



The Scottish Parliament
Pàrlamaid na h-Alba

Published 22 March 2022
SP Paper 143
20th 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 22 March 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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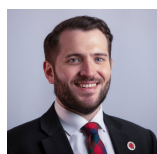
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Introduction

1. At its meeting on 22 March, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the relevant lead committee:
 - Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 (SSI 2022/97)
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 in terms of its remit, it did not need to draw the Parliament's attention to the instruments 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

Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 (SSI 2022/97)

4. The instrument amends the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010, which makes provision for enhanced disclosures with suitability information relating to children and adults. The instrument adds an individual seeking to provide accommodation to a Ukrainian national who has left Ukraine in connection with the Russian invasion, and any other person aged over 16 also residing on the premises that are to be used for the accommodation, as two further categories of individuals to whom an exempted question may be asked for the purpose of an enhanced criminal record certificate.
5. The instrument was laid on 17 March 2022 and comes into force on 24 March 2022. As it was laid less than 28 days before coming into force, it is in breach of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. This rule requires that instruments subject to the negative procedure are laid at least 28 days before they come into force, not counting recess periods of more than 4 days.
6. In correspondence with the Presiding Officer, the Scottish Government explained that the regulations are required to come into force urgently in order to have a suitable safeguarding system in place for the imminent commencement of the "Homes for Ukraine" scheme for those fleeing the Russian invasion of Ukraine.
7. A copy of the correspondence can be found in the **Annex**.

8. **The Committee draws the instrument to the attention of the Parliament on reporting ground (j) for failure to lay the instrument in accordance with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
9. **The Committee is nevertheless content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.**

No points raised

COVID-19 Recovery Committee

Coronavirus Act 2020 (Transitional Provision) (Scotland) Regulations 2022 (SSI 2022/82)

Health Protection (Coronavirus) (Requirements) (Scotland) Revocation Regulations 2022 (SSI 2022/92)

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Revocation Regulations 2022 (SSI 2022/99)

Criminal Justice Committee

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022 (SSI 2022/Draft)

Health, Social Care and Sport Committee

Sports Grounds and Sporting Events (Designation) (Scotland) Amendment Order 2022 (SSI 2022/86)

Net Zero, Energy and Transport Committee

Local Heat and Energy Efficiency Strategies (Scotland) Order 2022 (SSI 2022/Draft)

Rural Affairs, Islands and Natural Environment Committee

Agriculture and Horticulture Development Board (Amendment) Order 2022 (SI 2022/Draft)

Social Justice and Social Security Committee

Social Security (Residence Requirements) (Ukraine) (Scotland) Regulations 2022 (SSI 2022/Draft)

- The Regulations, which are subject to the affirmative procedure, seek to ensure a parity of access to the benefits system for Ukraine citizens coming to Scotland, in connection with the Russian invasion, as they will have with the rest of the UK. As the instrument was only laid on Monday, 21 March and is expected to be considered in the Chamber at Decision Time on Tuesday, 22 March, there has not been sufficient time for the Committee to fully scrutinise the instrument. However, given its subject matter the Committee acknowledged the immediacy of the instrument and was content with the Regulations. The Committee nevertheless reserved the right to look again at the instrument at a subsequent meeting should any issues be found. These would then be highlighted to the Scottish Government.

(Re-laid) Social Security (Up-rating) (Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/Draft)

Annex

Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 (SSI 2022/97)

On 17 March, the Scottish Government wrote to the Presiding Officer:

The Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022, SSI 2022/97, were made by the Scottish Ministers under sections 113B(2)(b), 113CA(1), 113CB(1) and 125(5) of the Police Act 1997 on 17th March 2022. They are being laid before the Scottish Parliament today, 17th March 2022 and come into force on 24th March 2022.

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.

These regulations have been made in response to the “Homes for Ukraine” scheme announced by the UK Government and the Scottish Government’s intention to act as a “super sponsor” for those fleeing the Russian invasion of Ukraine. The regulations make amendments to the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 to ensure the statutory framework for state disclosure allows for higher level disclosures checks to be carried out on sponsors (volunteers providing accommodation in their homes) and those in the sponsoring household, to ensure those fleeing Ukraine are placed in safe homes. Connected amendments to the statutory framework in relation to self disclosure are intended to be made by the Rehabilitation of Offenders Act 1974 (Exclusions And Exceptions) (Scotland) Amendment Order 2022 which is also being laid before the Scottish Parliament today.

The Scottish Government’s policy intent is to ensure there are adequate levels of vetting checks on those who wish to act as a sponsor, and for those in the sponsoring household over the age of 16. The scheme is expected to predominantly involve women and children fleeing the war and the safeguarding needs of these individuals and families when they arrive in Scotland are our paramount concern. Whilst recognising that the vast majority of people volunteering to accommodate Ukrainian refugees will present no risk of harm to them, the Scottish Ministers are aware from previous similar schemes that people may seek to exploit vulnerabilities in the system and seek opportunities to cause harm. Whilst the vast majority of people coming forward to host refugees will present no risk of harm to them, the Scottish Ministers believe the system (which criminal record checks forms one part of) should be sufficiently robust to protect it from those who may seek to exploit vulnerabilities in the system.

The regulations are required to come into force urgently in order to have a suitable safeguarding system in place for the imminent commencement of the Home for Ukraine scheme, which we understand may start as early as Friday 18 March 2022. Bringing the regulations into force this week ensures agencies placing refugees with sponsors will have access to the appropriate level of conviction and other criminal history information to make informed placement decisions.

