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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 8 December 2020

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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.



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Introduction

1. At its meeting on 8 December 2020, the Delegated Powers and Law Reform Committee considered the following instrument and agreed to draw it to the attention of the lead committee:
 - the Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/393).
2. The Committee's recommendations in relation to this instrument are set out later in the report.
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.

Scrutiny of instruments under the Committee's remit: instrument drawn to the attention of the lead committee

Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/393)

Purpose

4. This instrument:
 - amends the Aquatic Animal Health (Scotland) Regulations 2009 in implementation of EU law and to correct deficiencies in EU law;
 - corrects deficiencies in retained EU law by making amendments to the Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019;
 - amends the Fisheries (EU Exit) (Scotland) (Amendment) Regulations 2019 to fix a deficiency and to implement the Ireland/Northern Ireland Protocol; and
 - revokes the Aquatic Animal Health in Alien Species in Aquaculture (EU Exit) (Scotland) (Amendment) Regulations 2019, which are superseded by this instrument.
5. The instrument is subject to the negative procedure.
6. The Committee wrote to the Scottish Government on 26 November 2020 with questions on the instrument. Specifically, the Committee queried the reference in regulation 3(11) (in the modifications to Part A of Annex 3, paragraphs 4(2)(ii) and (iii) of new Schedule 1E of the Aquatic Animal Health (Scotland) Regulations 2009) to Article 2b(1) and (3) of Decision 2015/1554. The Scottish Government responded to the points raised by the Committee on 2 December 2020.
7. In its response, the Scottish Government advised that this is a cross-referencing error; the reference should instead be to Article 2a(1) and (3) of that Decision respectively. The Scottish Government has undertaken to correct the error by correction slip.
8. A copy of the correspondence can be found in the **Annex**.
9. **The Committee recognised that there has been a cross-referencing error and noted the Scottish Government's commitment to correct the error by correction slip.**
10. **The Committee agreed to draw this instrument to the attention of the Parliament on the general reporting ground in respect of this error.**

No points raised

COVID-19 Committee

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 5) Regulations 2020 (SSI 2020/400)

Health and Sport Committee

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 24) Regulations 2020 (SSI 2020/404)

Justice Committee

Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 (SSI 2020/draft)

Local Government and Communities Committee

Non-Domestic Rates (Restriction of Relief and Consequential Amendments) (Scotland) Regulations 2020 (SSI 2020/391)

Social Security Committee

Carer's Allowance Supplement and Young Carer Grants (Residence Requirements and Procedural Provisions) (EU Exit) (Scotland) Regulations 2020 (SSI 2020/draft) **(re-laid)**

Scottish Child Payment Amendment Regulations 2021 (SSI 2020/draft)

Annex

Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/393)

On 26 November 2020 the legal adviser asked for an explanation of this matter:

1. In regulation 3(11), in the modifications to Part A of Annex 3, paragraphs 4(2)(ii) and (iii) of new Schedule 1E make reference to Article 2b(1) and (3) of Decision 2015/1554. Could you identify the legislation that inserts/will insert Article 2b? It does not appear that it will be inserted by the draft UK SI referred to in the Policy Note (looking at the draft on the UK Government's website).
2. In the event that there is an error, is any corrective action proposed, and if so, what action and when?

On 2 December 2020 the Scottish Government responded:

1 and 2. The references to Article 2b(1) and (3) of Decision 2015/1554 should be references to Article 2a(1) and (3) of Decision 2015/1554 respectively. These cross-referencing errors will be remedied by way of correction slip and steps are in hand with the Registrar at the National Archives to arrange that as soon as possible.

