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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 November 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 19 November 2024ⁱ, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the Parliament:
 - Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 (SSI 2024/313).
 - Protection of Vulnerable Groups (Information for Listing and Vetting) (Scotland) Regulations 2024 (SSI 2024/314); and
 - Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024 (SSI 2024/315).
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 Roz McCall MSP submitted apologies for this meeting.

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

4. The following three instruments form part of a wider package of regulations which implement the Disclosure (Scotland) Act 2020.

Protection of Vulnerable Groups (Referrals by Chief Constable) (Prescribed Information) (Scotland) Regulations 2024 (SSI 2024/313)

5. The instrument is made under the power in section [6A](#) of the Protection of Vulnerable Groups (Scotland) Act 2007 (as amended by the Disclosure (Scotland) Act 2020).
6. These regulations prescribe the information which the chief constable must refer, if held, to Scottish Ministers in relation to an individual whom the chief constable considers is or has been carrying out a type of 'regulated role' while not participating in the Protecting Vulnerable Groups Scheme in relation to that type of regulated role.
7. The prescribed information includes-
 - Information about the identity of the individual
 - Details of the type of regulated role
 - Details of how the chief constable became aware of the individual carrying out a regulated role
 - Details of the person the individual is, or has been, carrying out a regulated role for
 - Details of the involvement of other organisations or personnel suppliers
8. The schedule of the instrument lists the information which must be provided, and this includes at paragraph 6 "Details of the person for whom the chief constable considers that the individual is, or has been, carrying out a regulated role during the relevant period."
9. The information prescribed in paragraph 6 is not directly information about the individual concerned but is instead details of a person for whom the individual is considered to be (or to have been) carrying out a regulated role.
10. In [correspondence with the Scottish Government](#), the Committee queried whether the enabling power permits the information in paragraph 6 to be prescribed. The Committee was content with the Scottish Government's response in this regard. The Committee also queried whether the term "details" is sufficiently clear to identify what information must be passed to Ministers under this paragraph.
11. In its [response](#), the Scottish Government said it considers "details" to be sufficiently clear. It further stated that the information is being sought to establish whether the

individual is or has been carrying out a regulated role while not participating in the Scheme and is required so Ministers have the necessary details about the regulated role that the individual is, or may have been, doing. This is said to ensure Ministers can understand the context to the referral and consider whether the individual should be on the children’s list, the adults’ list, or both. The Scottish Government also noted that (as required by the Act) it will issue relevant guidance to the chief constable.

12. The Committee considers that “details” could include any number of pieces of information about someone who is not the individual concerned and has no limits or criteria applying to it. The Committee also noted that, during the passage of the Bill, it was suggested that this information would be similar to that already required for scheme members, which is limited to the gender and National Insurance number of the individual.
13. What details and how much detail will be passed is not obvious from the instrument itself. The Committee considers that it could be clearer what “details” will encompass.
14. The lead committee for this instrument is the Education, Children and Young People Committee.

15. The Committee draws this instrument to the attention of the Parliament on reporting ground (h) (form or meaning could be clearer) as the meaning of the term “details” in paragraph 6 of the schedule could be clearer.

Protection of Vulnerable Groups (Information for Listing and Vetting) (Scotland) Regulations 2024 (SSI 2024/314)

16. The instrument makes detailed provision in relation to every “relevant matter” that may be used for listing purposes and in relation to vetting information which may be included on a scheme record in respect of scheme members under the Protection of Vulnerable Groups (Scotland) Act 2007 (“the 2007 Act”) (as amended by the Disclosure (Scotland) Act 2020).
17. The information that the Scottish Ministers may require includes details of convictions, cautions and certain civil court orders prescribed by this instrument.
18. The definition of “relevant matter” in the 2007 Act, section 18(5), excludes specified types of non-disclosable conviction and specified types of spent caution.
19. In [correspondence with the Scottish Government](#), the Committee noted that, on the face of the regulations, they appear to prescribe all convictions and all cautions. The Committee queried whether the regulations were intended to require disclosure of the specified types of conviction and caution that are excluded by section 18(5).
20. In its [response](#), the Scottish Government advised this is not the intention, and that the policy intention is achieved given that “relevant matters” takes the definition in the parent Act.
21. While the Committee appreciates that the instrument achieves the policy intention as a matter of law, it considers that, as regards the accessibility of the legislation, it

could have been made clear, for example in the accompanying documents, that not all convictions and cautions are prescribed.

22. The lead committee for this instrument is the Education, Children and Young People Committee.

23. The Committee draws this instrument to the attention of the Parliament on the general reporting ground on the basis that it would have been helpful, in the interests of the accessibility of this instrument, if the accompanying documents made clear that the prescribed convictions and cautions do not include non-disclosable convictions and certain cautions as set out in section 18(5) of the Protection of Vulnerable Groups (Scotland) Act 2007.

Level 1 and Level 2 Disclosure Information (Scotland) Regulations 2024 (SSI 2024/315)

24. These Regulations make detailed provision about what information will be included in Level 1 and Level 2 disclosures when the new scheme under the Disclosure (Scotland) Act 2020 (“the 2020 Act”) enters into force.

25. Regulation 5(a) prescribes the details of a “criminal disposal” which are to be contained in a Level 2 disclosure certificate. “Criminal disposal” is defined for this purpose (in section 8(3) of the 2020 Act) to exclude certain types of “non-disclosable conviction”. Section 9 of the 2020 Act specifies what convictions are “non-disclosable” for this purpose.

26. On the face of it, regulation 5(a) appears to specify spent convictions without excluding non-disclosable convictions. In [correspondence with the Scottish Government](#), the Committee queried whether this was intentional.

27. In its [response](#), the Scottish Government advised that the provisions are not intended to require disclosure of “non-disclosable” convictions, and as with SSI 2024/314, the policy intention is achieved given that the term takes the definition in the parent Act.

28. While the Committee appreciates that the instrument achieves the policy intention as a matter of law, it considers that, as regards the accessibility of the legislation, it could have been made clear, for example in the accompanying documents, that not all convictions are prescribed.

29. The lead committee for this instrument is the Education, Children and Young People Committee.

30. The Committee draws this instrument to the attention of the Parliament on the general reporting ground on the basis that it would have been helpful, in the interests of the accessibility of this instrument, if the accompanying documents made clear that the prescribed convictions do not include non-disclosable convictions within the meaning of section 9 of the Disclosure (Scotland) Act 2020.

No points raised

Criminal Justice Committee

Firefighters' Pension Schemes (Scotland) Amendment (No. 2) Order 2024 (SSI 2024/295)

- In relation to the above instrument, the Committee draws to the attention of the Criminal Justice Committee its [correspondence with the Scottish Government](#), with regards to paragraph 1 of the schedule; and
- The Committee welcomes that this instrument fulfils a commitment made by the Scottish Government to correct an error in a date inserted by the Firefighters' Pension Schemes (Scotland) Amendment Order 2024 (SSI 2024/26).

Education, Children and Young People Committee

Regulated Roles (Prohibitions and Requirements) (Scotland) Regulations 2024 (SSI 2024/Draft)

Consideration of Suitability for Regulated Roles (Prescribed Purposes) (Scotland) Regulations 2024 (SSI 2024/316)

Disclosure and Use of Level 2 Disclosures (Prescribed Purpose and Circumstances) (Scotland) Regulations 2024 (SSI 2024/317)

Equalities, Human Rights and Civil Justice Committee

Act of Sederunt (Rules of the Court of Session 1994, Sheriff Appeal Court Rules 2021 and Ordinary Cause Rules 1993 Amendment) (Taxation of Judicial Expenses) 2024 (SSI 2024/323)

Health, Social Care and Sport Committee

Official Controls (Import of High Risk Food and Feed of Non-Animal Origin) Amendment (Scotland) (No. 2) Regulations 2024 (SSI 2024/324)

Food Safety (Sampling and Qualifications) (Scotland) Amendment Regulations 2024 (SSI 2024/326)

Feed Additives (Authorisations) and Uses of Feed Intended for Particular Nutritional Purposes (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/330)

Local Government, Housing and Planning Committee

Town and Country Planning (Fees for Applications) (Scotland) Amendment Regulations 2024 (SSI 2024/292)

Building (Scotland) Amendment (No. 2) Regulations 2024 (SSI 2024/327)

