



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 6 February 2018  
SP Paper 276  
7th Report, 2018 (Session 5)

# **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 6 February 2018**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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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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**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**David Torrance**  
Scottish National Party

# Introduction

1. At its meeting on 6 February 2018, the Committee agreed to draw to the attention of the Parliament to the following instrument—

Community Care (Provision of Residential Accommodation Outwith Scotland)  
(Scotland) Amendment Regulations 2018 (SSI 2018/16)

2. The Committee's recommendations and conclusions in relation to this instrument are set out in 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

## Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Amendment Regulations 2018 (SSI 2018/16) (Health and Sport)

### Purpose

4. These Regulations amend the Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Regulations 2015 to reflect that, as respects Wales, an “appropriate establishment” for the provision of residential accommodation outwith Scotland is a place at which a care home service, within the meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016, is provided wholly or mainly to persons aged 18 or over.
5. The Regulations are subject to the negative procedure and come into force on 3 April 2018.

### Discussion

6. Regulation 1 provides that the Regulations will come into force on 3 April. It is intended that the commencement date should be 2 April, being the commencement date of the relevant provisions of the 2016 Act, referred to within regulation 2(2).
7. The Scottish Government has undertaken to lay a further instrument, which will revoke the Regulations and substitute equivalent Regulations which would come into force timeously as detailed in correspondence set out in the Annex to this report.

### Recommendation

8. **The Committee draws the Regulations to the attention of the Parliament on the general reporting ground, as they contain an error in the date when they will come into force.**
9. **The Committee notes the Scottish Government's intention to lay a further instrument to correct the error.**

# No points raised

## **Health and Sport**

Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2018 [draft]

Functions of Health Boards and Special Health Boards (Scotland) (Miscellaneous Amendments) Order 2018 (SSI 2018/27)

Carers (Scotland) Act 2016 (Commencement No. 3) Regulations 2018 (SSI 2018/25 (C.3))

Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016 (Commencement No. 3) Regulations 2018 (SSI 2018/26 (C.4))

## **Justice**

Proceeds of Crime Act 2002 (Searches under Part 5: Constables in Scotland: Code of Practice) Order 2018 [draft]

Courts Reform (Scotland) Act 2014 (Consequential and Supplemental Provisions) Order 2018 [draft]

## **Rural Economy and Connectivity**

National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Amendment Order 2018 [draft]

Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2018 (SSI 2018/22)



# Annex

## **Community Care (Provision of Residential Accommodation Outwith Scotland) (Scotland) Amendment Regulations 2018 (SSI 2018/16)**

**On 23 January 2018, the Scottish Government was asked:**

The Regulations state in both the italicised heading and regulation 1 that they come into force on 3 April 2018. However, the Regulation and Inspection of Social Care (Wales) Act 2016 (Commencement No. 5, Savings, Transitory and Transitional Provisions) Order 2017 (SI 2017/1326) provides that section 2 of, and paragraphs 1 to 3 and 8 of Schedule 1 and Part 1 of Schedule 3 to, the Regulation and Inspection of Social Care (Wales) Act 2016 ("the 2016 Act") will come into force on 2 April 2018.

(a) Please explain the reason/s for the difference of one day between the coming into force date of the Regulations and the relevant coming into force date for the 2016 Act, and the impact of that difference?

(b) If it is intended that the coming into force of the Regulations should be the same as the relevant coming into force date for the 2016 Act, is corrective action proposed?

**The Scottish Government responded as follows:**

In response to question a), the reason for the difference of one day is because the Scottish Government had been advised by colleagues in the Welsh Government that section 2 of, and paragraphs 1 of schedule 1 and part 1 of schedule 3 to, the 2016 Act were due to come into force on 3rd April 2018.

In response to question b), it is intended that the coming into force date of the Regulations should be the same as the coming into force date of the relevant provisions of the 2016 Act. The Scottish Government propose to take corrective action in the form of making and laying an SSI which revokes SSI 2018/16 and makes equivalent amendments to the Provision of Residential Accommodation Outwith Scotland (Scotland) Regulations 2015, with a coming into force date of 2nd April 2018.

