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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 2 February 2021

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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 the following (and any additional matter added under Rule 6.1.5A)—

(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; and

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

(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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Introduction

1. At its meeting on 2 February 2021, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the lead committee:
 - Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021 (SI 2021/27).
2. The Committee's recommendations in relation to this instrument are set out in the next section of the report.
3. The Committee also determined that it did not need to draw the Parliament's attention to the instruments set out by the relevant lead committee at the end of this report.

Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the lead committee

Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021 (SI 2021/27)

4. The instrument is an Order of the Privy Council which approves rules made by the Health and Care Professions Council. It was laid before both the Scottish Parliament and both Houses at Westminster. It comes into force on 4 March 2021.
5. This instrument is subject to the negative procedure.
6. The Committee wrote to the Scottish Government highlighting what appeared to be an error identified in the drafting of the schedule to the Order. The schedule amends existing rules for hearings of the Health and Care Professions Council which regulates a number of professions across the UK. Certain steps in procedure in professional registration matters, including appeals, require to be taken within timescales calculated with reference to the date on which various documents are sent. The amending provisions introducing additional forms of service delete the definition of the date on which posted documents by the Council are treated as having been sent and do not provide any alternative definition. This affects the calculation of time periods in which certain procedural steps must be taken.
7. In its response, the Scottish Government acknowledged there had been an error. It confirmed the UK Government had undertaken to bring forward a new Order in Council to correct the position before this instrument comes into force.
8. A copy of all correspondence can be found in the **Annex**.
9. **The Committee agrees to draw the instrument to the attention of the Parliament on the general reporting ground on the basis that there is an error in the drafting of the schedule to the Order.**
10. **The Committee welcomes the UK Government's commitment to laying an amended Order before the Scottish Parliament and both Houses at Westminster before the instrument comes into force.**

No points raised

COVID-19 Committee

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 14) Regulations 2021 (SSI 2021/35)

Economy, Energy and Fair Work Committee

Registers of Scotland (Fees) Amendment Order 2021 (SSI 2021/draft)

Education and Skills Committee

Children and Young People (Scotland) Act 2014 (Modification) Order 2021 (SSI 2021/draft)

Special Restrictions on Adoptions from Nigeria (Scotland) Order 2021 (SSI 2021/30)

Education (Miscellaneous Amendments) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/31)

Environment, Climate Change and Land Reform Committee

Crofting Community Right to Buy (Procedure, Ballots and Forms) (Scotland) Amendment Regulations 2021 (SSI 2021/27)

Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (Commencement No. 2) Regulations 2021 (SSI 2021/42 (C.3))

Health and Sport Committee

Civil Contingencies Act 2004 (Amendment of List of Responders) (Scotland) Order 2021 (SSI 2021/draft)

Carers (Scotland) Act 2016 (Adult Carers and Young Carers of Terminally Ill Persons: Timescales for Adult Carer Support Plans and Young Carer Statements etc.) Regulations 2021 (SSI 2021/draft)

Community Care (Personal Care and Nursing Care) (Scotland) Amendment Regulations 2021 (SSI 2020/draft)

Justice Committee

Restorative Justice (Prescribed Persons) (Scotland) Order 2021 (SSI 2021/40)

Victims and Witnesses (Scotland) Act 2014 (Commencement No. 8) Order 2021 (SSI 2021/39 (C. 2))

Local Government and Communities

Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment Order 2021 (SSI 2021/29)

Rural Economy and Connectivity Committee

National Bus Travel Concession Scheme for Young Persons (Scotland) Order 2021 (SSI 2021/draft)

Rural Development (Miscellaneous Amendment) (Scotland) Regulations 2021 (SSI 2021/33)

Social Security Committee

First-tier Tribunal for Scotland Social Security Chamber (Allocation of Functions) Amendment Regulations 2021 (SSI 2021/draft)

Annex

Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021 (SI 2021/27)

On 22 January 2021 the Committee wrote to the Scottish Government as follows:

The Order amends rules prescribing operating procedures for the Health and Care Professions Council (HCPC) committees dealing with fitness to practice questions and its Appeals Panel. These rules are the Amendments to the Health and Care Professions Council (Investigating Committee) (Procedure) Rules 2003; the Amendments to the Health and Care Professions Council (Conduct and Competence Committee) (Procedure) Rules 2003; the Amendments to the Health and Care Professions Council (Health Committee) (Procedure) Rules 2003 and the Amendments to the Health and Care Professions Council (Registration Appeals) Rules 2003. In the schedule of this Order, paragraphs 2(3), 3(3), 4(3) and 5(3) substitute alternative text for the existing rule on service of documents in each of these procedural rules in order to make provision for a notice or other document to be sent to, or from, the HCPC using electronic mail if the sender or recipient has provided an e-mail address for communication or by leaving it at the relevant address, in addition to the existing option of sending it by post.

Rule 3 on Service of Documents in the existing rules provides that all communications sent for the purposes of these rules may be sent by post and any such communication shall be treated as having been sent on the day that it was posted. The amending provision introducing two additional forms of service deletes this provision, and makes no alternative provision.

The procedural rules require action by HCPC or registrants which must be taken within time periods calculated with reference to the date on which a notice or document is sent. The date on which an electronic mail has been sent will normally be clear on the face of the communication. The rules no longer make clear when communications sent by post shall be treated as having been sent. Is this an error? Please advise whether any corrective action proposed, and if so, what action and when?

On 26 January 2021, the Scottish Government responded to the Committee as follows:

It is agreed that there is an error. As the Committee will be aware, these are UK Orders that are laid before both Parliaments. We understand that colleagues in the Department for Health and Social Care will take forward corrective action through a further Order to amend SI 2021/27, with the intention to do this prior to SI 2021/27 coming into force.

