



The Scottish Parliament
Pàrlamaid na h-Alba

Published 29 January 2021
SP Paper 922
3rd Report, 2021 (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 26 January 2021



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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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Committee Membership



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Introduction

1. At its meeting on 26 January 2021, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the lead committee:
 - Homeless Persons (Unsuitable Accommodation) (Scotland) (Modification and Revocation) (Coronavirus) Order 2021 (SSI 2021/10); and
 - Civil Partnership (Scotland) Act 2020 (Commencement No. 3, Saving and Transitional Provision) Regulations 2021 (SSI 2021/23).
2. The Committee's recommendations in relation to these instruments are set out in the next section of 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.

Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the lead committee

Homeless Persons (Unsuitable Accommodation) (Scotland) (Modification and Revocation) (Coronavirus) Order 2021 (SSI 2021/10)

4. The purpose of this instrument is to make temporary modifications to the Homeless Persons (Unsuitable Accommodation) (Scotland) Order 2014 to allow local authorities to provide homeless households with accommodation within hotels and bed and breakfasts as a result of coronavirus. The instrument mirrors the provisions in SSI 2020/268, which ceases to have effect on 31 January 2021.
5. This instrument is subject to the negative procedure.
6. The Committee noted that there had been a failure to lay the instrument in accordance with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. This section requires that negative instruments are laid at least 28 days before they come into force, not counting recess periods of more than 4 days. This instrument was laid on 13 January 2021 and comes into force on 31 January.

7. **The Committee agrees to draw the instrument to the attention of the Parliament under reporting ground (j) on the basis that it has breached the 28-day rule. The Committee nevertheless notes it is satisfied with the Scottish Government's explanation (please see the Annex) that has been given for the failure to comply with the rule.**

Civil Partnership (Scotland) Act 2020 (Commencement No. 3, Saving and Transitional Provision) Regulations 2021 (SSI 2021/23)

8. The instrument commences certain provisions of the Civil Partnership (Scotland) Act 2020 and makes saving and transitional provision relating to the introduction of civil partnership between persons of different sexes.
9. This instrument is subject to the negative procedure.
10. As with the previous instrument in this report, there has been a failure to lay the instrument in accordance with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The instrument was laid on 18 January and certain provisions commence on 1 February 2021.

11. **The Committee agrees to draw the instrument to the attention of the Parliament under reporting ground (j) on the basis that it has breached the 28-day rule. The Committee nevertheless notes it is satisfied with the Scottish Government's explanation (please see the Annex) that has been**

given for the failure to comply with the rule.

No points raised

COVID-19 Committee

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 12) Regulations 2021 (SSI 2021/17)

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 13) Regulations 2021 (SSI 2021/25)

Environment, Climate Change and Land Reform Committee

Single Use Carrier Bags Charge (Coronavirus) (Scotland) Amendment Regulations 2021 (SSI 2021/draft)

Equalities and Human Rights Committee

Civil Partnership Between Persons of Different Sexes (Prescribed Bodies) (Scotland) Regulations 2021 (SSI 2021/24)

Health and Sport Committee

Human Tissue (Authorisation) (Specified Type B Procedures) (Scotland) Regulations 2021 (SSI 2021/draft)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 4) Regulations 2021 (SSI 2021/19)

Health Protection (Coronavirus) (Pre-Departure Testing and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/20)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/21)

General Pharmaceutical Council (Coronavirus) (Amendment) Rules Order of Council 2021 (SI 2021/26)

Health Protection (Coronavirus) (International Travel, Public Health Information and Pre-Departure Testing) (Scotland) Amendment Regulations 2021 (SSI 2021/34)

Justice Committee

Police Service of Scotland (Miscellaneous Amendments) Regulations 2020 (SSI 2020/453)

Fireworks (Scotland) Amendment Regulations 2021 (SSI 2021/14)

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Miscellaneous) 2021 (SSI 2021/22)

Local Government and Communities

Local Authority (Capital Finance and Accounting) (Scotland) (Coronavirus) Amendment Regulations 2021 (SSI 2021/draft)

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Property Factors (Code of Conduct) (Scotland) Order 2021 (SSI 2021/draft)

Statutory Guidance: Sports Club Relief (SG 2021/9)

Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2021 (SSI 2021/18)

Rural Economy and Connectivity Committee

Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/9)

- **To note:** regulation 2 of the instrument makes an amendment that the Delegated Powers and Law Reform Committee called for in [its report on subordinate legislation considered on 24 November 2020](#) when considering the draft Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations 2020 (which has now been made as SSI 2020/460). The Committee noted in that report that SSI 2020/460 could have omitted the words “its share of” from Article 14 of the Direct Payments Regulation (DPR), in the interests of consistency with equivalent amendments which SSI 2020/460 made to other Articles of the DPR.

Social Security Committee

Council Tax Reduction (Scotland) Amendment (Coronavirus) Regulations 2021 (SSI 2021/12)

Annex

Homeless Persons (Unsuitable Accommodation) (Scotland) (Modification and Revocation) (Coronavirus) Order 2021 (SSI 2021/10)

On 13 January 2021 the Government wrote to the Presiding Officer as follows:

The Homeless Persons (Unsuitable Accommodation) (Scotland) (Modification and Revocation) (Coronavirus) Order 2021 (UAO), SSI 2021/10, 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 13 January 2021. This instrument is subject to negative procedure. The Regulation is being laid before the Scottish Parliament on 13 January 2021 and comes into force on 31 January 2021.

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.

Additionally local authorities have been permitted to place households in accommodation that would otherwise be deemed as unsuitable where there was a lack of availability of suitable temporary accommodation or settled accommodation, as a result of the indirect impacts of Covid-19 on accommodation supply in the area.

As the pandemic continues, and the virus remains a significant threat to public health, there have been restrictions on local authorities and registered social landlords which have meant that void properties have not been able to be turned over in the same way, and thus allocations of both temporary and settled accommodation aren't at the levels they need to be.

Although voids are now being turned over and allocations to homeless households are being prioritised, the continuing impact of the additional pressures on the system since March are still being felt. Information gathered through the local authority Unsuitable Accommodation Order working group shows that whilst there have been some homeless applicants moving from temporary accommodation (including B&B) to settled tenancies, there remain challenges in progressing these during the phased exit from lockdown and the further lockdowns that have occurred have only added to the problem.

As we head into the winter months, which generally see a rise in the need for homelessness services, local authorities are also facing pressures from the impact that coronavirus has had on the production of materials and supply issues because of lockdown and on the construction industry which has delayed plans. Local authorities also face the unknown challenges of the impact of Brexit which also needed to be factored into this decision.

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 as the pandemic continues. 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 further extend the legislation as a direct and continuing response to Covid-19. 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 settled home.

We had hoped that a further extension would not have been required, however, given the ongoing impact and repercussions to the housing and homelessness system of the pandemic, along with the unknowns around winter pressures and Brexit, it is necessary to urgently extend the temporary exceptions for a further 5 months.

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.

Civil Partnership (Scotland) Act 2020 (Commencement No. 3, Saving and Transitional Provision) Regulations 2021 (SSI 2021/23)

On 18 January 2021 the Government wrote to the Presiding Officer as follows:

The Civil Partnership (Scotland) Act 2020 (Commencement No. 3, Saving and Transitional Provision) Regulations 2021 were made by the Scottish Ministers under sections 3(5)(b), 15 and 16(2) of the Civil Partnership (Scotland) Act 2020 (“the 2020 Act”) on 18 January 2021. They are being laid before the Scottish Parliament today, 18 January 2021. Regulations 1 and 4 come into force on 1 February 2021 and the remaining provisions come into force on 1 June 2021.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 provides 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 in relation to regulations 1 and 4. In accordance with section 31(3) of that Act, this letter explains why.

The Civil Partnership (Scotland) Act 2020 (Commencement No. 3, Saving and Transitional Provision) Regulations 2021 bring into force provisions of the 2020 Act the effect of which is that mixed sex civil partnerships formed outwith Scotland are generally recognised in Scotland as civil partnerships from 1 June 2021. However, these regulations also include, at regulation 4, transitional provision so that a mixed sex civil partnership that has previously been formed overseas is not recognised in Scotland if one or both of the parties is already in a registered relationship (such as a marriage) which is recognised in Scotland. This ensures there is no possibility of the recognition of relationships that have not previously been recognised bringing about a situation in which a person is in two registered relationships under Scots law at the same time.

When preparing the Civil Partnership (Scotland) Act 2020 (Commencement No. 3, Saving and Transitional Provision) Regulations 2021, we realised that the same point on people

not being in two registered relationships under Scots law at the same time may also be relevant to the interim scheme under section 3 of the 2020 Act. Under the interim scheme, persons in a mixed sex civil partnership are initially to be treated in Scotland as being in a marriage formed under the law of the jurisdiction in which the civil partnership is registered. While the issue only potentially affects a narrow class of cases, I apologise for our failure to appreciate earlier that the point on people not being in two registered relationships under Scots law at the same time was also relevant to the interim scheme under the 2020 Act.

Provisions commencing the interim scheme are contained in the Civil Partnership (Scotland) Act 2020 (Commencement No. 1 and Interim Recognition of Different Sex Relationships) Regulations 2020 (SSI 2020/414) which comes into force on 1 February. Regulation 4 of the Civil Partnership (Scotland) Act 2020 (Commencement No. 3, Saving and Transitional Provision) Regulations 2021 is therefore to be brought into force on the same date in order to ensure that the interim arrangements for the recognition of overseas mixed sex civil partnerships are subject to the transitional provision in question from the outset.

