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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 21 January 2020



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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

Instruments drawn to the attention of the lead Committee

1. At its meeting on 21 January 2020, the Delegated Powers and Law Reform Committee considered the following instruments and agreed to draw them to the attention of the lead Committee.
 - the draft Fuel Poverty (Enhanced Heating) (Scotland) Regulations 2020
 - Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/438)
2. The Committee's recommendations and conclusions in relation to these instruments are set out later in the report.

Other instruments considered

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.

Instruments Drawn to the Attention of the Lead Committee

Fuel Poverty (Enhanced Heating) (Scotland) Regulations 2020 (2019/Draft)

Purpose

4. These regulations specify the types of household for which enhanced heating temperatures and enhanced heating hours are appropriate for the purposes of measuring fuel poverty under the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 ("2019 Act").
5. The definition of fuel poverty in the 2019 Act relates to the ability to pay fuel costs necessary to heat the home to the requisite temperatures for the requisite number of hours.
6. However, the Scottish Government has identified that some households are more vulnerable to a poorly heated home or need a slightly higher temperature, largely due to age, illness or disability and should be heating their homes for longer and/or at a higher temperature (leading to higher fuel bills). These households are therefore considered subject to an "enhanced heating regime" for the purpose of measuring fuel poverty.
7. These regulations set out three "enhanced heating regimes" and specify the types of household that will have an enhanced heating regime applied to it.
8. The three heating regimes are:
 - "Enhanced Heating Regime 1" combines enhanced heating temperatures with enhanced heating hours – this applies where the dwelling is frequently occupied on weekdays when it is cold, and a household member suffers from a long-term physical or mental illness lasting at least 12 months, is in receipt of benefits for a care need or disability, and is 75 years old or over;
 - "Enhanced Heating Regime 2" combines enhanced heating temperatures with standard heating hours – this applies in the same circumstances as Enhanced Heating Regime 1, except that the house is not frequently occupied during weekdays;
 - "Enhanced Heating Regime 3" combines standard temperatures with enhanced heating hours – this applies where the dwelling is frequently occupied on weekdays when it is cold, any member of a household is 5 years old or under and Enhanced Heating Regime 1 does not apply.

Committee Consideration

9. Regulation 2 of this instrument defines the term "benefits". However, in line with the definition in section 3(10)(b) of the 2019 Act, it should instead define "benefits received for a care need or disability".

10. The Scottish Government have accepted that this was an oversight and intends to correct it by correction slip.

11. The Committee draws this instrument to the attention of the Local Government and Communities Committee under the general reporting ground and welcomes the Scottish Government's commitment to correct the error.

Local Government Pension Scheme (Increased Pension Entitlement) (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/438)

Purpose

12. These regulations ensure continuity of an affected member's pension at its current rate where incorrect Guaranteed Minimum Pension data has been applied to the annual indexation of that pension.
13. A Guaranteed Minimum Pension accrued for contracted out service between April 1978 and April 1997, which reflects the level of earnings related state pension a member would have received had they not been contracted out.
14. Where either no Guaranteed Minimum Pension details are held or the data is incorrect, the result can be that indexation has been applied incorrectly leading to an overpayment.
15. These Regulations provide that the overpayments related to the Guaranteed Minimum Pension are converted into an Increased Pension Entitlement and now become part of the members' entitlement under the scheme. This means that affected pensioners in Local Government schemes will see their existing level of pension maintained by an award of the Increased Pension Entitlement.

Committee Consideration

16. Regulation 1(2) of this instrument provides that the regulations have effect from the 8th of April 2019, subject to the exceptions in paragraph (3). However, exceptions are also specified in paragraph (4). Regulation 1(2) should therefore refer to the exceptions in both paragraphs (3) and (4), not just paragraph (3).

17. The Committee therefore draws this instrument to the attention of the Local Government and Communities Committee under the general reporting ground.

18. The Committee welcomes the Scottish Government's commitment to correct this error by amending instrument.

No Points Raised

Education and Skills Committee

Royal Conservatoire of Scotland Amendment Order of Council 2020 (SSI 2020/3)

Health and Sport Committee

Foods for Specific Groups (Infant Formula and Follow-on Formula) (Scotland) Regulations 2020 (SSI 2020/6)

Foods for Specific Groups (Medical Foods for Infants) and Addition of Vitamins, Minerals and Other Substances (Scotland) Amendment Regulations 2020 (SSI 2020/7)

