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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 22 December 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.



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Introduction

1. At its meeting on 22 December 2020, the Committee considered the following instrument and agreed to draw it to the attention of the lead committee:
 - Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Hague Service Convention) (Amendment) 2020 (SSI 2020/423).
2. The Committee's recommendations in relation to this instrument are set out later in the 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.

Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the lead committee

Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Hague Service Convention) (Amendment) 2020 (SSI 2020/423)

4. This instrument amends the tables of fees in schedule 1 of the Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002 and schedule 1 of the Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002.
5. The amendments provide fees for messengers-at-arms and sheriff officers for the service of documents in Scotland under the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters which was concluded on 15 November 1965 (commonly referred to as the “Hague Service Convention”).
6. The instrument is subject to the negative procedure and is required to come into force before the end of the implementation period under the Withdrawal Agreement between the UK and the EU at 11pm on 31 December 2020 (i.e. “IP completion day”).
7. The Committee noted there had been a failure to lay the instrument in accordance with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2020. This section requires that instruments subject to the negative procedure are laid at least 28 days before they come into force. As the instrument was laid on 11 December, even without the Parliament being in recess from 24 December, the instrument would not meet the 28-day period given that it comes into force on IP completion day.
8. On 10 December 2020, the Lord President wrote to the Presiding Officer explaining why the 28-day rule was not complied withⁱ. The Lord President explained that the Scottish Government advised the Scottish Civil Justice Council of the need for the instrument in November 2020. However, finalised policy instructions seeking the legislative amendments were not received by the Council from the Government until early December.

9. **The Committee agrees to draw this instrument to the attention of the Parliament on reporting ground (j) on the basis that it has breached the 28-day rule.**

ⁱ [Correspondence from Lord President to Presiding Officer, 10 December 2020](#)

No points raised

COVID-19 Committee

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 8) Regulations 2020 (SSI 2020/452)

Health and Sport Committee

National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2020 (SSI 2020/420)

Health Protection (Coronavirus) (International Travel and Public Health Information) (Scotland) Regulations 2020 (SSI 2020/431)

Local Government and Communities Committee

Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (No. 2) Order 2020 (SSI 2020/419)

Corporate Insolvency and Governance Act 2020 (Meetings of Scottish Charitable Incorporated Organisations) (Coronavirus) (No. 2) Regulations 2020 (SSI 2020/421)

Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 (SSI draft/2020)

Rural Economy and Connectivity Committee

Agricultural Holdings (Relinquishment and Assignment) (Application to Relevant Partnerships) (Scotland) Regulations 2021 (SSI draft/2020)

Land Reform (Scotland) Act 2016 (Commencement No. 12) Regulations 2020 (SSI 2020/428 (C. 40))

Transport (Scotland) Act 2019 (Commencement No. 3) Regulations 2020 (SSI 2020/429 (C. 41))

Agricultural Holdings (Relinquishment and Assignment) (Scotland) Regulations 2020 (SSI 2020/430)

Social Security Committee

Social Security Administration and Tribunal Membership (Scotland) Act 2020 (Commencement No. 1) Regulations 2020 (SSI 2020/422 (C. 39))

