



The Scottish Parliament
Pàrlamaid na h-Alba

Published 12 January 2021
SP Paper 903
1st Report, 2021 (Session 5)

Local Government and Communities Committee Comataidh Riaghaltas Ionadail is Coimhearsnachdan

Subordinate Legislation on Smoke and Fire Alarms considered by the Local Government and Communities Committee on 16 December 2020



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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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Scottish Green Party

Introduction

1. At its meeting on 16 December 2020, the Local Government and Communities Committee considered the following instruments:
 - [Housing \(Scotland\) Act 1987 \(Tolerable Standard\) \(Extension of Criteria\) Amendment Order 2020 \(SSI 2020/draft\)](#); and
 - [Housing \(Scotland\) Act 2006 \(Modification of the Repairing Standard\) Amendment Regulations 2020 \(SSI 2020/draft\)](#)
2. The two instruments are directed towards the same common purpose: to have a common new minimum standard for fire and smoke detectors across all housing, regardless of whether the house is owner-occupied or rented in the social or private sector. The Parliament has already agreed to this change, but the instruments will jointly move back the date on which this change will come into force. Accordingly, the Committee took evidence on both instruments under one agenda item.

Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Amendment Order 2020 (SSI 2020/draft)

3. The Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Amendment Order 2020 (SSI 2020/draft) was laid before the Parliament on 20 November 2020 and was referred to the Local Government and Communities Committee for consideration. These regulations are subject to the affirmative procedure.
4. This Order amends the date on which the requirement for the installation of fire and carbon monoxide detection and warning equipment is added to the tolerable standard for housing, changing it from 1 February 2021 to 1 February 2022.
5. The Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Order 2019 (the “2019 Order”) amended the tolerable standard in section 86 of the Housing (Scotland) Act 1987 to add requirements to have satisfactory equipment installed for detecting fire, and for giving warning of fire or suspected fire; and satisfactory equipment installed for detecting, and for giving warning of, carbon monoxide present in a concentration that is hazardous to health. The 2019 Order set 1 February 2021 as the due date for this change.
6. According to the [Policy Note](#) accompanying the instrument, the reason for the amendment is to allow people longer to undertake the necessary works. This is due to the Covid-19 pandemic as home owners will have difficulty organising work or may be concerned about having people coming into their homes.

Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Amendment Regulations 2020

(SSI 2020/draft)

7. The Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Amendment Regulations 2020 (SSI 2020/draft) was laid before the Parliament on 20 November 2020 and was referred to the Local Government and Communities Committee for consideration. These regulations are subject to the affirmative procedure.
8. These Regulations amend the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Regulations 2019 by changing the date on which Regulation 3(1)(b) comes into force from 1 February 2021 to 1 February 2022. Regulation 3(1)(b) of those Regulations will have the effect of repealing sections 13(f) and (g) of the Housing (Scotland) Act 2006.
9. Regulations 3(1)(b) of the 2019 Regulations repeals section 13(1)(f) and (g) of the Housing (Scotland) Act 2006. Section 13 of the 2006 Act provides for a repairing standard duty for private landlords. Paragraphs (f) and (g) relate to fire and carbon monoxide detection and warning equipment. The effect of the 2020 Regulations is that these standards will now apply from 1 February 2022 rather than 1 February 2021.
10. According to the [Policy Note](#) for the draft instrument, its purpose is to postpone the consequential amendment of the duty in relation to fire and smoke alarms and carbon monoxide detectors in the repairing standard, so that it coincides with the postponed date for changes to the tolerable standard.
11. The Policy Note also indicates that the reason for postponing the changes to the tolerable standard is to allow people longer to undertake the necessary works. This is due to the Covid-19 pandemic as home owners will have difficulty organising work or may be concerned about having people coming into their homes.

Prior consideration and written evidence

12. The Committee took evidence on the 2019 Order on [19 December 2018](#) from the Minister for Local Government, Housing and Planning. Amongst matters discussed were: why the Scottish Government considered amendment of the tolerable standard in this way to be necessary; the nature of the duty imposed, and on whom; the cost householders were likely to incur in order to meet the revised tolerable standard; and the Scottish Government's plans to publicise the change.
13. The Committee, and subsequently the Parliament, agreed to the 2019 Order.
14. In October this year, [the Minister wrote to the Committee](#) notifying the proposal to delay implementation of new rules on fire and smoke alarm standards for 12 months, and the reasons for this. [The Convener wrote to the Minister on 12 November](#) seeking clarification on the legal duty to the public and financial matters. [The Minister responded on 11 December](#).
15. Submissions from two individuals on the instruments, and on the changes to the tolerable standard originally made by the 2019 Order, are below:
 - [Submission from Alister McDonald](#)

- [Submission from anonymous](#)

Committee Consideration

16. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on [1 December 2020](#) and [determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit](#).
17. At its meeting on 16 December 2020 the Local Government and Communities Committee took evidence on the instrument from Kevin Stewart, Minister for Local Government, Housing and Planning and Catriona MacKean, Deputy Director, Better Homes Division.
18. Graham Simpson MSP was present for this item, as well as Committee Members.
19. In his opening statement, the Minister explained that the Scottish Government now wished to delay the legislation to install interlinked fire and carbon monoxide detectors in specific areas within the home by one year, to February 2022. It had come to this view after considering the difficulties people are experiencing due to the COVID pandemic. He said the delay would also afford the Scottish Government time to resume and further develop its public awareness campaign.
20. The following issues were raised during the evidence session:
21. Misuse of the Scottish Government logo: A marketing flyer by a private company had recently been posted out across Scotland. The Scottish Government's logo was attached to the flyer giving the impression of endorsement. The Minister apologised for this giving rise to the perception that the company had acted in partnership with the Scottish Government. He also commented that the tone used in the flyer had been very wrong and it frightened people unnecessarily'. The Minister said the Scottish Government didn't effectively communicate its own messages as originally intended. He said lessons had been learned and that messaging going forward would be proportionate. The Minister said the Scottish Government would give regular updates to the Committee on the roll out of the programme.
22. Progress so far in installing devices in households: The Minister was asked how many installations have been carried out since the original legislation was passed, and how many Scottish homes still required the new standard of alarm before the proposed date of February 2022. The Minister said he would provide an answer by correspondence, which the Committee has since received. [It states the exact number will be captured in future Scottish House Condition Surveys. It also estimates that 1.5 million homes have no alarm at all and approx. 490,000 have only one alarm.](#)
23. Notwithstanding the 12-month delay being brought in by the legislation, the Minister urged home owners to install alarms to the new standard at their earliest opportunity, rather than, to ensure compliance with the regulations and to make their homes safer as soon as possible.
24. Awareness-raising after passing of original instrument: Committee Members raised concerns about lack of information available to the public about the changes and

some confusion surrounding home owners' legal duties, what equipment was needed, and where it could be purchased. The Minister was asked what efforts were made to raise awareness of the instrument after it was originally passed in December 2018. He said the legislation was highlighted in the media as it passed through Parliament and plans were in place to increase publicity as the original February 2021 date grew closer. However, the plans were suspended as the Scottish Government focussed on more pressing public health messaging in response to the pandemic.

25. Discussions with stakeholders: The Minister said the Scottish Government had been in ongoing dialogue about the changes with the Scottish Fire and Rescue Service. Discussions had been about finding the right language and tone to communicate the change, in the light of the flyer campaign by the private company. He said the SFRS were also advising the Scottish Government on best practice in offering financial support to the vulnerable, and on how to safely install alarms in homes where the householder is self isolating or can't access up to date advice and information.
26. Catriona MacKean said the Scottish Government had been having discussions about progress with the Convention of Scottish Local Authorities. Discussions had, to date, focused on how to progress installations within the confines of the pandemic. Future conversations would centre around getting the correct messaging and advice out to home owners.
27. Communicating the changes to the public going forward: The Minister told the Committee that the Scottish Government's marketing campaign would begin again in 2021. The Minister was asked how members of the public could access clear advice on what they need to do to meet the new requirements. He was also asked what measures were in place to protect the public from rogue traders or scammers. The Minister said up to date information can be found at the Scottish Government website. People could also seek advice from the SFRS and Citizens Advice Scotland. He thanked the Construction Industry Coronavirus Forum for their efforts in communicating messages to householders. He said the Scottish Government would work with organisations such as Age Scotland to maintain a close watch on any untoward conduct by traders.
28. The Minister was asked to clarify what duties the legislation actually imposed on homeowners and on local authorities, it was clear that there remained considerable confusion. The Minister stated that the legislation—

” ‘... does not create a direct duty on the home owner, it will in practice be the responsibility of home owners to meet the new standard. As local authorities are required to have a strategy for ensuring compliance with the tolerable standard within a reasonable period, they have a wide range of discretionary powers to assist home owners’.

He said the point of the legislation was to improve housing standards and protect homes, neighbours and communities, and not to criminalise homeowners.

29. After questions to the Minister were concluded, the Committee moved on to formally debate the instrument. The Minister moved motion [S5M-23439](#).

That the Local Government and Communities Committee recommends that the

Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Amendment Order 2020 [draft] be approved.

30. During the debate, the following points were raised:

Andy Wightman said there was still confusion about the nature of the legal responsibility that the legislation imposed on home owners. He said there was a need for a better public information on what householders had to do. He welcomed the Minister's commitment to keep the Committee updated on the Government's progress over the next 14 months.

31. Sarah Boyack expressed her disappointment at the Scottish Government's handling of this matter. She said the public had not so far been adequately informed. She said there should be a planned campaign over two years in which stakeholders, retailers, suppliers and householders should all be involved, so as to raise awareness and encourage the public to purchase and install alarms over the whole period, and avoid a last minute rush. She said this would require 'leadership at Scottish Government and local Government level'.

32. Graham Simpson also recommended a longer delay, so the Scottish Government could strengthen its message to the public.

33. Alexander Stewart noted that some charities had voiced concerns since the flyer was received. He called for a 'stringent campaign' to publicise the changes and for an extension of more than one year.

34. Keith Brown said the pandemic has caused widespread disruption which had impacted on the Government's ability to fulfil its duties. He said he agreed with the one-year extension, accompanied by a strong marketing campaign. He encouraged the Minister to ask elected officials to act as another channel to help spread the information to the public.

35. In responding to points raised, the Minister said that it was appropriate to delay the new requirements by one year but no more. He said a further delay would increase the chance of harm in homes and would not strike the right balance. He said the Government's marketing campaign would be improved and that he would report back regularly to the Committee on progress. The Minister said no sanctions would be imposed if home owners missed the revised February 2022 deadline.

36. After debate, the motion was agreed to (by division: For 4, Against 3, Abstentions 0).

37. The Minister then moved motion [S5M-23438](#).

That the Local Government and Communities Committee recommends that the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Amendment Regulations 2020 [draft] be approved.

38. The motion was voted on without further debate or division.

Conclusion

39. The Local Government and Communities Committee recommends that the Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Amendment Order 2020 (SSI 2020/draft) be approved.

40. That the Local Government and Communities Committee recommends that the Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Amendment regulations 2020 [draft] be approved.

41. **The Committee accordingly recommends that both instruments be agreed to. The Committee stresses to the Scottish Government the importance of ensuring that its forthcoming publicity and awareness-raising campaign in relation to the new requirements is strong, and has a clear message to householders about what needs to be done and where they can get help.**

