Delegated Powers and Law Reform Committee

Subordinate Legislation
Contents

Introduction 1
Points raised: Instruments not subject to any parliamentary procedure 2
No points raised 4
Annexe A 5
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;

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;

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 in accordance with Rule 9.18.3.
Committee Membership

**Convener**
**John Scott**
Scottish Conservative and Unionist Party

**Deputy Convener**
**Stuart McMillan**
Scottish National Party

**Rachael Hamilton**
Scottish Conservative and Unionist Party

**Monica Lennon**
Scottish Labour

**David Torrance**
Scottish National Party
Introduction

1. At its meeting on 25 October 2016, the Committee agreed to draw the attention of the Parliament to the following instrument—

   Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Supervision Default Orders) 2016 (SSI 2016/300)

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 instruments that are set out at the end of this report.
Points raised: Instruments not subject to any parliamentary procedure

*Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Supervision Default Orders) 2016 (SSI 2016/300) (Justice)*

4. This instrument amends the Criminal Procedure Rules 1996 (“the 1996 Rules”), to make some procedural provisions in relation to certain offenders who are transferred to Scotland.

5. By way of an outline explanation of the offenders affected, the Offender Rehabilitation Act 2014 amends the Criminal Justice Act 2003 to provide for post-release supervision of certain categories of offender in England and Wales. On release, the offender may be made subject to supervision requirements. Failure to comply may result in the imposition of a “supervision default order” (SDO). The Offender Rehabilitation Act 2014 also amends the Crime (Sentences) Act 1997, to the effect that the SDO provisions of the Criminal Justice Act 2003 will apply to an offender who is transferred to Scotland to serve a sentence, or period of supervision. This instrument therefore applies to those transferred offenders.

6. Paragraph 2(2) of the instrument makes an exception to the general rule on service of documents contained in the 1996 Rules. The citation of a person to appear before a sheriff under a supervision default order is to be done by the clerk of court.

7. Other provisions prescribe the forms to be used in relation to supervision default orders, which are inserted into the Appendix to the 1996 Rules.

8. The instrument comes into force on 31 October 2016.

9. In considering the instrument, the Committee sought clarification from the Lord President’s Private Office regarding two apparent drafting errors. The correspondence is reproduced at *Annexe A*.

10. The Lord President’s Private Office has acknowledged that there is a minor drafting error in the instrument, and that there has been an oversight in relation to the title of the instrument. The Committee therefore draws the instrument to the attention of the Parliament on the general reporting ground, in the following two respects:

   (i) There is a minor drafting error in rule 20.23(2) of the Criminal Procedure Rules 1996 as inserted by paragraph 2(4) of the instrument. Rule 20.23(2) refers incorrectly to a supervision default order made under section 256AC(1)(a) of the Criminal Justice Act 2003. Such an order is made under section 256AC(4)(c) of that Act.
(ii) There is a failure to follow the normal drafting practice in relation to the title of the instrument. The title includes that it is the “(No.3)” amendment of the Criminal Procedure Rules 1996, but the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Instruction of Representation in the High Court) 2016 (S.S.I. 2016/201) has already been laid before the Parliament. The normal practice would have been to number the instrument as the fourth amendment of the Criminal Procedure Rules rather than the third.
No points raised

11. At its meeting on 25 October 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.

**Education and Skills**

Additional Support for Learning (Sources of Information) (Scotland) Order 2016 (SSI 2016/299)

**Justice**

Courts Reform (Scotland) Act 2014 (Relevant Officer and Consequential Provisions) Order 2016 [draft]

Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft]

Community Justice Outcomes Improvement Plan and Performance Report (Scotland) Regulations 2016 (SSI 2016/309)

Civil Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2016 (SSI 2016/317)

Act of Sederunt (Electronic Authentication) 2016 (SSI 2016/306)

**Local Government and Communities**

Air Weapons and Licensing (Scotland) Act 2015 (Commencement No. 5 and Saving Provisions) Order 2016 (SSI 2016/307 (C.29))
Annexe A

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Supervision Default Orders) 2016 (SSI 2016/300)

On 4 October 2016, the Lord President’s Private Office was asked:

1. (a) Is there an error or a failure to follow normal drafting practice in the title of the instrument, given that it includes “(No. 3)” but the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Instruction of Representation in the High Court) 2016 (SSI 2016/201) was laid before the Parliament on 17 June 2016?

   (b) If so what effects (if any) does this duplication have for the High Court of Justiciary, the National Archives and other readers of the instrument?

2. (a) Is there an error in rule 20.23(2) of the Criminal Procedure Rules 1996 as inserted by paragraph 2(4) of the instrument, as it refers to a supervision default order made under section 256AC(1)(a) of the Criminal Justice Act 2003, whereas Form 20.23-A in Part 2 of the schedule appears to state correctly in its heading that a supervision default order is made under section 256AC(4)(c) of the 2003 Act?

   (b) If so, is any corrective action proposed?

The Lord President’s Private Office responded as follows:

Question 1 (a)
We are grateful to the Committee for identifying this titling error in the instrument in that it refers to the instrument as being the “(No.3)” amendment of the Criminal Procedure Rules when the Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Instruction of Representation in the High Court) 2016 (S.S.I. 2016/201) had already been made. In light of this, we are taking the opportunity to review our drafting practice in relation to the use of numbering in titles to instruments which amend a principal instrument which has itself been amended more than once but where the amending instrument’s title is in any event unique.

Question 1 (b)
In our view, notwithstanding this error, which we fully acknowledge, the fact that the instruments each have unique descriptive titles - “Instruction of Representation in the High Court” and “Supervision Default Orders” - means that there is little, if any, scope for confusion for readers of the instrument.
Question 2 (a)
We are also grateful to the Committee for raising this point. There is an error in rule 20.23(2) of the Criminal Procedure Rules 1996 as inserted by paragraph 2(4) of the instrument in that the reference to section 256AC(1)(a) of the Criminal Justice Act 2003 should be to section 256AC(4)(c) of the 2003 Act.

Question 2 (b)
We will be taking action to correct this error at the next available legislative opportunity. As the Committee is aware, due to the nature of the process by which court rule changes are arrived at and made, it is difficult to provide a timescale for corrective action as this is not within our control but, as the Committee will have observed, there have now been four instruments amending the principal court rules this year so we do not anticipate it will be more than the order of a few months before an opportunity will arise.