Regulations, other than regulation 2, come into force on 31 May 2017. Regulation 2 comes into force on 1 June 2017.

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

The general effect of the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120) is to increase some maximum fees currently payable under the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004.

SSI 2017/149 is required to correct errors in the SSI 2017/120, including errors which were identified by the Delegated Powers and Law Reform Committee. The Committee drew the instrument to the attention of the Scottish Government on two accounts.

(1) There is an error in the specification of the fee in paragraph 8 of the table of fees. The figure of £30,240 in sub-paragraph (b) should be £30,476.

(2) SSI 2017/120 did not amend paragraph 14 of schedule 1 of the 2004 Regulations to reflect the increased fees in the new table of fees.

It is necessary to make corrections in order to ensure that the amended fees regime operates as intended from the date on which SSI 2017/120 comes into force on 1 June 2017. It is therefore necessary to breach the 28 day laying requirement.

