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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 12 May 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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Introduction

1. At its meeting on 12 May 2020, the Delegated Powers and Law Reform Committee considered the following instruments subject to the negative procedure and agreed to draw them to the attention of the lead committee:
 - Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment Order 2020 (SSI 2020/129)
2. The Committee's conclusions in relation to this instrument is set out later in the report.
3. The Committee also 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

Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment Order 2020 (SSI 2020/129)

Purpose

4. This Order amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 to provide for local authorities and certain health service bodies to carry out development for the purposes of—
 - preventing an emergency,
 - reducing, controlling or mitigating the effects of an emergency, or
 - taking other action in connection with an emergency.
5. The instrument defines that an emergency is an event or situation which threatens serious damage to human welfare in a place in the United Kingdom.

Committee Consideration

6. The instrument was laid before the Parliament on 23 April 2020 and came into force on 24 April 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 draws this instrument to the attention of the lead Committee, the Local Government and Communities Committee, under reporting ground (j).

9. The Committee also considers the reasons for the breach of the 28 day rule, which in this case are set out in a letter to the Presiding Officer dated 23 April 2020 (see Annex).
10. The letter explains that new developments and changes of use are currently taking place to urgently provide additional capacity for the NHS and other services to address the coronavirus emergency. The Scottish Government considers it essential that the planning system does not act as a barrier or create delays in providing this necessary infrastructure.
11. The Scottish Government considers that it will provide additional certainty to local authorities and NHS bodies to ensure through legislation that necessary developments do not require applications for planning permission to be made.

Since these essential developments are already proposed. The Scottish Government considers that it is necessary for the instrument to come into force immediately.

12. The Committee accepted that the breach of the 28 day requirement was necessary to respond to the current coronavirus pandemic. However, the Committee also noted that the Amendment Order applies more broadly than this, extending to any “event or situation which threatens serious damage to human welfare in a place in the United Kingdom”.
13. The Committee highlights to the lead committee that this instrument is wider in scope than the coronavirus pandemic. The lead committee may wish to consider whether an alternative approach may have been appropriate that would have allowed for the full 28 day scrutiny period in relation to the extension of these matters to non-coronavirus emergencies.

No Points Raised

Environment, Climate Change and Land Reform Committee

Scottish Animal Welfare Commission Regulations 2020 (SSI 2020/draft)

Rural Economy and Connectivity Committee

Land Reform (Scotland) Act 2016 (Supplementary Provision) (Coronavirus) Regulations 2020 (SSI 2020/draft)

Standards, Procedures and Public Appointments Committee

Scottish Parliament (Elections etc.) Amendment Order 2020 (SSI 2020/draft)

Representation of the People (Scotland) Amendment Regulations 2020 (SSI 2020/draft)

Annex

Letter to the Presiding Officer Dated 23 April 2020

Dear Presiding Officer

THE TOWN AND COUNTRY PLANNING (GENERAL PERMITTED DEVELOPMENT) (CORONAVIRUS) (SCOTLAND) AMENDMENT ORDER 2020

The Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment Order 2020, SSI 2020/129 was made by the Scottish Ministers under sections 30, 31 and 275 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so today, 23 April 2020. It is also being laid before the Scottish Parliament today and comes into force on 24 April 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.

The Amendment Order inserts new class 72C in Schedule 1 of the Town and Country Planning (General Permitted Development) (Scotland) Order 1992

The new class establishes permitted development rights for development by or on behalf of a local authority or health service body on land owned, leased, occupied or maintained by it for the purposes of preventing an emergency, reducing, controlling or mitigating the effects of an emergency or taking any other action in connection with an emergency.

There are restrictions on the height of any new buildings and the proximity of the development or any associated plant or machinery to the boundary of the land or to any dwellinghouse, and developments may not be sited in sensitive areas. The local authority must be notified of any development carried out under class 72C if not carried out by the local authority itself.

Class 72C permits development subject to conditions that the use of land for the purposes of the class ceases on or before 31 December and that, within six months of the date that the use of the land ceases, any building, works, plant, machinery, structure and erection permitted by this class is removed; and the land is restored to its condition before the development took place, or, if the developer is not also the planning authority, to such other state as may be agreed in writing between the planning authority and the developer.

New developments and changes of use are currently taking place to urgently provide additional capacity for the NHS and other services to address the coronavirus emergency. It is essential that the planning system does not act as a barrier or create delays in providing this necessary infrastructure. Planning authorities have discretion in the use of enforcement powers, and the Minister for Local Government and I have asked them not to use those powers where changes are necessary to contribute to the response to the pandemic. However, it will provide more certainty to local authorities and NHS bodies to ensure through legislation that necessary developments do not require applications for planning permission to be made. The Order also makes clear the temporary nature of the permission, and when any new development must be removed, which provides certainty to

neighbours of such developments. Since these essential developments are already proposed, we consider that it is necessary for the Order to come into force immediately.

Yours sincerely

JOHN MCNAIRNEY

Chief Planner

