Subordinate Legislation Committee

6th 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
Rob Littlejohn

Support Manager
Daren Pratt
The Committee reports to the Parliament as follows—

1. At its meeting on 7 February 2012, the Committee agreed to draw the attention of the Parliament to the following instrument—
   
   • Act of Sederunt (Fees of Sheriff Officers) (Amendment) 2012 (SSI 2012/7).

2. The Committee’s recommendations in relation to this instrument 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.
POUNDS RAISED: INSTRUMENT SUBJECT TO NEGATIVE PROCEDURE

Act of Sederunt (Fees of Sheriff Officers) (Amendment) 2012 (SSI 2012/7) (Justice Committee)

3. This instrument amends the Act of Sederunt (Fees of Sheriff Officers) (No.2) 2011 (“SSI 2011/432”). It does so to correct errors in that instrument in respect of the provision which it makes concerning “remote rural areas”, and the fees which may be claimed by sheriff officers in such circumstances.

4. The amendments deal with the following matters: the levying within a remote rural area of an additional fee of 30% of that specified in the Table of Fees, as provided for in SSI 2011/432, is to apply in a more restricted range of circumstances; various reference numbers within the Table of Fees are adjusted; and the definition of remote rural area is amended to address concerns reported by the Committee that the meaning of that definition could have been clearer.

5. Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 provides that a Scottish statutory instrument which is subject to negative procedure must be laid before the Parliament as soon as practicable after it is made, and in any event at least 28 days before the instrument comes into force. A failure to comply with section 28(2) does not render the instrument invalid, but the responsible authority, which in this case is the Lord President’s Private Office (“LPPO”), must explain to the Presiding Officer why the laying requirements have not been complied with.

6. The Committee notes that the instrument was laid on 19 January and came into force on 22 January 2012. The LPPO therefore provided a letter to the Presiding Officer explaining why the laying requirements in section 28(2) of the 2010 Act were not complied with.

7. The Committee notes that the letter states that SSI 2011/432 came into force on 23 January 2012 and the LPPO considered it necessary to correct the errors concerned prior to this date.

8. The letter refers to the provision made in SSI 2011/432 for the surcharging of fees in remote rural areas by the levying of an additional fee of 30% of the fee specified in the Table of Fees. It states that this change was approved as part of an on-going review of the fees of officers of court.

9. The letter goes on to state that it then transpired that due to a misunderstanding the change provided for in SSI 2011/432 goes further than intended, so that a greater number of fees than was meant are liable to the 30% surcharge. This issue was addressed within the amending instrument. However, the Committee notes that, because the error has only recently come to light, rectifying it prior to SSI 2011/432 coming into force on 23 January 2012 involved breaching the 28 day rule.

10. The Committee therefore draws the instrument to the Parliament’s attention under reporting ground (j) as there has been a failure to lay the instrument at least
28 days before it comes into force as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

11. However, in doing so, it finds the explanation provided by the Lord President’s Private Office for this failure to be acceptable, as action to correct errors in SSI 2011/432 required to be taken prior to 23 January 2012, when that instrument was to come into force.
NO POINTS RAISED

12. At its meeting on 7 February 2012, 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:

**Education and Culture Committee**

Public Services Reform (Recovery of Expenses in respect of Inspection of Independent Further Education Colleges and English Language Schools) (Scotland) Order 2012 [draft]

Repayment of Student Loans (Scotland) Amendment Regulations 2012 (SSI 2012/22)

Children's Hearings (Scotland) Act 2011 (Commencement No. 4) Order 2012 (SSI 2012/23)

**Finance Committee**

Budget (Scotland) Act 2011 Amendment Order 2012 [draft]

**Health and Sport Committee**

National Health Service (General Medical Services Contracts) (Scotland) Amendment Regulations 2012 (SSI 2012/9)

National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2012 (SSI 2012/10)

**Infrastructure and Capital Investment Committee**

Housing Support Grant (Scotland) Order 2012 [draft]

Scottish Road Works Register (Prescribed Fees) Regulations 2012 (SSI 2012/11)

Housing (Scotland) Act 2010 (Commencement No. 5) Order 2012 (SSI 2012/19)

**Justice Committee**

Act of Sederunt (Fees of Messengers-at-Arms) (Amendment) 2012 (SSI 2012/8)

Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (Commencement) Order 2012 (SSI 2012/20)

**Local Government and Regeneration Committee**

Representation of the People (Variation of Limits of Candidates’ Local Government Election Expenses) (Scotland) Order 2012 (SSI 2012/16)
Rural Affairs, Climate Change and Environment Committee

Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2012 (SSI 2012/24)

Parliament

Local Government Finance (Scotland) Order 2012 [draft]
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