Delegated Powers and Law Reform Committee

39th Report, 2014 (Session 4)

Subordinate Legislation

Published by the Scottish Parliament on 3 June 2014
Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. 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; and
   (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; and
   (h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

Membership:

Richard Baker
Nigel Don (Convener)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth White

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

1. At its meeting on 3 June 2014, the Committee agreed to draw the attention of the Parliament to the following instrument—

   Children and Young People (Scotland) Act 2014 (Commencement No. 1 and Transitory Provisions) Order 2014 (SSI 2014/131 (C.9)).

2. The Committee's recommendations in relation to the above instrument are set out below.

3. The Committee determined that it did not need to draw the Parliament’s attention to the instruments which are set out at the end of this report.
POINTS RAISED: INSTRUMENTS NOT SUBJECT TO ANY PARLIAMENTARY PROCEDURE

Children and Young People (Scotland) Act 2014 (Commencement No. 1 and Transitory Provisions) Order 2014 (SSI 2014/131 (C.9)) (Education and Culture Committee)

4. This first commencement order under the Children and Young People (Scotland) Act 2014 commences certain provisions of the Act with effect from 28 June 2014, and various provisions with effect from 1 August 2014. The various provisions commenced on 1 August are listed in the schedule to the Order.

5. The Order will come into force on 28 June 2014.

6. In considering the instrument, the Committee asked the Scottish Government for an explanation of one matter. The correspondence is reproduced at the Annex.

7. The Committee has identified a drafting error in the instrument, as explained below. The Scottish Government has acknowledged that there is an error, but considers that the mistake has no legal or practical effect.

8. The Committee therefore draws the Order to the attention of the Parliament on the general reporting ground, as it contains a minor drafting error.

9. Article 2(1) of the Order commences section 98, for the purpose of commencing paragraph 2(1) of schedule 5 to the Children and Young People (Scotland) Act 2014, on 28 June 2014. The reference to paragraph 2(1) of schedule 5 should not have been included in column 3 of the table in the Schedule to the Order. This is a superfluous provision, which purports to commence section 98 again for the same purpose with effect from 1 August 2014.
NO POINTS RAISED

10. At its meeting on 3 June 2014, the Committee 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:

**Economy, Energy and Tourism**

Registers of Scotland (Fees) Order 2014 [draft];

Land Registration etc. (Scotland) Act 2012 (Incidental, Consequential and Transitional) Order 2014 [draft].

**Education and Culture**

Children’s Hearings (Scotland) Act 2011 (Supplementary Provision) Order 2014 (SSI 2014/137).

**Finance**

Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Revenue Scotland as Specified Authority) Order 2014 [draft].
Children and Young People (Scotland) Act 2014 (Commencement No. 1 and Transitory Provisions) Order 2014 (SSI 2014/131 (C. 9))

On 22 May 2014, the Scottish Government was asked:

Article 2(1) commences, with effect from 28 June 2014, inter alia paragraph 2(1) of Schedule 5 (consequential amendments) to the 2014 Act, and section 98 so far as necessary to commence that subparagraph. However article 2(2) and the schedule to the Order commence (inter alia) section 98 for the purpose of commencing that paragraph 2(1) - with effect from 1 August 2014. (Paragraph 2(1) provides that it is the Education (Scotland) Act 1980 which is amended by the provision in 2(2)).

Would you agree this is error, and what is the effect in relation to the commencement of the provision considered to be? If so would the Scottish Government propose to correct it?

The Scottish Government responded as follows:

It was an error to commence section 98 for the purpose of commencing paragraph 2(1) of schedule 5 to the Children and Young People (Scotland) Act 2014 (“the Act”) on 1st August 2014, given article 2(1) of the Children and Young People (Scotland) Act 2014 (Commencement No. 1 and Transitory Provisions) Order 2014 (SSI 2014/131 (C. 9)) (“the Order”) commences section 98 for the purposes of commencing paragraph 2(1) of schedule 5 to the Act on 28th June 2014. The reference to paragraph 2(1) of schedule 5 should not therefore have been included in column 3 of the table in the Schedule to the Order.

As article 2(1) of the Order commences section 98 for the purpose of commencing paragraph 2(1) of schedule 5 to the Act on 28 June 2014, it is considered that commencing it again for the same purpose on 1st August 2014 has no legal effect. As the error is minor in nature, as it is considered that it has no legal or practical effect, given the terms of article 2(1) of the Order, and considering the public cost of bringing forward an amendment Order, the Scottish Government has no plans to rectify it.
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