Subordinate Legislation Committee

1st Report, 2012 (Session 4)

Subordinate Legislation

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Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a) any—

(i) subordinate legislation laid before the Parliament;

(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.

(Standing Orders of the Scottish Parliament, Rule 6.11)

Membership:

Chic Brodie
Nigel Don (Convener)
James Dornan (Deputy Convener)
Mike MacKenzie
Michael McMahon
John Pentland
John Scott

Committee Clerking Team:

Clerk to the Committee
Irene Fleming

Assistant Clerk
Euan Donald
The Committee reports to the Parliament as follows—

1. At its meeting on 10 January 2012, the Committee agreed to draw the attention of the Parliament to the following instruments—

   Act of Sederunt (Fees of Sheriff Officers) (No.2) 2011 (SSI 2011/432);

   Act of Sederunt (Fees of Messengers-at-Arms) (No.2) 2011 (SSI 2011/431);

   and

   Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No.2) Amendment Order 2011 (SSI 2011/437)

2. The Committee’s recommendations in relation to these instruments are set out below. The instruments that the Committee determined it did not need to draw the Parliament’s attention to are set out at the end of this report.
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

Act of Sederunt (Fees of Sheriff Officers) (No.2) 2011 (SSI 2011/432) (Justice Committee)

3. This instrument amends existing provision in relation to the fees of sheriff officers. The changes are as follows:

- Substitution of a new Table of Fees increasing the fees payable to sheriff officers by 3.8%
- Amended provision in relation to fees where value of action is over £100,000
- Amended provision in relation to fees in remote rural areas and provision of definition of “remote rural area”.

4. These amendments are carried out by way of amendment to the Act of Sederunt (Fees of Sheriff Officers) (No.2) 2002 (SSI 2002/567). This instrument is subject to negative procedure.

5. In General Regulation 3, whether a settlement falls to be classed as a “remote rural area” is of importance in determining the range of fees which are payable to messengers-at-arms in respect of certain services.

6. The Lord President’s Private Office (LPPO) was asked to explain how the definition of such an area will be applied to settlements, without a methodology prescribed in this instrument for the calculation of “drive time”, and whether taken as its stands the meaning was considered sufficiently clear and precise for persons to establish the fees legally payable for these services. This correspondence is reproduced at Appendix A.

7. The response acknowledges that, on the face of it, there is a lack of clarity and precision in the definition of “remote rural area”, and that, in particular, it does not provide a methodology for the calculation of “drive time”. The view is taken that the position is however sufficiently clear and precise, given that the persons establishing the fees payable are court officers, and that it was their professional organisation which asked for the definition concerned to be used. In any event, it is stated that if a question should arise then this can be resolved by reference to the publication footnoted in the instrument, within which source there is set out the basis for calculating “drive time”.

8. The Committee notes that this instrument, and the provision which it makes in respect of fees, has implications for others, aside from officers of court, and that the definition concerned represents a core element of this instrument. The Committee considers that the definition is not clearly provided for within the instrument itself such as to enable persons to establish the fees which are legally payable for the services concerned. The Committee takes the view that clarity and precision of drafting are important considerations, particularly so where involving such matters as calculation of fees, and that in this instance the definition could have been clearer.
9. The form or meaning of the definition which is provided for “remote rural area” could be clearer, in particular regarding the reference made in to “drive time”. The Committee therefore draws the instrument to the attention of the Parliament on reporting ground (h).
INSTRUMENTS NOT SUBJECT TO ANY PARLIAMENTARY PROCEDURE

Act of Sederunt (Fees of Messengers-at-Arms) (No.2) 2011 (SSI 2011/431) (Justice Committee)

10. This instrument amends existing provision in relation to the fees of messengers-at-arms. The changes are as follows:

• Substitution of a new Table of Fees increasing the fees payable to messengers-at-arms by 3.8%

• Amended provision in relation to fees where value of action is over £100,000

• Amended provision in relation to fees in remote rural areas and provision of definition of “remote rural area”.

11. These amendments are carried out by way of adjustment to the Act of Sederunt (Fees of Messengers-at-Arms) (No.2) 2002 (SSI 2002/566).

12. As in relation to SSI 2011/432, in General Regulation 3, whether a settlement falls to be classed as a “remote rural area” is of importance in determining range of fees which are payable to messengers-at-arms in respect of certain services.

13. The Lord President’s Private Office (LPPO) was asked to explain how the definition of such an area will be applied to settlements without a methodology prescribed in this instrument for the calculation of “drive time”, and whether taken as its stands the meaning is considered sufficiently clear and precise for persons to establish the fees legally payable for these services. This correspondence is reproduced at Appendix A. The issue highlighted here is the same as in relation to SSI 2011/432 and as such the response from the LPPO is to both instruments.

14. The response acknowledges that, on the face of it, there is a lack of clarity and precision in the definition of “remote rural area”, and that, in particular, it does not provide a methodology for the calculation of “drive time”. The view is taken that the position is however sufficiently clear and precise, given that the persons establishing the fees payable are court officers, and that it was their professional organisation which asked for the definition concerned to be used. In any event, it is stated that if a question should arise then this can be resolved by reference to the publication footnoted in the instrument, within which source there is set out the basis for calculating “drive time”.

15. The Committee notes that this instrument and the provision which it makes in respect of fees has implications for others, aside from officers of court and that the definition concerned represents a core element of this instrument. The Committee considers that the definition is not clearly provided for within the instrument itself such as to enable persons to establish the fees which are legally payable for the services concerned. The Committee takes the view that clarity and precision of drafting are important considerations, particularly so where involving such matters as calculation of fees, and that in this instance the definition could have been clearer.
16. The form or meaning of the definition which is provided for “remote rural area” could be clearer, in particular regarding the reference made to “drive time”. The Committee therefore draws the instrument to the attention of the Parliament on reporting ground (h).
Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No.2) Amendment Order 2011 (SSI 2011/437) (Rural Affairs, Climate Change and Environment Committee)

17. This Order corrects an error in the Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No. 2) Order (SSI 2011/433). This is with the effect that section 13 (snares) of the Wildlife and Natural Environment (Scotland) Act 2011 comes into force on 1 January 2013 (so far as not already in force), rather than 1 April 2013.

18. The Scottish Government was asked for an explanation of the effect in article 2(1) of the apparent omission of “2011” in the proper citation of the title of SSI 2011/433 which is being amended by this article. The correspondence is reproduced at Appendix 2.

19. The response from the Scottish Government acknowledges that there is a drafting error in article 2(1) of the Order, as the reference to the title of the Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No. 2) Order 2011 omits “2011” at the end. However, it contends that this will have no legal effect.

20. The Committee agrees with the Government’s view that, in the context, the error is patent and not likely to affect the operation of the instrument. There is only one second commencement order, under the 2011 Act. It is plain that it is intended to refer to that instrument.

21. The Committee draws this instrument to the Parliament’s attention on the general reporting ground as there is a drafting error in article 2(1), where “2011” is omitted from the citation of the Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No. 2) Order 2011, which is amended by this Order. It is not considered likely that the error affects the operation of the instrument.
22. At its meeting on 10 January 2011, the Committee also considered the following instruments and determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit:

**Infrastructure and Capital Investment Committee**

- Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 (SSI 2011/442)
- Bus Lane Contraventions (Approved Local Authorities) (Scotland) Order 2011 (SSI 2011/443)
- Bus Lanes (Approved Devices) (Scotland) Order 2011 (2011/444)
- Housing (Scotland) Act 2010 (Consequential Amendment) Order 2011 (SSI 2011/445)

**Justice Committee**

- Charities References in Documents (Scotland) Amendment Regulations 2011 (SSI 2011/446)
- Act of Sederunt (Rules of the Court of Session Amendment No. 8) (Terrorism Prevention and Investigation Measures) 2011 (SSI 2011/441)

**Rural Affairs, Climate Change and Environment Committee**

- Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No.2) Order 2011 (SSI 2011/433)
INSTRUMENTS SUBJECT TO THE NEGATIVE PROCEDURE AND NOT SUBJECT TO PARLIAMENTARY PROCEDURE

APPENDIX 1

Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2011 (SSI 2011/431) and Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2011 (SSI 2011/432)

On 16 December 2011 the Lord President’s Private Office was asked:

In General Regulation 3, whether a settlement falls to be classed as a “remote rural area” is of importance in determining range of fees which are payable for certain services. Can the Lord President’s Private Office explain how the definition of such an area will be applied to settlements without a methodology prescribed in this instrument for the calculation of “drive time”, and whether taken as its stands the meaning is considered sufficiently clear and precise for persons to establish the fees legally payable for these services?

The Lord President’s Private Office responded as follows:

The Lord President’s Private office accepts that the definition of “remote rural area” in General Regulation 3 is not, on the face of it, sufficiently clear and precise; in particular it does not provide a methodology for the calculation of drive time. However, the Lord President’s Private Office takes the view that, on balance, it will be sufficiently and clear and precise for those persons establishing the fee payable.

This is because the persons establishing the fee payable are officers of the court (either Messengers-at-Arms or Sheriff Officers) and the definition in General Regulation 3 is one which is known to them and their professional association the Society of Messengers-at-Arms and Sheriff Officers. Indeed, it was the Society who asked that this definition, taken from Scottish Government’s Urban Rural Classification 2009-2010 published by the Office of the Chief Statistician August 2011, be used.

Accordingly, the expectation is that the definition will work well in practice but should a question arise then reference can be made to the abovementioned publication. The publication contains two classifications of urban/rural areas in Scotland and it is the 6 fold classification which classifies Scotland into 6 categories ranging from large urban areas to remote rural areas. In relation to the particular issue of drive time, the publication calculates drive time by using a rural and urban average speed depending upon the class of a road. For example the average speed of an A class road is 40mph in rural areas and 19mph in urban (built up) areas.
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE

APPENDIX 2

The Wildlife and Natural Environment (Scotland) Act 2011 (Commencement No. 2) Amendment Order 2011 (SSI 2011/437 (C. 38))

On 15 December 2011 the Scottish Government was asked:

In article 2(1), what is the effect of the apparent omission of “2011” in the proper citation of the title of SSI 2011/433, being amended by this article?

The Scottish Government responded as follows:

The Scottish Government agrees that the date “2011” has been omitted from the description of the title of SSI 2011/433 in article 2(1) of this instrument. It regrets this error, but considers that it has no legal effect in the circumstances.
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