



Delegated Powers and Law Reform Committee

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COVID-19 Committee

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Scottish Government Report on Coronavirus Legislation

Dear Convener,

At its meeting this afternoon, the Delegated Powers and Law Reform Committee considered the Scottish Government's second report on the Coronavirus legislation and agreed to highlight the following matters to you.

Made Affirmative Procedure

The Committee notes the high number of instruments in this report which have been laid subject to the made affirmative procedure.

The Committee acknowledges the requirement for made affirmative instruments during the pandemic as it has allowed the Government to respond quickly to the many challenges presented by the Coronavirus. Nevertheless, bringing such substantial changes into force immediately, before any parliamentary scrutiny, should only be used when essential and should not become standard practice when time would allow the affirmative procedure to be used. We will continue to monitor the use of this procedure over the coming months.

Breaching the 28-day Rule

The Committee also wishes to highlight that a high number of instruments in this reporting period have broken the 28-day rule.

While the breach of the rule may often be required in responding to Coronavirus, this should only be done where the provision being made is required so urgently that time does not allow for the full 28 days to elapse. The Committee will continue monitoring whether or not the failure to comply with the 28-day rule is appropriate.

One particular example of a breach of the 28-day rule was in relation to measures within an SSI laid in May 2020 which the Committee did not consider to be entirely Coronavirus related. The Homeless Persons (Unsuitable Accommodation) (Scotland) Amendment Order 2020 (SSI 2020/139) made provision in respect of Coronavirus but also made more general, permanent, provision. Nevertheless, all of the instrument was brought into force at the same time, meaning the 28-day rule was broken in respect of provisions that were not related to Coronavirus.

The Committee highlighted the inconsistency to the lead committee for the instrument, the Local Government and Communities Committee, who subsequently raised the issue a [letter to the Minister for Local Government, Housing and Planning](#).

This is an issue that the DPLR Committee will continue to monitor when Coronavirus legislation is laid before the Parliament that does not comply with the 28-day rule.

Expiry of Provisions

The Committee also wishes to highlight the wide range of expiry dates that apply in respect of instruments made under delegated powers in Acts other than the Coronavirus Acts and that not all provision is tied to the duration of the “emergency period” in those Acts. We will continue to monitor the expiry dates for future instruments and will highlight any trends to the COVID-19 Committee in future reports.

Instrument Not Included in the Report

The Non-Domestic Rates (Scotland) Act 2020 (Commencement No. 1 and Transitional Provision) Regulations 2020 (SSI 2020/107) is an instrument that may be considered related to the Coronavirus but is not included in the Scottish Government’s report. This instrument commenced section 13 of the Non-Domestic Rates (Scotland) Act 2020 (“the 2020 Act”). Section 13 of the 2020 Act amends the definition of a material change of circumstances (MCC) as set out in section 37 of the Local Government (Scotland) Act 1975 so that it no longer includes economic factors and specifically excludes a change in rent, or of valuation or the value of the lands and heritages generally. The Explanatory Note accompanying this instrument explained that the definition of MCC prior to this could potentially be deemed to cover the economic situation resulting from the COVID-19 pandemic. This would have put substantial public revenue at risk in the form of decreased non-domestic rates income at a time when the duration of the pandemic and the extent of public support that would be required to deal with the situation were unknown.

Commencing section 13 of the Act was therefore considered to be a necessary and urgent step to protect public revenue at a time when the scale of the Covid-19 crisis and the need for further public support could not be estimated. However, while the reason for commencing the section *at that time* was related to the Coronavirus, the Scottish Government would have been required to commence this at some point irrespective of Coronavirus, as the provision had already been agreed by the Parliament when it passed the 2020 Act. The definition was not therefore changed in response to Coronavirus, that change was agreed when the 2020 Act was passed, prior to the Coronavirus outbreak. It is only the *timing* of the commencement that is

due to the Coronavirus. The Committee notes that this may be why the Scottish Government considered that it did not fit alongside the other COVID legislation included in the report. The Committee agreed to highlight this instrument so that your Committee might consider, from a policy perspective, whether the “main purpose” of this instrument was related to Coronavirus and therefore it ought to have been included in the Scottish Government’s report, or you are content with its exclusion.

Yours sincerely,

Bill Bowman

Convener of the Delegated Powers and Law Reform Committee