



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

22nd Report, 2014 (Session 4)

Subordinate Legislation

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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)
Mike MacKenzie
Margaret McCulloch
Stuart McMillan (Deputy Convener)
John Scott
Stewart Stevenson

Committee Clerking Team:

Clerk to the Committee

Euan Donald

Assistant Clerk

Elizabeth White

Support Manager

Daren Pratt



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The Committee reports to the Parliament as follows—

1. At its meeting on 11 March 2014, the Committee agreed to draw the attention of the Parliament to the following instruments—

[National Health Service \(Superannuation Scheme\) \(Scotland\) Amendment Regulations 2014 \(SSI 2014/43\);](#)

[Teachers' Superannuation \(Scotland\) Amendment Regulations 2014 \(SSI 2014/44\);](#)

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

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

POINTS RAISED: INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

[National Health Service \(Superannuation Scheme\) \(Scotland\) Amendment Regulations 2014 \(SSI 2014/43\)](#) (Health and Sport Committee)

4. The Regulations amend the National Health Service (Superannuation Scheme) (Scotland) Regulations 2011 and the National Health Service Superannuation Scheme (2008 Section) (Scotland) Regulations 2013, to provide for changes to pensionable pay bands or earnings bands and employee contribution percentage rates for the 2014-15 Scheme year.

5. The Regulations are subject to the negative procedure. They come into force on 1 April 2014.

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

7. There has been an unusual and inordinate delay between the making of these Regulations (on the last date of signing on behalf of the Treasury) on 13 February, and when they were laid before the Parliament on 24 February. This in particular means that the persons who are interested in these Regulations could have become aware of them (from the date of their publication on www.legislation.gov.uk) at an earlier date, had the instrument been laid in the Parliament timeously.

8. The response from the Scottish Government acknowledges that the “laying requirement” in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 – that the Regulations must be laid as soon as practicable after the instrument is made – has been breached. The Committee understands however that the delay in laying does not affect the validity or vires of the instrument (section 31(2) of that Act).

9. The Scottish Government’s response has explained that the delay is “principally due to the Treasury not notifying the Scottish Government that the instrument had been signed until 18th February. There was then a delay of slightly more than 24 hours in the fact of signing being communicated to those within the Scottish Government responsible for arranging the registration and laying of instruments.” While that response does not specify the date when the Scottish Government actually received the instrument back from the Treasury, it appears to the Committee that the Scottish Government also bears a degree of responsibility for the delay in laying the instrument, up until 24 February.

10. The Committee therefore draws the Regulations to the attention of the Parliament on the Committee’s reporting grounds (d) and (j). There has been unjustifiable delay in the laying of the Regulations before the Parliament, as they were made on 13 February and laid on 24 February 2014 (ground (d)).

11. While the delay does not affect the validity of the instrument, it also amounts to a failure to comply with the laying requirement in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, that the instrument must be laid as soon as practicable after it is made (ground (j)).

12. The period of delay in laying the Regulations is unusual and is not satisfactory. The Scottish Government in its response has offered apologies to the Committee. The Committee notes that steps will be taken to try to ensure that the omission is not repeated.

Teachers' Superannuation (Scotland) Amendment Regulations 2014 (SSI 2014/44) (Education and Culture Committee)

13. This instrument amends the Teachers' Superannuation (Scotland) Regulations 2005 ("the 2005 Regulations") to adjust the rates of contributions payable by teachers during 2014/15 in respect of their pensions.

14. This instrument comes into force on 1 April 2014 and is subject to the negative procedure.

15. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced at the Annex.

16. The Committee has the same comments for this instrument, as for the National Health Service (Superannuation Scheme) (Scotland) Amendment Regulations 2014 above. The same issue arises.

17. The Committee draws the Regulations to the attention of the Parliament on the Committee's reporting grounds (d) and (j). There has been unjustifiable delay in the laying of the Regulations before the Parliament, as they were made on 13 February and laid on 24 February 2014 (ground (d)).

18. While the delay does not affect the validity of the instrument, it also amounts to a failure to comply with the laying requirement in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, that the instrument must be laid as soon as practicable after it is made (ground (j)).

19. The period of delay in laying the Regulations is unusual and is not satisfactory. The Scottish Government in its response has offered apologies to the Committee. The Committee notes that steps will be taken to try to ensure that the omission is not repeated.

NO POINTS RAISED

20. At its meeting on 11 March 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:

Education and Culture

Coatbridge College (Transfer and Closure) (Scotland) Order 2014 (SSI 2014/52).

Health and Sport

Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2014 (SSI 2014/57);

National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2014 (SSI 2014/61);

Carers (Waiving of Charges for Support) (Scotland) Regulations 2014 (SSI 2014/65);

Community Care (Joint Working etc.) (Scotland) Amendment Regulations 2014 (SSI 2014/66).

Infrastructure and Capital Investment

Road Works (Inspection Fees) (Scotland) Amendment Regulations 2014 (SSI 2014/56);

Scottish Road Works Register (Prescribed Fees) Regulations 2014 (SSI 2014/58);

Justice

Firemen's Pension Scheme (Amendment) (Scotland) Order 2014 (SSI 2014/59);

Firefighters' Pension Scheme (Scotland) Amendment Order 2014 (SSI 2014/60);

Police Pensions (Contributions) Amendment (Scotland) Regulations 2014 (SSI 2014/62);

Police Service of Scotland (Performance) Regulations 2014 (SSI 2014/67).

Local Government and Regeneration

Town and Country Planning (Tree Preservation Order and Trees in Conservation Areas) (Scotland) Amendment Regulations 2014 (SSI 2014/53);

High Hedges (Scotland) Act 2013 (Supplementary Provision) Order 2014 (SSI 2014/55);

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High Hedges (Scotland) Act 2013 (Commencement) Order 2014 (SSI 2014/54 (C.5)).

Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2014 (SSI 2014/64).

Rural Affairs, Climate Change and Environment

Agricultural Holdings (Scotland) Act 2003 Remedial Order 2014 [draft].

ANNEX

National Health Service (Superannuation Scheme) (Scotland) Amendment Regulations 2014 (2014/43) and;

Teachers' Superannuation (Scotland) Amendment Regulations 2014 (2014/44)

On 26 February 2014, the Scottish Government was asked:

(a) The instruments were made (on being signed by two of the Lords Commissioners of the Treasury) on 13 February, but were not laid in the Parliament until 24th. Please explain the reason for this delay (given that the Committee is entitled to report an instrument to the Parliament, either where there appears to have been an unjustifiable delay in laying, or there appears to have been a failure to lay in accordance with sections 28(2) or 31 of the Interpretation and Legislative Reform (Scotland) Act 2010).

(b) As the "laying requirements" in that section 28(2) include that the SSI must be laid as soon as practicable after the instrument is made, please explain why it was only practicable to lay the Regulations on 24 February. Otherwise, has there in fact been a breach of the "laying requirements", so that there is an obligation in terms of section 31(3) of the 2010 Act to explain (as soon as practicable after the laying date) to the Presiding Officer why the requirements have not been complied with?

The Scottish Government responded as follows:

The delay in laying these instruments is principally due to the Treasury not notifying the Scottish Government that the instruments had been signed until 18 February. There was then a delay of slightly more than 24 hours in the fact of signing being communicated to those within the Scottish Government responsible for arranging the registration and laying of instruments. It is accepted that in the circumstances a letter should have been sent to the Presiding Officer in terms of section 31(3) of the 2010 Act.

Apologies are offered to the Committee for these omissions and steps are being taken to try and ensure that they are not repeated.

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