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Local Government and Communities Committee Comataidh Riaghaltas Ionadail is Coimhearsnachdan

Subordinate Legislation Considered by the Local Government and Communities Committee on 23 September 2020



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Contents

Introduction	1
The Insolvency Act 1986 (Scotland) Amendment Regulations 2020 [draft]	2
Committee Consideration	2
Conclusion	2
The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (Coronavirus) Order 2020 (220/268)	3
Procedure	3
Committee Consideration	4
Conclusion	6

Local Government and Communities Committee

To consider and report on communities, housing, local government, measures against poverty, planning and regeneration matters falling within the responsibility of the Cabinet Secretary for Communities and Local Government.



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David Stewart
Scottish Labour



Annie Wells
Scottish Conservative
and Unionist Party



Andy Wightman
Scottish Green Party

Introduction

1. At its meeting on 23 September 2020, the Local Government and Communities Committee considered the following instruments:
 - [The Insolvency Act 1986 \(Scotland\) Amendment Regulations 2020 \[draft\]](#)
 - [Homeless Persons \(Unsuitable Accommodation\) \(Scotland\) Amendment \(Coronavirus\) Order 2020 \(SSI 220/268\)](#)

The Insolvency Act 1986 (Scotland) Amendment Regulations 2020 [draft]

2. The [Insolvency Act 1986 \(Scotland\) Amendment Regulations 2020](#) were laid before the Parliament on 2 September 2020 and were referred to the Local Government and Communities Committee for consideration. These regulations are subject to the affirmative procedure.
3. The [Policy Note](#) states that the Regulations amend the Insolvency Act 1986 in order to ensure that Part A1 (Moratorium) of that Act (inserted by the Corporate Insolvency and Governance Act 2020) does not apply to companies which are registered as social landlords, in accordance with Part 2 of the Housing (Scotland) Act 2010.
4. The Policy Note says that these Regulations are required to ensure that the application of the new moratorium, which applies to all eligible companies, and automatically applies to registered social landlords which are companies in Scotland does not unnecessarily conflict with the existing provisions in relation to insolvency (including a debt moratorium) in the Housing (Scotland) Act 2010.

Committee Consideration

5. The Delegated Powers and Law Reform Committee considered the Insolvency Act 1986 (Scotland) Amendment Regulations 2020 at its meeting on [8 September 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.
6. At its meeting on [23 September 2020](#) the Local Government and Communities Committee took evidence on the instrument from Kevin Stewart, Minister for Local Government, Housing and Planning.
7. Following a brief opening statement on which there were no questions, Kevin Stewart moved motion S5M- 22618-

That the Local Government and Communities Committee recommends that the Insolvency Act 1986 (Scotland) Amendment Regulations 2020 [draft] be approved.
8. The motion was agreed to without debate or division.

Conclusion

9. The Local Government and Communities Committee recommends that the Insolvency Act 1986 (Scotland) Amendment Regulations 2020 be approved.

The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (Coronavirus) Order 2020 (220/268)


10. The [Homeless Persons \(Unsuitable Accommodation\) \(Scotland\) Amendment \(Coronavirus\) Order 2020 \(220/268\)](#) was laid before the Parliament on 1 September 2020 and was referred to the local Government and Communities Committee for consideration. This order is subject to the negative procedure.
11. The [Policy Note](#) states that [the Homeless Persons \(Unsuitable Accommodation\) \(Scotland\) Amendment Order \(2020/139\)](#) was laid on 5 May 2020 and came into immediate effect. This legislation included temporary exceptions to allow local authorities to use certain type of temporary accommodation in response to the coronavirus epidemic. The temporary exceptions are due to expire on 30 September 2020.
12. The Policy Note adds that, as the pandemic continues, the Scottish Government has decided to extend the temporary exceptions set out in Order 139 to ensure that homeless households are allowed access to physical distance and self-isolate where this is required. This order will provide for that extension. It notes Ministers have proposed extension of the two Scottish Coronavirus Acts in response to the ongoing impact and effects to the housing and "homelessness system".
13. In addition, the order modifies the temporary exceptions to permit local authorities to place households in accommodation that would otherwise be deemed as unsuitable where there was a lack of availability of suitable temporary accommodation or settled accommodation, as a result of the indirect impacts of Covid-19 on accommodation supply in the area.

Procedure

14. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
15. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. Where a motion to annul has been lodged, the lead Committee will debate the motion, prior to agreeing whether to recommend to Parliament that the instrument be annulled. The member who lodged the motion, members of the lead Committee and the Minister in charge of the instrument will have the opportunity to take part in this debate. The lead Committee must also report on the Order, setting out whether it recommends to the Parliament the statutory instrument should be annulled.
16. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument.

Committee Consideration

17. The Delegated Powers and Law Reform Committee considered the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (Coronavirus) Order 2020 (220/268) at its meeting on [15 September 2020](#) and [determined](#) that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.
18. Nevertheless, the Delegated Powers and Law Reform Committee agreed to highlight submissions it received from [Shelter Scotland](#) and [COSLA](#) on the instrument to the Local Government and Communities Committee. The Convener stated-
 - ” Although it is clear that Shelter Scotland has significant concerns about the policy intention and drafting of the instrument, our legal advisers consider that, on Shelter Scotland’s specific drafting points, the instrument achieves the policy intention that is outlined by the Scottish Government in the policy note that accompanies the instrument. Notwithstanding that, those policy choices will be of interest to the Local Government and Communities Committee, which is the lead committee for consideration of the instrument.
19. At its meeting on [23 September 2020](#) the Local Government and Communities Committee took evidence on the instrument from Kevin Stewart, Minister for Local Government, Housing and Planning.
20. The minister was asked what efforts had been made to ensure sufficient suitable temporary accommodation since the extension of temporary exceptions in May. He said the Minister stated that local authorities and third sector parties had begun providing personal plans to move people from hotels into other accommodation, including some bed and breakfast accommodation. He said, however, that the turnover of void properties that take place under normal circumstances had been slower because restrictions in relation to the pandemic were still in place.
21. The Minister said that a working group was putting together guidance on unsuitable accommodation, and that this guidance, which is to be agreed between the Scottish Government and the Convention of Scottish Local Authorities, would take a logical approach to ensuring that mainstream temporary accommodation is available for homeless people. He offered to share this guidance with the Committee.
22. One Committee member cast doubt as to why a statutory exemption should be in place for circumstances in which suitable accommodation is not available in the local area. They said that it afforded an opportunity to local authorities to make a judgement that could, in effect, condemn homeless people to unsuitable accommodation for long periods of time.
23. The Minister said that neither he nor local authorities would want this outcome. He noted that the pandemic had given rise to exceptional circumstances where local authorities had to use hotel and bed and breakfast accommodation to house people. He said that sometimes that had amounted to the only option available that would allow someone to self isolate, and that taking it away could impede frontline service providers.

24. The Minister said that in the past, the difficulties relating to providing suitable temporary accommodation had predominately been in urban settings, but they were seeing more incidence of this issue in rural settings in recent months due to the pandemic.
25. The Minister offered to write to the Committee with a breakdown of how £1.5 million additional funding was allocated to third sector parties to house rough sleepers in hotel accommodation during the pandemic.
26. In response to concerns raised by Shelter Scotland about the capacity to deliver social distancing in temporary accommodation, the Minister said that social distancing cannot be done in shared situations or in the hostel accommodation that had previously been used by some local authorities.
27. The Minister said that the Homeless Persons (Unsuitable Accommodation) (Scotland) Order had been extended to ensure that women with children and pregnant women spend as little time as possible in unsuitable temporary accommodation, and that there were no exemptions to that in the instrument currently being considered by the Committee. He acknowledged the difficulties faced by those who had found themselves in temporary accommodation unexpectedly during lockdown due to family circumstances, and stated that he had asked local authorities and Registered Social Landlords to ensure that 80 to 90 per cent of housing allocations go to woman or families fleeing domestic violence, homeless and other vulnerable people.
28. Committee Member Andy Wightman MSP then spoke to and moved—
[S5M-22768](#): Andy Wightman, Lothian, Scottish Green Party: Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (Coronavirus) Order 2020 (SSI 2020/268) That the Local Government and Regeneration Committee recommends that the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (Coronavirus) Order 2020 (SSI 2020/268) be annulled.
29. Andy Wightman said he had lodged the motion to annul to try to persuade the Government to reconsider, amend and reintroduce the instrument. His objections had been prompted by Shelter Scotland’s comments and were focussed on two policy issues. The first related to his understanding that the May exceptions would be temporary and would not continue beyond September. He had also understood that work would be undertaken during the first six-month emergency period to ensure they would not be required beyond that period.
30. His second policy objection related to the additional exemptions that had been placed in the order and his belief that-
 looking at the impact of coronavirus on the temporary accommodation supply in an area is a broad invitation to breach the spirit of the unsuitable accommodation order. It also makes people who need accommodation pay the price of that failure.
31. Sarah Boyack referred to a lack of suitable housing and the capacity of local authorities to provide the necessary support to a range of people as challenges. She said that not enough support was being provided to local authorities to meet them. She said she was sympathetic to the points raised by Andy Wightman, but was reluctant to oppose the instrument, as she did not want to stop the work that

councils were doing on the ground. She called for the Minister to clarify what scope there was for improving the statutory instrument and what further support could be provided to local authorities.

32. The Minister said that the primary policy intention of the SSI was to take account of the ongoing impacts of the pandemic. He said that even if the Scottish Government could come back with an improved order (which he was not certain was possible), he doubted it could be done in time to put the exemption back in place. He said that while the delivery of affordable homes had slowed somewhat during the pandemic, it had picked up pace recently. But this would not provide a solution in itself during the pandemic. He offered to provide the committee with regular updates relating to the order and the issue of unsuitable accommodation.
33. Andy Wightman disputed the Minister's point that the Government would not be able to bring forward a replacement in time if the instrument was annulled. He said that the order could be amended and brought back before 30 September and whilst this would breach the 28-day rule between the laying of an instrument and it being passed in Parliament, the Government could provide an explanatory letter as to why the rule had been breached. The Minister acknowledged that this was correct, but he said that they would be unable to consult key stakeholders on revised proposals in the time available.
34. In closing the debate, Andy Wightman queried why homeless people continue to be housed in unsuitable temporary accommodation. He said this was because of long-term failures in Scotland's housing system. He said that laying a motion to annul was the only way to give Parliament the opportunity to debate the policy intentions of a negative instrument where members disagree with elements of it, and invite the Scottish Government to resubmit it. He pressed the motion.

Conclusion

35. Following the debate, the Committee disagreed (by division: For 1, Against 6, Abstentions 0) to recommend to Parliament that the Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment (Coronavirus) Order 2020 (220/268) be annulled. The Committee also agreed to make no recommendations to Parliament in relation to the instrument.

