Subordinate Legislation Committee

8th 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 21 February 2012, the Committee agreed to draw the attention of the Parliament to the following instrument—

   • Public Records (Scotland) Act 2011 (Commencement No. 1) Order 2012 (SSI 2012/21).

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.
POINTS RAISED: INSTRUMENTS NOT SUBJECT TO ANY PARLIAMENTARY PROCEDURE

Public Records (Scotland) Act 2011 (Commencement No. 1) Order 2012 (SSI 2012/21) (Education and Culture Committee)

3. The commencement order brings into force certain provisions of Part 1 of the Public Records (Scotland) Act 2011. Those provisions are sections 1(4) to (6), 2, 3, 8(1) and (2), and 13.

4. The provisions enable the Keeper of the Records of Scotland to prepare and consult on draft guidance to Scottish public authorities and a draft model records management plan.

5. The order also enables the Keeper to issue the guidance and publish the plan in advance of the day when the provisions that oblige authorities to prepare their own records management plans are brought into force. The commencement of section 2 of the Act will enable the Scottish Ministers to amend the schedule to the Act, which lists the public authorities to which Part 1 applies.

6. The Committee notes that the drafting of the order appears to be defective in one respect. The order provides for the commencement of section 2 of the Act, but does not expressly commence the schedule to the Act, which section 2 both introduces and enables Ministers to amend.

7. The Scottish Government was asked why it was considered that the order commences the schedule to the Act on 24 February 2012. The correspondence is reproduced at Appendix 1.

8. In response, the Scottish Government agreed that there is a drafting error in the order, and it undertook to introduce an amending order to correct it in advance of the commencement date of 24 February. SSI 2012/42, which the Committee also considered at its meeting on 21 February, is the amending order which makes the correction.

9. The Committee therefore draws the instrument to the Parliament’s attention under reporting ground (i) as its drafting appears to be defective, in respect that it does not provide for the commencement of the schedule to the Public Records (Scotland) Act 2011 on 24 February 2012 as was intended.

10. However, in doing so, it welcomes the making of the amending order SSI 2012/42, which has been brought forward to remedy the error.
NO POINTS RAISED

11. At its meeting on 21 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 Records (Scotland) Act 2011 (Commencement No. 1) Amendment Order 2012 (SSI 2012/42)

**Health and Sport Committee**

Patient Rights (Scotland) Act 2011 (Commencement) Order 2012 (SSI 2012/35)

**Infrastructure and Capital Investment Committee**

Home Energy Assistance Scheme (Scotland) Amendment Regulations 2012 (SSI 2012/34)

**Justice Committee**

Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2012 (SSI 2012/30)

**Local Government and Regeneration Committee**

Non-Domestic Rate (Scotland) Order 2012 (SSI 2012/27)

Non-Domestic Rates (Levying) (Scotland) Regulations 2012 (SSI 2012/28)

Non-Domestic Rates (Levying) (Scotland) (No.2) Regulations 2012 (SSI 2012/29)

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

Potatoes Originating in Egypt (Scotland) Amendment Regulations 2012 (SSI 2012/37)
APPENDIX 1

The Public Records (Scotland) Act 2011 (Commencement No. 1) Order 2012 (SSI 2012/21)

On 31 January 2012 the Scottish Government was asked:

The Order provides for the commencement of section 2 of the Public Records (Scotland) Act 2011, but not the schedule to the Act, which that section both introduces and enables the amendment of. Express commencement of a schedule in these circumstances is the normal drafting approach. Could you explain why it is considered that the order commences the schedule to the Act on 24 February 2012?

The Scottish Government responded as follows:

SGLD thanks the Subordinate Legislation Committee for its question. This is a drafting error and an amending commencement order will be brought forward in advance of the coming into force of this Order on 24 February to insert reference to the schedule in this Order.
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