Delegated Powers and Law Reform Committee

Subordinate Legislation
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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—

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; and

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.
Committee Membership

Convener
Nigel Don
Scottish National Party

Deputy Convener
John Mason
Scottish National Party

Richard Baker
Scottish Labour

John Scott
Scottish Conservative and Unionist Party

Stewart Stevenson
Scottish National Party
Introduction

1. At its meeting on 6 October 2015, the Committee agreed to draw the attention of the Parliament to the following instrument—

   Renewables Obligation (Scotland) Amendment Order 2015 [draft]

2. The Committee’s recommendation in relation to the above instrument is set out below.

3. The Committee determined that it did not need to draw the Parliament’s attention to the instrument which is set out at the end of this report.
Points raised: Instruments subject to affirmative procedure

**Renewables Obligation (Scotland) Amendment Order 2015 [draft]**
*(Economy, Energy and Tourism)*

4. This draft instrument amends the Renewables Obligation (Scotland) Order 2009 (“the principal Order”) to implement policy decisions in relation to reporting requirements and sustainability criteria for generating stations using solid biomass and biogas feedstocks to generate electricity.

5. The amendments include:
   - Making compliance with sustainability criteria mandatory for generating stations of 1 MW or above which use solid biomass and biogas;
   - Tightening the greenhouse gas emissions targets for 2020 and 2025 and averaging greenhouse gas emissions across the year;
   - Technical adjustments to reporting requirements and sustainability criteria for solid biomass and biogas;
   - Correcting a defect in the principal order;
   - Amendments to facilitate Ofgem’s administration of the Renewables Obligation scheme.

6. The instrument is subject to the affirmative procedure. If approved by the Parliament, it will come into force on 1 December 2015.

7. The Committee considers that the form and meaning of one provision in the Order could be clearer, as follows.

8. Article 16 of the instrument includes the words “Subject to paragraph (2)”. There is however no paragraph (2) to Article 16. The Committee wrote to the Scottish Government to clarify what was intended by the words “Subject to paragraph (2)” in Article 16 of the instrument (the correspondence is reproduced at the Annexe). The Scottish Government confirmed that these words have been included in error. The Government explained that an earlier version of Article 16 had a second paragraph, and when this was removed the cross reference should also have been removed.

9. The Scottish Government considers that, despite this error, Article 16 is sufficiently clear. The Committee considers, however, that the words which have been included in error have the potential to raise a doubt as to whether the savings provision in Article 16 is intended to be made subject to some other...
provision. While the error does not appear to affect the operation of the instrument, it does detract from the clarity of the provision and may raise a doubt as to how the provision is intended to operate.

10. The Committee also notes a drafting error in new schedule A2, introduced by schedule 2 to the Order. The words “the principles” are missing from the start of paragraph 6(2)(b). The Scottish Government has confirmed in correspondence that these words have been excluded in error.

11. The Committee accordingly draws the instrument to the attention of the Parliament on the following reporting grounds:

   (1) On ground (h), as the form and meaning of Article 16 could be clearer. The inclusion, in error, of the words “Subject to paragraph (2)…” at the start of Article 16 has the potential to raise a doubt as to whether it is intended that the savings provision in Article 16 is to be made subject to some other provision.

   (2) On the general ground in respect of a drafting error. Sub-paragraph (2)(b) of paragraph 6 of new schedule A2, introduced by schedule 2 to the Order, should include the words “the principles” at the start of that sub-paragraph. These words have been omitted in error.

12. The Committee notes that the Scottish Government has undertaken to correct these errors at the next available opportunity.
No points raised

13. At its meeting on 6 October 2015, the Committee considered the following instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit:

*Local Government and Regeneration*

Community Empowerment (Scotland) Act 2015 (Commencement No. 1) Order 2015 (SSI 2015/344 (C.42))
Annexe

Renewables Obligation (Scotland) Amendment Order 2015 [draft]

On 24 September 2015, the Scottish Government was asked:

1. Article 16 of the Order makes savings provision in respect of the changes made by the Order to the principal Order. Article 16 seeks to make such savings provision “Subject to paragraph (2)”. However, it is not clear what provision is being referred to by reference to “paragraph (2)”.

   Accordingly, the Scottish Government is asked whether it is intended that the savings provision in Article 16 is to be made subject to some other provision, and if this is the intention, to clarify what this other provision is. Does the Scottish Government consider that Article 16 is sufficiently clear, or is some corrective action proposed?

2. Paragraph 6 to new schedule A2, introduced by schedule 2 to the Order, specifies at sub-paragraph (2) two separate requirements. In respect of the second requirement, set out at sub-paragraph (2)(b), there appears to be some text missing. Should sub-paragraph (2)(b) include a reference to “the principles” at the start of this sub-paragraph? Does the Scottish Government consider that this provision is sufficiently clear, or is any corrective action proposed?

The Scottish Government responded as follows:

1. An earlier version of article 16 had a second paragraph and when this was removed the cross reference to paragraph (2) should also have been removed. This was an oversight but given that there is no paragraph (2) the Scottish Government is of the view that article 16 is sufficiently clear. However, the words will be removed at the next available opportunity.

2. The Scottish Government confirms that paragraph 6(2)(b) should start with the words “the principles”. Given that sub-paragraph (1)(bb) refers to a set of international principles which meet the requirements in sub-paragraph (2) the Scottish Government is of the view that it is clear that the requirement in sub-paragraph (2)(b) is one which applies to the international principles. However, sub-paragraph (2)(b) will be amended at the next available opportunity.