



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

3rd Report, 2015 (Session 4)

Subordinate Legislation

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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:

Nigel Don (Convener)
John Mason (Deputy Convener)
Margaret McCulloch
John Scott
Stewart Stevenson

Committee Clerking Team:

Clerk to the Committee

Euan Donald

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Elizabeth Anderson

Support Manager

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Delegated Powers and Law Reform Committee

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The Committee reports to the Parliament as follows—

1. At its meeting on 20 January 2015, the Committee agreed to draw the attention of the Parliament to the following—

Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014 (SSI 2014/377)

2. The Committee's recommendations in relation to the above instrument 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

[Land and Buildings Transaction Tax \(Transitional Provisions\) \(Scotland\) Order 2014 \(SSI 2014/377\)](#) (Finance Committee)

4. This Order makes transitional provisions in respect of the introduction of land and buildings transaction tax (LBTT) in Scotland by the Land and Buildings Transaction Tax (Scotland) Act 2013 (“the LBTT Act”). The Order contains technical and complex provisions in respect of certain transactions that began under the stamp duty land tax regime (SDLT), but have an “effective date” on or after commencement of LBTT.

5. The Order comes into force on 1 April 2015 (when it is anticipated that LBTT will replace SDLT).

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

7. The Scottish Government has acknowledged that there is a drafting error, relating to articles 3 and 4 of the Order. They have undertaken to bring forward an amending instrument to correct the error. The amendment would also come into force on 1 April 2015.

8. Articles 3 and 4, in outline, make provision in respect of certain contracts for land transactions that were entered into either before or after 1 May 2012. Article 3 sets out rules which will apply where such a contract is entered before 1 May 2012, under which the transaction is to be completed by a conveyance, and certain provisions in the Scotland Act 2012 apply because there has been an intervening event which disapplies stamp duty land tax from the transaction. The rules set out in the article determine whether the new LBTT will be payable in the circumstances.

9. Article 4 sets out rules which will apply where the contract for land transaction is entered into after 1 May 2012 but before the “commencement date” (anticipated to be 1 April 2015); and where substantial performance of the contract happened before the “commencement date”. The rules provided for determine whether LBTT will be payable in the circumstances. Articles 3 and 4 omit to make the appropriate transitional provision where the contract for the transaction is entered into on 1 May 2012.

10. The Committee therefore draws the attention of Parliament to the Order on reporting ground (i), as the drafting of articles 3 and 4 appears to be defective. Those articles do not implement the Scottish Government’s intention to additionally make transitional provision for contracts for land transactions that were entered into on 1 May 2012.

11. The Scottish Government has however undertaken to correct this by laying an amending instrument which would come into force on 1 April 2015, as for this Order.

NO POINTS RAISED

12. At its meeting on 20 January 2015, the Committee considered the following instruments and a draft code of practice. The Committee determined that it did not need to draw the attention of the Parliament to any of the instruments or the draft code on any grounds within its remit:

Economy, Energy and Tourism

Scottish Regulators' Strategic Code of Practice (SG/2015/10).

Equal Opportunities

Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2015 [draft].

Finance

Land and Buildings Transaction Tax (Administration) (Scotland) Regulations 2014 (SSI 2014/375).

Justice

Civil Jurisdiction and Judgments (Amendment) (Scotland) Regulations 2015 (SSI 2015/1);

Act of Sederunt (Sheriff Court Adoption Rules Amendment) 2015 (SSI 2015/5).

ANNEX

Land and Buildings Transaction Tax (Transitional Provisions) (Scotland) Order 2014 (SSI 2014/377)

On 8 January 2015, the Scottish Government was asked:

1. Article 3 applies to contracts entered into before 1 May 2012 for a land transaction under which the transaction is to be completed by a conveyance and there is an “effective date” in relation to the transaction after the “commencement date”. Article 4 applies to contracts entered into after 1 May 2012 but before the “commencement date”.

Article 3(2) also requires the transaction to be excluded by an event listed in section 29(6)(a) to (c) of the Scotland Act 2012, which would disapply stamp duty land tax (SDLT). Those events relate to transactions effected in pursuance of a contract entered into on or before 1 May 2012.

(a) Please explain therefore (as it does not appear to be explained in the explanatory or policy notes) why it is appropriate that neither of articles 3 or 4 apply to contracts that have been entered into on 1 May 2012 (the date when the Scotland Act 2012 received Royal Assent) - or whether there has been any omission to cater for such contracts?

(b) If there has been any omission, would the Scottish Government propose to correct this by an amendment?

2. Article 5(2) applies to certain “alternative property finance” arrangements that give rise to a series of land transactions. The paragraph states that (where the provision applies) neither the third transaction under section 72 of the Finance Act 2003 nor a further transaction under section 72A shall be chargeable to SDLT, if their effective date is after the “commencement date”, “provided that the conditions mentioned respectively in sections 72(4) and 72A(4) of that 2003 Act have been met”.

The “commencement date” as explained in the Policy Note is anticipated to be 1 April 2015 though yet to be set. As regards that proviso in article 5(2), article 2(1) defines “the 2003 Act” expressly as being in its form as amended up to the “commencement date”. However sections 72 and 72A of the 2003 Act were repealed with effect from 1 July 2012 (paragraph 10, schedule 3(1) to the Scotland Act 2012).

(a) Please explain therefore how the proviso in article 5(2) properly has effect, given that it contains a requirement to meet certain conditions as mentioned in sections 72(4) and 72A(4) of the 2003 Act as they are to be read as amended up to the “commencement date”? Would you agree that as drafted (unless sections 72(4) and 72A(4) are somehow re-enacted in future) those sections are to be read in the provision as repealed on 1 July 2012, and accordingly of no effect?

(b) Or to enable the proviso to have proper effect, is there a need to correct the provision by amending either the definition of “the 2003 Act” or the terms of article 5(2) (or both)?

The Scottish Government responded as follows:

On the first point the Scottish Government accepts that there is an error and that the legislation should have covered transactions effected on 1st May 2012 and would propose to remove the error by an amending instrument that would come into force at the same date as the main instrument.

On the second point the Scottish Government does not accept that for the purposes of the transitional provisions, sections 72 and 72A of the 2003 Act have been repealed and would refer the Committee to section 29(5) of the Scotland Act 2012, which dis-applies the section in respect of transitional arrangements covered by that subsection. That means section 29(3)(a) of the Scotland Act 2012 which repeals sections 72 and 72A of the 2003 Act, is dis-applied.

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