

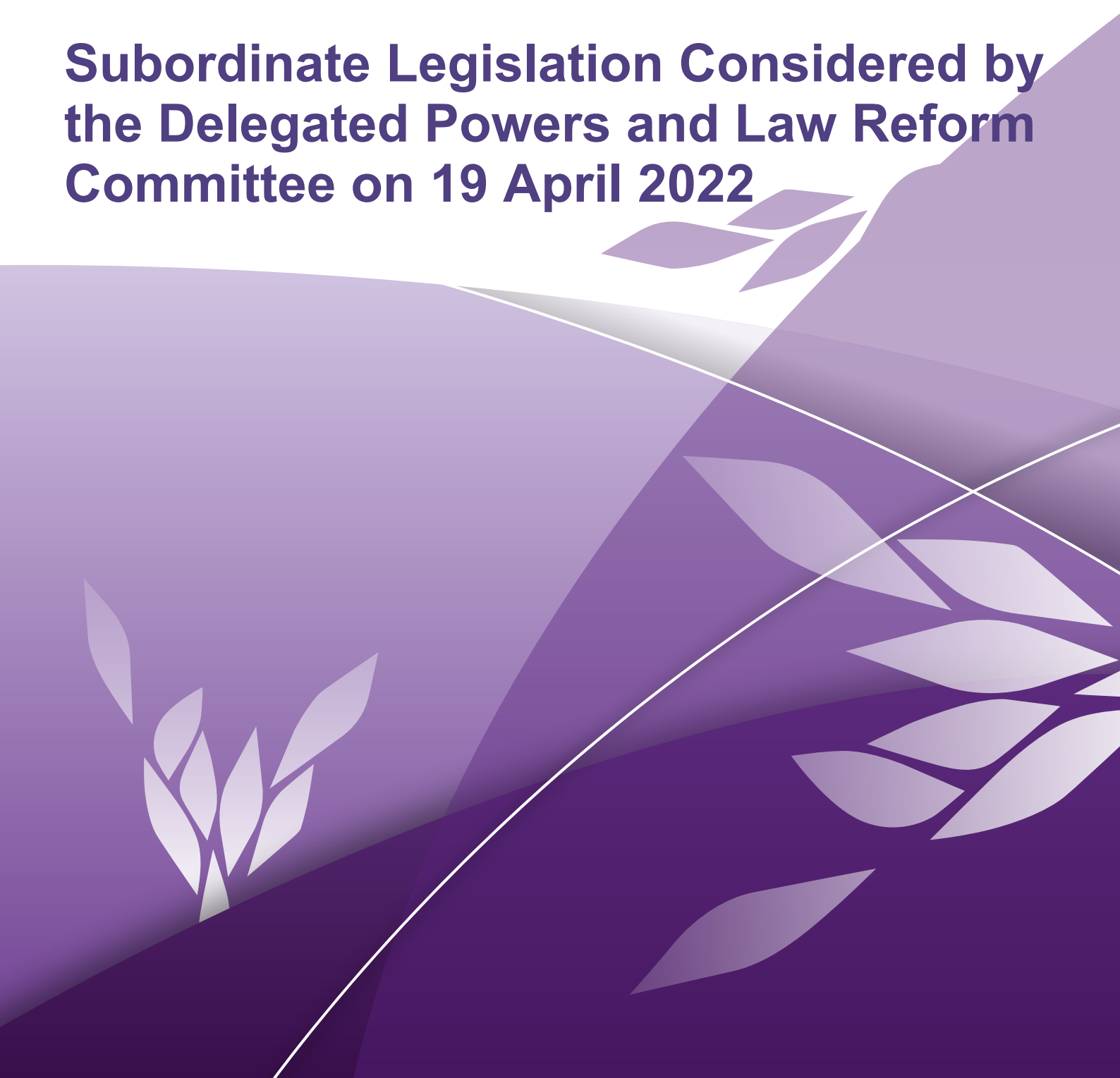


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 19 April 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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Committee Membership



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Introduction

1. At its meeting on 19 April, the Committee considered the following instrument under the SSI Protocol agreed between the Scottish Government and the Scottish Parliament in respect of SSIs made using the powers under the European Union (Withdrawal) Act 2018:
 - Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/90).
2. The Committee's recommendations in relation to this instrument, under the SSI Protocol, are set out in the next section of the report.
3. The Committee also considered the following instruments under its technical remit and agreed to draw them to the attention of the relevant lead committee:
 - Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/90);
 - Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2022 (SSI 2022/124); and
 - Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/125).
4. The Committee's recommendations in relation to these instruments are set out later in the report.
5. The Committee also determined that in terms of its technical remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

Instruments considered under the European Union (Withdrawal) Act 2018

Committee consideration of the scrutiny procedure under which an instrument has been laid and the categorisation applied by the Scottish Government

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/90)

6. The instrument makes exemptions from some official controls for certain products being imported into Scotland from the Republic of Ireland which are produced in Northern Ireland or the Republic of Ireland.
7. Specifically, the regulations apply to imports of relevant goods consisting of products of animal origin and certain animal by-products. The instrument exempts these imports from being subject to 'pre-notification requirements', being (for example) the obligation to notify border control by submitting certain paperwork.
8. The instrument is made under the negative procedure and is considered by the Scottish Government to be of low significance.
9. In correspondence with the Scottish Government, the Committee asked whether it agreed that a choice of procedure was available and if so, for further explanation as to their choice of the negative procedure.
10. The Scottish Government confirmed that there was a choice of procedure and that the negative procedure was considered appropriate due to the limited impact of the amendments made by the instrument which will apply for a limited time.
11. A copy of the correspondence can be found in the **Annex**.
12. **The Committee is content that the appropriate scrutiny procedure and categorisation have been applied to the instrument.**

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

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/90)

13. As highlighted in the previous section of this report, these Regulations make exemptions from some official controls for certain animal products being imported into Scotland from the Republic of Ireland.
14. The intended effect of Regulation 2 of the instrument is to exempt imports of certain animal-origin goods which are produced in Northern Ireland and the Republic of Ireland from the requirement to pre-notify them to the border controls authority in Scotland, and to provide that, for these purposes, goods are taken to be produced in Northern Ireland or in the Republic of Ireland if they are processed there.
15. In correspondence with the Scottish Government, the Committee asked whether the absence of a reference in Regulation 2 to the Republic of Ireland in relation to whether goods are to be taken to be produced in the Republic of Ireland if they are processed there was intentional given that related provisions refer to both Northern Ireland and the Republic of Ireland in this regard.
16. The Scottish Government confirmed that this was a drafting error and that reference to the Republic of Ireland should have been included. It has committed to rectifying this error by making a further amendment in regulations which will be laid in the Scottish Parliament at the next available opportunity.
17. A copy of the correspondence can be found in the **Annex**.

18. **The Committee draws this instrument to the attention of the Parliament under reporting ground (i) that its drafting appears to be defective due to the error in Regulation 2 of the instrument.**
19. **The Committee notes the Scottish Government's commitment to rectify the error by making a further amendment in regulations which will be laid in the Scottish Parliament at the next available opportunity.**

Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2022 (SSI 2022/124)

Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/125)

20. These instruments are both made under the Local Government Finance Act 1992. They were laid on 31 March 2022 and came into force on 1 April 2022. As they were laid less than 28 days before coming into force, they are 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.

21. In relation to SSI 2022/124, the Order amends the Council Tax (Exempt Dwellings) (Scotland) Order 1997 so that council tax is not charged on dwellings that are exclusively used as the sole or main residence of those who have left Ukraine in connection with the Russian invasion and who have leave to remain or enter the UK or a right to abode in the UK.
22. In relation to SSI 2022/125, the Regulations amend specified council tax regulations. This provides that the entitlement to the Single Person discount from council tax liability, and under the Council Tax Reduction scheme, is not affected by offering accommodation to certain persons coming to the UK from Ukraine in connection with the Russian invasion.
23. In correspondence with the Presiding Officer in relation to both instruments, the Scottish Government explained that the Homes for Ukraine Scheme was launched by the UK Government on 14 March 2022. Due to the nature of the scheme, it has the potential to increase the level of council tax liability of those who accommodate Ukrainian refugees which was not able to be fully assessed until the scheme was launched.
24. The Scottish Government also stated that given the urgent nature of the need to change the law on this occasion, and the short time frame from when the Homes for Ukraine Scheme was launched and the beginning of the 2022-23 council tax year, it had not been possible to meet the 28 day requirement.
25. A copy of the correspondence can be found in the **Annex**.

26. **The Committee draws SSI 2022/124 and SSI 2022/125 to the attention of the Parliament under reporting ground (j) for failure to lay the instruments in accordance with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
27. **The Committee is nevertheless content with the explanations provided by the Scottish Government for failure to comply with the laying requirements.**

No technical points raised

COVID-19 Recovery Committee

Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 6) Regulations 2022 (SSI 2022/123)

Criminal Justice Committee

Scottish Fire and Rescue Service (Framework) Order 2022 (SSI 2022/119)

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Electronic Monitoring) 2022 (SSI 2022/120)

Annex

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/90)

On 24 March 2022, the Committee asked the Scottish Government :

1. Regulation 2 of the instrument, inserting sub-paragraph (3B) into schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012, provides that “goods are taken to be produced in Northern Ireland if they are processed there”, whereas the equivalent provision made by regulation 3 (and by the related UK SI referred to in the Policy Note) states that “goods are taken to be produced in Northern Ireland or the Republic of Ireland if they are processed there” (emphasis added). Is the absence of reference to the Republic of Ireland in sub-paragraph (3B) intentional?

2. The enabling power cited for the instrument is paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 (supplemented by paragraph 21(b) of schedule 7). There is a choice of procedure under this power (unless the affirmative procedure is mandatory under paragraph 1(6) because the instrument contains provision of a type falling within paragraph 1(2), which does not appear to be the case here). However, under the heading in the Policy Note for the Scottish Ministers’ reasons for their choice of procedure, it is stated: “[n]egative procedure is considered appropriate as the powers under the European Union (Withdrawal) Act 2018 are subject to negative procedure”. Do you agree that there is in fact a choice of procedure for this instrument, and if so, could further explanation be given for the choice of the negative procedure?

On 1 April 2022, the Scottish Government responded:

1. This is a drafting error and the words “or the Republic of Ireland” should be included. We intend to rectify this error by making a further amendment in an SSI which will be laid in the Scottish Parliament at the next available opportunity.

2. As the Regulations do not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018 (“EUWA”), it is agreed there is a choice of procedure open to the Scottish Ministers. The negative procedure was considered appropriate in this case. This is because these measures have been introduced to alter pre-notification requirements on goods entering Scotland from the Republic of Ireland as part of transitional arrangements and to ensure the same import provisions apply across GB. This choice of procedure is in line with the approach taken in relation to previous recent SSIs making changes to the transitional arrangements using relevant EUWA powers which were similarly subject to negative procedure (see most recently S.S.I. 2021/493). In addition, as there are no established trade routes from the Republic of Ireland to Scotland the impact of the changes are limited.

Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2022 (SSI 2022/124)

Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/125)

On 31 March 2022, the Scottish Government wrote to the Presiding Officer:

The Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2022, SSI 2022/124,

and the Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (Scotland) Regulations 2022, SSI 2022/125, were made by the Scottish Ministers under section 72(6) and (7) of the Local Government Finance Act 1992 in the case of the Order, and sections 80 and 113(1) and (2), and paragraph 11 of schedule 1 and paragraph 1 of schedule 2 of the Local Government Finance Act 1992 in the case of the Regulations, on 31 March 2022. Both of these instruments are subject to negative procedure. The Regulations and Order are being laid before the Scottish Parliament today, 31 March 2021 and come into force on 1 April 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.

On the 14 March 2022 the UK Government launched its Homes for Ukraine scheme, under which sponsors can accommodate those who left Ukraine in connection with the Russian invasion which began on 24 February 2022. Under the scheme members of the public can accommodate Ukrainian refugees in their property (or properties), and receive an optional 'thank you' payment of £350 a month.

The nature of the scheme means it has the potential to increase the level of council tax liability of those who accommodate Ukrainian refugees. It was not until the scheme was launched that the Scottish Government was able to fully assess the nature of those impacts and decide how best to address them.

Given the urgent nature of the need to change the law on this occasion, and the short time frame from when the Homes for Ukraine scheme was launched and the beginning of the 2022-23 council tax year, it has not been possible to meet the 28 day requirement on this occasion.

I am copying this letter to Ariane Burgess, Convener of the Local Government, Housing and Planning Committee and Stuart McMillan, Convener of the Delegated Powers and Law Reform Committee.

