



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 8 March 2023  
SP Paper 335  
20th Report, 2023 (Session 6)

# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 7 March 2023**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(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;

(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.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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# Committee Membership



**Convener**  
**Stuart McMillan**  
Scottish National Party



**Deputy Convener**  
**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Carol Mochan**  
Scottish Labour



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party

# No points raised

1. At its meeting on 7 March, the Committee considered the following instruments under its remit and agreed not to draw them to the attention of the relevant lead committee.

## Criminal Justice Committee

Criminal Justice (Scotland) Act 2016 (Commencement No. 7) Order 2023 (SSI 2023/49 (C.4))

Abusive Behaviour and Sexual Harm (Scotland) Act 2016 (Commencement No. 3, Transitional and Saving Provisions) Regulations 2023 (SSI 2023/51 (C.5))

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Court Sittings) 2023 (SSI 2023/57)

## Equalities, Human Rights and Civil Justice Committee

Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2023 (SSI 2023/Draft)

First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (SSI 2023/40)

- The Committee welcomed that this instrument fulfils a commitment made by the Scottish Government to bring forward an amending instrument, before the principal instruments come into force, to address issues raised by the Committee on the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 (SSI 2022/364) and the Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022 (SSI 2022/365).
- The Committee also noted that the Scottish Government intends that a cross-referencing error in rule 20(4) of First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 (SSI 2022 364) will be corrected by correction slip.

Marriage and Marriage Registration (Prescription of Forms) (Scotland) Amendment Regulations 2023 (SSI 2023/53)

## Local Government, Housing and Planning Committee

Cost of Living (Tenant Protection) (Scotland) Act 2022 (Incidental Provision) Regulations 2023 (SSI 2023/Draft)

Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2023 (SSI 2023/32)

## Net Zero, Energy and Transport Committee

Water and Sewerage Services to Dwellings (Collection of Unmetered Charges by

Local Authority) (Scotland) Order 2023 (SSI 2023/52)

# Annex

## Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2023 (SSI 2023/32)

On 24 February 2023, the Committee asked the Scottish Government:

The instrument seeks to exclude plant and machinery used for the generation or storage of power from renewable energies and plant and machinery used for powering vehicle charging points from being considered part of lands and heritage for the purposes of valuation for non-domestic rating. The Policy Note indicates that the exception for specified plant and machinery used in connection with on-site renewable energy generation and storage, or storage at electric vehicle charging points should take effect from 1 April 2023 until 31 March 2035.

The instrument amends schedule 1 (prescribed classes of plant and machinery) in the Valuation for Rating (Plant and Machinery) (Scotland) Regulations 2000 (“the principal Regulations”). Paragraph 1 of schedule 1 prescribes Class 1 plant and machinery in an opening paragraph and in Table 1. Regulation 2(2)(a) of this instrument replaces the existing text in the opening paragraph of Class 1 with the following text: “(except to the extent that plant and machinery has microgeneration capacity and excluding excepted plant and machinery)” with “(excluding plant and machinery with microgeneration capacity, excepted plant and machinery and, in relation to any day before 1 April 2035, excepted renewables plant and machinery and excepted electric vehicle charging point plant and machinery)”. Regulation 2(2)(b) inserts definitions of the terms “excepted renewables plant and machinery” and “excepted vehicle charging point plant and machinery”.

The new exception is made by way of a change to the description of Class 1 plant and machinery made by the amending instrument and is qualified only by the end date of 1 April 2035. The changes to Class 1 plant and machinery in the principal Regulations will be made when the amending instrument comes into force on 1 April 2023. However there is no start date identified in the description of the newly excepted plant and machinery and it will not be obvious on the face of the principal Regulations when these changes were made.

1. Is it sufficiently clear from the principal Regulations as they will be amended by these Regulations that the exclusion for excepted renewables plant and machinery and excepted vehicle charging point plant and machinery which applies in relation to any day before 1 April 2035 does not also apply in relation to any day before 1 April 2023?
2. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 28 February 2023, the Scottish Government responded:

1. The exception for the specified plant and machinery is intended to take effect from 1 April 2023 and it does so, by virtue of the fact that the amending Regulations come into force on that date. It would be unusual for amended legislation to state, on its face, a start date from which particular amendments or provisions take effect. The two previous amendments to the principal Regulations (made by the Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2001 and the Valuation for Rating (Plant and Machinery) (Scotland) Amendment Regulations 2008) did not make any provision

about a start date for the changes they made to the principal Regulations. They similarly take effect from the date the amending instrument comes into force and there is a presumption against retrospective operation in the construction of statutes. The source and date of taking effect of the amendment will generally be footnoted on legislation databases and therefore should be apparent to any informed user of the legislation. Whilst we strive to make all legislation as clear and accessible as possible, this particular legislation is aimed at specialist users in the form of Scottish assessors and commercial entities subject to non-domestic rates, who can be expected to understand that legislation is amended from time to time and that amendments are not, unless specified otherwise, retrospective.

2. In light of the above comments, we do consider it sufficiently clear from the principal Regulations, as they will be amended by these Regulations, that the exclusion for excepted renewables plant and machinery and excepted vehicle charging point plant and machinery which applies in relation to any day before

1 April 2035 does not also apply in relation to any day before 1 April 2023. It is not therefore proposed to take any corrective action in relation to this instrument.

### **First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Rules of Procedure) (Miscellaneous Amendment) Regulations 2023 (SSI 2023/40)**

On 24 February 2023, the Committee asked the Scottish Government:

Regulation 2 of this instrument amends the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 (SSI 2022/364) to addresses issues raised by the DPLRC during its scrutiny of that instrument. One of the issues raised by the DPLRC was whether the reference in rule 20(4) to paragraph (1) should be to paragraph (2). (This was question 5 in the questions asked on 15 December 2022.) The Scottish Government's response on 21 December, in answer number 4, appeared to indicate that the Scottish Government intended to amend to address all points raised on rule 20, including this one. However, the present instrument does not address this point.

Do you agree that the reference in rule 20(4) to paragraph (1) should be to paragraph (2)? Please confirm whether any corrective action is proposed, and if so, what action and when.

On 28 February 2023, the Scottish Government responded:

We thank the Committee for bringing this point to our attention.

The Scottish Government agrees that the reference in rule 20(4) of the schedule of SSI 2022/364 should be to paragraph (2) rather than paragraph (1), but considers that despite this the intention of the provision is sufficiently clear from the context for it to be interpreted as intended.

The error was not corrected in this instrument as it appeared that these paragraph references in rule 20 were correct from the version of SSI 2022/364 published on the legislation.gov.uk website, which does not show the error but correctly refers to paragraph (2). On further consideration, it is apparent that there is a discrepancy between the versions published – the original King's Printer version of the instrument includes the erroneous reference to paragraph (1).

The Scottish Government considers that the provision is capable of being operated effectively, but for the avoidance of doubt will rectify the issue by correction slip, and also rectify the discrepancy with the registrars at the King's Printer.

