

DELEGATED POWERS AND LAW REFORM COMMITTEE

22nd Meeting, 2022 (Session 6) Tuesday 6 September 2022

Instrument Responses

Scottish Landfill Tax (Prescribed Landfill Site Activities) Amendment Order 2022 (SSI 2022/233)

On 8 July 2022, the Committee asked the Scottish Government:

The above instrument was made, laid and came into force on 1 July 2022. The accompanying policy note indicates that a consultation, which sought views on a draft of the instrument, was published in November 2021 and closed in December 2021.

The Parliament went in to recess on 2nd July 2022, the day after this instrument was made, laid and came into force. The instrument ceases to have effect on the expiry of the period of 28 days (not counting recess periods of more than 4 days) beginning with the date on which it is made unless, before the expiry of that period, it is approved by resolution of the Parliament. The instrument will therefore be in force for a number of months without Parliament having had the opportunity to consider the instrument.

Please explain why

1. it was necessary to make and lay the instrument on 1st July 2022; and
2. this could not have been done earlier to facilitate parliamentary scrutiny of an instrument already in force so there is no delay in parliamentary consideration.

On 29 July 2022, the Scottish Government responded:

1. There had been considered to be a need to clarify the law relating to when a taxable disposal has occurred for the purposes of SLfT, to assist taxpayers. To that end, a consultation was published in November 2021 and closed in December 2021. Following the closure of the consultation at the end of December 2021, the Scottish Government took time to consider carefully the responses received and the case for amending the proposed statutory instrument, including through further discussion with stakeholders. Time was also required to consider the decision of 9 May 2022 of the Upper Tribunal for Scotland in the case of Barr Environmental Limited v Revenue Scotland, which related to the law in this area. It was considered important to clarify the law as soon as possible. The instrument was made and laid on 1 July as this was the first practicable day on which it was possible to do so.

2. As noted in paragraph 1, the instrument could not have been made and laid earlier than 1 July as it was not practicable to do so. It is regretted that it was not possible to lay the instrument until the day before recess, but in the event that it had not been possible to do so, the instrument would have been laid as soon as possible after that

day. It is considered that the importance of clarifying the law for taxpayers and others was such that it would not have been appropriate to delay laying of the instrument until the end of recess.

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Court Sittings) 2022 (SSI 2022/250)

On 25 August 2022, the Committee asked the Lord President's Private Office:

1. In the table in Schedule 3 of the instrument, the last two entries under the column heading "2024" read "Wednesday 23rd December 2024" and "Wednesday 30th December 2024" (reproduced and highlighted below for ease of reference). Both of these dates appear to fall on a Monday rather than a Wednesday. Is there an error in the selection of the days (or dates)?

Schedule 3

Table

2024	2025	2026
Wednesday 3rd January 2024	Wednesday 16th April 2025	Wednesday 1st April 2026
Wednesday 27th March 2024	Wednesday 23rd April 2025	Wednesday 8th April 2026
Wednesday 3rd April 2024	Tuesday 23rd December 2025	Wednesday 23rd December 2026
Wednesday 23rd December 2024	Tuesday 30th December 2025	Wednesday 30th December 2026
Wednesday 30th December 2024		

2. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 30 August 2022, the Lord President's Private Office responded:

1. There is an error in the days identified. 23 and 30 December 2024 are Mondays. The error appears to have arisen at the point at which the draft instrument was placed on the template. We apologise for this oversight. The table below reflects the correct days/dates:

Schedule 3

Table

2024	2025	2026
Wednesday 3rd January 2024	Wednesday 16th April 2025	Wednesday 1st April 2026
Wednesday 27th March 2024	Wednesday 23rd April 2025	Wednesday 8th April 2026
Wednesday 3rd April 2024	Tuesday 23rd December 2025	Wednesday 23rd December 2026
Monday 23rd December 2024	Tuesday 30th December 2025	Wednesday 30th December 2026
Monday 30 th December 2024		

2. We shall take corrective action, by way of amendment, at the next available opportunity.

Scottish Social Housing Charter: November 2022 (SG/2022/146)

On 25 August 2022, the Committee asked the Scottish Government:

A revised Housing Charter was previously laid before the Parliament in February 2022 (SG/2022/32) ('the April 2022 Charter'). This was subsequently withdrawn following correspondence with the Committee's legal advisors on whether the mandatory consultation requirements in section 33 of the Housing (Scotland) Act 2010 had been complied with given the terms of paragraph 1.3 of the April 2022 Charter on consultation. Notably, while there are some minor differences between the two charters, paragraph 1.3 of the November 2022 Charter is in the same terms as the April 2022 Charter.

In the absence of any indication in the November 2022 Charter:

1. Please confirm whether there has now been direct communication with all eight statutory consultees listed in section 33(2) of the 2010 Act as it was indicated there would be in previous correspondence with the Committee.
2. Please confirm whether any changes were made in light of any direct communication there has been with the statutory consultees, and if so, what they are.

On 30 August 2022, the Scottish Government responded:

1. The Scottish Government made direct contact with all eight statutory consultees and provided a further 12 weeks for them to respond. Of the various bodies consulted, the bodies who responded to this new consultation are outlined in the table annexed below.
2. In light of the comments received from the statutory consultees, the Scottish Government made the following changes to the Charter before it was re-laid;
 - Equalities outcome – further provision added that landlords should consider the need to eliminate discrimination and advance equality of opportunity.
 - Quality of Housing outcome – the wording of this outcome was revised to provide additional clarity.
 - Value for Money outcome – this was changed from a standard to an outcome and the outcome highlighted the legal requirement to consult on rents and service charges in the supporting narrative.

ANNEX A

Statutory Consultees	Organisation which responded
Regulator	Scottish Housing Regulator
Tenants of social landlords or their representatives	Regional Networks
	Tenants Information Service
	Tenant Participation Advisory Service
Homeless persons or bodies representing the interests of homeless persons	Shelter
Recipients of housing services provided by social landlords or their representatives	Gypsy /Travellers Article 12
	Positive Action in Housing
Social landlords or their representatives	COSLA
	ALACHO
	SFHA
	GWSF
	CIH
Secured creditors of registered social landlords or their representatives	UK Finance
The Accounts Commission for Scotland	Audit Scotland / Accounts Commission
The Commission for Equality and Human Rights and such other bodies representing equal opportunities interests	Equality and Human Rights Commission
	Scottish Human Rights Commission