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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 23 November 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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Introduction

1. At its meeting on 23 November 2021, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the relevant lead committee:
 - Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021 (SSI 2021/397).
2. The Committee's recommendations in relation to this instrument 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 at the end of the report. Some broader points highlighted by the Committee are noted below the relevant instrument.

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

Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021 (SS1 2021/397)

4. The instrument amends the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 in light of changes made to the Code of Conduct for Councillors and the Model Code of Conduct for Members of Devolved Public Bodies.
5. Regulation 2(2) of the instrument substitutes a new schedule into the 2003 Regulations in which the registrable interests of councillors and members of devolved public bodies are described by reference to various paragraphs in the councillors' code and the members' code respectively.
6. Table A of the Schedule refers to Councillor's interests and Table B refers to Members' interests. Table B of the schedule to be inserted by this instrument does not include Category 9 concerning Close Family Members. The instrument as amended therefore does not reflect the registrable interests contained within the revised Model Code.
7. In correspondence with the Scottish Government, the Committee highlighted the error in Table B of the schedule to be inserted by regulation 2(2) of the instrument.
8. In its response, the Scottish Government agreed that the omission of Category 9 concerning Close Family Members was an error and confirmed that an amending instrument would be laid in early course to rectify this error.
9. The full correspondence between the Committee and the Scottish Government is included in the Annex.
10. **The Committee draws the instrument to the attention of the Parliament under reporting ground (i) on the basis that the instrument's drafting appears to be defective. This is due to the error in Table B of the schedule, as set out above, which fails to make provision for all registrable interests as set out in the revised Model Code contrary to the policy intention.**
11. **The Committee welcomes that the Scottish Government has acknowledged the error and has confirmed that an amending instrument will be laid in early course to rectify it.**

No points raised

Economy and Fair Work Committee

Diligence against Earnings (Variation) (Scotland) Regulations 2021 (SSI 2021/409)

Local Government, Housing and Planning Committee

Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment (No. 2) Order 2021 (SSI 2021/411)

Net Zero, Energy and Transport Committee

Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 (SSI 2021/410)

- The Committee agreed to write to the Net Zero, Energy and Transport Committee to highlight the effect on the instrument of the United Kingdom Internal Market Act 2020, as highlighted in the Policy Note.

Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2021 (SSI 2021/412)

Social Justice and Social Security Committee

Best Start Grants and Scottish Child Payment (Miscellaneous Amendments) Regulations 2021 (SSI 2021/Draft)

Annex

Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021 (2021/397)

On 12 November 2021 the Scottish Government was asked:

The instrument amends the Ethical Standards in Public Life etc. (Scotland) Act 2000 (Register of Interests) Regulations 2003 (“the 2003 Regulations”) as a result of amendments made to the code of conduct for councillors and the model code of conduct for members of devolved public bodies. In particular, regulation 2(2) substitutes a new schedule into the 2003 Regulations in which the registerable interests of councillors and members of devolved public bodies are described by reference to various paragraphs in the councillors’ code and the members’ code respectively. The accompanying policy note explains that the amendments are a consequence of the approval of the revised Councillors’ Code of Conduct and Model Code of Conduct for Members of Devolved Bodies by the Scottish Parliament on 27 October 2021. It is further explained that as the 2003 Regulations cross-refer to the Codes it is necessary to amend those regulations so that they reflect the Codes as amended.

Table B of the schedule to be inserted by regulation 2(2) of the instrument refers to Members interests and column one lists the registerable interests. There are eight entries listed in table B. Section 4 (Registered Interests) of the Model Code of Conduct for Members of Devolved Public Bodies (SG/2021/230) laid before the Parliament on 2nd September 2021 and approved on 27 October 2021 contains nine entries (or categories). Category 9 (Close Family Members) is not included in the schedule to be inserted by regulation 2(2). Should this category be included in the schedule to reflect the amended code of conduct?

Please confirm whether any corrective action is proposed, and if so, what action and when.

On 16 November 2021 the Scottish Government responded:

Table B of the schedule, as inserted by the Amendment Regulations, should have contained a ninth entry for the interests of close family members who have transactions with the public body or are likely to have transactions or do business with the public body. This appears to have been omitted from the table inadvertently. The Scottish Government would propose to amend the new schedule of the 2003 Regulations (as inserted by the present Amendment Regulations) as soon as possible so as to insert entry 9 into table B.

Officials are discussing the timing of these further amendment regulations and it is anticipated that the necessary amendment will be made in early course.

