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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 10 December 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



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Tom Arthur
Scottish National Party



Jeremy Balfour
Scottish Conservative
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Deputy Convener
Stuart McMillan
Scottish National Party



Mary Fee
Scottish Labour

Introduction

Instruments drawn to the attention of the lead Committee

1. At its meeting on 10 December 2019, the Delegated Powers and Law Reform Committee considered the following instruments subject to the negative procedure and agreed to draw them to the attention of the lead Committee:
 - Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/407)
 - Official Controls Agriculture etc. (Scotland) Regulations 2019 (SSI 2019/412)
2. The Committee's recommendations and conclusions in relation to these instruments are set out later in the report.

Other instruments considered

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.

Instruments Drawn to the Attention of the Lead Committee

Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/407)

Purpose

4. This instrument amends existing domestic food and feed law to provide for the execution and enforcement, in Scotland, of the food and feed elements of the new EU Official Controls Regulation and associated tertiary legislation.

Committee Consideration

5. The instrument was laid before the Parliament on 28 November 2019 and will come into force on 14 December 2019. Accordingly, it does not comply with the requirement that at least 28 days should elapse between the laying of an instrument which is subject to the negative procedure and the coming into force of that instrument.
6. Standing Orders require the Committee to draw the Parliament's attention to any failure to respect the 28-day laying requirement.

7. The Committee therefore reports this instrument to the lead committee, the Health and Sport Committee, under reporting ground (j) for failure to comply with laying requirements.

8. The reasons for not complying are set out in a letter from the Scottish Government to the Presiding Officer dated 28 November, which can be found in Annex A.

9. The Committee is content that the failure to comply with the 28-day laying requirement is acceptable in the circumstances.

10. Regulation 7(19) of this instrument substitutes regulation 32 of the Official Feed and Food Controls (Scotland) Regulations 2009. This provision seeks to impose a statutory duty on an enforcement officer but uses the word "will" in relation to this duty rather than the word "must".

11. The Scottish Government has agreed that this wording could be clearer and intends to amend the instrument at the next available opportunity.

12. The Committee therefore also reports this instrument to the Health and Sport Committee under the general reporting ground.

13. The Committee welcomes the Scottish Government's intention to amend this instrument.

Official Controls Agriculture etc. (Scotland) Regulations 2019 (SSI 2019/412)

Purpose

14. These Regulations implement Regulation EU 2017 625 in respect of official controls and other official activities on genetically modified organisms, animals, animal by-products and derived products. They repeal and replace the Official Controls (Animals, Feed and Food) (Scotland) Regulations 2007.

Committee Consideration

15. The instrument was laid before the Parliament on 3 December 2019 and will come into force on 14 December 2019. As with the previous instrument, this does not comply with the 28-day laying requirement.

16. The Committee therefore reports this instrument to the lead committee, the Rural Economy and Connectivity Committee, under reporting ground (j).

17. The reasons for not complying are set out in a letter from the Scottish Government to the Presiding Officer dated 3 December 2019 which can be found in Annex B.

18. The Committee is content that the failure to comply with the 28-day laying requirement is acceptable in the circumstances.

No Points Raised

Justice Committee

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Case Management of Certain Personal Injuries Actions) 2019 (SSI 2019/404)

Act of Sederunt (Rules of the Court of Session 1994 and Summary Applications, Statutory Applications and Appeals etc. Rules 1999 Amendment) (Proceeds of Crime) (No.2) 2019 (SSI 2019/405)

Local Government and Communities Committee

Planning (Scotland) Act (Actual Dates) Regulations (SSI 2019/410)

Planning (Scotland) Act 2019 (Commencement No. 2, Saving and Transitional Provisions) Amendment Regulations 2019 (SSI 2019/411)

Social Security Committee

Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 (SSI 2010/draft)

Standards, Procedures and Public Appointments Committee

Representation of the People Act 1983 Remedial (Scotland) Revocation Order 2019 (SSI 2019/408)

Annex A

28 November 2019

Dear Presiding Officer

THE OFFICIAL FEED AND FOOD CONTROLS (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2019 (SSI 2019/407)

The Official Feed and Food Controls (Miscellaneous Amendments) (Scotland) Regulations 2019 (“the instrument”) was made by the Scottish Ministers under section 2(2) of the European Communities Act 1972 earlier today, 28 November 2019, and is being laid before the Scottish Parliament this afternoon and comes into force on 14 December 2019.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) that Act, this letter explains why.

The instrument provides for the domestic execution and enforcement of the food and animal feed elements of the Official Controls Regulation (EU) 2017/625 on official controls and other official activities performed to ensure the application of food and feed law, rules on animal health and welfare, plant health and plant protection products (the OCR), and associated tertiary legislation, which Food Standards Scotland (FSS) has policy responsibility for in Scotland. Separate but parallel legislation is also being made by Scottish Government Animal Health and Plant Health to implement the animal health and welfare, plant health and animal by-product elements of the OCR, which they have respective lead policy responsibility for.

The OCR is a directly applicable EU Regulation which entered into force in May 2017, and the main date of application is 14 December 2019. As of that date, it will repeal and replace existing EU official controls legislation which is integral to the activities of FSS, as the national competent authority responsible for the delivery of official food and feed controls in Scotland, and local enforcement bodies.

This is a significant piece of EU legislation, which forms part of the wider Smarter Rules for Safer Food package, and implementation in Scotland and the rest of the UK has been complicated by the continued uncertainty related to the timing of the UK’s exit from the EU. It is only following EU agreement to further extend Article 50 until the end of January 2020 that there has been certainty that the UK would have legal obligations to implement the OCR by 14 December 2019.

These complexities, coupled with the significant challenge and prioritisation of resources associated with ensuring the necessary fixes to the EU law were in place for a possible no-deal EU Exit on 31 October 2019, has meant the necessary work to prepare for implementation in Scotland has been undertaken in shorter than normal timescales. There has also been a need to align implementation of the instrument with the equivalent legislation being prepared by the other UK administrations, who have been faced with similar challenges. As a result, under these challenging circumstances, it has not been possible for us to comply with the 28 day rule.

Preparation of the above regulations has been further complicated by delays at EU level in agreeing and publishing some of the relevant tertiary legislation.

FSS and the Scottish Government are cognisant of the difficulties that breaching the 28 day rule poses in terms of Parliamentary scrutiny, and regret that on this occasion it has been impossible to comply with this requirement.

Garry Mournian

Director Policy, Science, Finance and HR

Food Standards Scotland

Annex B

3 December 2019

Dear Presiding Officer,

THE OFFICIAL CONTROLS (AGRICULTURE ETC.) (SCOTLAND) REGULATIONS 2019 (SSI 2019/412)

The Official Controls (Agriculture etc.) (Scotland) Regulations 2019 (the Regulations) were made by the Scottish Ministers under section 2(2) of the European Communities Act 1972 this afternoon, and are being laid before the Scottish Parliament today with a coming into force date of 14 December 2019.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, it has not been possible to comply with this requirement. In accordance with the requirements of section 31(3) of that Act, this letter explains why this requirement has been breached.

The Regulations partially implement the Official Controls Regulation (EU) 2017/625 (the OCR) in respect of official controls and other official activities carried out on genetically modified organisms, animals, animal by-products and derived products. The OCR is a significant piece of EU legislation, and is a component of the wider Smarter Rules for Safer Food (SRSF) package that creates a single framework for all official controls and other official activities along the agri-food chain.

These Regulations repeal and replace The Official Controls (Animals, Feed and Food) (Scotland) Regulations 2007, which had implemented the previous EU official controls regime. Separate but parallel legislation is also being made by Food Standards Scotland (in an instrument laid before the Scottish Parliament on 28 November 2019) and Scottish Government Plant Health division to implement the food and feed and plant health elements of the OCR, for which they have respective lead policy responsibility.

Implementation of the OCR in Scotland and the rest of the UK has been complicated by the continued uncertainty related to the timing of the UK's exit from the EU. It was only following agreement to further extend Article 50 until the end of January 2020 that there was certainty that the UK would be legally required to implement the OCR by 14 December 2019.

These complexities, coupled with the significant challenge and prioritisation of resources associated with ensuring the necessary fixes to the EU law were in place for a possible no-deal EU Exit on 31 October 2019, has meant the necessary work to prepare for implementation in Scotland has been undertaken in shorter-than-normal timescales.

There has also been a need to align implementation of the instrument with the equivalent legislation being prepared by the other UK administrations, which were faced with similar challenges. As a result, under these challenging circumstances, it has not been possible for us to comply with the 28 day rule.

Preparation of the above regulations has been further complicated by delays at EU level in agreeing and publishing some of the relevant tertiary legislation.

The Scottish Government and Food Standards Scotland acknowledge the difficulties that breaching the 28 day rule poses in terms of Parliamentary scrutiny, and regret that on this occasion it has not been possible to comply with this requirement.

Sheila Voas

Chief Veterinary Officer (Scotland)

