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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 30 January 2024



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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 30 January 2024ⁱ, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the Parliament:
 - Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2024 (SSI 2024/5); and
 - Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2024 (SSI 2024/10).
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.

ⁱ Rona Mackay MSP substituted for Stuart McMillan MSP

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

Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2024 (SSI 2024/5)

4. The instrument makes provision to cap the amount of Non-Domestic Rates payable in certain circumstances applicable to the financial year 2024-25. It implements the following transitional relief schemes:
 - General Revaluation Transitional Relief
 - Small Business Transitional Relief
 - Parks Transitional Relief
5. This is a substantial instrument made up of 19 regulations, most of which have several sub-divisions. The Committee raised an issue on one sub-division of one of the regulations, as follows.
6. In [correspondence with the Scottish Government](#), the Committee queried whether a reference in regulation 11(1)(ii) to section 24(3) of the Local Government (Scotland) Act 1966 was an error, as this section has been repealed.
7. In its [response](#), the Scottish Government agreed that the reference to section 24(3) is an error. It advised that it will bring forward an amending instrument with a coming into force date of 1 April 2024, coinciding with that of the principal instrument, to remove the erroneous reference.
8. The Scottish Government advised that the amending instrument will make other changes to regulation 11 that have been identified following a review of the regulation in light of the Committee's question.
9. The lead committee for this instrument is the Local Government, Housing and Planning Committee.
10. **The Committee draws this instrument to the attention of the Parliament on reporting ground (i) – that the instrument's drafting appears to be defective – on the basis that regulation 11 does not operate as intended in that regulation 11(1)(ii) refers to a provision (section 24(3) of the Local Government (Scotland) Act 1996) which has been repealed without relevant savings.**
11. **The Committee welcomed that the Scottish Government intends to address this in an amending instrument that will come into force to coincide with the principal instrument.**

12. The [Committee also asked the Scottish Government](#) about the reference in the preamble to a consultation requirement in section 145 of the Non-Domestic Rates (Scotland) Act 2020. There is no section 145 in that Act. The Committee asked if the reference should instead be to section 14(5) of the Act.
13. In its [response](#), the Scottish Government agreed and advised that this was a typographical error.
14. The error does not affect the validity of the instrument, and the Scottish Government has confirmed that the statutory precondition requiring consultation has been fulfilled.
15. The Scottish Government proposes to address this issue by adding text to the Explanatory Note of the instrument, setting out the error and referring to the Scottish Government's correspondence with the Committee in this regard.

16. The Committee draws the instrument to the attention of the Parliament on the general reporting ground in that the reference in the preamble to section 145 of the Non-Domestic Rates (Scotland) Act 2020 should be to section 14(5).

17. The Committee noted the Scottish Government's proposal for addressing this.

Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2024 (SSI 2024/10)

18. The instrument amends the Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2024 (“the principal regulations”). The principal regulations govern when self-catering holiday accommodation can be entered on the valuation roll, and is therefore subject to non-domestic rates rather than council tax.
19. In [correspondence with the Scottish Government](#), the Committee queried whether the word “as” was missing from regulation 5A(4) of the principal regulations, inserted by regulation 2(2) of the instrument, and whether the meaning of the provision was sufficiently clear.
20. In its [response](#), the Scottish Government advised that this is a typographical error, and that it will be corrected by correction slip before the instrument comes into force.
21. The lead committee for this instrument is the Local Government, Housing and Planning Committee.

22. The Committee draws this point to the attention of the Parliament on the general reporting ground.

23. **The Committee notes that the Scottish Government proposes to correct this by correction slip before the instrument comes into force.**

No points raised

Education, Children and Young People Committee

Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2024 (SSI 2024/Draft)

Equalities, Human Rights and Civil Justice Committee

United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (Commencement) Regulations 2024 (SSI 2024/13 (C.2))

- The Committee noted that the Scottish Government has laid a [revised Policy Note](#) in respect of this instrument.

Finance and Public Administration Committee

Land and Buildings Transaction Tax (Miscellaneous Amendments) (Scotland) Order 2024 (SSI 2024/Draft)

Health, Social Care and Sport Committee

Official Controls (Import of High Risk Food and Feed of Non-Animal Origin) Amendment (Scotland) Regulations 2024 (SSI 2024/12)

Net Zero, Energy and Transport Committee

Renewables Obligation (Scotland) Amendment Order 2024 (SSI 2024/Draft)

