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

## **Subordinate legislation considered at the Delegated Powers and Law Reform Committee on 20 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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Scottish National Party



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



**David Torrance**  
Scottish National Party

# Introduction

1. At its meeting on 20 March 2018, the Committee agreed to draw to the attention of the Parliament the following instrument—

National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (SSI 2018/94)

2. The Committee's recommendations and conclusions in relation to this instrument are set out in the following sections of this report.

# Points raised: Instrument subject to negative procedure

## National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (SSI 2018/94) (Health and Sport)

### Purpose

3. These regulations make various corrections to rectify errors in relation to the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 (SSI 2018/66) and the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018 (SSI 2018/67) which the Committee reported on in its 10th Report, 2018 published on 6 March. The Scottish Government undertook to lay this amending instrument to correct the errors timeously. The Regulations are subject to the negative procedure.

### Breach of the "28 Day rule"

4. Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (ILRA) provides that where a Scottish statutory instrument is subject to the negative procedure, it must be laid at least 28 days before the instrument comes into force. A breach of the rule does not affect the validity of the Regulations.
5. The Regulations were laid before the Parliament on 14 March and come into force on 1 April. This does not respect the requirement in section 28(2) of ILRA.
6. In accordance with section 31 of ILRA, the Scottish Government wrote to the Presiding Officer to explain why the requirements of section 28(2) have not been met in this case. The Scottish Government explained that the rule had been breached so that the various corrections could come into force timeously. This correspondence has been reproduced in the Annex to this report.

### Recommendations

7. **The Committee draws the Regulations to the attention of the Parliament on reporting ground (j) as they fail to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
8. **The Committee finds the failure to comply with section 28 (2) to be acceptable in the circumstances as outlined in the correspondence received from the Scottish Government to the Presiding Officer of 14 March 2018.**

# Annex

## **Breach of laying requirements: letter from the Scottish Government to the Presiding Officer**

### **National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (SSI 2018/94)**

The National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2018 (“the Amendment Regulations”), were made by the Scottish Ministers under sections 17A(6), 17E, 17K, 17N, 17O, 105(7) and 106 of the National Health Service (Scotland) Act 1978. The instrument is being laid before the Scottish Parliament today, 14 March 2018 and comes into force on 1 April 2018.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) has not been complied with. To meet the requirements of section 31(3) of that Act, this letter explains why.

The Amendment Regulations are required to correct a number of errors in the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2018 (S.S.I. 2018/66) (“the GMS Regulations”) and the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2018 (S.S.I. 2018/67) (“the PMS Regulations”). Both instruments were laid before Parliament on 19 February 2018 and will come into force on 1 April 2018.

The GMS Regulations and the PMS Regulations set out the terms which Health Boards must observe in contracting with general practitioners (“GPs”) for the provision of primary medical services under a general medical services contract or a section 17C agreement. The majority of GP health care services in Scotland are delivered under a general medical services contract or a section 17C agreement, where the GP acts as an independent provider of services to the National Health Service for Scotland. This SSI is required to come into force on the same day as the Regulations which it amends to ensure that the GMS Regulations and PMS Regulations have the intended effect when they come into force.

The Amendment Regulations correct a number of typographical and cross-referencing errors in the GMS Regulations and in the PMS Regulations. The majority of the amendments made by the Amendment Regulations are made in response to concerns raised by the Parliament’s Delegated Powers and Legislative Reform Committee, however we have also taken this opportunity to make a minor change to properly reflect a point of policy in the 2018 Contract Regulations. The Committee provided its comments which raised these concerns on 26 February 2018. The Scottish Government made commitments to amend in responses submitted to the Committee on 1 and 2 March 2018. In the circumstances, it would not have been feasible to lay the Amendment Regulations on 2 March 2018 in order to comply with the 28 day rule.



