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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 14 November 2017**



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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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**Stuart McMillan**  
Scottish National Party



**Convener**  
**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**David Torrance**  
Scottish National Party

# Introduction

1. At its meeting on 14 November 2017, the Committee agreed to draw to the attention of the Parliament the following instruments—

First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals (Procedure) Regulations 2017 (SSI 2017/364)

First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017 (SSI 2017/366)

2. The Committee's recommendations and conclusions in relation to these instruments are set out in the following chapters 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

## [First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals \(Procedure\) Regulations 2017 \(SSI 2017/364\) \(Justice\)](#)

### Purpose

4. These Regulations establish rules of procedure for the First-tier Tribunal General Regulatory Chamber when dealing with appeals against decisions of the Office of the Scottish Charity Regulator.
5. The Regulations are subject to the negative procedure. They come into force on 12 January 2018.
6. They form part of a package of instruments relating to Tribunals.

### Committee consideration

7. The Rules set out in the schedule to the instrument are entitled The First-Tier Tribunal for Scotland General Regulatory Chamber Charity Appeals Rules Of Procedure 2018. However, regulation 1 of the instrument provides in error that the Rules may be cited as The First-tier Tribunal for Scotland General Regulatory Chamber Rules of Procedure 2018.
8. The Scottish Government accepts that there is an error and intends to make an amending instrument correcting the error which should come into force at the same time as the instrument. Annex A contains the exchange of correspondence with the Scottish Government on this matter.

### Recommendations

9. **The Committee draws the instrument to the attention of the Parliament under the general reporting ground, as it contains a drafting error.**
10. **The Committee welcomes that the Scottish Government has agreed to make an amending instrument correcting this error, to come into force at the same time as the instrument.**

## [First-tier Tribunal for Scotland Health and Education Chamber \(Procedure\) Regulations 2017 \(SSI 2017/366\) \(Justice\)](#)

### Purpose

11. These Regulations establish rules of procedure for the First-tier Tribunal Health and Education Chamber. They form part of the same package of Tribunal instruments as SSI 2017/364 considered in the preceding paragraphs.
12. The Regulations are subject to the negative procedure. They come into force on 12 January 2018.

13. The Committee noted the following drafting errors in this instrument.
14. Reference here to “rules” means those in the First-tier Tribunal for Scotland Health and Education Chamber Rules of Procedure 2018, which are contained in the schedule of the Regulations.
15. Rules 32(2), 33(4), 78(2) and 79(4) make provision for citations to call witnesses and for the recovery of documents. The citations must explain that it is an offence under the Scottish Tribunals (Offences in relation to Proceedings) Regulations 2016 to do certain things as specified in those rules, and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
16. There should be an additional reference in those rules to liability on summary conviction to imprisonment for a term not exceeding 12 months.
17. The reference in rule 84(7)(a) (attendance at hearings) to “the person to whom the claim relates, where the person is the claimant” should be omitted, as it appears to be superfluous.
18. There is a paragraphing error in rule 92 (restricted reporting orders). The text of paragraphs (2) and (3) should all be in paragraph (2), and there should not be a full stop at the end of paragraph (2). As a result, paragraphs (2) to (5) should be re-numbered (2) to (4).
19. Annex B contains the exchange of correspondence with the Scottish Government on these matters.

## **Recommendations**

20. **The Committee draws the Regulations to the attention of the Parliament on the general reporting ground, as they contain some drafting errors.**
21. **The Committee welcomes that the Scottish Government has undertaken to make an amending instrument, timeously for these Regulations coming into force on 12 January 2018.**



# No points raised

## Education and Skills

Education (Scotland) Act 2016 (Commencement No. 4) Regulations 2017 (SSI 2017/354 (C.28))

## Health and Sport

Public Bodies (Joint Working) (Prescribed Local Authority Functions etc.) (Scotland) Amendment (No. 2) Regulations 2017 [draft]

Public Bodies (Joint Working) (Prescribed Health Board Functions) (Scotland) Amendment Regulations 2017 (SSI 2017/381)

## Justice

First-tier Tribunal for Scotland Housing and Property Chamber (Rules of Procedure) Amendment Regulations 2017 (SSI 2017/369)

## Rural Economy and Connectivity

Land Reform (Scotland) Act 2016 (Commencement No. 6, Transitory and Saving Provisions) (Modern Limited Duration Tenancies) Miscellaneous Amendments Regulations 2017 (SSI 2017/370)

# Annex A

## **First-tier Tribunal for Scotland General Regulatory Chamber Charity Appeals (Procedure) Regulations 2017 (SSI 2017/364)**

**On 2 November 2018, the Scottish Government was asked:**

1. Regulation 1 provides that the Rules set out in the schedule to the instrument may be cited as The First-tier Tribunal for Scotland General Regulatory Chamber Rules of Procedure 2018. However, the Rules set out in the schedule are entitled The First-Tier Tribunal For Scotland General Regulatory Chamber **Charity Appeals** Rules Of Procedure 2018. Please confirm if there is an error and whether any corrective action is proposed.

**The Scottish Government responded as follows:**

The Scottish Government accepts that there is an error and intends to make an amending instrument correcting the error which should come into force at the same time as the above instrument.

# Annex B

## First-tier Tribunal for Scotland Health and Education Chamber (Procedure) Regulations 2017 (SSI 2017/366)

### On 3 November 2018, the Scottish Government was asked:

1. In the schedule, paragraph (2) of rule 32 and paragraph (4) of rule 33 provide that the citations for the recovery of documents which are referred to in those rules must explain that it is an offence under the Scottish Tribunals (Offences in relation to Proceedings) Regulations 2016 to do certain things as specified in those paragraphs, and that a person guilty of such an offence may be liable on summary conviction to a fine not exceeding level 5 on the standard scale. Similar provisions are made in paragraph (2) of rule 78 and paragraph (4) of rule 79 in respect of citations for the recovery of documents, as part of the procedure in relation to disability claims under paragraph 8 of schedule 17 of the Equality Act 2010.

Is there an error in respect that paragraph (3) of regulation 2 of those 2016 Regulations provides that a person who commits an offence under paragraph (1) is liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 (or both), or on indictment to imprisonment for a term not exceeding 2 years or a fine not exceeding £5,000 (or both)? Otherwise please explain why the provisions are appropriate.

2. In the schedule, paragraph (7) of rule 84 makes provision for the persons, *as well as the parties and their representatives*, who shall be entitled to attend a private hearing of a disability claim under paragraph 8 of schedule 17 of the Equality Act 2010. This includes in subparagraph (a) of paragraph (7) "the person to whom the claim relates, where the person is the claimant". However, is there an error given that rule 60 defines a "party" as including the claimant?

3. In rule 92 there is an error. It appears that the text of paragraphs (2) and (3) should all be in paragraph (2), there should not be a full stop at the end of paragraph (2), and as a result paragraphs (2) to (5) should be re-numbered (2) to (4)?

4. Is corrective action proposed?

### The Scottish Government responded as follows:

In relation to question 1, the Scottish Government accepts that there should be a reference to liability to imprisonment for a term not exceeding 12 months in rules 32(2), 33(4), 78(2) and 79(4).

In relation to question 2, the Scottish Government accepts that there should not be a reference to "the person to whom the claim relates, where the person is the claimant" in rule 84(7)(a).

In relation to question 3, the Scottish Government accepts that in rule 92 there is an error. The text of paragraphs (2) and (3) should all be in paragraph (2), there should not be a full stop at the end of paragraph (2), and as a result paragraphs (2) to (5) should be re-numbered (2) to (4).

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The Scottish Government intends to make an amending instrument correcting these errors which should come into force at the same time as the relevant instrument SSI 2017/366.

