



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

73rd Report, 2014 (Session 4)

Subordinate Legislation

Published by the Scottish Parliament on 9 December 2014

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Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Remit and membership

Remit:

1. The remit of the Delegated Powers and Law Reform Committee is to consider and report on—
 - (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; and
 - (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.

Membership:

Richard Baker
Nigel Don (Convener)
John Mason
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson

Committee Clerking Team:

Clerk to the Committee

Euan Donald

Assistant Clerk

Elizabeth Anderson

Support Manager

Daren Pratt



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Delegated Powers and Law Reform Committee

73rd Report, 2014 (Session 4)

Subordinate Legislation

The Committee reports to the Parliament as follows—

1. At its meeting on 9 December 2014, the Committee agreed to draw the attention of the Parliament to the following—

Conservation of Salmon (Annual Close Time and Catch and Release)
(Scotland) Regulations 2014 (SSI 2014/327);

Charities Accounts (Scotland) Amendment (No. 2) Regulations 2014
(SSI 2014/335).

2. The Committee's recommendations in relation to the above instruments are set out below.

3. The Committee determined that it did not need to draw the Parliament's attention to the instruments which are set out at the end of this report.

POINTS RAISED: INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

Conservation of Salmon (Annual Close Time and Catch and Release) (Scotland) Regulations 2014 (SSI 2014/327) *(Rural Affairs, Climate Change and Environment Committee)*

4. This instrument prescribes the annual close time for each salmon fishery district in Scotland (with the exception of cross-border districts) and the periods within that close time when it is permitted to fish for salmon by rod and line.

5. The instrument also prohibits the retention of any salmon caught by rod and line during certain periods (known as “catch and release” periods).

6. The general purpose of this instrument is to make provision for the conservation of salmon, by ensuring that no salmon is taken during the early part of the season.

7. The instrument comes into force on 9 January 2015.

8. In considering the instrument, the Committee asked the Scottish Government for an explanation of certain matters. The correspondence is reproduced at Annex A.

9. The Committee considers that the instrument appears to be defectively drafted in a certain respect, as discussed below.

10. The Committee draws the instrument to the Parliament’s attention on reporting ground (i), as entry 50 of the schedule appears to be defectively drafted in a particular respect.

11. The schedule sets out the various dates during which salmon fishing is permitted in each salmon fishery district. Entry 50 (relating to the Urr district) states that rod and line fishing is permitted during the dates “10th September to [31st October] [29th November]”. The Scottish Government has confirmed that the intended date is 30th November and the reference to “[31st October] [29th November]” is made in error.

12. The Committee notes that the Scottish Government has undertaken to amend the provision in due course.

Charities Accounts (Scotland) Amendment (No. 2) Regulations 2014 (SSI 2014/335) *(Local Government and Regeneration Committee)*

13. The purpose of this instrument is to amend the Charities Accounts (Scotland) Regulations 2006 (“the 2006 Regulations”), to update references to various Statements of Recommended Practice in relation to accounting by charities.

14. This instrument comes into force on 1 January 2015.

15. The Scottish Government has provided a letter to the Presiding Officer, to explain the failure to comply with the “28 day rule”, as set out in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (“ILRA”). The correspondence is reproduced at Annex B.

16. In this instance, the Committee agreed that the breach is acceptable, as the Scottish Government is seeking to make corrections to satisfy the Committee’s report on a previous instrument.

17. The Committee draws the instrument to the Parliament’s attention on reporting ground (j) as there has been a failure to observe the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The instrument will come into force on 1 January 2015, meaning that the requirement to leave a minimum of 28 days (excluding recess dates) between laying and coming into force has not been complied with.

18. However, the Committee finds the breach acceptable in this instance, because the Scottish Government is seeking to make corrections to satisfy the Committee’s report on a previous instrument.

NO POINTS RAISED

19. At its meeting on 9 December 2014, the Committee considered the following instruments and determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit:

Justice

Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2015 [draft];

European Protection Order (Scotland) Regulations 2014 [draft];

Civil Jurisdiction and Judgments (Protection Measures) (Scotland) Regulations 2014 (SSI 2014/333);

Regulation of Investigatory Powers (Authorisation of Covert Human Intelligence Sources) (Scotland) Order 2014 (SSI 2014/339).

Rural Affairs, Climate Change and Environment

Plant Health (Import Inspection Fees) (Scotland) Regulations 2014 (SSI 2014/338).

ANNEX A

**Conservation of Salmon (Annual Close Time and Catch and Release)
(Scotland) Regulations 2014 (SSI 2014/327)**

On 27 November 2014 the Scottish Government was asked:

1. Entry 50 of the schedule, at column 3, gives the permitted dates for rod and lines fishing as “10th September to [31st October] [29th November]”. Can the Scottish Government clarify which dates are intended to apply? Does the Scottish Government consider that this provision is sufficiently clear in setting out the permitted dates? If not, would the Scottish Government propose to amend this provision?

2. Regulation 2(4) provides that the limits of a salmon fishery district are to be construed in accordance with the designation listed in column 5 of the schedule. Various entries in column 5 refer to byelaws “enacted as Schedule A to the 1868 Act” (as defined in section 69(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003).

Schedule A to the 1868 Act was repealed by the Salmon Act 1986, and references to salmon fishery districts are now to be construed as set out in section 1 of that Act.

Can the Scottish Government explain why it is considered that the references to Schedule A to the 1868 Act are sufficiently clear, given that Schedule A has been repealed? Could there be any error, and if so would the Scottish Government propose to amend these entries?

The Scottish Government responded as follows:

1. Column 3 of entry 50 (Urr district) in the Schedule contains a typographical error and we are grateful to the Committee for raising this. 30th November is the correct date and the reference “[31st October] [29th November]” was unintended. We confirm that it is the intention of the Scottish Government to bring forward an amending instrument as soon as possible to correct that error.

2. The Regulations prescribe the annual close time and the periods within the close time when it is permitted to fish for, or take, salmon by rod and line as well as a catch and release requirement for each salmon fishery district. “Salmon fishery district” has the meaning given in section 34(1) of the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 (“the 2003 Act”).

Section 34 provides that, subject to subsection (2), a salmon fishery district shall be the area within the coastal limits of a district (within the meaning of the 1862 to 1868 Acts) and extending (a) seaward for 5 km from mean low water springs and (b) landward to include the catchment area of each river which flows directly or indirectly into the sea within the coastal limits of the salmon fishery district. Subsection (2) provides the Scottish Ministers with the power to designate any area, by order, as a salmon fishery district, whether or not it includes all or part of an existing salmon fishery district.

The Salmon Fisheries (Scotland) Act 1868 enacted, in Schedule A to that Act, the limits of each salmon fishery district which had been set in the Byelaw dated 24th December 1862 by the Commissioners appointed under the Salmon Fisheries (Scotland) Acts 1862. Several designation orders have been made to bring together some of those districts to create a new salmon fishery district (for example in Argyll; see entry 2 in the Schedule to the Regulations). Where no designation order has been made section 34(1) of the 2003 Act applies. Although Schedule A to the 1868 Act was repealed by the Salmon Act 1986 (section 41(2) and schedule 5), section 34(1) of the 2003 Act provides, in the context of the area of a district, that the district is a district (within the meaning of the 1862 to 1868 Acts) where no designation order has been made. The 2003 Act is a consolidating Act and section 34(1) derives from section 1(1) of the Salmon Act 1986. That also provides that the limits of a district are within the meaning of the 1862 to 1868 Acts.

The reference in regulation 2(4) and column 5 of the Schedule to the Regulations is a reference to an historical provision; it is a matter of historical fact that those provisions were enacted and described the limits for the salmon fishery districts. The Regulations therefore provide that the limits of the districts are to be construed in accordance with Schedule A to the 1868 Act which enacted the byelaw dated 24th December 1862 made by the Commissioners setting those district limits under the enactments referred to. Schedule A is the list of those salmon fishery districts which should be referred to for a description of the district limits where no designation order has been made and that is why the Regulations provide that the district limits should be construed in accordance with the references in column 5 of the Schedule. This reflects the approach taken in section 34(1) of the 2003 Act and in section 1(1) of the Salmon Act 1986.

ANNEX B

**Charities Accounts (Scotland) Amendment (No. 2) Regulations 2014
(SSI 2014/335)**

Breach of laying requirements: letter to Presiding Officer

The above instrument was made by the Scottish Ministers under sections section 44(4) and (5) of the Charities and Trustee Investment (Scotland) Act 2005 on 26 November 2014. It is being laid before the Scottish Parliament today and is to come into force on 1 January 2015.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) has not been complied with. To meet the requirements of section 31(3) of that Act, this letter explains why.

The Charities Accounts (Scotland) Amendment (No.2) Regulations 2014(S.S.I. 2014/335) revoke and replace the Charities Accounts (Scotland) Amendment Regulations 2014 (S.S.I. 2014/295) which were made by the Scottish Ministers on 5 November 2014 and laid before the Scottish Parliament on 7 November 2014.

The Charities Accounts (Scotland) Amendment Regulations 2014(S.S.I. 2014/295) were considered by the Delegated Powers and Law Reform Committee on 10 November. The Committee pointed out minor discrepancies between the dates set out in the regulations and the dates on which the Statements of Recommended Practice appeared on the various websites. Having checked the position, we agreed with the Committee that the dates in the regulations were not correct. Regrettably, in preparing the regulations, there was some confusion with the relevant bodies as to what was meant by the date of issue of the relevant statements of recommended practice.

We concluded, therefore, to revoke the SSI and lay a new SSI with the year of publication and the ISBN reference of the Statements of Recommended Practice. Unfortunately the 28 day period was not complied with because it took time to establish with the relevant bodies that the titles and details of publication were accurate.

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Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by APS Group Scotland

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ISBN 978-1-78534-556-2
