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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 19 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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Committee Membership



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Stuart McMillan
Scottish National Party



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Scottish Conservative
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Gil Paterson
Scottish National Party

Introduction

1. At its meeting on 19 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:
 - Criminal Justice (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/137)
 - Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020 (SSI 2020/139)
2. The Committee's conclusions in relation to these instruments are 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

Criminal Justice (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/137)

Purpose

4. The instrument makes modifications to the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”), the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”) and the Coronavirus (Scotland) Act 2020 (“the 2020 Act”).
5. These modifications make provision for victims to be notified in the event of an offender’s early release from prison, where they have been so released by virtue of the 2020 Act.
6. The amendments also clarify that the powers that may be exercised by prison “governors” under the 2020 Act may also be exercised by prison “directors”. Prison “directors” exercise the same functions as “governors” in contracted out prisons.
7. The modifications of the 2003 Act and the 2014 Act will only have effect whilst the 2020 Act remains in force.

Committee Consideration

8. The instrument was made and laid before the Parliament on 4 May 2020 and came into force immediately. 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 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.

10. The Committee therefore reports this instrument to the lead committee, the COVID-19 Committee, under reporting ground (j) for failure to comply with the 28-day rule.

11. The Committee also considered 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 4 May 2020 (see Annex A).
12. The letter explains that the Scottish Government breached the 28 day rule in order to bring this instrument into force on the same day as the Release of Prisoners (Coronavirus) (Scotland) Act Regulations 2020. Had this not been done, there would have been a period of time when prisoners could have been released but Scottish Ministers would have been unable to provide information to victims about an offender’s release.

13. The Committee is content with the reasons for the breach of the 28-day rule in these circumstances.

Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020 (SSI 2020/139)

Purpose

14. This instrument amends the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014, which previously provided that pregnant women and families with children are not to be housed in unsuitable accommodation for more than seven days. What is considered "unsuitable accommodation" is specified in the 2014 Order.
15. This instrument extends the scope of the 2014 Order to apply to all homeless persons. It also extends the types of accommodation that are always unsuitable to include accommodation not meeting safety standards. In addition, it provides two further circumstances where accommodation is unsuitable, unless an exception applies. Those circumstances are if the accommodation is not in the locality of the place of employment of a member of the household (taking into account the distance of travel by public transport or transport provided by a local authority); or not suitable for visitation by a child who is not a member of the household and in respect of whom a member of the household has parental rights.
16. The instrument also amends an existing exception (i.e. where accommodation is not unsuitable) if the local authority has secured that it has been made available (e.g., by a charity, rather than, as previously, that it had to be owned by the local authority) and services relating to health, child care or family welfare are provided to persons accommodated there. New exceptions are also provided where the accommodation made available is shared tenancy accommodation, consists of community hosting, or is rapid access accommodation.
17. Separately, the instrument temporarily modifies the 2014 Order as amended above in response to the coronavirus pandemic. It allows for temporary accommodation to be provided for homeless households by way of accommodation within hotels and bed and breakfasts. This applies where homeless persons need to self-isolate or otherwise comply with physical distancing guidelines. This provision expires on 30 September 2020.

Committee Consideration

18. The instrument was laid before the Parliament on 5 May 2020 and came into force the following day. 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.
19. As with the preceding instrument, the Committee is required to draw the instrument to the attention of the Parliament under reporting ground (j).

20. The Committee therefore reports this instrument to the lead committee, the Local Government and Communities Committee, under reporting ground (j) for failure to comply with the 28-day rule.
21. The reasons for the breach of the 28 day rule in this case are set out in a letter to the Presiding Officer dated 5 May 2020 (see Annex B).
22. In this letter the Scottish Government explains that it considers this breach necessary to put in place the correct structure to aid recovery from coronavirus, providing local authorities with clarity on how they should plan their exit strategies and support a restructure of how homelessness is dealt with. This is to ensure that all homeless households are able to be provided with high quality temporary accommodation prior to moving to a permanent settled home.
23. As this instrument contains both permanent changes to the 2014 Order and temporary modifications to those changes in response to coronavirus, the Committee invites the lead committee to consider whether the breach of the 28-day rule is justified in policy terms, particularly in relation to the permanent changes.
24. This instrument also refers to the Homeless Persons (Unsuitable Accommodation) *Order (Scotland) 2014*, when it should instead refer to the Homeless Persons (Unsuitable Accommodation) *(Scotland) Order 2014*. Article 3(1) also incorrectly refers to the “modifications in this paragraph” instead of the modifications contained in paragraphs (2) and (3) of article 3. The Scottish Government has acknowledged these errors and has undertaken to correct them by way of correction slip.
25. The Committee draws these errors to the attention of the lead committee under the general reporting ground.
26. The Committee also considered several words used in this instrument which are not defined:
 - “short period of time” in the definition of “community hosting” inserted into the 2014 Order by article 2(2)(b);
 - the terms “congregate”, “large scale”, “small scale” and “good standard” in the definition of “shared tenancy accommodation” inserted into the 2014 Order by article 2(2)(d).
27. The Committee wishes to highlight these words to the lead committee so that it might consider, as a matter of policy, whether their interpretation should be left to the judgement of the local authority, having regard to any guidance issued by Ministers, rather than providing a more specific definition in the Order.

No Points Raised

COVID-19 Committee

Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/138)

Annex A

Letter to the Presiding Officer dated 4 May 2020

Dear Presiding Officer,

THE CRIMINAL JUSTICE (MISCELLANEOUS TEMPORARY MODIFICATIONS) (SCOTLAND) REGULATIONS 2020 (SSI 2020/137)

The Criminal Justice (Miscellaneous Temporary Modifications) (Scotland) Regulations 2020

are made in exercise of the powers conferred by section 16 of the Coronavirus (Scotland) Act 2020. These regulations are subject to the negative procedure in accordance with section 16(4) of the 2020 Act. They have also been laid before the Scottish Parliament today and come into force on the same day as they were made. It is recognised that this does not comply with Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. This letter sets out why it is necessary to lay the above instrument less than 28 days before it is brought into force.

These regulations modify the Victim Notification Scheme (VNS), for the duration of the 2020 Act, to ensure that victims who have registered with the VNS can receive information about an offender's release from prison under the emergency release arrangements. Without these modifications, neither section 16 of the 2003 Act nor section 27A of the 2014 Act would apply where an offender is released under regulations made under the 2020 Act. This would prevent Scottish Ministers from informing a victim where the relevant offender is released from prison. These regulations remedy this issue.

These Regulations also modify paragraph 19 of schedule 4 of the 2020 Act, for the duration of that Act, so as to clarify that the references to the "governor" of a prison include references to the "director" of a contracted out prison. This will ensure that the director of a contracted out prison will be able to exercise the same power as the governor of a prison to prevent the release of a person under these arrangements where the person is considered to pose an immediate risk of harm to an identified individual.

Obviously if your officials would like to discuss any matters arising from these Regulations I would be happy to engage with them.

I am sending a copy of this letter to the Convenor of the Delegated Powers and Law Reform Committee.

GRAHAM ROBERTSON

Community Justice Division

Scottish Government

Annex B

Letter to the Presiding Officer dated 5 May 2020

Dear Presiding Officer

THE HOMELESS PERSONS (UNSUITABLE ACCOMMODATION) (SCOTLAND) AMENDMENT ORDER 2020

The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order (UAO), SSI 2020/139 is made by the Scottish Ministers under sections 29(3) and (4) of the Housing (Scotland) Act 1987(a) and all other powers enabling them to do so on 5 May 2020. This instrument is subject to negative procedure. The Regulation is being laid before the Scottish Parliament today, 5 May 2020 and comes into force on 6 May 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.

In response to COVID-19, local authorities have had to respond in a different way to ensure that the safety of vulnerable homeless people and the wider public health need were prioritised. Rough sleepers and other homeless households have been provided with accommodation in hotels and B&B accommodation as this is the best option for them as a response to this outbreak. However, this accommodation would normally constitute a breach of the Order.

It is now not only important to protect the progress that has been made, whereby people have been provided with accommodation appropriate to their need but to ensure there is no backwards movement in local and national efforts to tackle homelessness in the aftermath of the pandemic. This means we need to develop the right framework containing appropriate measures and processes to facilitate delivery of homeless services post COVID-19.

To do this we need to lay legislation immediately that includes temporary changes as a direct response to COVID-19 as well as permanent changes to give effect to the commitments already made in the Programme for Government to extend the UAO this parliamentary term. This is necessary to put in place the correct structure to aid recovery from coronavirus, providing local authorities with clarity on how they should plan their exit strategies and support a restructure of how we deal with homelessness, ensuring that all homeless households are able to be provided with high quality temporary accommodation prior to moving to a permanent settled home.

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.

Yours sincerely

Graham Thomson

Temporary Accommodation and Programme Strategy Team Leader

