

DELEGATED POWERS AND LAW REFORM COMMITTEE

15th Meeting, 2021 (Session 6) Tuesday 21 December 2021

Instrument Responses

Public Health (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 13) Regulations 2021 (2021/470)

On 16 December 2021 the Committee asked the Scottish Government:

The instrument is the thirteenth in a series of instruments which amend the Health Protection (Coronavirus) (International Travel and Operator Liability) Regulations 2021. Each amending instrument in a series should reflect the title of the principal Regulations which it amends. The title of this instrument uses the term 'Public Health' rather than 'Health Protection' when referring to the principal Regulations.

1. Is the inconsistency in the title of this amending instrument intentional?
2. If not, please confirm what corrective action is proposed, and when.

On 16 December 2021 the Scottish Government responded:

Many thanks for drawing this point to our attention.

1. We can confirm that the inconsistency in the title of the amending instrument was not intentional, and apologise for the oversight. We note that in this case it does not bear on the instrument's legal effect, though we accept that the inconsistency will make the relevant amendments harder to trace for users of the legislation.
2. We have considered amending the citation provision of the instrument to amend the title, but having checked with the SI Registrar, they do not consider it appropriate in this case to obtain a correction slip. In these circumstances, we consider amending the citation provision is likely to cause more confusion for readers of the instrument in this case. For that reason we would not propose to amend the citation provision. We will footnote the instrument where appropriate in future amendments.

Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Sheriff Appeal Court Rules Amendment) (Age of Criminal Responsibility (Scotland) Act 2019) 2021 (2021/452)

On 10 December 2021 the Committee asked the Lord President's Private Office:

Paragraph 3(3) inserts a new Chapter 31 into the Sheriff Appeal Court Rules 2015. Rule 31.1 provides that Chapter 31 “applies to an appeal against the decision of a

sheriff under section 38(3), 44(3) and 67(3) of the Age of Criminal Responsibility (Scotland) Act 2019”. Similar references are contained in the text inserted by paragraph 3(2) of the instrument.

Sections 38(3) and 68(3) of the 2019 Act make provision for the permitted timescales for appeals to be taken against an order by a sheriff, respectively, under sections 36(2) and 63(2). However, section 44(3) relates to the principal decision by a sheriff to make an order under section 44(2) rather than the appeal itself. Section 46(3) appears to make the equivalent provision to sections 38(3) and 68(3) in respect of appealing orders made under section 44(2).

1. Is the inconsistency in the references to the mechanism for appeal and the principal decision intentional?
2. If not, please confirm if the reference to section 44(3) should in fact be to section 46(3).
3. Please confirm whether any corrective action is proposed, and if so, what action and when

On 14 December 2021 the Lord President's Private Office responded:

1. The inconsistency in the references to the mechanism for appeal is unintentional. The Lord President's Private Office is grateful to the Committee for identifying this error and apologises for it.

This SSI was prepared to place it place emergency court rules in consequence of the Scottish Ministers' unexpected decision to commence the relevant provisions of the Age of Criminal Responsibility (Scotland) Act 2019 on 17 December.

The error identified by the Committee's advisers has been replicated in the Act of Sederunt (Sheriff Appeal Court Rules) 2021. That instrument was held back in order to incorporate the emergency changes into the new Sheriff Appeal Court Rules. They were laid on 10 December.

2. The correct reference should be to section 46(3).

3. A correction slip has been requested from TSO but they advise that they are very busy and, at time of writing, have not had time to confirm whether they would permit one or not. While an amending instrument has already been drafted to correct the error, as the Committee is yet to consider Act of Sederunt (Sheriff Appeal Court Rules) 2021, we consider it premature for the Court to make it now. Were the Committee to identify any other errors in that 112 page instrument, a further instrument would then be necessary. We therefore conclude that the only prudent way to proceed is to undertake to correct the error at the earliest possible opportunity rather than risk having two amending instruments brought forward in quick succession. Further, due to the emergency nature of Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Sheriff Appeal Court Rules Amendment) (Age of Criminal Responsibility (Scotland) Act 2019) 2021, the Scottish Civil Justice Council may elect to amend them at some point in the New Year. Separately, amendments to the Sheriff Appeal Court Rules are also anticipated in the New Year in consequence of other legislation. We therefore intend to cover all such amendments in one amending instrument.