



The Scottish Parliament
Pàrlamaid na h-Alba

Published 20 February 2019
SP Paper 473
9th Report, 2019 (Session 5)

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 February 2019



Published in Scotland by the Scottish Parliamentary Corporate Body.

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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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Introduction

Instruments considered under the European Union (Withdrawal) Act 2018

1. At its meeting on 19 February 2019, the Committee considered the following 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-

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

Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 [draft]

Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/24)

Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 (SSI 2019/25)

Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (SSI 2019/26)

Animal Welfare (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/34)

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 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 (scrutiny procedure and categorisation)

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

Purpose

4. These Regulations amend the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019 considered by the Committee at its meetings on 29 January and 5 February 2019 (the "first regulations").ⁱ
5. The general purpose of these Regulations is to address deficiencies in retained EU law relating to public procurement which arise from the UK's withdrawal from the EU. Specifically, these Regulations amend the first Regulations so that the period by which certain provisions have effect is changed so that they continue to have effect up to 18 months after exit day.
6. This approach is requested by the UK Government, which will lay a similar instrument having effect in England, Wales and Northern Ireland. This is to provide sufficient time for the Trade Bill, or other primary legislation which would enable the UK's new obligations to be implemented, to receive Royal Assent.

Committee consideration

7. The Scottish Government has laid this instrument under the affirmative procedure and has categorised it as of high significance under the SSI Protocol.
8. The Committee is content that the affirmative procedure is appropriate given the significance of the changes made by the instrument. The Committee is also content with the categorisation given that it amends the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019, which are categorised as "high".

Recommendations

9. **The Committee recommends to the Economy, Energy and Fair Work Committee that the affirmative procedure is the appropriate scrutiny procedure for the draft Public Procurement etc. (Scotland) (Amendment) (EU Exit) Amendment Regulations 2019.**

ⁱ Delegated Powers and Law Reform Committee, [7th Report, 2019 \(Session 5\)](#) and [8th Report, 2019 \(Session 5\)](#).

10. **The Committee recommends to the Economy, Energy and Fair Work Committee that the draft Public Procurement etc. (Scotland) (Amendment) (EU Exit) Amendment Regulations 2019 is appropriately categorised as High in terms of its significance under the SSI Protocol.**

Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/24) (Rural Economy and Connectivity)

Purpose

11. The purpose of this instrument is to amend domestic legislation concerning salmon fishing, salmon conservation, sea fisheries, aquaculture and marine and fisheries funding. Specifically, Part 2 of the instrument amends out of date references in domestic legislation to EU instruments to ensure a functioning statute book in time for exit day. Parts 3 and 4 amend deficiencies in retained EU law arising out of the UK's exit from the EU.

Committee Consideration

12. The Committee noted that the Scottish Government plans to retain current standards protecting sea fisheries and aquaculture and marine and fisheries funding after exit day. This instrument intends to maintain appropriate monitoring and enforcement measures relating to sea fishing and to ensure the continued operation of financial assistance to the fishing and aquaculture sector in Scotland.
13. The Scottish Government has laid this instrument under the negative procedure and has categorised it as of low significance under the SSI Protocol.
14. The Committee is content that negative procedure and categorisation as of low significance are appropriate given that the instrument makes only minor and technical changes which ensure continuity of law without any policy changes.

Recommendations

15. **The Committee recommends to the Rural Economy and Connectivity Committee that the negative procedure is the appropriate scrutiny procedure for the Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/24).**
16. **The Committee recommends to the Rural Economy and Connectivity Committee that the Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/24) is appropriately categorised as Low in terms of its significance under the SSI Protocol.**

Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 (SSI 2019/25) (Rural Economy and Connectivity)

Purpose

17. The purpose of the instrument is to amend Scottish subordinate legislation on fertilisers and pesticides to ensure that it continues to operate effectively arising from the UK's withdrawal from the EU and in the event that a withdrawal agreement is not reached.

Committee Consideration

18. The Scottish Government has laid this instrument under the negative procedure and has categorised it as of low significance under the SSI Protocol.
19. The Committee is content that the negative procedure and the categorisation of the instrument as of low significance are appropriate given that the instrument makes changes that are minor and technical in nature and seek to maintain the status quo.

Recommendations

20. **The Committee recommends to the Rural Economy and Connectivity Committee that the negative procedure is the appropriate scrutiny procedure for the Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 (SSI 2019/25).**
21. **The Committee recommends to the Rural Economy and Connectivity Committee that the Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 (SSI 2019/25) is appropriately categorised as Low in terms of its significance under the SSI Protocol.**

Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (SSI 2019/26) (Environment, Climate Change and Land Reform)

Purpose

22. The purpose of the instrument is to correct deficiencies in Scottish legislation in the fields of environmental protection, industrial pollution control, water, water industry, waste and bathing waters arising from the UK's withdrawal from the EU.

Committee Consideration

23. The Scottish Government has laid this instrument under the negative procedure and has categorised it as of low significance under the SSI Protocol.

24. The Committee is content that the negative procedure and the categorisation of the instrument as Low significance are appropriate given that the instrument only makes minor and technical changes and ensures continuity with the current regulatory framework without any significant policy changes.

Recommendations

25. **The Committee recommends to the Environment, Climate Change and Land Reform Committee that the negative procedure is the appropriate scrutiny procedure for the Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (SSI 2019/26).**
26. **The Committee recommends to the Environment, Climate Change and Land Reform Committee that the Environment (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 (SSI 2019/26) is appropriately categorised as Low in terms of its significance under the SSI Protocol.**

Animal Welfare (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/34) (Rural Economy and Connectivity)

Purpose

27. The purpose of the instrument is to correct deficiencies in Scottish legislation on animal welfare to allow it to continue to operate effectively the UK's withdrawal from the UK and in the event that a withdrawal agreement is not reached.

Committee Consideration

28. The Scottish Government has laid this instrument under the negative procedure and has categorised it as of low significance under the SSI Protocol.
29. The Committee is content that the negative procedure is appropriate. The Committee is also content with the categorisation of the instrument as Low, given that the amendments being made are minor and technical in nature and ensure continuity of the law with no policy change.

Recommendations

30. **The Committee recommends to the Rural Economy and Connectivity Committee that the negative procedure is the appropriate scrutiny procedure for the Animal Welfare (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/34).**
31. **The Committee recommends to the Rural Economy and Connectivity Committee that the Animal Welfare (EU Exit) (Scotland) (Amendment)**

Regulations 2019 (SSI 2019/34) is appropriately categorised as Low in terms of its significance under the SSI Protocol.

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

Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 [draft] (Health and Sport)

Purpose

32. The purpose of the instrument is to correct deficiencies in the Fishery Products (Official Controls Charges) (Scotland) Regulations 2007 (the “2007 Regulations”) arising from the UK’s withdrawal from the EU. It is made in the context of the Official Controls for Feed, Food and Animal Health and Welfare (Amendment etc.) (EU Exit) Regulations 2009 recently laid before the UK Parliament.
33. The instrument is required under the European Union (Withdrawal) Act to be laid under the affirmative procedure on the basis that certain amendments to the 2009 Scottish Regulations relate to a fee in respect of a function exercisable by a public authority in the UK.

Committee Consideration

34. The Committee is content that the regulations should be categorised as of Low significance, given that the deficiencies corrected by the instrument are minor and technical in nature, with no changes in policy, to allow the 2007 Regulations to function effectively when the UK leaves the EU.

Recommendation

35. **The Committee recommends to the Health and Sport Committee that the Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 [draft] is appropriately categorised as Low in terms of its significance under the SSI Protocol.**

No points raised

Health and Sport

Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 [draft]

Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2019 (SSI 2019/27)

Food Standards and Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/33)

Justice

Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc.) Regulations 2019 [draft]

Act of Sederunt (Computer Evidence in the Sheriff Court) (Revocation) 2019 (SSi 2019/22)

Local Government and Communities

Freedom of Information (Scotland) Act 2002 (Designation of Persons as Scottish Public Authorities) Order 2019 [draft]

Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2019 (SSI 2019/23)

Non-Domestic Rate (Scotland) Order 2019 (SSI 2019/35)

Parliament

Local Government Finance (Scotland) Order 2019 [draft]

Rural Economy and Connectivity

Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/24)

Fertilisers and Pesticides (EU Exit) (Scotland) (Miscellaneous Amendments etc.) Regulations 2019 (SSI 2019/25)

Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2019 (SSI 2019/28)

Animal Welfare (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/34)

Social Security

Carer's Allowance Up-rating (Scotland) Order 2019 [draft]

Carer's Allowance Up-rating (Scotland) Regulations 2019 (SSI 2019/21)

Council Tax Reduction (Scotland) Amendment Regulations 2019 (SSI 2019/29)

