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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 26 June 2018



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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.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Committee Membership



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Scottish Labour



Alison Harris
Scottish Conservative
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Introduction

1. At its meeting on 26 June 2018, the Committee agreed to draw to the attention of the Parliament the following instrument—

Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 (SSI 2018/202)

2. The Committee's recommendations and conclusions in relation to this instrument are set out in the following sections of this report.
3. The Committee determined that it did not need to draw the Parliament's attention to the instruments set out by the relevant lead committee at the end of this report.

Points raised: instrument subject to negative procedure

Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 (SSI 2018/202) (Rural Economy and Connectivity)

Purpose

4. This Order has the sole purpose of revoking the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 (SSI 2018/164).
5. That Order amends the Tuberculosis (Scotland) Order 2007 to change the requirements for post-movement testing and the compensation arrangements when bovine animals are slaughtered under TB control measures. That Order would have come into force on 10 July 2018, if not revoked by this Order.
6. This Order was laid before the Parliament on 22 June 2018 and comes into force on 30 June 2018.

Breach of the "28 day rule"

7. The Order fails to comply with the "28 day rule" contained in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("ILRA").
8. The "28 day rule" provides that where a Scottish statutory instrument is subject to the negative procedure, it must be laid at least 28 days before the instrument comes into force. A breach of the rule does not affect the validity of the Order.
9. In accordance with section 31 of ILRA, the Scottish Government wrote to the Presiding Officer on 22 June to explain why the requirements of section 28(2) have not been made in this case. The correspondence is reproduced in the Annex.
10. The letter explains that the breach arises due to consultation responses being received on late dates, in relation to the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018. In light of the contents of those responses, the Scottish Government decided to revoke the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 (SSI 2018/164).
11. The Committee accepts the reasons provided for the breach of the "28 day rule". The Scottish Government appears to have acted quickly to make and lay the Order on 22 June as a result of the late receipt of consultation responses.

12. **Accordingly, the Committee draws the Order to the attention of the Parliament under reporting ground (j), as the Order fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**

13. **The Committee finds the failure to comply with section 28 to be acceptable in the circumstances as outlined in correspondence from the Scottish Government to the Presiding Officer of 22 June 2018.**

No points raised

Economy, Jobs and Fair Work

Common Financial Tool (Scotland) Regulations 2018 [draft]

Debt Arrangement Scheme (Scotland) Amendment Regulations 2018 [draft]

Environment, Climate Change and Land Reform

Regulatory Reform (Specification of Basic Safety Standards Directive) (Scotland) Order 2018 (SSI 2018/192)

Justice

Legal Aid (Employment of Solicitors) (Scotland) Amendment Regulations 2018 (SSI 2018/193)

Act of Sederunt (Simple Procedure Amendment) (Miscellaneous) 2018 (SSI 2018/191)

Rural Economy and Connectivity

Seat Belts on School Transport (Scotland) Act 2017 (Commencement) Regulations 2018 (SSI 2018/195 (C.16))

Annex

Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 (SSI 2018/202)

Breach of laying requirements: letter to the Presiding Officer

NOTIFICATION OF BREACH OF THE 28 DAY RULE

The Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 was made by the Scottish Ministers under sections 1, 8(1), 28, 32(2), 32(3), 34(7) and 83(2) of the Animal Health Act 1981 on 22 June 2018. It is being laid before the Scottish Parliament today. This instrument is subject to negative procedure by virtue of section 33 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”).

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. To meet the requirements of 31(3) of that Act, I am writing to explain why.

However, before doing so, I should explain that regrettably due to an oversight the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 (“the principal Order”) which is being revoked by this instrument, was laid under the incorrect procedure, (namely laid no procedure as defined in section 30 of the 2010 Act). This overlooked the fact that one of the enabling powers relied on for the instrument (section 32(3) of the Animal Health Act 1981) was specifically subject to negative procedure (by virtue of express provision to that effect in section 32(3)) and hence the instrument as a whole required to be subject to such procedure, in accordance with section 33 of the 2010 Act. Whilst in light of section 31(2) of the 2010 Act this did not affect the underlying validity of the principal Order and, in any event, the principal Order respected in practice the requirements of section 28(2) of the 2010 Act, I apologise for this oversight.

From 7 September to 30 November 2017 the Scottish Government ran a public consultation on proposals to amend aspects of our bovine tuberculosis (TB) control and compensation policy. Following this consultation and analysis of the responses received The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 was signed by the responsible Cabinet Secretary on 17 May 2018 and laid before the Scottish Parliament on 21 May 2018. This Order should have been subject to negative Parliamentary procedure, however as explained above, was inadvertently laid as ‘laid no procedure’.

On 11 June 2018 it came to light that two consultation responses, one from the NFUS and the other from the British Veterinary Association (BVA) had been submitted (by e-mail, not through Citizen Space) but not received by the Scottish Government and consequently were not included in our analysis of responses. A retrospective analysis of these responses showed that the BVA agreed with the proposals set out in our consultation paper. The NFUS agreed with the majority of the Scottish Government’s proposals, however they do not agree with one of the more significant changes, that being to cap compensation payments for high-value animals that are culled for disease control reasons.

On 13 June 2018, we received notice from the Clerk to the Rural Economy and Connectivity Committee that the NFUS had made representations to the Committee highlighting that their consultation response had not been considered nor had their concerns on the proposed cap been addressed. We were further advised that the

Committee, in light of the NFUS correspondence, intended to discuss The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 in Committee on 20 June 2018. We subsequently wrote to the Committee on the 20 June to advise of our intention to revoke the Order to ensure transparency and that due process is followed. The Committee welcomed this decision.

While the Scottish Government believes that the provisions set out in The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 are sound, we feel that it would be prudent to engage further with the NFUS on this matter, particularly given their significance as a key and valued stakeholder and the importance of this issue to their members. Accordingly, the Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 is being laid today to revoke The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 prior to its coming into force date of 10 July 2018 and it has therefore been necessary to breach the 28 day rule. The Scottish Government will lay a new amending Instrument before the Scottish Parliament once our deliberations with the NFUS have concluded.

I am copying this letter to Edward Mountain, Convenor of the Rural Economy and Connectivity Committee and Graham Simpson, Convenor of the Delegated Powers and Legislative Reform Committee.

