



The Scottish Parliament
Pàrlamaid na h-Alba

Published 9 November 2022
SP Paper 253
56th Report, 2022 (Session 6)

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 8 November 2022



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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 8 November, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the relevant lead committee:
 - Assured Tenancies and Private Residential Tenancies (Prescribed Notices and Forms) (Miscellaneous Temporary Modifications) (Scotland) Regulations 2022 (SSI 2022/307).
2. The Committee's recommendations in relation to this instrument are set out in the next section of this report.
3. The Committee also determined that in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

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

Assured Tenancies and Private Residential Tenancies (Prescribed Notices and Forms) (Miscellaneous Temporary Modifications) (Scotland) Regulations 2022 (SSI 2022/307)

4. The instrument temporarily modifies the Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2017 and the Rent Regulation and Assured Tenancies (Forms) (Scotland) Regulations 2017. It does so by making changes to certain forms and notices that a landlord is required to serve on a tenant when seeking to end a tenancy. The modifications are made in response to emergency measures introduced by the Cost of Living (Tenant Protection) (Scotland) Act 2022.
5. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to the negative procedure are to be laid at least 28 days before they come into force, not counting recess periods of more than 4 days. The instrument was laid on 28 October 2022 and came into force the same day.
6. In its letter to the Presiding Officer which can be read in the Annex, the Scottish Government explained that the 28 day rule could not be met due to the speed the new legislation was being introduced and amending regulations being required to ensure the forms reflect all evictions grounds on the date the 2022 Act came into force.
7. The Scottish Government also explained that the coming into force date of the Act and regulations could not be moved as these measures were urgently needed to help protect tenants during the cost of living crisis.
8. Oliver Mundell MSP noted that he was not content with the explanations provided by the Scottish Government for failure to comply with the laying requirementsⁱ. He said:

” I wish to put on record that, in this instance, the primary legislation to which the instrument relates was rushed through Parliament, which is clearly a contributing factor in the breach. Although I respect Parliament's decision, and understand the need now for the instrument to come into force, I am not content with the reason for the breach, as I believe that it could have been avoided if the primary legislation had followed the normal parliamentary procedure.

9. **The Committee draws the instrument to the attention of the Parliament under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**

ⁱ Official Report 8 November 2022

- 10. The Committee is nevertheless content with the explanations provided by the Scottish Government for failure to comply with the laying requirements.**

No points raised

Finance and Public Administration Committee

Budget (Scotland) Act 2022 Amendment Regulations 2023 (SSI 2022/Draft)

Local Government, Housing and Planning Committee

Non-Domestic Rates (Scotland) Act 2020 (Commencement No. 2, Transitional and Saving Provisions) Amendment (No. 2) Regulations 2022 (2022/301 (C. 17))

Net Zero, Energy and Transport Committee

Public Water Supplies (Scotland) Amendment Regulations 2022 (2022/Draft)

Environment Act 2021 (Commencement and Saving Provision) (Scotland) Regulations 2022 (2022/305(C.18))

Annex

Assured Tenancies and Private Residential Tenancies (Prescribed Notices and Forms) (Miscellaneous Temporary Modifications) (Scotland) Regulations 2022 (SSI 2022/307)

On 28 October 2022, the Scottish Government wrote to the Presiding Officer:

The Assured Tenancies and Private Residential Tenancies (Prescribed Notices and Forms) (Miscellaneous Temporary Modifications) (Scotland) Regulations 2022, SSI 2022/307, were made by the Scottish Ministers under sections 19(3), 53(1), (2) and (3) and 55(1) of the Housing (Scotland) Act 1988, and sections 61(3)(b), 62(1)(d) and 77(1) and (2) of the Private Housing (Tenancies) (Scotland) Act 2016 on 28 October 2022. The Regulations are being laid before the Scottish Parliament today, 28 October 2022 and come into force today.

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) the 2010 Act, this letter explains why.

Emergency legislation was introduced through the Cost of Living (Tenant Protection) (Scotland) Act which was passed by the Scottish Parliament on 06 October 2022. The Act helps to protect the wellbeing of tenants by stabilising their housing costs, reducing evictions and their potential homelessness but also includes safeguards for landlords experiencing financial hardship. As part of implementation of the temporary emergency measures in the Act, amendments to 2 prescribed forms which landlords use to serve notice to leave, or notice of intention to recover possession, on their tenants are required. The updates to these forms ensure that the additional, temporary grounds for eviction are included.

These Regulations are required to enable these changes to be made. The speed with which the new legislation is being introduced and the fact that the current versions of the forms sit within schedules of the [The Rent Regulation and Assured Tenancies \(Forms\) \(Scotland\) Regulations 2017](#) (AT6 - Intention to Raise Proceeding For Possession) and [The Private Residential Tenancies \(Prescribed Notices and Forms\) \(Scotland\) Regulations 2017](#) (Notice to Leave) means that amending Regulations are required to ensure the forms reflect all evictions grounds on the date the Act comes into force. If these Regulations were not in force on this date, the grounds would not be accessible as landlords cannot use any other form to serve notice. These are the reasons why the 28 days cannot be met. The coming into force date of the Act and Regulations cannot be moved as these measures are urgently needed to help protect tenants during the cost of living crisis.

