Delegated Powers and Law Reform Committee

1st Report, 2015 (Session 4)

Subordinate Legislation

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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:

Nigel Don (Convener)
John Mason (Deputy Convener)
Margaret McCulloch
John Scott
Stewart Stevenson
Committee Clerking Team:

Clerk to the Committee
Euan Donald

Assistant Clerk
Elizabeth Anderson

Support Manager
Daren Pratt
Delegated Powers and Law Reform Committee

1st Report, 2015 (Session 4)

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The Committee reports to the Parliament as follows—

1. At its meeting on 6 January 2015, the Committee agreed to draw the attention of the Parliament to the following—

   Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Amendment Regulations 2014 (SSI 2014/357);

   Children and Young People (Scotland) Act 2014 (Commencement No. 5 and Saving Provision) Order 2014 (SSI 2014/353(C.31)).

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 which are set out at the end of this report.
POINTS RAISED: INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Amendment Regulations 2014 (SSI 2014/357) (Rural Affairs, Climate Change and Environment Committee)

4. The purpose of this instrument is to amend the Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Regulations 2014 ("the principal Regulations"), to amend an error in the schedule to those Regulations.

5. This instrument comes into force on 9 January 2015.

6. The Scottish Government has provided a letter to the Presiding Officer, to explain the failure to comply with the “28 day rule”, as set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”). The correspondence is reproduced at Annex A.

7. The letter to the Presiding Officer explains that the “28 day rule” was not complied with because the Scottish Government considers it necessary to bring the instrument into force on 9 January, to ensure that the amendment will be synchronous with the principal Regulations coming into force. The coming into force date of the principal Regulations is intended to coincide with the start of the Spring fishing season.

8. In this instance, the Committee agreed that the breach is acceptable, as the Scottish Government is seeking to make corrections to satisfy the Committee’s report on a previous instrument.

9. The Committee draws this instrument to the Parliament’s attention on reporting ground (j) as there has been a failure to observe the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The instrument will come into force on 9 January 2015, meaning that the requirement to leave a minimum of 28 days (excluding recess dates) between laying and coming into force has not been complied with.

10. The Committee however, finds the breach acceptable in this instance, because the Scottish Government is seeking to make corrections to satisfy the Committee’s report on a previous instrument.
POINTS RAISED: INSTRUMENTS NOT SUBJECT TO ANY PARLIAMENTARY PROCEDURE

Children and Young People (Scotland) Act 2014 (Commencement No. 5 and Saving Provision) Order 2014 (SSI 2014/353(C.31)) (Education and Culture Committee)

11. The purpose of the instrument is to bring into force, on 9 and 26 January 2015, various provisions of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”).

12. The instrument is subject to the default laying requirement in section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. It comes into force on 9 January 2015.

13. In considering the instrument, the Committee asked the Scottish Government for an explanation of certain matters. The correspondence is reproduced at Annex B.

14. Section 81 of the 2014 Act amends the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”) to make provision for the referral of school closure proposals to the Convener of the School Closure Review Panels, and for review by such Panels. Section 81(4) inserts provision in the 2010 Act which defines the terms “the Convener” and “School Closure Review Panel” for the purposes of the 2010 Act. In addition, section 81(9) further amends the 2010 Act to refer to these two definitions.

15. Section 81 is already partially in force, for the purpose of enabling the making of regulations relating to appointment to the post of Convener, and appointment as a Panel member. The instrument brings section 81 further into force, to enable the establishment of the office of the Convener and the appointment of persons as Panel members. However it fails to fully commence section 81(4) and (9), meaning that the definitions of “the Convener” and “School Closure Review Panel” are not given effect in the 2010 Act.

16. The Committee accordingly draws this instrument to the attention of the Parliament under the general reporting ground. The instrument fails to commence section 81(4) of the Children and Young People (Scotland) Act 2014 for the purpose of bringing section 17A(6) of the Schools (Consultation) (Scotland) Act 2010 fully into force. The instrument also fails to commence section 81(9) of the 2014 Act insofar as it is not already in force.

17. The Committee notes, however, that the Scottish Government has laid a further commencement order, also before the Committee this week, to commence both of these provisions in the required manner. Both commencement orders come into force on 9 January 2015.
NO POINTS RAISED

18. At its meeting on 6 January 2015, 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:

**Education and Culture**

Children and Young People (Scotland) Act 2014 (Commencement No. 6) Order 2014 (SSI 2014/365 (C.33)).

**Health and Sport**


**Justice**


**Local Government and Regeneration**

Freedom of Information (Scotland) Act 2002 (Scottish Public Authorities) Amendment Order 2014 (SSI 2014/354);
ANNEX A

Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Amendment Regulations 2014 (SSI 2014/357)

Breach of laying requirements: Letter to Presiding Officer

The Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Amendment Regulations 2014, SSI 2014/357 was made by the Scottish Ministers under section 38 of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 on 10th December 2014. It is being laid before the Scottish Parliament today, 12th December 2014 and comes into force on 9th January 2015.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) has not been complied with. To meet the requirements of section 31(3) that Act, this letter explains why.

The Regulations correct a typographical error in the Schedule to the Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Regulations 2014 (“the principal Regulations”). The principal Regulations prescribe the annual close time for each salmon fishery district and the periods within the annual close time when it is permitted to fish for, or take, salmon by rod and line as well as prohibiting the retention of salmon during prescribed periods in the spring. The principal Regulations come into force on 9th January to ensure that the new measures are in force in time for the start of the fishing season.

Unfortunately there was a typographical error in the entry for the Urr Salmon Fishery District in the principal Regulations, in column 3, which prescribes the permitted periods for rod and line fishing. The reference “[29th November]” was unintended and is removed by these amending Regulations. The correct date is 31st October.

The intention is that the principal Regulations should come into effect with the correct dates for every salmon fishery district, as listed in the Schedule, to ensure clarity and to avoid any confusion which might otherwise arise. It is therefore considered necessary to bring these amending Regulations into force on 9th January 2015 to ensure that the amendment will be synchronous with the principal Regulations coming into force.
Children and Young People (Scotland) Act 2014 (Commencement No. 5 and Saving Provision) Order 2014 (SSI 2014/353 (C.31))

On 11 December 2014, the Scottish Government was asked:

Article 2(1) of the order appoints 9 January 2015 for the coming into force of section 81(4) and (5) of the 2014 Act for the purpose of bringing fully into force section 17A(5) of and schedule 2A to the 2010 Act. Schedule 2A makes provision for the establishment of the office of the Convener of the School Closure Review Panels, and for the appointment of School Closure Review Panel members. Those terms (“the Convener” and “School Closure Review Panel”) are defined in section 17A(6) of the 2010 Act, as inserted by section 81(4) of the 2014 Act. In addition, section 21(2) of the 2010 Act (definitions) is amended by section 81(9) of the 2014 Act to refer to the two definitions.

Section 81(4) of the 2014 Act has to date been commenced for the purpose of bringing into force section 17A(6) of the 2010 Act, but only in so far as necessary to enable the Scottish Ministers to make regulations under paragraphs 1(9) and 2(5) of schedule 2A to the 2010 Act. Section 81(9) of the 2014 Act has also been commenced only in so far as necessary to enable the Scottish Ministers to make regulations under those paragraphs of schedule 2A. It would appear that section 81(4) should now be commenced for the purpose of bringing section 17A(6) into force for all remaining purposes, and that section 81(9) should be commenced insofar as it is not already in force. This would enable the definitions of “the Convener” and “School Closure Review Panel” to take effect in relation to new schedule 2A of the 2010 Act, which is given effect by this instrument.

Does the Scottish Government agree that section 81(4) should be commenced for the purpose of bringing section 17A(6) fully into force, and that section 81(9) should be commenced insofar as it is not already in force? If so, is any corrective action proposed?

The Scottish Government responded as follows:

The Scottish Government agrees that section 81(4) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) should be commenced for the purpose of bringing section 17A(6) of the Schools (Consultation) (Scotland) Act 2010 (“the 2010 Act”) fully into force, and that section 81(9) of the 2014 Act should be commenced insofar as it is not already in force.

The Scottish Government has therefore prepared a further commencement order (the Children and Young People (Scotland) Act 2014 (Commencement No. 6) Order 2014) to commence these provisions in so far as they are not already in force, which will be laid in Parliament on Wednesday 16th December 2014, in order to come into force on 9th January 2015 (the same date as the coming into force date of section 81(4) and (5) of the 2014 Act for the purpose of bringing into force section 17A(5) and Schedule 2A to the 2010 Act, and section 81(7), (10), (11)(a) and (12) of the 2014 Act).
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