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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 17 September 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>



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



Jeremy Balfour
Scottish Conservative
and Unionist Party



Mary Fee
Scottish Labour

Introduction

Instruments considered under the European Union (Withdrawal) Act 2018

1. At its meeting on 17 September 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 powers under the European Union (Withdrawal) Act 2018-
 - the Environmental Liability Etc. (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/276)
2. The Committee's recommendations and conclusions in relation to this instrument are set out in the following section of this report.

Instruments drawn to the attention of the lead committee

3. The Committee also considered the following laid only instrument and agreed to draw it to the attention of the lead committee:
 - the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 (Commencement No. 1) Regulations 2019 (2019/277)

The Committee's recommendations and conclusions in relation to this instrument are set out later in the report.

Other instruments

4. The Committee determined that it did not need to draw the Parliament's attention to the instruments set out by the relevant lead Committees at the end of this report.

Representation of the People Act 1983 Remedial (Scotland) Order 2019 (2019/261)

5. The Committee agreed to draw the attention of the lead committee to its scrutiny of this instrument.

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

Environmental Liability Etc. (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/276)

Purpose

6. Part 4 of this instrument is made under the European Union (Withdrawal) Act 2018. This Part makes minor and technical changes in the Environmental Liability (Scotland) Regulations 2009 ("the 2009 Regulations") to address deficiencies arising as a result of the UK's withdrawal from 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 with the Scottish Ministers' explanation that the instrument does no more than appropriate to address the deficiencies in the 2009 Regulations, that there are good reasons for the amendments, and that it is a reasonable course of action.
9. The Committee agrees that the negative procedure is appropriate and that the instrument is properly categorised as low in accordance with the protocol.

Recommendations

10. **The Committee recommends to the Environment Climate Change and Land Reform Committee that the negative procedure is the appropriate scrutiny procedure for the Environmental Liability Etc. (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/276).**
11. **The Committee recommends to the Environment Climate Change and Land Reform Committee that the Environmental Liability Etc. (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/276) are appropriately categorised as Low in terms of their significance under the SSI Protocol.**

Instruments drawn to the attention of the lead committee

Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 (Commencement No. 1) Regulations (2019/277)

Purpose

12. This instrument commences sections 1 to 18(2), excluding section 7(2)(g), of the Fuel Poverty Targets, Definition and Strategy Scotland Act 2019 ("the Act") on 19 September.

Committee Consideration

13. Section 7(2)(g) of the Act requires the Scottish Ministers in preparing the fuel poverty strategy under section 6(1) to consult the Scottish Fuel Poverty Advisory Panel established under section 14(1) of the Act.
14. The Scottish Government has confirmed that the Scottish Fuel Poverty Advisory Panel will not be consulted on the first proposed fuel poverty strategy to be laid before the Parliament under section 7(4)(a) by 19 September 2020. Instead, they have indicated that they intend to consult the existing Fuel Poverty Advisory Panel and Partnership Forum.

15. **The Committee draws this instrument to the attention of the Local Government and Communities Committee under the general reporting ground as the Scottish Fuel Poverty Advisory Panel is not being consulted in respect of the first fuel poverty strategy as envisaged by section 7(2)(g).**

No Points Raised

Environment Climate Change and Land Reform

Environmental Protection Act 1990 Amendment (Scotland) Regulations 2019 (2019/draft)

Environmental Liability etc. (EU Exit) (Scotland) (Amendment) Regulations 2019 (2019/276)

Rural Economy and Climate Change

Plant Health (Forestry) Amendment (Scotland) Order 2019 (2019/278)

Standards, Procedures and Public Appointments

Representation of the People Act 1983 Remedial (Scotland) Order 2019 (2019/261)

Representation of the People Act 1983 Remedial (Scotland) Order 2019 (2019/ 261)

16. The Committee would like to draw the attention of the Standards, Procedures and Public Appointments (“SPPA”) Committee to the scrutiny that it has undertaken in relation to this instrument.
17. This Order permitted prisoners serving a sentence or 12 months or less to vote in the Shetland Islands Scottish Parliamentary by-election which was held on 29 August 2019.
18. It was made under the Convention Rights (Compliance) (Scotland) Act 2001 and was subject to the urgent procedure set out in section 14 of that Act. It came into force on 2 August 2019 (the day after it was made). As the Order was only capable of applying to the Shetland Islands by-election, the Order is now spent. However, Scottish Ministers have stated that they do not intend to revoke the Order until the 60-day period in which observations can be made about the Order has elapsed.
19. When this Order was made on 1 August 2019, communication of this was made to the Convener of the Delegated Powers and Law Reform Committee.ⁱ As this was during the summer recess, no formal consideration of the instrument could take place. To ensure both transparency and parliamentary scrutiny of the Order, the Convener wrote to the Cabinet Secretary of Government Business and Constitutional Relations with a number of questions on 7 August 2019.ⁱⁱ
20. A response was received from the Cabinet Secretary on 15 August 2019ⁱⁱⁱ and was followed up by an evidence session on 10 September 2019.^{iv} A SPICe briefing was also prepared for the Committee on this Order.^v
21. The Committee considered the Order in relation to several issues:
 - The necessity of the Order.
 - Any alternatives that were explored.
 - Any learning points that had been identified by the Scottish Government to ensure Parliament has opportunity to fully scrutinise the use of delegated powers.
 - The use to be made by the Scottish Government of the 60 day consultation period.

i The full text of this letter can be found [here](#).

ii The full text of this letter can be found [here](#).

iii The full text of this letter can be found [here](#).

iv The Official Report can be found [here](#).

v This briefing paper can be found [here](#).

22. While the Committee has no points to raise in relation to its technical scrutiny of the Order, it hopes the SPPA Committee might find this work to be of use during its own consideration of this instrument.

