



The Scottish Parliament
Pàrlamaid na h-Alba

Published 24 April 2019
SP Paper 514
19th Report, 2019 (Session 5)

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 23 April 2019



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
[http://www.parliament.scot/abouttheparliament/
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Introduction	1
Points raised: instruments subject to negative procedure	2
Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2019 (SSI 2019/116) (Local Government and Communities)	2
Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2019 (SSI 2019/118) (Rural Economy and Connectivity)	3
No points raised	4
Annex A	5
Annex B	6

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>



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Convener
Graham Simpson
Scottish Conservative
and Unionist Party



Deputy Convener
Stuart McMillan
Scottish National Party



Tom Arthur
Scottish National Party



Mary Fee
Scottish Labour



Alison Harris
Scottish Conservative
and Unionist Party

Introduction

1. At its meeting on 23 April 2019, the Committee agreed to draw the following instruments to the attention of the Parliament-

Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2019 (SSI 2019/116)

Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2019 (SSI 2019/118)

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

Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2019 (SSI 2019/116) (Local Government and Communities)

Purpose

4. These Regulations amend the Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Regulations 2019 (SSI 2019/40), which came into force on 1 April 2019.
5. They adjust a formula at regulation 10(5)(b) in those Regulations, which relates to the calculation of transitional rate relief where a property is improved in the past 12 months. The divisor in the formula should be "366" (the number of days in the 2019/20 financial year) multiplied by the rateable value of the lands and heritages that qualify for relief. The reference to the rateable value is added.
6. The Regulations are subject to the negative procedure, and come into force on 31 March 2019.

Committee consideration

7. 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.
8. The Regulations were laid before the Parliament on 22 March and came into force on 31 March, 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.
9. The Scottish Government has explained its reasons for not complying with section 28(2) in a letter to the Presiding Officer, and in further correspondence. The Government explains that the instrument is required to ensure the correct formula for calculating the relief will apply from April 2019, and that the error was identified, and the revision to the principal Regulations instructed, on 15 March. This correspondence is reproduced at Annex A.

Recommendations

10. **The Committee draws the Regulations 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.**

11. **The Committee finds the failure to comply with section 28 to be acceptable in the circumstances.**

Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2019 (SSI 2019/118) (Rural Economy and Connectivity)

Purpose

12. These Regulations amend the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010 to align them with Regulation (EC) No. 999/2001 laying down rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies ("the EU TSE Regulation") prior to the UK's withdrawal from the EU. The EU TSE Regulation has been updated in recent years and several parts of the 2010 Regulations are out of date.
13. The instrument is made under the negative procedure and comes into force on 23 May 2019.

Committee consideration

14. The Committee noted that there has been a failure to follow proper drafting practice in the preamble.
15. Where reliance is placed upon paragraph 1A of schedule 2 of the European Communities Act 1972, the preamble should narrate the fact that it is considered necessary or expedient for a reference to an EU instrument or any provision of an EU instrument to be construed as a reference to that instrument or that provision as amended from time to time.
16. Correspondence with the Scottish Government on this issue is reproduced at Annex B.

Recommendation

17. **The Committee draws the instrument to the attention of the Parliament on the general reporting ground as there has been a failure to follow proper drafting practice in the preamble set out in paragraph 15 above.**

No points raised

Environment, Climate Change and Land Reform

Carbon Accounting Scheme (Scotland) Amendment Regulations 2019 (SSI 2019/121)

Justice

Act of Sederunt (Simple Procedure Amendment) (Civil Online) 2019 (SSI 2019/122)

Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Views of the Child) 2019 (SSI 2019/123)

Rural Economy and Connectivity

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of South of Scotland Enterprise as Specified Authority) Order 2019 (SSI 2019/draft)

Islands (Scotland) Act 2018 (Commencement No. 2) Regulations 2019 (SSI 2019/134 (C.3))

Social Security

Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2019 (SSI 2019/133)

Annex A

CORRESPONDENCE FROM THE SCOTTISH GOVERNMENT

Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2019 (SSI 2019/116)

On 28 March 2019 the Scottish Government was asked:

The Delegated Powers and Law Reform Committee intends to consider the Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2019 (SSI 2019/116) at its meeting on Tuesday 23 April. The Committee has delegated authority to its legal advisers to ask questions directly of the Scottish Government Legal Directorate.

The letter from the Scottish Government Directorate for Local Government and Communities to the Presiding Officer of 22 March provides an explanation why the instrument requires to come into force on 31 March 2019. Please clarify why in the circumstances the instrument could not be laid earlier than 22 March, with a view to complying with the “28 day rule” in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010?

The Scottish Government responds as follows:

The Regulations correct an error in a formula set out in the instrument being amended. The error was drawn to the attention of the Scottish Government’s Legal Directorate at 21:56 on Friday 15 March.

The amending instrument was then prepared and laid without delay. Compliance with the “28 day rule” was not possible in these circumstances.

Breach of laying requirements: letter to the Presiding Officer

The Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2019, SSI 2019/116 were made by the Scottish Ministers under section 153 of the Local Government etc. (Scotland) Act 1994 on 22 March 2019. This instrument is subject to negative procedure. The Regulations are being laid before the Scottish Parliament today, 22 March 2019 and come into force on 31 March 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) of that Act, this letter explains why.

The Amendment Regulations are required to correct an error in the Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Regulations 2019 (SSI 2019/40), which were laid before Parliament on 18 February 2019 and come into force on 1 April 2019. In transcribing a formula for the calculation of reliefs, part of the formula was accidentally omitted. That formula provides for the rateable value of the property entitled to relief to be included in the calculation. Accordingly, the Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2019 are being laid today to amend the earlier instrument and ensure the correct formula for calculating the relief will apply from 1 April 2019.

Annex B

CORRESPONDENCE FROM THE SCOTTISH GOVERNMENT

Transmissible Spongiform Encephalopathies (Scotland) Amendment Regulations 2019 (SSI 2019/118)

On 01 April 2019 the Scottish Government was asked:

The preamble to this instrument cites paragraph 1A of schedule 2 to the European Communities Act 1972 as an enabling power. Where reliance is placed upon paragraph 1A the preamble should narrate the fact that it is considered necessary or expedient for a reference to an EU instrument or any provision of an EU instrument to be construed as a reference to that instrument or that provision as amended from time to time.

Please explain why the preamble does not narrate which of these pre-conditions is met? What do you consider to be the legal consequence of this omission?

The Scottish Government responds as follows:

The Scottish Government thanks the Committee's legal advisors for drawing this matter to its attention.

The instrument is an amending instrument which amends the Transmissible Spongiform Encephalopathies (Scotland) Regulations 2010 ("the 2010 Regulations"). The 2010 Regulations cite paragraph 1A of schedule 2 as an enabling power. The preamble of the 2010 Regulations narrates that it appears to the Scottish Ministers that it is expedient for references to the EU instruments referred to in schedule 1 to be construed as references to those instruments as amended from time to time.

As this instrument amends the 2010 Regulations, the Scottish Government considers that it is sufficiently clear that the references to EU instruments which appear in this instrument and are listed in schedule 1 of the 2010 Regulation are to be construed as references to those instruments as amended from time to time and that the justification for doing so is the same as is given in the 2010 Regulations – that the Scottish Ministers consider it expedient.

The Scottish Government concedes that this is a departure from regular drafting practice but does not consider there to be any legal consequences where the effect of this instrument is to amend an instrument where the preconditions were indicated. Therefore no corrective action is proposed.

