



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

26th Meeting, 2013 (Session 4)

Tuesday 1 October 2013

The Committee will meet at 10.00 am in Committee Room 4.

1. **Decision on taking business in private:** The Committee will decide whether to consider its draft report on the Tribunals (Scotland) Bill in private today and at future meetings.
2. **Criminal Justice (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Assistant Chief Constable Malcolm Graham, and John Gillies, Director HR, Police Scotland;

Chief Superintendent David O'Connor, President, Association of Scottish Police Superintendents;

Calum Steele, General Secretary, Scottish Police Federation;

Stevie Diamond, Police Staff Scotland Branch, Unison;

and then from—

David Harvie, Director of Serious Casework, Crown Office and Procurator Fiscal Service;

Grazia Robertson, Member of the Law Society Criminal Law Committee, Law Society of Scotland;

Ann Ritchie, President, Glasgow Bar Association;

Murdo Macleod QC, Faculty of Advocates.

3. **Subordinate legislation:** The Committee will consider the following negative instrument—

Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013/261).

4. **Subordinate legislation:** The Committee will consider the following instruments which are not subject to any parliamentary procedure—

Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Miscellaneous) 2013 (SSI 2013/238);

Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (Commencement No. 2) Order 2013 (SSI 2013/262).

5. **Criminal Justice (Scotland) Bill (in private):** The Committee will further consider its approach to the scrutiny of the Bill at Stage 1.

6. **Tribunals (Scotland) Bill:** The Committee will consider a draft Stage 1 report.

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The papers for this meeting are as follows—

Agenda item 2

Private paper

J/S4/13/26/1 (P)

[Copy of the Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Agenda item 3

Paper by the clerk

J/S4/13/26/2

[Personal Licence \(Training\) \(Scotland\) Regulations 2013 \(SSI 2013/261\)](#)

Agenda item 4

Paper by the clerk

J/S4/13/26/3

[Act of Sederunt \(Rules of the Court of Session Amendment No. 5\) \(Miscellaneous\) 2013 \(SSI 2013/238\)](#)

[Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 \(Commencement No. 2\) Order 2013 \(SSI 2013/262\)](#)

Agenda item 5

Private paper

J/S4/13/26/4 (P)

Agenda item 6

Private paper

J/S4/13/26/5 (P)

[Copy of the Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Justice Committee

26th Meeting, 2013 (Session 4), Tuesday, 1 October 2013

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013/261).
2. Further details on the procedure for negative instruments are set out in the Annex attached to this paper.

Purpose of instrument

3. The purpose of the instrument is to prescribe (i) the training requirement for personal licence holders; and (ii) how evidence of compliance with the training requirements is to be demonstrated and submitted by the personal licence holder.
4. The instrument comes into force on 8 October 2013.
5. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2013/261/contents/made>

Consultation

6. The policy note on the instrument confirms that wide ranging consultation was undertaken on the creation of the refresher training.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 24 September 2013 and agreed to draw the instrument to the attention of the Parliament on the ground that the form or meaning of the instrument could be clearer, in that regulation 2(2)(a) and (b) duplicate the terms of section 87(1)(a) and (b) of the Licensing (Scotland) Act 2005.
8. The DPLR Committee also draws the instrument to the attention of the Parliament on the ground that regulation 2(2), which prescribes the training requirement to be met by personal licence holders, appears to have been made by an unusual or unexpected use of the enabling powers. The regulations prescribe a training requirement, but one which can only have a practical meaning upon the taking of a further step by the Scottish Ministers, which is to accredit the relevant courses. The regulations therefore appear to sub-delegate the power to accredit courses to the Scottish Ministers. The DPLR Committee's view is that the exercise of the enabling power in this way is unexpected, because the instrument does not explain to users of the legislation – whose licences will be revoked if they fail to complete the appropriate

training – how, on a practical level, they can comply with that requirement without further information from the Scottish Ministers as to which courses are accredited.

9. The relevant extract from the DPLR Committee report on the instrument is reproduced on page 4 of this paper.

Justice Committee consideration

10. Members are invited to consider the instrument and make any comment or recommendation on it. In particular, in light of the concerns raised by the DPLR Committee, the Committee is invited to endorse the conclusions reached in the DPLR Committee's report.

11. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 28 October 2013.

Policy Note: Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013/261)

The above instrument was made in exercise of the powers conferred by sections 87 and 147(1) of the Licensing (Scotland) Act 2005() and all other powers enabling them to do so. The instrument is subject to negative procedure.

Policy Objectives

The Licensing (Scotland) Act 2005 requires those who authorise the sale of alcohol to possess a personal licence. All premises licence holders must possess a personal licence. The personal licence has effect, subject to conditions, for a period of ten years from the date on which it is issued.

The Licensing (Scotland) Act 2005 introduced mandatory training of personal licence holders at initial application and subsequently after 5 years (from herein the later training is referred to as 'refresher' training).

The holder of a personal licence must, no later than 3 months after the expiry of –
a) the period of five years beginning with the date on which the licence was issued, and
b) each subsequent period of 5 years during which the licence has effect

*“produce to the Licensing Board which issued the licence evidence in the **prescribed form** of the licence holder's having complied, during that period, with such requirements as to the training of personal licence holders as may be **prescribed**” S87(1) (my emphasis)*

Secondary legislation is necessary to prescribe:-

- the form of evidence submitted to Licensing Boards by personal licence holders as proof that they have carried out the required refresher training; should be the Scottish Certificate for Personal Licence Holders (Refresher) SCQF Level 6 (either an original or a copy), name, address, date of birth, and licence number
- that 'requirements as to the training of personal licence holders' means a qualification (whether awarded within or outwith Scotland) which has been accredited for the purposes of that section by the Scottish Ministers

Consultation - developing refresher training course

There was wide ranging consultation on the creation of the refresher training.

The Government contractor, People 1st set up project steering groups, made up of representatives of the licensed trade, SQA accreditation, Alcohol Focus Scotland, representatives from both the on and off trade, awarding bodies and the Scottish Government.

People 1st engaged with these groups as well as carrying out wider consultation work to determine the content of the refresher course. They then drafted a training specification and consulted on this before finalising the document.

This engagement was focused on the content of the refresher training course. The specific issue of the SSI - prescribing the form and accreditation process of the course would not suit consultation as they are very specialised and the Licensing (Scotland) Act 2005 prescribed what is suitable quite narrowly so there was little opportunity to consider other views. For these reasons, engagement was carried out directly with Boards and legal professionals as outlined below.

Consultation – secondary legislation

The following government agencies and departments have been involved in the preparation of this secondary legislation.

- Scottish Government, Criminal Law and Licensing Division
- Scottish Government Legal Directorate has provided advice on the legal issues raised in this consultation

The following Licensing Board clerks were engaged throughout the process, from the initial ideas-gathering phase, up to commenting on the draft SSI:-

- Aberdeenshire Licensing Board
- Renfrewshire Licensing Board
- Glasgow Licensing Board

A prominent licensing lawyer and blogger was involved throughout the process, and commented on the draft SSI

Impact Assessments

This SSI prescribes the content and form for a refresher of a pre-existing personal licence scheme. The refresher training does not created any new equality issues.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The Business and Regulatory Impact Assessment was signed off by colleagues in the Better Regulation team on 28 August 2013. The BRIA makes clear that administration of the refresher process will have short-term financial implications for Licensing Boards. However, the licensing fees regime is based on cost recovery so

if a Board is making a deficit due to this process, in the long term they will be able to regain these finances through raising their fees.

There will be some costs for personal licence holders as training organisations are likely to charge around £90-£100 for this refresher course. Where Licensing Boards require the personal licence to be sent in there may also be some costs associated with registered post.

Despite these costs, the refresher training is required by the 2005 Act, will result in better trained personal licence holders with a greater understanding of up-to-date legislation and health impacts, and will create work for training organisations, awarding bodies and individual trainers.

Scottish Government
Criminal Law and Licensing Division
September 2013

Extract from the Delegated Powers and Law Reform Committee's 46th Report, 2013 (Session 4)

Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013/261) (Justice Committee)

1. The purpose of these regulations is to prescribe the training required to be undertaken by personal licence holders under the Licensing (Scotland) Act 2005 ("the 2005 Act") and the form of evidence to be presented by a licence holder to the relevant licensing board as proof that the prescribed training has been undertaken.
2. The regulations, which are subject to the negative procedure, come into force on 8 October 2013, and so will be in place prior to the holders of the first personal licences becoming required to undertake the training.
3. In considering the instrument, the Committee asked the Scottish Government for clarification of certain points. The correspondence is reproduced in the Appendix.
4. Regulation 2(2)(a) and (b) are a duplication of the terms of section 87(1)(a) and (b) of the 2005 Act which prescribe the period of time within which training must be completed by the holders of personal licences and evidence of that training submitted to the relevant licensing board. This duplication is unnecessary, as those time periods are already laid down in the 2005 Act. As the Scottish Ministers have no power to prescribe anew the time periods within which the training requirement must be met, regulation 2(2)(a) and (b) must fall to be disregarded in terms of legal effect.
5. The Committee considered that this duplication of primary legislation in subordinate legislation is unnecessary and has the capacity to create confusion for users as to the timescale within which the prescribed training must be completed. Given that a failure to comply with the training requirement must result in the revocation of a personal licence, the Committee considers it critical that it is clear to users what their obligations are, and when they are to be complied with. The Committee considered that the unnecessary duplication of the parent statute in regulation 2(2)(a) and (b) does not achieve this clarity.
6. The Committee further considered that the power to prescribe the training requirement in section 87(1) of the 2005 Act, when read with section 87(4) of that Act,

would appear to contemplate the making of regulations which would provide users with full information as to what the training to be undertaken by personal licence holders consists of. The present regulations simply provide that personal licence holders must complete a course of training that has been accredited by the Scottish Ministers. They do not prescribe any courses or course providers, nor do they explain the process of accreditation so that it is clear to personal licence holders how they may find out which courses they can complete in order to satisfy their training obligation.

7. The regulations prescribe a training requirement, but one which can only have a practical meaning upon the taking of a further step by the Scottish Ministers, which is to accredit the relevant courses. The regulations therefore appear to sub-delegate the power to accredit courses to the Scottish Ministers. The exercise of the enabling power in this way is unexpected, because the instrument does not explain to users of the legislation – whose licences will be revoked if they fail to complete the appropriate training – how, on a practical level, they can comply with that requirement without further information from the Scottish Ministers as to which courses are accredited.

8. **The Committee draws the instrument to the attention of the Parliament on reporting ground (h) as the form or meaning of the instrument could be clearer, in that regulation 2(2)(a) and (b) duplicate the terms of section 87(1)(a) and (b) of the Licensing (Scotland) Act 2005. This duplication is unnecessary and as it cannot competently be done under the powers available to Ministers falls to be ignored in terms of legal effect. This unnecessary inclusion is therefore of possible detriment to the clarity of the instrument in the context of its interaction with the parent statute.**

9. **The Committee also draws the instrument to the attention of the Parliament on reporting ground (g) as regulation 2(2), which prescribes the training requirement to be met by personal licence holders, appears to have been made by an unusual or unexpected use of the enabling powers. It appears to sub-delegate in part the function of prescribing the training requirement for personal licence holders by providing that the training requirement is to complete a course which has been accredited by the Scottish Ministers without further specification as to which courses are accredited for that purpose, or how the process of accreditation is to work.**

Appendix

Personal Licence (Training) (Scotland) Regulations 2013 (SSI 2013/261)

On 13 September 2013, the Scottish Government was asked:

1. Regulation 2(2)(a) and (b) appear to duplicate the terms of section 87(1)(a) and (b) of the Licensing (Scotland) Act 2005. Can the Scottish Government explain this duplication? What power do Ministers consider they have to prescribe in subordinate legislation the period during which the training requirements must be complied with when the parent Act already makes provision in this regard?

2. Regulation 2(2) prescribes the training requirements for personal licence holders. In particular, it states that licence holders must undertake a course of training accredited by the Scottish Ministers for the purpose of that Regulation. Section 87(4) of the 2005 Act provides that Regulations may make provision for the accreditation by the Scottish Ministers of courses of training and persons providing such courses. These Regulations do not appear to make provision for the accreditation of courses,

but simply state that a licence holder must undertake an accredited course. Does the Scottish Government consider it to be sufficiently clear from the terms of the Regulations which course or courses are to be accredited for the purposes of complying with the training requirement, breach of which must result in a licence being revoked?

The Scottish Government responded as follows:

1. The Scottish Government accepts that regulation 2(2)(a) and (b) are a duplication of the terms of section 87(1)(a) and (b) of the Licensing (Scotland) Act 2005 (the 2005 Act). The Scottish Government felt it appropriate to duplicate the provisions of the 2005 Act, as there would be a benefit to the reader of the Regulations in doing so. It is the intention of the duplication to direct the reader's focus to the relevant timeframes by which the holder of a personal licence must produce to the licensing board evidence of meeting the training requirement as provided in the 2005 Act. It is the Scottish Government's view that without first framing regulation 2 in the context of the relevant timeframe by which the licence holder must produce evidence of meeting the training requirement, regulation 2 would be more difficult for users of the legislation to understand.

In these circumstances, the purpose of the duplication is not to prescribe the period during which the training requirements must be complied with, we would accept there are no relevant powers to do so. However, as the provisions are not attempting to exercise any such power, it would be the view of the Scottish Government that the instrument remains *intra vires*.

2. Section 87(4) of the 2005 Act allows for Regulations to be made that provide for accreditation by Scottish Ministers for courses of training. It is not the intention of these Regulations to make provisions for the accreditation process nor the details of the training courses themselves. Instead, regulation 2 simply provides that the courses of training for the purposes of section 87(1) of the 2005 Act are those courses that have been accredited by Scottish Ministers. The Scottish Government has previously made Regulations in a similar manner in the Licensing (Training) (Scotland) Regulations 2007 (SSI 2007/95), and similar provision was made with regards to licensing qualification in the Licensing Qualification (Scotland) Regulations 2007 (SSI 2007/98).

The Scottish Government is of the view that it is sufficiently clear from the terms of the Regulations that the relevant courses for the purpose of section 87(1) of the 2005 Act are those that are accredited by Scottish Ministers. The Scottish Government has undertaken significant consultation and is in regular discussion with those within the trade with regards to the subject matter of these Regulations.

ANNEXE**Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. 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).

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.

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.

Each negative instrument appears on the 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. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Justice Committee

26th Meeting, 2013 (Session 4), Tuesday 1 October 2013

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following instruments which are not subject to any parliamentary procedure:

- Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Miscellaneous) 2013 (SSI 2013/238);
- Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 (Commencement No. 2) Order 2013 (SSI 2013/262).

2. Further details on the procedure for instruments not subject to any Parliamentary procedure are set out in the Annexe attached to this paper.

**Act of Sederunt (Rules of the Court of Session Amendment No. 5)
(Miscellaneous) 2013 (SSI 2013/238)**

Purpose of instrument

3. The purpose of the instrument is to amend the Rules of the Court of Session as follows:

- Paragraph 2 amends Chapter 41 (appeals under statute) by inserting Part XI (appeals under the Tribunals, Courts and Enforcement Act 2007) and new Rule 41.57 (permission to appeal against decisions of the Upper Tribunal). This change reinstates what is known as the “second appeals test”.
- Paragraph 3 inserts new Chapter 104 (Justice and Security Act 2013) in consequence of the coming into force of Part 2 of the Act of 2013. Part 2 makes provision for closed material procedures in proceedings before the Court of Session. It sets out a framework whereby the court can allow, in the interests of national security, elements of a case to be heard in closed, in addition to the open proceedings. The process broadly consists of two stages.
- The Secretary of State or any party to the case may make an application to the court to make a declaration that the proceedings are ones in which a closed material application may be made. The court may grant a declaration following an application or of its own motion provided that certain conditions are met.
- Once the declaration has been made, a closed material application may then be made by a party to the proceedings not to disclose specific pieces or tranches of material, except to the court, a special advocate and the Secretary of State. An application will be granted where the disclosure of that material would be damaging to the interests of national security.

4. The instrument came into force on 19 August 2013.

5. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2013/238/contents/made>

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 17 September 2013 and agreed to draw the instrument to the attention of the Parliament on the ground that there appears to be doubt whether the instrument is *intra vires*, so far as the new rule 41.57(2)(a) inserted by paragraph 2 provides that permission shall not be granted on an application to the court in relation to a decision of the Upper Tribunal (as referred to in rule 41.57(1)), unless the court considers that the proposed appeal from the decision would raise some important point of practice.

7. That provision is of doubtful vires because the scope of the enabling power to make rules of court in section 13(6A) of the Tribunals, Courts and Enforcement Act 2007 is restricted to where the court considers that the proposed appeal would raise some important point of principle (and not of practice).

8. The DPLR Committee also draws the instrument to the attention of the Parliament on the ground that there is a minor drafting error in the new rule 104.5(1) as inserted by paragraph 3 of the instrument, which refers to the parties mentioned in rule 104.3(4)(b) to (d), when the relevant parties are mentioned in rule 104.3(6)(b) to (d).

9. The DPLR Committee notes that the Lord President's Private Office accepts that these provisions have been inserted in error, and has undertaken to rectify these matters promptly, by laying an amending instrument.

10. The relevant extract from the DPLR Committee report on the instrument is reproduced on page 3 of this paper.

Justice Committee consideration

11. The instrument was laid on 1 August 2013 and the Justice Committee has been designated as lead committee.

Recommendation

12. The Committee is invited to note the instrument and make any comment on it. In particular, in light of the concerns raised by the DPLR Committee, the Committee is invited to endorse the conclusions reached in the DPLR Committee's report.

Extract from the Delegated Powers and Law Reform Committee 45th Report 2013

Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Miscellaneous) 2013 (SSI 2013/238) (*Justice Committee*)

1. This Act of Sederunt amends the Rules of the Court of Session. Paragraph 2 of the instrument inserts a new rule concerning permission to appeal to the Court of Session against certain decisions of the Upper Tribunal (rule 41.57). Paragraph 3 inserts new Chapter 104 (Justice and Security Act 2013) of the Rules. Part 2 of the Justice and Security Act 2013 makes provision for closed material procedures in proceedings before the Court of Session. It sets out a framework whereby the court can allow, in the interests of national security, elements of a case to be heard in closed, in addition to the open, proceedings.

2. The instrument is "laid only" and not subject to further Parliamentary procedure. It came into force on 19 August 2013.

3. In considering the instrument, the Committee asked the Lord President's Private Office for clarification of certain points. The correspondence is reproduced in the Appendix.

4. Paragraph 2 of the instrument inserts a rule which is concerned with applications for permission to appeal to the Court of Session, against certain decisions of the Upper Tribunal (rule 41.57). The right of appeal to the Court of Session arises where the Court is the "relevant appellate court" in accordance with the provisions of the Tribunals, Courts and Enforcement Act 2007 ("the 2007 Act"). (In outline, appeals to the First-tier Tribunal are against the decisions of government departments and other public bodies. The Upper Tribunal hears appeals from the First-tier Tribunal on points of law, i.e. an appeal made over the interpretation of a legal principle or statute.)

5. The new rule 41.57 provides that permission shall not be granted on the application, unless the Court considers that the proposed appeal would raise some important point of principle or practice, or there is some other compelling reason for the court to hear the appeal.

6. The Committee queried with the Lord President's Private Office that the enabling power to make the new rule 41.57 – namely section 13(6A) of the 2007 Act – provides that rules of court may make provision for permission not to be granted on an application to the Court, unless the Court considers that the proposed appeal would raise some important point of principle, or that there is some other compelling reason for the court to hear the appeal.

7. However, the new rule 41.57(2)(a) provides that permission shall not be granted unless the court considers the appeal would raise some important point of principle **or practice**. The power available to the Lord Chancellor, under section 13(6) of the 2007 Act in respect of appeals to the Courts of Appeal in England and Wales, and in Northern Ireland permits the court to consider whether important points of principle or practice are raised. However, the enabling power in section 13(6A) of the 2007 Act in respect of appeals in Scotland does not permit the courts to extend their rules to permit appeals where important points of practice are raised. The power is restricted to points of principle.

8. The Lord President's Private Office has accepted in response to the Committee that the new rule ought to reflect the terms of the enabling power, and that it should therefore not purport to extend to appeals that would raise some important point of practice. It is proposed to amend the rule 41.57(2)(a) at the first opportunity.

9. The Committee notes that there is a clear difference between the terms – and therefore the scope – of the enabling powers contained in section 13(6) of the 2007 Act in respect of England, Wales and Northern Ireland, compared with section 13(6A) in respect of Scotland. The Committee considers accordingly that doubt is raised, whether the provision in question is *intra vires*.

10. The Lord President's Private Office has also acknowledged that there is a minor drafting error in the instrument. The new rule 104.5(1) (inserted by paragraph 3) provides that where the Court of Session has fixed a hearing on an application with proposals for further procedure, the Deputy Principal Clerk shall (unless the court directs otherwise) notify the time and date to various parties, as mentioned in rule 104.3(4)(b) to (d). This should have referred to the parties in 104.3(6)(b) to (d).

11. The Committee draws the instrument to the attention of the Parliament on reporting ground (e). There appears to be doubt whether the instrument is *intra vires*, so far as the new rule 41.57(2)(a) inserted by paragraph 2 provides that permission shall not be granted on an application to the court in relation to a decision of the Upper Tribunal (as referred to in rule 41.57(1)), unless the court considers that the proposed appeal from the decision would raise some important point of practice.

12. That provision is of doubtful vires because the scope of the enabling power to make rules of court in section 13(6A) of the Tribunals, Courts and Enforcement Act 2007 is restricted to where the court considers that the proposed appeal would raise some important point of principle (and not of practice).

13. The Committee also draws the instrument to the attention of the Parliament on the general reporting ground. There is a minor drafting error in the new rule 104.5(1) as inserted by paragraph 3 of the instrument, which refers to the parties mentioned in rule 104.3(4)(b) to (d), when the relevant parties are mentioned in rule 104.3(6)(b) to (d).

14. The Committee notes that the Lord President's Private Office accepts that these provisions have been inserted in error, and has undertaken to rectify these matters promptly, by laying an amending instrument.

Appendix

Act of Sederunt (Rules of the Court of Session Amendment No. 5) (Miscellaneous) 2013 (SSI 2013/238)

On 6 September 2013, the Lord President's Private Office was asked:

1. Section 13(6A) of the Tribunals, Courts and Enforcement Act 2007 provides that rules of court may make provision for permission not to be granted on an application under subsection (4) of that section to the Court unless the Court considers (a) that the proposed appeal would raise some important point of principle, or that there is some other compelling reason for the court to hear the appeal.

However the new rule 41.57(2) as inserted by paragraph 2 provides that permission shall not be granted unless the court considers the appeal would raise some important point of principle or practice, which is the provision enabled by section 13(6) of the 2007 Act in respect of the order-making power of the Lord Chancellor.

(a) Please clarify whether it is intended that rule 41.57(2)(a) should reflect the terms of the power in section 13(6A) so that a proposed appeal should raise an important point of principle (only), or whether it is considered that that sub-paragraph (a) is within the scope of the enabling powers?

(b) If the former, would you propose to amend the provision (and when?) If the latter, please explain why it is considered that the subparagraph (a) is within the enabling powers (and so within vires)?

2. Would you propose to amend the error in the new rule 104.5(1) (inserted by paragraph 3) which refers to the parties mentioned in rule 104.3(4)(b) to (d), when the relevant parties are mentioned in paragraph 3(6)(b) to (d); and if so, how?

The Lord President's Private Office responded as follows:

1. Having considered further the terms of the enabling power in section 13(6A) of the Tribunals, Courts and Enforcement Act 2007, we accept that new rule 41.57(2)(a) ought to reflect the terms of the enabling power and that it should therefore not purport to extend to appeals that would raise some important point of practice. The Lord President's Private Office regrets this error, and proposes to amend the provision at the first possible opportunity so that it properly reflects the terms of section 13(6A).

2. We are grateful to the Committee and its advisers for drawing this error to our attention. We consider that the reader would be able to identify the parties intended when rule 104.3 is considered in context, particularly as rule 104.4(2), which also

requires the Deputy Principal Clerk to notify parties of the time and date of a diet, correctly refers to rule 104.3(6). In the interests of clarity, however, the Lord President's Private Office proposes to amend the erroneous cross-reference in rule 104.5(1) at the same time as making the amendment referred to in paragraph (1) above.

**Scottish Civil Justice Council and Criminal Legal Assistance Act 2013
(Commencement No. 2) Order 2013 (SSI 2013/262)**

Purpose of instrument

13. The purpose of the instrument is to bring into force, on 11 October, various sections of Part 2 of the 2013 Act.

14. Part 2 of the 2013 Act relates to criminal legal assistance and amends the Legal Aid (Scotland) Act 1986 (“the 1986 Act”) to alter the test for eligibility for assistance by way of representation in criminal matters and introduce contributions for criminal legal aid. The amendments made to the 1986 Act will only have full effect once regulations made under the 1986 Act (as amended by the 2013 Act) come into force.

15. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2013/262/contents/made>

Delegated Powers and Law Reform Committee consideration

16. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 24 September 2013 and agreed to draw the attention of the Parliament to the instrument on the ground that it is defective in that it brings section 20 of the 2013 Act into force when that was not the policy intention.

17. The DPLR Committee noted that the Scottish Government has brought forward SSI 2013/271 which will correct the defect in this instrument before it comes into force. This SSI was considered by the DPLR Committee at its meeting on 24 September and it had no points to raise on the instrument.

18. The relevant extract from the DPLR Committee report on the instrument is reproduced on page 7 of this paper.

Justice Committee consideration

19. The instrument was laid on 11 September 2013 and the Justice Committee has been designated as lead committee.

Recommendation

20. The Committee is invited to note the instrument and make any comment on it. In particular, in light of the concerns raised by the DPLR Committee, the Committee is invited to endorse the conclusions reached in the DPLR Committee’s report.

Extract from the Delegated Powers and Law Reform Committee 46th Report 2013

**Scottish Civil Justice Council and Criminal Legal Assistance Act 2013
(Commencement No. 2) Order 2013 (SSI 2013/262) (Justice Committee)**

1. The purpose of this order is to bring various sections of Part 2 of the Scottish Civil Justice Council and Criminal Legal Assistance Act 2013 into force on 11 October 2013.

2. The order requires to be read alongside SSI 2013/271 which will amend the order on 10 October 2013 (and therefore before SSI 2013/262 comes into force) to correct a defect in the commencement scheme set out in 2013/262.
3. Together the two instruments will commence sections 17, 18(1), 19, 22 and 23 of the 2013 Act.
4. This order brings section 20 of the 2013 Act into force in error. Section 20 should not be brought into force until supporting subordinate legislation is in place. SSI 2013/271 therefore removes section 20 from the scope of this commencement order.
5. **The Committee draws the attention of the Parliament to the instrument under reporting ground (i) as it is defective in that it brings section 20 of the 2013 Act into force when that was not the policy intention. Were it brought into force at this point section 20 would not operate correctly as other provisions require to be brought into force to accompany it and those provisions are not commenced by the order.**
6. **However, the Committee notes that the Scottish Government has brought forward SSI 2013/271 which will correct the defect in this instrument before it comes into force.**

ANNEXE

Instruments not subject to any Parliamentary procedure

Instruments not subject to any parliamentary procedure are referred to the Committee under Rule 10.1.3 of Standing Orders. However, there is no formal requirement for the Committee to consider them.

The Committee has agreed that these types of instruments will not normally be placed on a Committee agenda unless—

- the Delegated Powers and Law Reform Committee has drawn the instrument to the lead Committee's attention on technical grounds; or
- a Member of the Justice Committee has proposed to the Convener that the instrument goes on the agenda, and the Convener agrees.

In addition, where the clerks are aware of particular issues with an instrument not subject to parliamentary procedure, they will draw this to the Convener's attention, for consideration of whether to put it on the agenda.