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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 1 April 2025



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Public Information on:
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Textphone: 0800 092 7100
Email: sp.info@parliament.scot

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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.



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Stuart McMillan
Scottish National Party



Bill Kidd
Scottish National Party



Jeremy Balfour
Scottish Conservative
and Unionist Party



Katy Clark
Scottish Labour



Roz McCall
Scottish Conservative
and Unionist Party

Introduction

1. At its meeting on 1 April 2025ⁱ, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the Parliament:
 - Recognition of Overseas Qualifications (Charges) (Scotland) Regulations 2025 (SSI 2025/67); and
 - Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Amendment Regulations 2025 (SSI 2025/73 (C.7)).
2. The Committee's recommendations in relation to these instruments are set out in the next section of this report.
3. The Committee also determined that, in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

ⁱ Bill Kidd MSP submitted apologies for this meeting.

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

Recognition of Overseas Qualifications (Charges) (Scotland) Regulations 2025 (SSI 2025/67)

4. The instrument sets out the charges payable for services relating to the recognition of overseas qualifications. This includes, for example, the cost that a person must pay in order to obtain an official UK document which is evidence that a qualification they have obtained overseas is equivalent to a particular UK qualification.
5. Specifically, the instrument sets out charges for statements, bundles, subscription packages and ancillary services for the recognition of overseas qualifications. It sets out to whom the charges can be paid and who can provide refunds.
6. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("the 2010 Act"), instruments subject to the negative procedure must be laid at least 28 counting days before they come into force. The instrument breaches this requirement as it was laid on 13 March 2025 and will come into force on 28 March 2025.
7. As required by the 2010 Act, the Scottish Government wrote to the Presiding Officer setting out its reasons for breaching the 28 day rule. This letter is set out in full in the annexe.
8. The reasons given for breaching the 28 day rule relate to the unusual history and context of this instrument. This background, as the Committee understands it, is as follows.
9. Fees for these services have been charged across the UK since 1997, when the UK first signed an international treaty aiming to facilitate the recognition of overseas qualifications. The UK Government subsequently decided that a statutory basis should be introduced for the charging of these fees. For this purpose, the UK Government made a UK-wide SI in September 2024 (the Recognition of Overseas Qualifications (Charges) Regulations 2024 (SI 2024/942) ("the UK SI")). The UK Government also included a provision in the Border Security, Asylum and Immigration Bill to retrospectively validate fees which have been charged for this purpose without the necessary legal basis throughout the UK. This would apply to fees charged before the day the Bill is passed.
10. Subsequent to the UK SI being made, and resulting from discussions between UK, Scottish, Welsh and Northern Irish administrations, the view was reached that the subject matter of the UK SI was devolved. The UK Government has therefore made a further instrument (SI 2025/256) which revokes the UK SI in so far as it extends to England and Wales and Northern Ireland and replaces it with provision which extends and applies only to those jurisdictions. The SSI before the Committee today makes equivalent provision for Scotland, and revokes the UK SI in so far as it extends to Scotland.

11. The new UK SI and the SSI are both timed to come into force on 28 March 2025, which is when a new contract begins which the UK Government has procured for the delivery of the services relating to the recognition of overseas qualifications.
12. To complete the picture, the intention is that the services will be provided through the new contract for the whole of the UK. In relation to Scotland, the services will be provided by the UK Government acting on behalf of the Scottish Government. An “agency arrangements” Order under section 93 of the Scotland Act 1998 is therefore proposed. Such an Order provides a statutory basis for the UK Government to exercise Scottish Government functions on the Scottish Government’s behalf (as in this case), or vice versa. These are “agency” arrangements only, responsibility for the function does not transfer. A section 93 Order is subject to procedure in both the UK and Scottish Parliaments.
13. The Scottish Government has set out that it is not possible for a section 93 Order to be in place before 28 March 2025, and that a Memorandum of Understanding will be in place in the meantime.
14. In [correspondence with the Scottish Government](#), the Committee asked about the timing of the planned section 93 Order, in the context of the wider legal issues which sit behind the making of this instrument.
15. The [Scottish Government responded](#) that arrangements are being made for the section 93 Order to be considered at the Privy Council in May 2025. It is of the view that the present instrument provides the necessary legal basis for the charging of these fees in Scotland.
16. The Scottish Government further stated that the retrospective validation of fees that is proposed in the UK Government’s Border Security, Asylum and Immigration Bill will only need to attach to fees that were charged for services provided in Scotland before the present instrument came into force.
17. The lead committee for this instrument is the Education, Children and Young People Committee.

18. The Committee draws the instrument to the attention of the Parliament under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

19. The Committee highlights to the Education, Children and Young People Committee the unusual history and context of the instrument, including its [correspondence with the Scottish Government](#) regarding the proposed section 93 Scotland Act Order.

Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Amendment Regulations 2025 (SSI 2025/73 (C.7))

20. The instrument creates new transitional provisions and changes the coming-into-force date of some provisions of the Disclosure (Scotland) Act 2020, for the purpose

of smoothing the transition from the previous disclosure regime to the new regime.

21. It does so by amending an earlier instrument which also made commencement and transitional provision, the [Disclosure \(Scotland\) Act 2020 \(Commencement No. 5, Saving and Transitional Provision\) Regulations 2025 \(SSI 2025/27 \(C. 4\)\)](#) (“the Principal Regulations”). The Principal Regulations are a substantial instrument which was considered by the Committee at its meeting on [18 February 2025](#).
22. In [correspondence with the Scottish Government](#), the Committee raised an issue that the instrument does not specify a commencement date for new regulations 13 to 15, which it inserts into the Principal Regulations.
23. In its [response](#), the Scottish Government confirmed that this was an error. The Committee considers that the error impedes the operation of the instrument.
24. The lead committee for this instrument is the Education, Children and Young People Committee.

25. The Committee draws the instrument to the attention of the Parliament on reporting ground (i) (that its drafting appears to be defective) in that there is no commencement date for new regulations 13 to 15 which the instrument inserts into the Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Regulations 2025 (SSI 2025/27 (C.4)).

26. The Scottish Government has however laid a further instrument, the Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Amendment (No. 2) Regulations 2025 (SSI 2025/84 (C.9)), which has rectified the error by inserting a coming-into-force date for regulations 13 to 15 of today, 1 April 2025, which rectifies the error. This instrument was also considered by the Committee today.

27. The Committee welcomes that the Scottish Government has made a corrective instrument, SSI 2025/84 (C.9), which resolved the issue before SSI 2025/27 (C.4) came into force.

No points raised

28. At its meeting on 1 April 2025, the Committee considered the following instruments under its remit and agreed not to draw them to the attention of the Parliament.

Education, Children and Young People Committee

Disclosure (Scotland) Act 2020 (Commencement No. 5, Saving and Transitional Provision) Amendment (No. 2) Regulations 2025 (SSI 2025/84 (C.9))

Equalities, Human Rights and Civil Justice Committee

Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Miscellaneous) 2025 (SSI 2025/80)

Finance and Public Administration Committee

Land and Buildings Transaction Tax (Group Relief and Sub-sale Development Relief Modifications) (Scotland) Order 2025 (SSI 2025/Draft)

Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024 (Commencement No. 1) Regulations 2025 (SSI 2025/79 (C.8))

Net Zero, Energy and Transport Committee

Railway Closure (Exclusion) (Hairmyres) Order 2025 (SSI 2025/81)

Annexe

Recognition of Overseas Qualifications (Charges) (Scotland) Regulations 2025 (SSI 2025/67)

On 13 March 2025, the Scottish Government wrote to the Presiding Officer:

The Recognition of Overseas Qualifications (Charges) (Scotland) Regulations 2025, SSI 2025/67 (“the Scottish Regulations”) were made by the Scottish Ministers under section 56(1) and (2) of the Finance Act 1973 today (13 March 2025). The Scottish Regulations are also being laid before the Scottish Parliament today, 13 March 2025 and come into force on 28 March 2025.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) that Act, this letter explains why.

On 12 March, Mr Dey, Minister for Higher and Further Education and Minister for Veterans, wrote to Douglas Ross MSP, Convener of the Education, Children and Young People Committee, copied to you, setting out the background to the UK European Network of Information Centres (ENIC) services and the need for Scottish subordinate legislation to allow the UK ENIC services to continue to be provided in Scotland beyond 28 March 2025.

The Scottish Regulations need to come into force on 28 March 2025 to provide a statutory basis for Scottish customers to continue to be charged for UK ENIC services from the start date of the new contract procured by UK Government.

The reason why the Scottish Regulations have been laid late is because it has only recently come to light and been agreed that the delivery of UK ENIC services is a devolved matter.

Following an initial approach from UK Government in December 2024, in the context of preparing the Border Security, Asylum and Immigration Bill for introduction in January 2025, subsequent detailed discussions between the UK Government Department for Education, the Scottish Government, Welsh Government and Northern Ireland Executive, have concluded that the UK ENIC services relate to the devolved matter of education.

It has taken some time to discuss and agree the most appropriate steps to put in place the right legislative framework from 28 March. The UK Government laid the Recognition of Overseas Qualifications (Charges) Regulations 2025 (S.I. 2025/256) (“**the UK Regulations**”) before the UK Parliament on 5 March 2025. The Scottish Regulations needed to be developed in parallel with, and informed by, the UK Regulations. Additionally, agreement in principle needed to be sought and achieved with the UK Government to proceed with a section 93 Order under the Scotland Act 1998; and that agreement was reached on 12 March 2025. That Order will allow for agency arrangements to be put in place for the UK Government to exercise relevant devolved functions in providing the UK ENIC services to customers in Scotland on behalf of the Scottish Government.

We have made every effort to prepare and lay the Scottish Regulations as quickly as possible, given the above constraints.

