



The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

25th Meeting, 2012 (Session 4)

Tuesday 13 November 2012

The Committee will meet at 10.30 am in Committee Room 5.

1. **Instruments subject to negative procedure:** The Committee will consider the following—

[Crofting Register \(Notice of First Registration\) \(Scotland\) Order 2012 \(SSI 2012/296\);](#)

[Crofting Register \(Transfer of Ownership\) \(Scotland\) Regulations 2012 \(SSI 2012/297\).](#)

2. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

[Housing \(Scotland\) Act 2010 \(Commencement No. 8 and Saving Provision\) Order 2012 \(SSI 2012/283 \(C. 30\)\).](#)

3. **Growth and Infrastructure Bill (UK Parliament legislation):** The Committee will consider the powers to make subordinate legislation conferred on Scottish Ministers in the Growth and Infrastructure Bill (UK Parliament legislation).

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The papers for this meeting are as follows—

Agenda Items 1 and 2

Legal Brief (private)

SL/S4/12/25/1 (P)

Agenda Item 2

Instrument Responses

SL/S4/12/25/2

Agenda Item 3

[Legislative Consent Memorandum
Growth and Infrastructure Bill \(UK Parliament legislation\)](#)

Briefing Paper (private)

SL/S4/12/25/3 (P)

SUBORDINATE LEGISLATION COMMITTEE

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Instrument Responses

INSTRUMENTS NOT SUBJECT TO ANY PARLIAMENTARY PROCEDURE

Housing (Scotland) Act 2010 (Commencement No. 8 and Saving Provision) Order 2012 (SSI 2012/283) (C.30)

On 2 November 2012, the Scottish Government was asked:

1. This instrument appoints 1 April 2013 as the day for the coming into force of sections 145 and 146 of the Housing (Scotland) Act 2010. Those sections impose duties on the Scottish Ministers to collect and publish information on prescribed matters "as soon as reasonably practicable after the end of each financial year". The duty accordingly does not come into existence until 1 April 2013, and so the first end of a financial year following the coming into force of the duty will occur on 31 March 2014. The Scottish Government is therefore asked to explain why the provision in article 4 is considered to be necessary, and what effect it is intended to have.

2. Further to that matter, article 4 is identified as a saving provision. Saving provisions are usually understood to keep alive an otherwise revoked provision for the purpose of a particular case or situation which existed prior to commencement of the new law (see SSIDM). By contrast, transitional provisions may be used to make special provision for circumstances existing at the coming into force of a new law in order to facilitate the transition to that new regime. We observe that article 3 of the Police and Fire Reform (Scotland) Act 2012 (Commencement No. 1, Transitional, Transitory and Saving Provisions) Order 2012, which is described as a transitional provision, is intended to have a similar effect to the apparent intention in respect of article 4.

a) Does the Scottish Government agree that this provision would be more accurately characterised as a transitional provision rather than a saving provision?

b) If so, the Scottish Government is asked to explain what it considers to be the effect of describing article 4 as a saving provision, both in its heading and in the title of the instrument.

c) If not, the Scottish Government is asked to identify the rule of law or statutory provision which is being saved by article 4.

The Scottish Government responded as follows:

1. Under and in terms of article 2 of the Order, sections 145 and 146 come into force on 1 April 2013. Since the duty to collect information arises “as soon as reasonably practicable **after the end of each financial year**” (emphasis added) it could be argued that the effect of commencing the provisions on 1 April 2013 is that from that date there is a duty to collect information in respect of the financial year 2012/2013 as soon as reasonably practicable. However, it is considered appropriate to make it clear from the beginning of the financial year 2013/2014 that Ministers will be under a duty to collect information in respect of that year, hence the decision to commence the above sections on 1 April 2013. Article 4 clarifies the scope of the duty by expressly providing that the commencement of sections 145 and 146 does not give rise to a duty to collect or publish information in respect of any financial year ending on or prior to 31 March 2013.

2(a) Article 4 may be properly regarded as a saving provision, in that it preserves existing law by not imposing the new requirements to collect and provide information. It does not make provision to move from the existing law to the new law.

2(b) Although the Scottish Government considers that article 4 may be described as a saving provision, even if it might properly be described as a transitional provision it is not considered that the description of article 4 as a saving provision would have any impact on the validity of the instrument since the enabling power in section 161(2)(a) of the 2010 Act enables the Scottish Ministers to make any transitional or saving provision, in a commencement order, that they consider appropriate.

2(c) As noted in answer 2(a), the Scottish Government considers that article 4 preserves existing law by not imposing the new requirements.