



The Scottish Parliament
Pàrlamaid na h-Alba

Published 2 June 2020
SP Paper 742
31st Report, 2020 (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 2 June 2020



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Email: sp.info@parliament.scot

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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.



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dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Convener
Bill Bowman
Scottish Conservative
and Unionist Party



Deputy Convener
Stuart McMillan
Scottish National Party



Mary Fee
Scottish Labour



Gordon Lindhurst
Scottish Conservative
and Unionist Party



Gil Paterson
Scottish National Party

Introduction

1. At its meeting on 2 June 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:
 - Marine Works and Marine Licensing (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/157)
2. The Committee's conclusions in relation to this instrument 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

Marine Works and Marine Licensing (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (2020/157)

Purpose

4. This instrument makes temporary modifications to the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013. The modifications suspend the requirements to make information or documentation available for inspection in a public place, to provide hard copies of Environmental Impact Assessment reports and to hold public events during the Coronavirus emergency period.
5. The instrument came into force on 20 May 2020. The modifications of the 2017 Regulations and the 2013 Regulations will only have effect whilst the Coronavirus (Scotland) Act 2020 remains in force.

Committee Consideration

6. The instrument was laid before the Parliament on 20 May 2020 and came into force the same 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.
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 Environment, Climate Change and Land Reform 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 20 May 2020 (see Annex).
10. The letter explains that it was considered necessary to bring these modifications into force as early as possible given the sudden nature of the pandemic and the major consequences of its associated impacts on business. The letter states that this will support future economic and societal recovery, will ensure consistency of approach across the planning and energy consents systems and thus certainty for applicants and the public, and will maintain the ability of the Marine Scotland Licensing Operations Team to continue to process applications efficiently.

11. The Committee is content with the reasons for the breach in these circumstances.

No Points Raised

COVID-19 Committee

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/164)

Finance and Constitution Committee

Budget (Scotland) Act 2020 Amendment Regulations 2020 (SSI 2020/draft)

Health and Sport Committee

Food Information and Addition of Vitamins, Minerals and Other Substances (Scotland) Amendment Regulations 2020 (SSI 2020/156)

Standards, Procedures and Public Appointments Committee

Scottish Elections (Franchise and Representation) Act 2020 (Commencement) Regulations 2020 (SSI 2020/162)

Annex

Letter to the Presiding Officer dated 20 May 2020

The MARINE Works AND MARINE LICENSING (Miscellaneous temporary MODIFICATIONS) (Coronavirus) (Scotland) Regulations 2020

The Marine Works and Marine Licensing (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020, SSI 2020/157 was made by the Scottish Ministers under section 2(2) of the European Communities Act 1972 and sections 23(3)(d), (4) and (5), 24(2) and 165(1) of the Marine (Scotland) Act 2020 on 20 May 2020. It has been laid before the Scottish Parliament today and will come into force on 20 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 we regret to inform that we have not been able to comply with this and to meet the requirements of section 31(3) that Act, this letter explains why.

This instrument is required to make temporary modifications to the Marine Works (Environmental Impact Assessment) (Scotland) Regulations 2017 and the Marine Licensing (Pre-application Consultation) (Scotland) Regulations 2013. The Regulations apply to applications made to the Scottish Ministers for a marine licence to construct or deposit certain large scale infrastructure under the Marine (Scotland) Act 2010. The provisions of the Coronavirus (Scotland) Act 2020 in relation to publishing documents and making documents available for inspection do not apply, if it is the applicant's responsibility. In addition the Coronavirus (Scotland) Act 2020 does not address the requirement for applicants to hold pre-application consultation events.

The regulations being amended require that applicants make physically available, for inspection by the public, application documents and environmental information at named places, and to hold pre-application consultation events at a suitable accessible venue, to allow for members of the public to make representations in respect of the activities proposed in the application. Such named places are most often public buildings such as council offices and libraries.

The regulations being amended also require that applicants, on making the applications, lodge physical copies of documents with the Scottish Ministers.

The modifications in this instrument are necessary to ensure the continued effective processing of marine licence applications during the coronavirus relevant period. The amendments require that companies making applications provide all required documentation electronically for public inspection. Applicants will not require to ensure the Scottish Ministers have hard copies of application documents, and applicants will hold pre-application consultation events online. These amendments are driven by the measures introduced to respond to the Covid-19 pandemic. The Scottish Government has advised members of the public not to leave the home unless it is essential to do so and to follow physical distancing instructions. As a result, most public buildings such as libraries and community centres are closed. Even where these remain open, it would not be appropriate to encourage members of the public to risk spreading the virus by attending such places.

These are temporary measures designed to ensure that the economic impact of the current emergency is minimised and that business can continue in respect of marine licensable activities. It is desirable that the circulation of such information regarding proposals is returned to wider availability as soon as possible and the modifications will therefore expire on expiry of the Coronavirus Act 2020. The modifications to these processes have been developed with great urgency at short notice in light of the impact of the Covid-19 lock down restrictions in recent weeks, and we have therefore not been able to plan ahead for them. They align with similar measures promoted in respect of the planning system and applications for energy consent in Scotland generally, and the breach of the 28 day rule in this case will ensure that all such modifications come into effect as soon as possible.

We regret this breach of the 28 day rule which we would ordinarily do our utmost to avoid, but given the sudden nature of the pandemic and the major consequences of its associated impacts on business we consider that in the circumstances it is necessary to bring these modifications into force as early as possible. Doing so will support future economic and societal recovery, will ensure consistency of approach across the planning and energy consents systems and thus certainty for applicants and the public, and will maintain the ability of the Marine Scotland Licensing Operations Team to continue to process applications efficiently.

Gayle Holland

Marine Scotland Licensing Operations Team

