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

Subordinate legislation considered by the Committee on 2 April 2019



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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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Scottish Labour



Alison Harris
Scottish Conservative
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Introduction

1. At its meeting on 2 April 2019, the Committee agreed to draw to the attention of the Parliament the following instrument-

Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2019 [draft].

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

Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2019 (2019/Draft) (Economy, Energy and Fair Work)

Purpose

4. This Order enables the accounts of ILF Scotland to be audited by the Auditor General for Scotland with effect from 24 May 2019.
5. ILF Scotland is a company and non-departmental public body that administers the Independent Living Fund (the “ILF”). Financial awards are provided to individuals to pay for care so that they can be supported in their homes and within their local communities.
6. The Order is made under section 483 (Scottish public sector companies: audit by Auditor General for Scotland) of the Companies Act 2006, a provision which extends to the whole of the United Kingdom.
7. The Order is subject to the affirmative procedure and comes into force on 24 May 2019.

Committee consideration

8. The Committee noted that where it is intended that an instrument is to extend to Scotland only, and the enabling power has a wider extent, drafting practice is to include an extent provision in the instrument. Such a provision had not been included in this instrument.
9. Correspondence with the Scottish Government on this issue is reproduced in the Annex.

Recommendation

10. **The Committee draws the Order to the attention of the Parliament on the general reporting ground in respect of a failure to follow proper drafting practice as set out in paragraph 8.**

No points raised

Environment, Climate Change and Land Reform

Loch Carron Marine Conservation Order 2019 (SSI 2019/101)

Local Government and Communities

Air Weapons and Licensing (Scotland) Act 2015 (Commencement No. 9 and Transitional Provisions) Order 2019 (SSI 2019/99)

Rural Economy and Connectivity

Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2019 (SSI 2019/98)

Annex

Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2019 [draft]

On 21 March 2019, the Scottish Government was asked:

1. Does the Scottish Government consider that section 483 of the Companies Act 2006 extends to the whole of the United Kingdom?
2. If so, in the absence of an extent provision, is the Order intended to extend to the whole of the United Kingdom, or is it intended to extend only to Scotland?
3. And if the Order is intended to extend to the whole of the United Kingdom, does it do so only as a matter of Scots law?

The Scottish Government responded as follows:

1. The Scottish Government considers that section 483 extends to the whole of the United Kingdom.
2. Technically the Order would also extend across the whole of the United Kingdom, although it is difficult to see if this would have any legal significance. ILF Scotland are a Scottish registered company limited by guarantee and predominantly carrying out functions in Scotland.
3. If the Order extends to the whole of the United Kingdom, it is as a matter of Scots law. Section 483 provides for Scottish Ministers to make an order providing for the accounts of a Scottish company to be audited by the Auditor General for Scotland. The Order comprises Scottish secondary legislation and is made under Scottish statutory procedure.

