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Pàrlamaid na h-Alba

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

## **Subordinate Legislation considered on 9 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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# Committee Membership



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**Alison Harris**  
Scottish Conservative  
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**Monica Lennon**  
Scottish Labour



**David Torrance**  
Scottish National Party

# Introduction

1. At its meeting on 9 May 2017, the Committee agreed to draw to the attention of the Parliament the following instrument—

Town and Country Planning (Fees for Applications and Deemed Applications)  
(Scotland) Amendment Regulations 2017 (2017/120)
2. The Committee's recommendations in relation to the above instrument 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 at the end of this report.

# Points raised: instruments subject to negative procedure

## Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (2017/120) (Local Government and Communities)

### Purpose

4. The Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (the “principal Regulations”) make provision for the payment of fees to planning authorities, in relation to applications for planning permission for several categories of development.
5. The effect of these Regulations is that some maximum fees currently payable under the principal Regulations are increased. These Regulations replace the table scale of fees in Part III of the schedule to the principal Regulations. The changes which have been made are shown in a detailed table in the Policy Note for the Regulations.
6. The Regulations come into force on 1 June 2017 and are subject to the negative procedure.

### Comment

7. Through correspondence with the Scottish Government, the Committee has identified that the Regulations are defectively drafted in two respects which the Scottish Government has acknowledged (See Annex A).
8. Firstly, the fee level in respect of sites with an area exceeding 7.6 hectares for planning applications connected with exploratory drilling for oil or natural gas is incorrect. There is an error in the specification of the fee in paragraph 8 of the schedule, as the figure of £30,240 specified in paragraph 8(b) should be £30,476.
9. Secondly, the Regulations omit to amend paragraph 14 of schedule 1 of the principal Regulations to reflect the increased fees stated in the new table of fees in these Regulations.

### Recommendation

**The Committee draws the Regulations to the attention of the Parliament on reporting ground (i), as they appear to be defectively drafted in two respects:**

**1. Paragraph 8 of the schedule specifies the fee to be payable in relation to planning applications for the carrying out of any operations connected with exploratory drilling for oil or natural gas.**

**Where the site area exceeds 7.6 hectares, paragraph 8(b) specifies a fee of £30,240, plus £200 for each 0.1 hectare in excess of 7.6 hectares (subject to a maximum of £125,000). The figure of £30,240 should be £30,476. As a result**

**the fee level is incorrectly stated in respect of sites with an area exceeding 7.6 hectares.**

**2. The Regulations omit to amend paragraph 14 of schedule 1 of the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (S.S.I. 2004/219), to reflect the increased fees stated in the new table of fees in these Regulations.**

**Paragraph 14, as amended to date, provides that where an application is for planning permission in principle and relates to development within more than one of the categories stated in the table of fees, the fee payable in respect of the application is £401 for each 0.1 hectares of the site area (subject to a maximum of £10,028).**

**The Committee welcomes the Scottish Government's commitment to bring forward an amending instrument before the Regulations come into force on 1 June 2017.**



# No points raised

## **Economy, Jobs and Fair Work**

Public Services Reform (Corporate Insolvency and Bankruptcy) (Scotland) Order 2017 [draft]

## **Finance and Constitution**

Scottish Landfill Tax (Administration) Amendment Regulations 2017 (SSI 2017/139)

## **Health and Sport**

National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2017 (SSI 2017/134)

National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2017 (SSI 2017/135)

## **Justice**

Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Competition Proceedings) 2017 (SSI 2017/130)

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Vexatious Actions) 2017 (SSI 2017/131)

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Curators ad litem) 2017 (SSI 2017/132)

## **Rural Economy and Connectivity**

Regulation of Scallop Fishing (Scotland) Order 2017 (SSI 2017/127)

M9/A90/M90 Trunk Road (Kirkliston to Halbeath) (Variable Speed Limits and Actively Managed Hard Shoulder) Amendment Regulations 2017 (SSI 2017/128)

Cattle Identification (Scotland) Amendment Regulations 2017 (SSI 2017/133)

# Annex

## **Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Amendment Regulations 2017 (SSI 2017/120)**

**On 27 April 2017, the Scottish Government was asked:**

1. Paragraph 8 of the schedule specifies the revised fee payable in relation to planning applications for the carrying out of any operations connected with the exploratory drilling for oil or natural gas. The general effect of the Regulations is to increase some maximum fees currently payable under the Town and Country Planning (Fees for Applications and Deemed Applications) (Scotland) Regulations 2004 (“the 2004 Regulations”).

Paragraph 8 provides for a fee, where the site area does not exceed 7.6 hectares, of £401 for each 0.1 hectare. That appears to be a fee of £30,476 for 7.6 hectares. Where the site area exceeds 7.6 hectares, the fee is £30,240 plus £200 for each 0.1 hectare in excess of 7.6 hectares (subject to a maximum of £125,000). This appears to be a fee of £30,440 for a site area of 7.7 hectares, and so slightly less than the fee for 7.6 hectares.

Is there any error in the specification of the fee in paragraph 8, or please confirm that it is intended to provide for a reduced fee in respect of the larger site area, in the limited respect as set out above?

2. Paragraph 14 of schedule 1 of the 2004 Regulations (immediately above the table scale of fees) as amended appears to provide that where an application is for planning permission in principle, and relates to development which is within more than one of the categories stated in the table of fees, the fee payable in respect of the application is £401 for each 0.1 hectares of the site area, subject to a maximum of £10,028.

Is there any intention to amend paragraph 14 in view of the revised table of fees in these Regulations? Otherwise please confirm that there is no intention to further amend paragraph 14 with effect from 1 June 2017.

3. Is any corrective action proposed in relation to the above matters?

**The Scottish Government responded as follows:**

With regard to the first question, there is an error in the specification of the fee in paragraph 8 of the table of fees because the figure of £30,240 in sub-paragraph (b) should be £30,476.

With regard to the second question, the Scottish Government intends to amend paragraph 14 of the schedule to reflect the increased fees in the new table of fees.

The Scottish Government intends to lay an amending instrument addressing these points before SSI 2017/120 comes into force on 1 June 2017.

