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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 13 March 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 13 March 2018, the Committee agreed to draw to the attention of the Parliament the following instrument—

Sheriff Court Fees Order 2018 (SSI 2018/81)

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

Sheriff Court Fees Order 2018 (SSI 2018/81) (Justice)

4. According to the Policy Note for this Order, Court fees and fees for services offered by the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts, and the Office of the Public Guardian (OPG) ensure that those who make use of the courts or the OPG meet or contribute towards the associated costs to the public purse, where they can afford so to do.
5. This Order is part of a package of six instruments relating to these fees. Each of the current Court Fees Orders, and the amending 2016 Orders, are repealed and replaced by the equivalent new Orders. In addition to the inflationary increases, certain updates to fee narratives have been made in the Orders, to ensure that they are as clear and consistent as possible.
6. The six Orders further implement a policy of moving towards fees which more fully reflect the cost of the processes involved, with a system of fee exemptions to protect access to justice. The specific fee rises in the Orders are of 2.3% with effect from 25 April 2018, followed by further increases of 2% with effect from 1 April 2019 and 2020. These rises are intended to allow for expected inflation over the next three years.
7. The scheme for exemptions from fees in the Orders extends the qualifying criteria to include those in receipt of emergency welfare funds, as well as removing particular fees related to civil protective orders for domestic abuse from fee charging. The income that can be earned whilst still qualifying for some of the benefits related exemptions has been increased to £18k, in line with the Scottish Living Wage.
8. The Orders are subject to the negative procedure.
9. The Sheriff Court Fees Order 2018 (SSI 2018/81) includes an erroneous reference to article 5(2), which is carried forward from the Sheriff Court Fees Order 2015. Correspondence with the Scottish Government on this issue is reproduced at Annex A.
10. **The Committee draws the Order to the attention of the Parliament on the general reporting ground as article 5(2) has been erroneously carried forward from the Sheriff Court Fees Order 2015 despite having no function in this Order.**
11. **The Committee welcomes the Scottish Government's undertaking to revoke article 5(2) should an amending opportunity arise.**

No points raised

Health and Sport

Alcohol (Minimum Price per Unit) (Scotland) Order 2018 [Draft]

Alcohol (Minimum Pricing) (Scotland) Act 2012 (Commencement No.2) Order 2018 (SSI 2018/88 (C.8))

Justice

Sheriff Appeal Court Fees Order 2018 (SSI 2018/82)

Court of Session etc. Fees Order 2018 (SSI 2018/83)

High Court of Justiciary Fees Order 2018 (SSI 2018/84)

Justice of the Peace Court Fees (Scotland) Order 2018 (SSI 2018/85)

Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2018 (SSI 2018/86)

Annex A

Sheriff Court Fees Order 2018 (SSI 2018/81)

On 5 March 2018, the Scottish Government was asked:

Article 5(2) states "[t]he matter specified in paragraph 13 of the Table of Fees in Part 1 of schedule 1, 2 or 3 includes, where appropriate, the issue of extracts and the issue of an abbreviate." Column 1 of paragraph 13 in each of schedules 1, 2 and 3 simply says "[n]o fee." but I note previously referred to applications for the approval of composition in bankruptcy actions. The Policy Note states this fee item has been removed as it is effectively redundant following changes to bankruptcy legislation.

If paragraph 13 of the Table of Fees in Part 1 of schedule 1, 2 or 3 is effectively redundant, why is it considered necessary to include article 5(2) in the Order?

The Scottish Government responded as follows:

The Scottish Government is grateful to the Delegated Powers and Law Reform Committee for highlighting this point. Article 5(2) appears in the same form in the Sheriff Court Fees Order 2015 and was erroneously carried forward into the Sheriff Court Fees Order 2018. As the Committee's legal advisers highlight, article 5(2) now has no function because paragraph 13 of the Table of Fees in Part 1 of schedules 1, 2 and 3 no longer specifies any fees for applications for the approval of composition.

The Scottish Government considers that article 5(2) has no substantive effect and does not present any practical issues in terms of the application or administration of the sheriff court fees regime.

Nonetheless, the Scottish Government undertakes to revoke article 5(2) should an amending opportunity arise, for example in the course of implementing the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

