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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 28 June 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



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**Craig Hoy**  
Scottish Conservative  
and Unionist Party



**Paul Sweeney**  
Scottish Labour

# Introduction

1. At its meeting on 28 June, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the relevant lead committee:
  - Public Health etc. (Scotland) Act 2008 (Notifiable Diseases and Notifiable Organisms) Amendment Regulations 2022 (SSI 2022/212)
  - National Health Service (Charges to Overseas Visitors) (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/213)
  - Sheriff Court Fees Amendment Order 2022 (SSI 2022/214)
2. The Committee's recommendations in relation to these instruments 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. 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

## Public Health etc. (Scotland) Act 2008 (Notifiable Diseases and Notifiable Organisms) Amendment Regulations 2022 (SSI 2022/212)

4. The instrument amends the Public Health etc. (Scotland) Act 2008 to add monkeypox to the list of notifiable diseases and to add the monkeypox virus to the list of notifiable organisms.
5. This will trigger duties on registered medical practitioners and laboratories to share specific information with health boards where they have reasonable grounds to suspect that a person they are attending to has monkeypox or where the virus is detected during testing. The information will also be shared to the Common Services Agency and Public Health Scotland.
6. The instrument was laid on 16 June 2022 and came into force later that day. It therefore breaches the 28-day rule in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The 2010 Act requires that instruments subject to the negative procedure be laid at least 28 days before they come into force, not counting recess periods of more than 4 days.
7. In correspondence with the Presiding Officer, the Scottish Government explained that a breach of the laying requirement had been necessary to ensure that registered medical practitioners and diagnostic laboratories will be placed under a duty to report incidences of the disease so that health boards can consider whether they need to use any of the powers under the 2008 Act.

## National Health Service (Charges to Overseas Visitors) (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/213)

8. The instrument amends the National Health Service (Charges to Overseas Visitors) (Scotland) Regulations 1989 by adding "Monkeypox" to the list of diseases so overseas visitors can be diagnosed and provided treatment for Monkeypox without charge. The regulations also correct one of the names already on the list of diseases.
9. The instrument was also laid on 16 June 2022 and came into force later that day. It therefore also breaches the 28-day rule in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.
10. In correspondence with the Presiding Officer, the Scottish Government explained that a breach of the laying requirements had been necessary to ensure that there is no financial barrier to receiving treatment for Monkeypox, so that overseas visitors are not deterred from seeking treatment and thus reducing the risk to public health from symptomatic visitors.
11. In its correspondence, the Scottish Government also explained that the provisions will provide clarity to those who are responsible for making and recovering charges.

12. A copy of the correspondence in relation to SSIs 2022 212 and 213 can be found in the **Annex**.

13. **The Committee draws SSIs 2022 212 and 213 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.**

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

Sheriff Court Fees Amendment Order 2022 (SSI 2022/214)

15. The instrument corrects errors identified by the Scottish Government in the Sheriff Court Fees Order 2022 (SSI 2022/181), which was considered by the Committee at its meeting on 14 June 2022 as part of a package of instruments making provision in respect of court fees.

16. The Order amends some of the prescribed fees by increasing them by between £1 and £33. It also corrects a more significant error which would have resulted in a person paying a fee of more than £100 for any actions for payment of money over £200. This was not the intention of the instrument and therefore the Order increases that figure to £300, meaning that those raising actions for payment of money up to £300 will pay an associated fee of around £20.

17. The instrument was laid on 21 June 2022 and will come into force on 1 July 2022, so will breach the 28-day rule in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

18. In correspondence with the Presiding Officer, the Scottish Government explained that a breach of the laying requirements had been necessary to correct errors identified in SSI 2022/181 in time for the original Order coming into force.

19. **The Committee draws this 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.**

20. **The Committee will also write to the Scottish Government to seek additional information on why the errors were not identified at the time.**



# No points raised

## Criminal Justice Committee

Advice and Assistance (Summary Criminal Proceedings) (Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/Draft)

Offensive Weapons Act 2019 (Prescribed Documents) (Scotland) (No. 2) Order 2022 (SSI 2022/210)

Act of Sederunt (Simple Procedure Amendment) (Miscellaneous) 2022 (SSI 2022/211)

## Local Government, Housing and Planning Committee

Building (Scotland) Amendment (Amendment) Regulations 2022 (SSI 2022/209)

## Rural Affairs, Islands and Natural Environment Committee

Rural Support (Simplification and Improvement) (Scotland) Regulations 2022 (SSI 2022/206)

- These regulations correct a minor error in the Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2022 (SSI 2022/107) following questions by the Committee. The error highlighted by the Committee has been resolved by SSI 2022/206.

## Social Justice and Social Security Committee

Period Products (Free Provision) (Scotland) Act 2021 (Commencement No. 2) Regulations 2022 (SSI 2022/208 (C.12))

# Annex

## The Public Health etc. (Scotland) Act 2008 (Notifiable Diseases and Notifiable Organisms) Amendment Regulations 2022

## The National Health Service (Charges To Overseas Visitors) (Scotland) Amendment (No.2) Regulations 2022

### **On 16 June 2022, the Scottish Government wrote to the Presiding Officer:**

The Public Health etc. (Scotland) Act 2008 (Notifiable Diseases and Notifiable Organisms) Amendment Regulations 2022 was made by the Scottish Ministers under section 12(2) of the Public Health etc. (Scotland) Act 2008 on 16 June 2022.

The National Health Service (Charges to Overseas Visitors) (Scotland) Amendment (No.2) Regulations 2022 was made by the Scottish Ministers under sections 98 and 105 of the National Health Service (Scotland) Act 1978 on 16 June 2022.

Both these amending instruments are being laid before the Scottish Parliament today, 16 June 2022, and both will come into force at 17:00 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) of that Act, this letter explains why.

## The Public Health etc. (Scotland) Act 2008 (Notifiable Diseases and Notifiable Organisms) Amendment Regulations 2022

The amending instrument amends Part 1 and 2 of schedule 1 of the 2008 Act to add monkeypox to the list of notifiable diseases and to add monkeypox virus to the list of notifiable organisms.

We are bringing these provisions forward now to ensure that registered medical practitioners will be placed under a duty in terms of section 13 of the 2008 Act to report incidences of the disease and that directors of diagnostic laboratories will be placed under a duty in terms of section 16 of the 2008 Act to report incidences of the organism.

The notification duties will mean that information is provided to a health board so that the health board can consider whether it needs to use any of its powers under Part 4 of the 2008 Act.

Similar reporting duties were brought into force in England by virtue of the Health Protection (Notification) (Amendment) Regulations 2022 (SI 2022/616) and we understand that Wales and Northern Ireland will, imminently, also be making similar provision in subordinate legislation.

## The National Health Service (Charges To Overseas Visitors) (Scotland) Amendment (No.2) Regulations 2022

The amending instrument is necessary to ensure that there is no financial barrier to overseas visitors in Scotland being given NHS hospital treatment for Monkeypox, so that they are not deterred from seeking treatment and thus reducing the risk to public health

from symptomatic visitors.

The instrument amends schedule 1 of the 1989 Regulations, in relation to Scotland, to add Monkeypox to the list of diseases (such as Tuberculosis and Pandemic Influenza) in respect of which no charge is to be made or recovered.

The UK Government have laid a similar instrument, to amend the English charging regulations, which came into force on 8 June 2022. Charging policy is a devolved matter with the devolved administrations responsible for taking forward any amendments to their charging regulations.

The instrument also corrects the name of a disease currently listed in schedule 1, from “Wuhan novel coronavirus (2019-nCoV)” to “Severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2)”.

We are bringing these provisions into force now to provide clarity to those who are responsible for making and recovering charges.

A copy of this letter has been sent to Stuart McMillan, Convenor of the Delegated Powers and Law Reform Committee, and Gillian Martin, Convenor of the Health, Social Care and Sport Committee.

The Sheriff Court Fees Amendment Order 2022, SSI 2022/214 was made by the Scottish Ministers under section 107(1) and (2) of the Courts Reform (Scotland) Act 2014(1). The instrument is subject to neagative procedure. The Order is being laid before Parliament today, 21<sup>st</sup> June and comes into force on 1 July 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.

#### Sheriff Court Fees Amendment Order 2022 (SSI 2022/214)

#### **On 21 June 2022, the Scottish Government wrote to the Presiding Officer:**

The Order is required to correct errors in the fee amounts in the Sheriff Court Fees Order 2022(SSI 2022/181) which were not identified by Scottish Courts and Tribunals Service (SCTS) until after the Order had been laid .

The error which has the most financial impact is in respect of the fee relating to a summons for summary cause or claim form for simple procedure case for actions of a certain value or less.

If the Order is not amended, those seeking a summons for summary cause or a claim form for a simple procedure case with a value of £200.01 to £300 will have to pay a fee of over £100 rather than £19. The £200 in this entry will be amended to £300 so that the fee does not act as a significant disincentive to bringing an action and these court users are not disadvantaged. The other errors have less financial consequences for court users but also require to be corrected. It is important that the changes made by the Sheriff Court Fees Amendment Order 2022 comes into force at the same time as the Sheriff Court Fees Order 2022 thereby ensuring that the correct sheriff court fees apply as from the 1st July. Given the short time frame from now until the 1<sup>st</sup> July, it has not been possible to meet the 28 day requirement on this occasion.

**Delegated Powers and Law Reform Committee**

Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 28 June 2022, 40th Report, 2022 (Session 6)

I am copying this letter to Joe FitzPatrick, Convener of the Equalities, Human Rights and Civil Justice Committee and Stuart McMillan, Convener of the Delegated Powers and Law Reform Committee.

