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

Subordinate legislation considered by the Delegated Powers and Law Reform Committee on 27 February 2018



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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 27 February 2018, the Committee agreed to draw to the attention of the Parliament the following instrument—

Council Tax Reduction (Scotland) Amendment Regulations 2018 (SSI 2018/69)
2. The Committee's recommendations and conclusions in relation to this instrument are set out in the following sections 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

Council Tax Reduction (Scotland) Amendment Regulations 2018 (SSI 2018/69) (Social Security)

Purpose

4. These Regulations make further amendments to the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319) ("the principal Regulations").
5. The Regulations are subject to the negative procedure. They come into force on 1 April 2018.

Background

6. The Scottish Government has introduced measures to reduce the council tax liability of persons who have a low income, following the UK Government's abolition of council tax benefit from April 2013. The principal Regulations came into force on 28 January 2013.
7. The Policy Note to the principal Regulations explains that those Regulations seek to ensure that persons previously in receipt of council tax benefit will not be disadvantaged by its abolition, and will receive an equivalent reduction in liability for council tax (provided their circumstances remain the same) to the support they would have received by way of council tax benefit.
8. The Policy Note to these amending Regulations states that they maintain the policy objective of the principal Regulations, by uprating various allowances and premia in line with the equivalent changes made by the Department of Work and Pensions to housing benefit.

Consideration

9. The Committee considers that these Regulations, which amend the principal Regulations, raise a devolution issue. This is for the same reasons that the Committee considered apply to the Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2017 (SSI 2017/326). The Committee considered that instrument on 31 October 2017.ⁱ
10. The Committee's consideration is the same as in relation to that instrument. The question before the Committee is whether or not these Regulations relate to the reserved matter of "a scheme supported from central or local funds which provides assistance for social security purposes to or in respect of individuals by way of benefits", as defined in Section F1 (social security schemes) of Part 2 of Schedule 5 of the Scotland Act 1998.

ⁱ 50th Report, 2017.

11. These Regulations amend and further the objective of the principal Regulations. The principal Regulations had as their objective the establishment of a scheme which replicated existing entitlements to council tax benefit support for persons as far as possible, for the financial year commencing 1 April 2013 and subsequent years.
12. The Committee notes that "providing assistance for social security purposes" at the end of the Section F1 reservation is defined to expressly include providing assistance in relation to an individual's liability for local taxes. The council tax is a local tax. The Committee also notes that the term "benefits" includes any form of financial assistance. The previous reserved social security scheme, council tax benefit, provided that assistance primarily in the form of a deduction from council tax, which is the mechanism applied in the principal Regulations.ⁱⁱ The Committee therefore concludes that there is a question as to whether the principal Regulations (and regulations which modify them) can therefore be said to fall within the F1 reservation.
13. The Committee recognises that the Scottish Government takes a contrary view. The Scottish Government contends that no question is raised as to whether the Regulations relate to matters which are reserved by Section F1 of Part 2 of Schedule 5 to the Scotland Act 1998 (social security schemes). In relation to the principal Regulations, the Scottish Government has contended that they were properly made under section 80 of the Local Government Finance Act 1992. Section 80 gives the Scottish Ministers powers to prescribe conditions under which an individual's liability for council tax may be reduced. The Scottish Government has contended that this allows the Scottish Ministers to make provision which takes into account detailed information about an individual's financial situation in order to determine entitlement to a reduced council tax liability. The Scottish Government has contended that the principal Regulations make provision for a reduction for individuals with low income and some factors indirectly related to needs arising out of disability or other needs if, as a result of that disability or need, an individual is on a low income. The Scottish Government contends that the purpose of the Regulations is as described above and is not to provide assistance for social security purposes or by way of benefits.ⁱⁱⁱ
14. Ultimately the question can only be resolved by the courts. The Committee's function is to consider whether or not to draw attention to any potential devolution issue.
15. An Exception 10 has been inserted into the Section F1 reservation by section 28 of the Scotland Act 2016. This exception has given the Scottish Parliament powers to create new benefit schemes in areas of devolved responsibility where the requirements of the exception are satisfied, including that the new scheme must be funded from the Scottish Consolidated Fund.
16. In relation to the Council Tax Reduction (Scotland) Amendment Regulations 2017 and the Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2017

ⁱⁱ The council tax benefit scheme was previously contained in the Council Tax Benefit Regulations 2006 (SI 2006/215).

ⁱⁱⁱ See [55th Report, 2012](#) of the Subordinate Legislation Committee, which provided the Scottish Government's analysis for the principal Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303).

(SSIs 2017/41 and 326), the Committee suggested to the Scottish Government that framing a new discrete scheme could avoid the Committee's concern were that scheme to comply with the requirements of Exception 10. The Committee also highlighted that a new discrete scheme would have a further benefit of accessibility to readers, if consolidated regulations could be produced. The principal Regulations are well in need of consolidation, as this is the thirteenth amending instrument.

17. On 23 January 2018, the Committee wrote to the Cabinet Secretary for Finance and the Constitution seeking a timetable for consolidation and the Cabinet Secretary has indicated that he will update the Committee in the summer.^{iv}
18. **The Convener proposed that the Committee considers that the Regulations raise a devolution issue and should be drawn to the attention of the Parliament on that basis.**
19. **The proposal was agreed by division (For 3, Against 2, Abstentions 0).**

Recommendation

20. **Accordingly, the Committee draws the Regulations to the attention of the Parliament on reporting ground (f). The Committee considers that the Regulations raise a devolution issue as they may relate to matters which are reserved by Section F1 of Part 2 of Schedule 5 of the Scotland Act 1998 (social security schemes).**
21. **The Committee also agreed to return to the issue of consolidation of the Regulations at a later date, once an update has been received from the Cabinet Secretary for Finance and the Constitution.**

^{iv} Letters from the Cabinet Secretary for Finance and the Constitution on this issue are available [here](#).

No Points Raised

Health and Sport

Carers (Scotland) Act 2016 (Transitional Provisions) Regulations 2018 (SSI 2018/34)

National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2018 (SSI 2018/68)

Local Government and Communities

Non-Domestic Rates (Telecommunication Installations) (Scotland) Amendment Regulations 2018 (SSI 2018/63)

Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2018 (SSI 2018/64)

Non-Domestic Rates (Day Nursery Relief) (Scotland) Regulations 2018 (SSI 2018/65)

Parliament

Local Government Finance (Scotland) Order 2018 [draft]

Rural Economy and Connectivity

Road Traffic (Permitted Parking Area and Special Parking Area) (Midlothian Council) Designation Order 2018 (SSI 2018/60)

Parking Attendants (Wearing of Uniforms) (Midlothian Council Parking Area) Regulations 2018 (SSI 2018/61)

Road Traffic (Parking Adjudicators) (Midlothian Council) Regulations 2018 (SSI 2018/62)

