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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 26 March 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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Introduction

Instruments considered under the European Union (Withdrawal) Act 2018

1. At its meeting on 26 March 2019 the Committee considered the following instrument under the protocol agreed between the Scottish Government and the Scottish Parliament in respect of SSIs made using the powers under the European Union (Withdrawal) Act 2018-

Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (SSI 2019/80).

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

Technical scrutiny of instruments

3. The Committee agreed to draw to the attention of the Parliament the following instruments-

Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (SSI 2019/80)

Teachers' Superannuation and Pension Scheme (Scotland) (Miscellaneous Amendments) Amendment Regulations 2019 (SSI 2019/95)

4. The Committee's recommendations and conclusions in relation to these instruments are set out in the following sections of this report.
5. 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.

Instrument considered under the SSI Protocol under the European Union (Withdrawal) Act 2018 (scrutiny procedure and categorisation)

Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/80) (Local Government and Communities)

Purpose

6. These Regulations amend legislation in the fields of environmental protection, town and country planning, electricity works, and hazardous substances to address deficiencies which would otherwise arise when the UK exits the EU.

Committee consideration

7. The Scottish Government has laid this instrument under the negative procedure and has categorised it as of low significance under the SSI Protocol.
8. The Committee is content that the negative procedure is appropriate. The Committee is also content with the categorisation given that the amendments being made are minor and technical in nature and ensure continuity of law with no policy change.

Recommendations

9. **The Committee recommends to the Local Government and Communities Committee that the negative procedure is the appropriate scrutiny procedure for the Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/80).**
10. **The Committee recommends to the Local Government and Communities Committee that the Town and Country Planning and Electricity Works (Miscellaneous Amendments) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/80) are appropriately categorised as Low in terms of their significance under the SSI Protocol.**

Points raised: Instruments subject to negative procedure

Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (SSI 2019/80) (Local Government and Communities)

Purpose

11. As set out in paragraph 6 above, these Regulations ensure that EU derived town and country planning legislation relating to environmental impact assessments and hazardous substances continues to be operable and enforceable after the UK leaves the EU.
12. This instrument is subject to the negative procedure and will come into force on exit day.

Committee consideration

13. The Committee noted that the instrument contains minor drafting issues relating to clarity of meaning. Specifically, the form of regulations 5(10)(c), 5(14)(a)(i) and 6(11)(a)(i) could be clearer.
14. The Committee noted that these drafting issues are minor and corrective action is not urgent. The Scottish Government has indicated that it intends to bring forward an amending instrument to correct these errors. Correspondence with the Scottish Government on these issues is reproduced at Annex A.

Recommendations

15. **The Committee draws the Regulations to the attention of the Parliament under reporting ground (h) as the form of regulations 5(10)(c), 5(14)(a)(i) and 6(11)(a)(i) could be clearer.**
16. **As the drafting issues are minor, and corrective action is not urgent, the Committee is content with the Scottish Government's assurance that it intends to bring forward an amending instrument.**

Teachers' Superannuation and Pension Scheme (Scotland) (Miscellaneous Amendments) Amendment Regulations 2019 (SSI 2019/95) (Education and Skills)

Purpose

17. The instrument amends the Teachers' Superannuation and Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2019 (the "2019 Regulations"). The 2019 Regulations amended the Teachers' Superannuation (Scotland) Regulations 2005 and the Teachers' Pension Scheme (Scotland) (No. 2) Regulations 2014 to increase the employer contribution rate from 17.2% to 22.4% from 1 April 2019.
18. This instrument makes provision to ensure that the current employer contribution rate of 17.2% will continue to apply to 31 August 2019 with a revised rate of 23% applying from 1 September 2019.
19. The instrument is subject to the negative procedure. It comes into force on 1 April 2019. It is subject to the consent of the Treasury, which was obtained on 14 March 2019.

Committee consideration

20. The Committee noted that the Regulations fail to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.
21. The Regulations were laid before the Parliament on 18 March 2019 and come into force on 1 April 2019. This does not respect the requirement that at least 28 days should elapse between the laying of an instrument which is subject to the negative procedure and the coming into force of that instrument.
22. The Scottish Public Pensions Agency has explained its reasons for not complying with section 28(2) in a letter to the Presiding Officer. This correspondence is reproduced at Annex B.

Recommendations

23. **The Committee draws the instrument to the attention of the Parliament on reporting ground (j) as the Regulations fail to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
24. **The Committee finds the failure to comply with section 28 to be acceptable in the circumstances.**

No points raised

Justice

Justice of the Peace Courts (Sheriffdom of South Strathclyde, Dumfries and Galloway) etc. Amendment Order 2019 [draft]

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Sanctions and Anti-Money Laundering) (No.2) 2019 (SSI 2019/97)

Rural Economy and Connectivity

Scottish Road Works Register (Prescribed Fees) Regulations 2019 (SSI 2019/96)

Chief Forester (Qualifications) (Scotland) Regulations 2019 (SSI 2019/92)

Social Security

Social Security (Ireland) (Further provision in respect of Scotland) Order 2019 (SSI 2019/93)

Annex A

Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019 (SSI 2019/80)

On 14 March 2019, the Scottish Government was asked:

1. Regulation 5(10)(c) inserts a new paragraph (6A) into regulation 60 (revocations and transitional provisions) of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017. Sub-paragraph (e) directs that the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2011 (“2011 Regulations”) are to be read as if, “in regulation 46 (access to review procedure before a court), after “Directive” there were inserted “(and for such purpose Article 11(1)(b) is to be read as if the reference to “a Member State” were a reference to “Scotland”).”

Given that the word “Directive” appears twice in regulation 46 of the 2011 Regulations, is it sufficiently clear where the text is to be inserted? Is any corrective action proposed?

2. Regulation 5(14)(a)(i) provides that in schedule 4, paragraph 5 of the Town and Country Planning (Environmental Impact Assessment) (Scotland) Regulations 2017, “or Member State level” is to be substituted by “level (as they had effect immediately before exit day) or United Kingdom”.

This substitution gives the following amended text within schedule 4, paragraph 5: -

This description should take into account the environmental protection objectives established at Union ~~or Member State level level~~ (as they had effect immediately before exit day) or United Kingdom which are relevant to the project including in particular those established under Council Directive 92/43/EEC and Directive 2009/147/EC.

Is there a word missing from the substituted text? If so, is any corrective action proposed?

3. Does the same point noted in question 2 above arise in relation to the substitution made by Regulation 6(11)(a)(i)? If so, is any corrective action proposed?

The Scottish Government responded as follows:

1. The Scottish Government agrees that it would be clearer if the regulation made reference to the second occurrence of the word “Directive” and is grateful to the Committee for their observations. The Scottish Government intends to bring forward an instrument to clarify this.

2. The Scottish Government agrees that there is a missing word from the substituted text and is grateful to the Committee for drawing this to their attention. The Scottish Government intends to bring forward an instrument to correct this.

3. The Scottish Government agrees that the point noted in question 2 also arises in relation to the substitution made by regulation 6(11)(a)(i) and is grateful to the Committee for their observation. The Scottish Government intends to bring forward an instrument to correct this.

Annex B

Teachers' Superannuation and Pension Scheme (Scotland) (Miscellaneous Amendments) Amendment Regulations 2019 (SSI 2019/95)

Breach of laying requirements: letter to the Presiding Officer

The Teachers' Superannuation and Pension Scheme (Scotland) (Miscellaneous Amendments) Amendment Regulations 2019 (SSI 2019/95), were made by the Scottish Ministers under section 9 and schedule 3 of the Superannuation Act 1972 and section 1(1) and (2)(d) and paragraph 4(b) of schedule 2 of the Public Service Pensions Act 2013 on 14 March 2019. It is being laid before the Scottish Parliament today, 18 March 2019, and comes into force on 1 April 2019.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and, to meet the requirements of section 31(3) that Act, this letter explains why.

The Teachers' Superannuation and Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2019, SSI 2019/48 was made by the Scottish Ministers under section 9 and schedule 3 of the Superannuation Act 1972 and section 1(1) and (2)(d) and paragraph 4(b) of schedule 2 of the Public Service Pensions Act 2013 on 13 February 2019. This instrument is currently under consideration and is scheduled to implement an increase in the scheme employer contribution rate from 1 April 2019. This followed a valuation of the scheme which sets employer contribution rates.

Increases in employer contributions are common to all unfunded public service schemes from 2019 and the principal reason for those increases is the UK Government's decision to reduce the discount rate used in the valuation process. As a result of that change, the UK Government confirmed it would provide funding to schemes in support of those additional costs. That funding is still to be formally confirmed, but, on 21 February, proposed details were received by Scottish Government officials which confirmed that the additional funding would be calculated using the Barnett formula.

Although HM Treasury were aware that Scottish Ministers planned to introduce the increase in employer contributions from 1 April 2019, the proposed share of the additional funding reflects the fact that the Teachers' scheme in England and Wales is deferring its increase of employer contributions until 1 September. The employer contribution rate to be paid in England and Wales was increased to take account of the later implementation period. This means that the Scottish Government's share of the additional 2019-20 funding for the Teachers' scheme is based on costs covering the period 1 September 2019 to 31 March 2020 rather than the whole financial year.

Retaining an implementation date of 1 April creates a significant shortfall between the costs being incurred and the funding provided for 2019-20. Therefore, Scottish Ministers have decided that, to better manage that shortfall, the employer contribution increase for the Scottish Teachers' scheme should be similarly deferred to 1 September. The cost for deferring the increase will be an additional 0.6% to the employer rate, taking the revised rate to 23% from 1 September.

This instrument is required to ensure that the employer contribution rate, as set out in SSI 2019/48 (22.4% from 1 April 2019), is not applied and the increase in employer contributions is deferred until 1 September 2019. This change allows scheme employers greater preparation time for the change and will allow final details on funding to be confirmed prior to the change being implemented.

I would like to apologise that the 28 day rule cannot be met on this instrument. Provisional details of the proposed HMT funding were not received until 21 February (final confirmation is still awaited) and the short time available to confirm and apply this change has meant that it has not been possible to meet the 28 day rule. I am conscious of the requirement and the importance it plays in the Parliamentary process, but unfortunately this instrument must have effect from 1 April 2019 to ensure that the correct employer contributions are applied in the Scottish Teachers' Pension schemes

