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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 29 January 2019**



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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



**Convener**  
**Graham Simpson**  
Scottish Conservative  
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**Deputy Convener**  
**Stuart McMillan**  
Scottish National Party



**Tom Arthur**  
Scottish National Party



**Mary Fee**  
Scottish Labour



**Alison Harris**  
Scottish Conservative  
and Unionist Party

# Introduction

## *Instruments considered under the European Union (Withdrawal) Act 2018*

1. At its meeting on 29 January 2019, the Committee considered the undernoted instruments under the protocol agreed between the Scottish Government and the Scottish Parliament in respect of SSIs made using the powers under the European Union (Withdrawal) Act 2018.

Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6)

Aquatic Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/9)

Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 [draft]

2. The Committee's recommendations and conclusions in relation to these instruments are set out in the following sections of this report.

## *Technical scrutiny of instruments*

3. The Committee also 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.

# Instruments considered under the SSI Protocol under the European Union (Withdrawal) Act 2018

## Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6) (Justice)

4. The purpose of this instrument is to correct deficiencies in licensing legislation arising from the withdrawal of the UK from the EU.
5. The Scottish Government has chosen to lay this instrument under the negative procedure.
6. The Scottish Government has categorised the instrument as of medium significance under the Protocol on account of the consequences which would arise if the amendments were not made in time and the legislation ceased to function as intended. However, the Committee considers that these changes are minor and technical.
7. Accordingly, the Committee considers that the instrument may be categorised as being of low significance as it is clear that there is no significant policy decision for Ministers to make.

### Recommendations

8. **The Committee recommends to the Justice Committee that the negative procedure is the appropriate scrutiny procedure for the Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6).**
9. **The Committee recommends to the Justice Committee that the Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6) be categorised as "low" in terms of their significance under the SSI Protocol.**

## Aquatic Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/9) (Rural Economy and Connectivity)

10. The purpose of this instrument is to provide the necessary technical corrections to regulations relating to aquatic animal health and aquaculture regulations.
11. The Scottish Government has chosen to lay this instrument under the negative procedure and has categorised it as of low significance under the Protocol.

12. The Committee agreed with the scrutiny procedure and categorisation level in respect of this instrument.

### **Recommendations**

13. **The Committee recommends to the Rural Economy and Connectivity Committee that the negative procedure is the appropriate scrutiny procedure for the Aquatic Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/9).**
14. **The Committee recommends to the Rural Economy and Connectivity Committee that the Aquatic Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/9) be categorised as "low" in terms of their significance under the SSI Protocol.**

## **Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 [draft] (Economy, Energy and Fair Work)**

15. The general purpose of this instrument is to address deficiencies in retained EU law relating to public procurement which arise from the UK's withdrawal from the EU.
16. The Scottish Government has laid the instrument under the affirmative procedure, as required by the European Union (Withdrawal) Act 2018.
17. The instrument has been categorised by the Scottish Government as of medium significance under the Protocol on the grounds that it is largely concerned with technical detail and does not seek to change the effect of the underlying legislation. However, the Committee considers that some provisions create or amend powers to legislate, including transfer of some EU legislative powers to Scottish Ministers.
18. Accordingly, the Committee considers that the instrument may be categorised as of high significance under the Protocol.

### **Recommendation**

19. **The Committee recommends to the Economy, Energy and Fair Work Committee that the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 [draft] be categorised as "high" in terms of their significance under the SSI Protocol.**



# No points raised

## **Economy, Energy and Fair Work**

Electronic Invoicing (Public Contracts etc.) Amendment (Scotland) Regulations 2019 (SSI 2019/7)

## **Justice**

Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6)

## **Rural Economy and Connectivity**

Genetically Modified Organisms (Deliberate Release etc.) (Miscellaneous Amendments) (Scotland) Regulations 2019 [draft]

Aquatic Animal Health and Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/9)

## **Social Security**

Funeral Expense Assistance (Scotland) Regulations 2019 [draft]

Early Years Assistance (Best Start Grants) (Scotland) Amendment (No. 1) Regulations 2019 [draft]

Early Years Assistance (Best Start Grants) (Scotland) Amendment (No. 2) Regulations 2019 [draft]

