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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 1 April 2020



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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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Convener
Bill Bowman
Scottish Conservative
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Mary Fee
Scottish Labour



Gordon Lindhurst
Scottish Conservative
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Gil Paterson
Scottish National Party

Introduction

1. At its meeting on 1 April 2020, the Delegated Powers and Law Reform Committee considered the following instrument subject to the negative procedure and agreed to draw it to the attention of the lead committee:
 - Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 (SSI 2020/101)
2. The Committee's conclusions in relation to this instrument are set out later in the report.

Other instruments considered

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.

Instruments drawn to the attention of the Lead Committee

Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020 (SSI 2020/101)

Purpose

4. The instrument provides for the following temporary reliefs intended to counter the adverse economic impact of COVID-19 for the 2020-2021 financial year only.
 - a 1.6% non-domestic rates relief for all non-domestic properties in Scotland applying to the gross rates bill (including any supplements);
 - a 100% non-domestic rates relief for properties with specified uses in the retail, hospitality and leisure (RHL) sectors; and
 - a 100% relief for airports and handling service providers, and for lands and heritages occupied by Loganair Ltd.
5. The instrument also makes consequential amendments to the Non-Domestic Rates (Transitional Relief) (Scotland) Amendment Regulations 2020.

Committee Consideration

6. The instrument was laid before the Parliament on 26 March 2020 and comes into force on 31 March 2020. 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.
7. The Committee is therefore required under standing orders to draw the instrument to the attention of the Parliament under reporting ground (j) for failing to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

8. The Committee therefore reports this instrument to the lead committee, the Local Government and Communities Committee, under reporting ground (j).

9. The Scottish Government's reasons for the breach of the 28 day rule are set out in a letter to the Presiding Officer received on 26 March 2020 (see Annex). This letter explains that the Scottish Government wishes the reliefs to come into force before the start of the 2020/21 financial year, to provide certainty for businesses as to the rating position and assist local authorities with billing arrangements.

10. In these circumstances, the Committee is content with the reasons for the failure to comply with section 28(2).

No Points Raised

Rural Economy and Connectivity Committee

South of Scotland Enterprise Act 2019 (Commencement and Transitional Provision) Amendment Regulations 2020 (SSI 2020/85 (C.10))

Bovine Viral Diarrhoea (Scotland) Amendment Order 2020 (SSI 2020/86)

Parliament

Single Use Carrier Bags Charge (Scotland) Amendment Regulations 2020 (SSI 2020/draft)

Public Services Reform (Scotland) Act 2010 (Part 2 Further Extension) Order 2020 (SSI 2020/draft)

Children and Young People (Scotland) Act 2014 (Modification) (No. 2) Revocation Order 2020 (SSI 2020/draft)

Scottish Landfill Tax (Standard Rate and Lower Rate) (No. 2) Order 2020 (SSI 2020/105)

Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020 (SSI 2020/103)

- The Committee's legal advisers raised some concerns in relation to this instrument. These were addressed by the Scottish Government subsequently laying the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment Regulations 2020 (SSI 2020/106). The Committee was therefore content with this instrument.
- The Committee also agreed to note that additional guidance could be useful in relation to the meaning of "vulnerable person" in regulation 10. In particular, the indicative list of health conditions in schedule 2 are all physical health conditions. There may be other conditions which do not affect physical health which may make someone a "vulnerable person" under these regulations. Guidance on how non-physical health conditions are to be treated in relation to these regulations would be welcome to assist those responsible for applying them.

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment Regulations 2020 (SSI 2020/106)

Annex

Letter to the Presiding Officer received 26 March 2020

Dear Presiding Officer

THE NON-DOMESTIC RATES (CORONAVIRUS RELIEFS) (SCOTLAND) REGULATIONS 2020

The Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Regulations 2020, SSI 2020/101 were made by the Scottish Ministers under section 153 of the Local Government etc. Scotland Act 1994 on 26 March 2020. This instrument is subject to negative procedure. The Regulations are being laid before the Scottish Parliament today, 26 March 2020 and come into force on 31 March 2020.

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.

On 14 March 2020, the Scottish Government announced a £320 million package of support for businesses to limit the impact of COVID-19, which was updated and expanded on 18 March. The measures announced include two non-domestic rates reliefs for 2020-21. The drafting of these regulations was commenced immediately after the announcement. The Scottish Government wishes the reliefs to come into force before the start of the 2020/21 financial year, to provide certainty for businesses as to the rating position. That also assists local authorities with billing arrangements.

I am copying this letter to James Dornan, Convenor of the Local Government and Communities Committee and Bill Bowman, Convenor of the Delegated Powers and Law Reform Committee.

Anouk Berthier

