

Equalities, Human Rights and Civil Justice Committee

18th Meeting, 2023 (Session 6), Tuesday 26 September 2023

Subordinate legislation

Note by the Clerk

Purpose of the paper

1. This paper invites the Committee to consider the following negative instrument:
 - [The Act of Sederunt \(Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Taxation of Judicial Expenses Rules 2019 Amendment\) \(Telecommunications Infrastructure\) 2023 \(SSI 2023/223\)](#) – **Note that this instrument has no accompanying policy note or impact assessments.**

The Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Taxation of Judicial Expenses Rules 2019 Amendment) (Telecommunications Infrastructure) 2023 (SSI 2023/223)

2. This instrument is made by the Lord President under sections 104 and 106 of the Court Reform (Scotland) Act 2014.
3. This instrument confers power to regulate the procedure, forms used and fees that can be charged within the Sheriff Court and Sheriff Appeal Court in respect of an Electronic Communications Code order under the Communications Act 2003 for unresponsive landowners of land and multiple dwellings, including warrants and citations.
4. As there is very little paperwork for this instrument, the certified copy Scottish Statutory Instrument can be viewed on legislation.gov.uk should further information be required, but by its nature it is updating administrative process: [Act of Sederunt \(Summary Applications, Statutory Applications and Appeals etc. Rules 1999 and Taxation of Judicial Expenses Rules 2019 Amendment\) \(Telecommunications Infrastructure\) 2023 \(legislation.gov.uk\)](#).

Delegated Powers and Law Reform Committee Consideration

5. The Delegated Powers and Law Reform Committee (DPLR) considered the instrument at its meeting on [5 September 2023](#) and agreed that it did not need to draw the Parliament's attention to the instrument on any grounds within its remit.

Equalities, Human Rights and Civil Justice Committee Consideration

6. SSI 2023/223 was laid on 11 August 2023 and referred to the Equalities, Human Rights and Civil Justice Committee. The instrument is subject to the negative procedure and due to come into force on 2 October 2023.
7. **The Committee is invited to consider any issues which it wishes to raise on this instrument and is required to report to the Parliament by 23 October 2023.**

Procedure for negative instruments

8. Negative instruments are instruments that are "subject to annulment" by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. The annulment process would require a motion to be agreed in the Chamber.
9. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
10. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
11. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
12. If the Parliament resolves to annul an SSI, then what has been done under authority of the instrument remains valid, but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book). Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.

13. Each negative instrument appears on the Equalities, Human Rights and Civil Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

14. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Clerks to the Committee
September 2023