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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 5 September 2023

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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 5 September, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the Parliament:
 - Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2023 (SSI 2023/197); and
 - Valuation (Proposals Procedure) (Scotland) Amendment Regulations 2023 (SSI 2023/207).
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.

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

Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2023 (SSI 2023/197)

4. This instrument amends the Council Tax Reduction (Scotland) Regulations 2021, to increase the maximum amount which may be disregarded in respect of childcare costs for recipients of universal credit when calculating their income for the purposes of the Council Tax Reduction scheme.
5. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to the negative procedure must be laid at least 28 days before they come into force, not counting recess periods of more than 4 days. The instrument breaches this requirement as it was laid on 27 June 2023 and came into force on 28 June 2023.
6. In correspondence with the Presiding Officer, the Scottish Government stated that the UK Government laid UK wide regulations increasing the amounts that may be paid as part of Universal Credit in respect of childcare costs, which came into force on 28 June 2023.
7. The Scottish Government stated that it was not made aware of this change until 21 June 2023.
8. Without these regulations, affected households could have seen an unintended consequential rise in their Council Tax payments, unless the 2021 Regulations were amended.
9. This instrument was therefore made, laid, and brought into force to coincide with the UK instrument as a matter of urgency.
10. A copy of the correspondence can be found in the **Annex**.
11. The lead committee for this instrument is the Social Justice and Social Security Committee.

12. 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.

13. The Committee is content with the Scottish Government's explanation provided for this breach of the laying requirements.

Valuation (Proposals Procedure) (Scotland) Amendment Regulations 2023 (SSI

2023/207)

14. This instrument amends the Valuation (Proposals Procedure) (Scotland) Regulations 2022.
15. It extended the deadline by which a non-domestic rate payer may make proposals for alteration of the valuation roll to a rates assessor from the 31 July 2023 to 31 August 2023, or 4 months after the receipt of the valuation notice.
16. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to the negative procedure must be laid at least 28 days before they come into force, not counting recess periods of more than 4 days. The instrument breaches this requirement as it was laid on 19 July 2023 and came into force on 20 July 2023.
17. In correspondence with the Presiding Officer, the Scottish Government stated that it had accepted the recommendation made in the New Deal for Business Group progress report and decided that the deadline for revaluation proposals should be extended.
18. The Scottish Government stated that it was not possible to meet the parliamentary laying requirements because an extension had to be introduced before the existing 31 July deadline.
19. A copy of the correspondence can be found in the **Annex**.
20. The lead committee for this instrument is the Local Government, Housing and Planning Committee.

21. 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.

22. The Committee is content with the Scottish Government's explanation provided for this breach of the laying requirements.

No points raised

Education, Children and Young People Committee

Teachers' Superannuation and Pension Scheme (Miscellaneous Amendments) (Scotland) Regulations 2023 (SSI 2023/190)

Equalities, Human Rights and Civil Justice Committee

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Taxation of Judicial Expenses Rules 2019 Amendment) (Telecommunications Infrastructure) 2023 (SSI 2023/223)

Net Zero, Energy and Transport Committee

Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2023 (SI 2023/850)

Rural Affairs and Islands Committee

Cereal Seed (Scotland) Amendment Regulations 2023 (SSI 2023/193)

Annex

Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2023 (SSI 2023/197)

On 27 June 2023, the Scottish Government wrote to the Presiding Officer:

The Council Tax Reduction (Scotland) Amendment (No. 2) Regulations 2023, SSI 2023/197 were made by the Scottish Ministers under sections 80 and 113(1) and (2) and paragraph 1 of schedule 2 of the Local Government Finance Act 1992 on 27 June 2023. This instrument is subject to negative procedure. The Regulations are being laid before the Scottish Parliament today, 27 June 2023 and come into force on 28 June 2023.

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.

The Regulations amend the Council Tax Reduction (Scotland) Regulations 2021 (“the Working Age Regulations”) to increase the maximum amount which may be disregarded to reflect the incurring of childcare charges, in calculating the unearned income of a council tax reduction applicant who has an award of universal credit which includes an element in respect of childcare costs. They are required because the UK Government laid Regulations that come into force on 28 June 2023 which apply substantial increases to the amounts that may be paid as part of a Universal Credit award in respect of childcare costs. Regrettably, although this policy change was announced at the UK Spring Budget, no timescale was indicated and we were not made aware of this change by the UK Government until 21 June 2023. Because of the way entitlement to a Council Tax Reduction is presently calculated, affected households would see significant rises to their Council Tax liabilities unless The Working Age Regulations are amended. These Regulations are therefore being laid as a matter of urgency in order to avoid this unintended consequence.

Valuation (Proposals Procedure) (Scotland) Amendment Regulations 2023 (SSI 2023/207)

On 19 July 2023, the Scottish Government wrote to the Presiding Officer:

The Valuation (Proposals Procedure) (Scotland) Amendment Regulations 2023, SSI 2023/207 was made by the Scottish Ministers under section 3ZA(7)(a) of the Local Government (Scotland) Act 1975. It is being laid before the Scottish Parliament on 19 July and also comes into force on 20 July.

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.

The independent Barclay Review of Non-Domestic Rates called for reforms to the appeals system to modernise the approach, reduce appeal volume and ensure greater transparency and fairness, and a new two two-stage appeals system was introduced on 1 April 2023.

Where non-domestic property owners and occupiers have evidence that a rating valuation is incorrect, they have the option to lodge a proposal and then, in prescribed circumstances, an appeal. Under the current timescales, prescribed in the Valuation Timetable (Scotland) Order 2022, they have until 31 July 2023, or 4 months after the receipt of their valuation notice, whichever is later, to submit a proposal in relation to the 2023 revaluation to the assessor.

A New Deal for Business Group (NDBG) was established in May following the Policy Prospectus commitment to reset the relationship between government and business, and under the main NDBG, a consultative sub-group was established to consider the current operation and administration of the non-domestic rates system with the objective of ensuring the best environment to do business and deliver a growing economy whilst supporting our communities.

The sub-group, which I chaired, met four times and had a large and diverse membership from business representative organisations, local authorities and Scottish Assessors. During those discussions some business representatives indicated that the current timescales for proposals were challenging and more time was required than the current deadline provides. While some members indicated concern in relation to this, it was recommended that urgent consideration be given to extending the deadline for lodging proposals from 31 July to 30 September 2023. This recommendation was included in the [progress report of the New Deal for Business](#), which was published on 29 June 2023 and has since been accepted by the First Minister.

These Regulations extend the 31 July 2023 deadline to 31 August 2023 to provide ratepayers additional time to lodge proposals in relation to a valuation notice issued under section 3(2) of the Local Government (Scotland) Act 1975. The extended deadline applies for the 2023 revaluation year only, in recognition that businesses are navigating a new process which was introduced on 1 April 2023 amongst a number of other reforms to the non-domestic rates system in recent months. An extension of one month provides ratepayers with additional time to lodge a proposal while seeking to prevent unintended consequences and protect the integrity of non-domestic rates system in a compressed revaluation cycle.

After the New Deal for Business Group's recommendations were published, the Scottish Government took the time to carefully consider the recommendation and to understand the range of stakeholders' views on this issue. Alternative approaches to address this recommendation were explored, including through an administrative route but this would open the new proposal system to further risk and challenge as it would operate contrary to the existing legislation.

The Scottish Government has sought to make, lay and bring into force this instrument as soon as possible following the publication of the New Deal for Business Group's recommendations. On this occasion, it has not been possible to meet the requirements of section 31(3) given the immediacy of the current 31 July deadline. To do so, would require retrospective amendment and we do not have power to make retrospective provision. It could also lead to uncertainty and confusion for both ratepayers and assessors, and further risk the efficient delivery of the revaluation cycle.

