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; and

i. any Consolidation Bill as defined in Rule 9.18.1 referred to it by the Parliamentary Bureau in accordance with Rule 9.18.3.

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Introduction

1. At its meeting on 8 March 2016, the Committee agreed to draw the attention of the Parliament to the following instruments—

   Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126)

   Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2016 (SSI 2016/102)

2. The Committee’s recommendations in relation to the above instruments are set out below.

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

*Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126)* (Local Government and Regeneration)

4. The purpose of the instrument is to amend the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 to provide for additional permitted development rights for the installation, alteration or replacement of an air source heat pump on or within the curtilage of a dwelling.

5. The instrument is subject to the negative procedure and comes into force on 24 March 2016.

6. In considering the instrument, the Committee sought explanation of an apparent drafting error. The correspondence is reproduced at Annexe A.

7. The Committee draws the instrument to the Parliament’s attention under the general reporting ground in respect that it includes a minor drafting error.

8. Regulation 3(2) of the instrument substitutes Class 6H of Part 1A of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992. The word “if” has been omitted from the provision at the beginning of sub-paragraph (2)(d) of that Class.

9. The Committee notes that the Scottish Government intends to correct the error at the next available opportunity.
Points raised: instruments not subject to any parliamentary procedure

**Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2016 (SSI 2016/102) (Justice)**

10. This instrument makes a series of miscellaneous amendments to the Rules of the Court of Session and the Sheriff Court Rules.

11. In considering the instrument the Committee sought explanation of two apparent drafting errors. The correspondence is reproduced at Annexe B.

12. The Committee draws the instrument to the Parliament’s attention under the general reporting ground, as the instrument contains the following errors:

   i. New rule 33A.21(6) of the Ordinary Cause Rules, as inserted by paragraph 3 of the instrument, makes reference to a “child welfare officer”. The correct term is “child welfare reporter”;

   ii. Paragraph 5 of the instrument makes a saving provision preserving the effect of the Ordinary Cause Rules as they applied immediately before “21st March 2106”. The correct reference is to “21st March 2016”.

13. The Committee notes that the Lord President’s Private Office intends to correct both of these errors at the next available opportunity.
No points raised

14. At its meeting on 8 March 2016 the Committee considered the following instruments. The Committee determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit:

Local Government and Regeneration

Non-Domestic Rates (Renewable Energy Generation Relief) (Scotland) Amendment Regulations 2016 (SSI 2016/121);

Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2016 (SSI 2016/124);

Air Weapons and Licensing (Scotland) Act 2015 (Commencement No. 3 and Transitional Provisions) Order 2016 (SSI 2016/130 (C.13));

Air Weapons and Licensing (Scotland) Act 2015 (Commencement No. 4, Transitional and Saving Provisions) Order 2016 (SSI 2016/132 (C.14)).
Annexe A

Town and Country Planning (General Permitted Development) (Scotland) Amendment Order 2016 (SSI 2016/126)

On 26 February 2016, the Scottish Government was asked:

Paragraph (2)(d) of Class 6H of Part 1A of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 (as substituted by article 3(2) of the instrument) provides as follows:

“Development is not permitted by this class-

 [...] 

(d) the air source heat pump would be within-

   (i) a World Heritage Site; or

   (ii) the curtilage of a listed building”.

Has the word “if” been omitted before “the air source heat pump”, and if so is any corrective action proposed?

The Scottish Government responded as follows:

The Scottish Government is grateful to the Delegated Powers and Law Reform Committee for drawing our attention to this point. We agree that the word “if” before “the air source heat pump” in paragraph (2)(d) of Class 6H of Part 1A of Schedule 1 (as substituted by article 3(2) of the instrument) has been omitted in error. The Scottish Government considers this error to be minor and is of the view that in the context there is no doubt as to the meaning of the provision. It is clear that paragraph (2)(d) operates to exclude air source heat pumps within a World Heritage Site or the curtilage of a listed building from permitted development rights. The Scottish Government does, however, intend to correct the error at the next available opportunity.
Annexe B

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2016 (SSI 2016/102)

On 26 February 2016, the Lord President’s Private Office was asked:

1. Paragraph 3 inserts new rule 33A.21 into the Ordinary Cause Rules regarding child welfare reporters. Rule 33A.21(6) provides that on appointing a “child welfare officer”, the sheriff may make various further orders or directions. Should the reference to “child welfare officer” be to “child welfare reporter”? If so, is rule 33A.21(6) considered to be sufficiently clear or is any corrective action proposed?

2. Paragraph 5 makes a savings provision preserving the effect of the Ordinary Cause Rules 1993 as they applied immediately before “21st March 2106”. If it is intended to refer instead to “21st March 2016”, can you explain whether corrective action is proposed?

The Lord President’s Private Office responded as follows:

1. In rule 33A.21(6), the reference to “child welfare officer” should be to “child welfare reporter”. The Lord President’s Private Office is grateful to the Committee and its advisors for identifying this error, which will be corrected at the next available opportunity.

2. In paragraph 5, the reference to “21st March 2106” is a drafting error. The reference should have been to “21st March 2016”. The Lord President’s Private Office is grateful to the Committee and its advisors for identifying this error, which will be corrected at the next available opportunity. In advance of its correction, we consider that the provision will be correctly interpreted as referring to 21st March 2016, given the manifest nature of the error.