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Pàrlamaid na h-Alba

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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 19 November 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**  
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Scottish Conservative  
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**Deputy Convener**  
**Stuart McMillan**  
Scottish National Party



**Tom Arthur**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Mary Fee**  
Scottish Labour

# Introduction

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

1. At its meeting on 19 November 2019, the Committee considered the following instrument under the protocol agreed between the Scottish Government and the Scottish Parliament in respect of SSIs made using powers under the European Union (Withdrawal) Act 2018:
  - the draft Environment (EU Exit) (Scotland) (Amendment etc.) (No. 2) Regulations 2019
2. The Committee's recommendations and conclusions in relation to this instrument are set out later in the report.

## Technical Scrutiny of Instruments

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 below.

# Instruments Considered Under the European Union (Withdrawal) Act 2018

## Environment (EU Exit) (Scotland) (Amendment etc.) (No. 2) Regulations 2019 (2019/ draft)

### Purpose

4. The purpose of the draft instrument is to address certain deficiencies in Scottish legislation which arise from the UK's withdrawal from the EU in the area of waste and the environment.
5. The most significant change is to the wide power in the Regulatory Reform (Scotland) Act 2014, section 18(1) and Schedule 2 paragraph 22. This power currently enables the Scottish Ministers, by regulations, to make provision which corresponds or is similar to any provision made, or capable of being made, under section 2(2) of the European Communities Act 1972 in connection with an EU obligation relating to protecting and improving the environment.
6. The draft instrument would amend this power by providing instead that, post-exit, Scottish Ministers may make any provision that might be made by an Act of the Scottish Parliament in connection with a specified list of EU instruments.
7. The draft instrument would also amend the existing power of Scottish Ministers to give directions to regulators, with which the regulators must comply, including directions given for the purpose of the implementation of EU obligations. Regulators for this purpose include SEPA and local authorities. This power would be changed by the draft instrument into a power to give directions for the purpose of the implementation of the specified list of EU instruments. The same change would be made to the Scottish Ministers' power to give guidance to which regulators must have regard in relation to implementing EU obligations.
8. The draft instrument also makes minor, technical changes to other legislation in the area of waste and environmental law to remove EU-related definitions and other references which will no longer be appropriate after EU withdrawal.

### Committee Consideration

9. This instrument has been laid under the affirmative procedure and has been categorised as of Medium significance.
10. There is no choice of scrutiny procedure in this case because the instrument amends a power to legislate, and the European Union (Withdrawal) Act 2018 requires the affirmative procedure for such instruments. Accordingly, there is no choice of scrutiny procedure for the Committee to consider.
11. In relation to the significance of the instrument, the Committee considers that this instrument would be more appropriately characterised as of High significance as it amends a power to legislate.

12. The Committee recommends to the Environment, Climate Change and Land Reform Committee that this instrument should be recategorised as High in terms of its significance under the SSI Protocol.



# **No Points Raised**

## **Local Government and Communities Committee**

Planning (Scotland) Act 2019 (Ancillary Provision) Regulations 2019 (2019/draft)

