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Delegated Powers and Law Reform Committee

Subordinate Legislation



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Textphone: 0800 092 7100
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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;
- 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.



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DPLR.Committee@scottish.parliament.uk



0131 348 5175



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Monica Lennon
Scottish Labour



David Torrance
Scottish National Party

Introduction

1. At its meeting on 10 January 2017, the Committee agreed to draw the attention of the Parliament to the following instruments—

Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016 (SSI 2016/421)

Housing (Scotland) Act 2014 (Commencement No. 6 and Transitional Provision) Order 2016 (SSI 2016/412 (C.42))
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 that are set out at the end of this report.

Points raised: Instruments subject to negative procedure

Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016 (SSI 2016/421) (Local Government and Communities)

4. The purpose of the Order is to amend the Town and Country Planning (Use Classes) (Scotland) (Order) 1997 to remove betting offices from class 2 (financial professional and other services) and to add both betting offices and pay day loan shops to the list of uses excluded from the various use classes.
5. This means that any material change of use of premises to a betting office or pay day loan shop would require a planning application to be made.
6. The new rules do not apply to a change of use to a betting office which occurs before 10 February 2020 where the building is authorised to be used for the provision of facilities for betting by a betting premises licence issued before 10 February 2017.
7. The Order also amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 to ensure that a change of use from a pay day loan shop or a betting office to a use in class 2 or in class 1 (shops) of the Use Class Order does not require a planning application.
8. This negative instrument was laid on 15 December 2016 and comes into force on 10 February 2017. It is subject to annulment within 40 days of it being laid.
9. In considering the Order, the Committee sought an explanation in writing from the Scottish Government regarding certain irregularities within the instrument. The correspondence is reproduced at **Annexe A**.
10. Paragraph (2) of article 4 of the Order provides that “In this article, “pay day loan shop” has the meaning given in article 3(6) of the Use Classes Order.” However, no reference is made to “pay day loan shop” in article 4.
11. The Scottish Government confirmed that the inclusion of the definition of “pay day loan shop” in article 4 was redundant. It also confirmed that the policy intention is that the transitional saving provision in article 4 is to apply only to changes of use to a betting shop. No transitional saving provision is to be made in respect of a change of use to a pay day loan shop occurring before 10 February 2020 (or, indeed, some other date).
12. The Scottish Government does not propose to take any action to amend article 4(2) on the basis that the definition appears in a transitional saving provision. While the oversight is unfortunate, the Scottish Government’s view is that the

inclusion of article 4(2) does not affect the operation of the transitional saving provision or the Order.

13. While the Committee agrees that the inclusion of paragraph (2) of article 4 does not affect the operation of the transitional provision or the Order, the inclusion of the definition of “pay day loan shop” in its application to article 4 of the Order is an error.
14. **The Committee therefore draws the instrument to the attention of the Parliament under the general reporting ground on the basis that the definition of “pay day loan shop” in its application to article 4 of the Order is a drafting error as no other reference is made to “pay day loan shop” in article 4.**
15. **Furthermore, the Committee invites the Scottish Government to amend the Order at the next available opportunity to remove the definition of “pay day loan shop” by removing paragraph (2) of article 4.**

Points raised: Instruments not subject to any parliamentary procedure

Housing (Scotland) Act 2014 (Commencement No. 6 and Transitional Provision) Order 2016 (SSI 2016/412 (C.42)) (Local Government and Communities)

16. This Order brings into force various provisions of the Housing (Scotland) Act 2014 (“the Act”). 1st May 2017 is appointed for the coming into force of the remaining provisions in Part 5 (mobile home sites with permanent residents) of the Act.
17. 31st January 2018 is appointed for the coming into force of the majority of the provisions in Part 4 (letting agents) of the Act.
18. The Order provides that section 44 (offence of operating as a letting agent without registration) of the Act will come into force on “31st September 2018”, which is intended to give a period of 8 months from the date the register of letting agents is established before that offence provision is in force. Article 3 of the Order aims to ensure that the offence provision will not apply, if by that date an application has been made but has not been finally determined.
19. In considering the Order, the Committee sought an explanation in writing from the Scottish Government regarding a couple of apparent drafting errors within the instrument. The correspondence is reproduced at **Annexe B**. The Order, in the provision commencing section 44 of the Act and within the transitional provision in article 3, refers in two places to 31st September 2018 (being a date which does not exist).
20. **The Committee therefore draws the Order to the attention of the Parliament on reporting ground (i), as it appears that article 3(1)(a) and the last entry in column 3 of the schedule of the Order are defectively drafted.**
21. **Article 3(1) purports to make a transitional provision in circumstances where a person has before “31st September 2018” made an application under section 30 of the Housing (Scotland) Act 2014, and the last entry in column 3 of the schedule purports to commence section 44 of the Act on that supposed date. The date which should have appeared in those provisions is 30th September 2018.**
22. **The Committee notes that the Scottish Government intends to correct those provisions, before they have effect, within the next commencement order for the Housing (Scotland) Act 2014 which will be made during the course of this year.**
23. **The Committee contends that, while such correction would be acceptable, given that the Order refers in two places to a non-existent date, it would be preferable to correct the provisions as soon as practicable.**

No points raised

24. At its meeting on 10 January 2017, 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

Gaelic Medium Education (Assessment Requests) (Scotland) Regulations 2016 (SSI 2016/425)

Equalities and Human Rights

Civil Partnership, Marriage Between Persons of Different Sexes and Same Sex Marriage (Prescribed Bodies) (Scotland) Amendment Regulations 2016 (SSI 2016/427)

Justice

Police Service of Scotland (Amendment) Regulations 2016 (SSI 2016/419)

Firemen's Pension Scheme (Amendment and Transitional Provisions) (Scotland) Order 2016 (SSI 2016/431)

Criminal Justice (Scotland) Act 2016 (Commencement No. 3 and Saving Provision) Order 2016 (SSI 2016/426 (C.44))

Local Government and Communities

Letting Agent Registration (Scotland) Regulations 2016 (SSI 2016/432)

Annexe A

Town and Country Planning (Miscellaneous Amendments and Transitional Saving Provision) (Scotland) Order 2016 (SSI 2016/421)

On 21 December 2016, the Scottish Government was asked:

1. Paragraph (2) of article 4 of the Order provides that “In this article, “pay day loan shop” has the meaning given in article 3(6) of the Use Classes Order.” However, no reference is made to “pay day loan shop” in article 4.

a. What is the purpose of defining “pay day loan shop” in its application to article 4?

b. Was it intended that transitional or saving provision was to be made in respect of a change of use to a pay day loan shop occurring before 10 February 2020 (or, indeed, some other date)?

The Scottish Government responded as follows:

(a) and (b). The policy is that the transitional saving provision in article 4 of the Order is to apply only to changes of use to a betting office. The inclusion of the definition of “pay day loan shop” in article 4 is otiose. Given that the definition appears in a transitional saving provision, it is not proposed to take any action to amend it. While the oversight is unfortunate the Scottish Government is of the view that the inclusion of article 4(2) does not affect the operation of the transitional saving provision or the Order.

Annexe B

Housing (Scotland) Act 2014 (Commencement No. 6 and Transitional Provision) Order 2016 (SSI 2016/412 (C. 42))

On 16 December 2016, the Scottish Government was asked:

There are apparent errors in the Order as:

(a) article 3(1) purports to make a transitional provision in circumstances where a person has before 31st September 2018 made an application under section 30 of the Housing (Scotland) Act 2014, and

(b) the last provision of the schedule purports to commence section 44 of the Act on that supposed date.

The fourth paragraph of the explanatory note also refers to commencement of that section on that date.

Is corrective action proposed?

The Scottish Government responded as follows:

The date which should have appeared in each of the identified places is 30th September 2018. This will be corrected in the next commencement order for the Housing (Scotland) Act 2014 which will be made in 2017.

