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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 20 February 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 20 February 2024, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the Parliament:
 - Firefighters' Pension Schemes (Scotland) Amendment Order 2024 (SSI 2024/26); and
 - Dangerous Dogs (Designated Types) (Scotland) Order 2024 (SSI 2024/31).
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

Firefighters' Pension Schemes (Scotland) Amendment Order 2024 (SSI 2024/26)

4. This instrument is made under the powers in section 26(1), (2) and (5) of the Fire Services Act 1947 and section 34(1), (2) and (4) of the Fire and Rescue Services Act 2004.
5. The instrument amends the Firemen's Pension Scheme Order 1992 and the Firefighters' Pension Scheme (Scotland) Order 2007 in order to extend the period during which persons who were employed in Scotland as retained firefighters have access to a pension scheme.
6. The Firefighters' Pension Scheme (Scotland) Amendment (No. 2) Order 2014 amended the 2007 Order, to provide retained firefighters who were employed in Scotland during the period from 1st July 2000 to 5th April 2006 with access to a pension scheme for that period. This Order extends that period so that it commences on 7th April 2000.
7. The Order states at Rule 1C(3) that "where the deceased was not married, or a member of a civil partnership, at the time of the deceased's death, a child of the deceased may apply in writing to the authority for a death grant and any such application must be made on or before 30 September 2024".
8. Elsewhere in the Order, the date 31 March 2025 is given for similar eligibility for civil partners and spouses.
9. In [correspondence with the Scottish Government](#), the Scottish Government confirmed that it is an error, and is regretted.
10. The effect is that the application scheme is not available to those who are intended to be eligible, where the parent died after 30 September 2024 and before 31 March 2025.
11. In its [response](#), the Scottish Government proposes to correct this "in the next amending instrument".

12. **The Committee draws this instrument to the attention of the Parliament on reporting ground (i), in that the instrument's drafting appears to be defective on the basis that the date specified in new rule 1C(3), inserted by Article 4 of this instrument, is incorrect.**

13. **Whilst acknowledging that the Scottish Government proposes to amend the instrument to correct the error at the next opportunity, and with retrospective effect if necessary, the Committee calls upon the Scottish**

Government to fix the error sooner rather than waiting until the next amending instrument.

14. Also in relation to this instrument, the [Committee asked the Scottish Government](#) what would happen if an eligible spouse, civil partner or child of a firefighter who died close to or on 31 March 2025 did not make their application before this date.
15. The [Scottish Government confirmed](#) it is the intention that 31 March 2025 is specified as the deadline for applications, but it is also the intention that eligible spouses, civil partners or children will be entitled to the grant if they miss the deadline.
16. However, late applications are not provided for by the Order as amended.
17. The lead committee for this instrument is the Criminal Justice Committee.

18. **The Committee draws this instrument to the attention of the Parliament under the General reporting ground in that the Scottish Government's answer suggests late applications will be allowed, but no provision is made for this in the Order.**

19. **The Committee invites the Scottish Government to consider correcting this, along with the issue of the erroneous date.**

20. **The Committee also highlights its correspondence with the Scottish Government regarding the application deadline to the lead committee.**

Dangerous Dogs (Designated Types) (Scotland) Order 2024 (SSI 2024/31)

21. This instrument is made under the powers in sections 1(1)(c) and (8) of the Dangerous Dogs Act 1991 (“the 1991 Act”).
22. The instrument designates the XL Bully as a type of dog which appears to the Scottish Ministers to be bred for fighting, or to have the characteristics of a type bred for fighting, for the purposes of section 1 of the 1991 Act. The effect is that this type of dog is subject to the controls and safeguards in the 1991 Act.
23. 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 31 January 2024 and will come into force on 23 February 2024.
24. The Scottish Government wrote to the Presiding Officer stating that it did not meet the laying requirements because it considered it necessary to act “with urgency to address growing public safety and animal welfare concerns”, following reports of some owners coming to Scotland to sell their XL Bully dogs after changes to the law

in relation to these dogs in England and Wales.

25. It further stated that “by introducing the same safeguards as operate in England and Wales, this removes the loophole created by the UK Government in relation to English and Welsh XL Bully dog owners who come to Scotland.”
26. A copy of the correspondence from the Scottish Government to the Presiding Officer can be found in the Annex.
27. The lead committee for this instrument is the Criminal Justice Committee.

28. The Committee draws this instrument to the attention of the Parliament under reporting ground (j) for failure to comply with laying requirements, as it was not laid 28 counting days before it comes into forceⁱ.

29. Further, in [correspondence with the Scottish Government](#), the Committee asked several questions, including whether it is sufficiently clear what type of dog is an XL Bully type for the purposes of the legislation; and whether consideration was given to laying the proposed Order containing an exemption and compensation scheme at the same time as the present instrument so the Parliament could scrutinise them together.

30. The Committee draws the attention of the lead committee to its correspondence with the Scottish Government.

ⁱ Oliver Mundell MSP and Stuart McMillan MSP both spoke about the 28 day breach, and their comments can be read in the [Official Report](#)

No points raised

Criminal Justice Committee

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2024 (SSI 2024/30)

Finance and Public Administration Committee

Budget (Scotland) Act 2023 Amendment Regulations 2024 (SSI 2024/Draft)

Rural Affairs and Islands Committee

Good Food Nation (Scotland) Act 2022 (Commencement No. 2) Regulations 2024 2024/29 (C. 4))

Scottish Food Commission (Appointment) Regulations 2024 (SSI 2024/Draft)

Sandeel (Prohibition of Fishing) (Scotland) Order 2024 (SSI 2024/36)

Scottish Parliament

Local Government Finance (Scotland) Order 2024 (SSI 2024/Draft)

Social Justice and Social Security Committee

Council Tax Reduction (Scotland) Amendment Regulations 2024 (SSI 2024/35)

- The Committee welcomed that the instrument fulfils an earlier commitment by the Scottish Government to amend schedule 4 of the Council Tax Reduction (Scotland) Regulations 2021 to insert a new part and section heading.

Annex

Dangerous Dogs (Designated Types) (Scotland) Order 2024 (SSI 2024/31)

On 31 January 2024, the Scottish Government wrote to the Presiding Officer:

The Dangerous Dogs (Designated Types) (Scotland) Order was made by the Scottish Ministers under powers in section 1 of the Dangerous Dogs Act 1991 on Wednesday 31 January 2024. This instrument is subject to negative procedure. The Order is being laid in the Scottish Parliament today, Wednesday 31 January. The Order will come into force on Friday 23 February 2024.

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.

In late 2023, the UK Government introduced legislation that has brought in new controls over XL Bully dogs for dog owners in England and Wales. The initial effect of these controls came into force on 31 December 2023 with further effect taking place on 1 February 2024. These controls include a ban on selling an XL Bully dog. The UK Government has been unable to confirm that an owner of an XL Bully dog who lives in England and Wales who comes to Scotland would be breaching English and Welsh law by selling their XL Bully dog in this manner. This has created a loophole in the English and Welsh controls with reports of some owners coming to Scotland to sell their XL Bully dogs.

As a result and in a decision not made lightly, the Scottish Government considers it necessary to introduce similar safeguards in Scotland with urgency to address growing public safety and animal welfare concerns. By introducing the same safeguards as operate in England and Wales, this removes the loophole created by the UK Government in relation to English and Welsh XL Bully dog owners who come to Scotland.

It is considered urgent to close this loophole while also maintaining some limited time for XL Bully dog owners to be ready for the new safeguards as well as the need for accountability to Parliament. The date of Friday 23 February 2024 has been chosen to balance these competing needs. It is for this reason why it has not been possible to meet the 28 day period.

