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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 1 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 1 December 2020, the Committee considered the following instruments under the SSI 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:
 - Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/380);
 - Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/381);
 - Aquaculture and Fisheries (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/393);
 - Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/draft) (re-laid);
 - Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/draft); and
 - Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/draft) (re-laid).
2. The Committee's recommendations in relation to these instruments are set out in the next section of this report.
3. In relation to its scrutiny of instruments under its remit, 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.
4. It nevertheless made some wider comments in relation to four of these instruments which are noted next to the relevant SSI.

Instruments considered under the European Union (Withdrawal) Act 2018

Committee consideration of the scrutiny procedure under which instruments have been laid and the categorisation applied by the Scottish Government

Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020

5. The instrument is principally made under powers in the European Union (Withdrawal) Act 2018 to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the UK from the EU in light of the Withdrawal Agreement and the Northern Ireland Protocol. The instrument is also partially made under the European Communities Act 1972.
6. The Committee considered the elements of the instrument made under the European Union (Withdrawal) Act 2018.
7. The instrument has been laid under the negative procedure and has been categorised by the Scottish Government as of low significance under the SSI Protocol (in relation to the European Union (Withdrawal) Act 2018 elements).

8. The Committee is content that the use of the negative procedure is appropriate in these circumstances.
9. The Committee is also content that the instruments should be categorised as low in terms of their significance under the SSI Protocol.

Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/381)

10. The instrument amends legislation in the field of genetically modified organisms and pesticides. It is made in exercise of powers in the European Union (Withdrawal) Act 2018 both in connection with the Ireland / Northern Ireland Protocol in the Withdrawal Agreement and to deal with deficiencies in retained EU law.
11. It has been laid under the negative procedure and has been categorised by the Scottish Government as of low significance under the SSI Protocol.

12. The Committee is content that the use of the negative procedure is appropriate in these circumstances.
13. The Committee is also content that the instruments should be categorised as low in terms of their significance under the SSI Protocol.

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

14. The instrument amends retained EU law relating to aquaculture and makes other amendments under different powers that are not relevant to the SSI Protocol.
15. It has been laid under the negative procedure and has been categorised by the Scottish Government as of low significance under the SSI Protocol.

16. The Committee is content that the use of the negative procedure is appropriate in these circumstances.
17. The Committee is also content that the instruments should be categorised as low in terms of their significance under the SSI Protocol.

Committee consideration of the categorisation applied by the Scottish Government

Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/draft) (re-laid)

Purpose

18. The instrument relates to EU exit. It fixes deficiencies in the field of environmental protection and biosecurity, in what will become the retained EU law on the prevention and management of the introduction and spread of invasive non-native species animals, plants, fungi and micro-organisms. This is done under the “deficiency-fixing” power in the European Union (Withdrawal) Act 2018.
19. The instrument also introduces new provisions for the enforcement of the law on invasive alien species and for emergency measures in this regard; this is done under the general power to make regulations to implement EU law so this aspect is not considered under the SSI Protocol.
20. The instrument has been categorised by the Scottish Government as of medium significance under the SSI Protocol.

The Committee recommends that the instrument should be categorised as of high significance under the SSI Protocol, as it gives the Scottish Ministers new powers to legislate.

Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/draft) (re-laid)

21. The instrument relates to EU exit. It amends existing legislation on official controls on the importation of live animals and related products, to retain the current EU law rules for the protection of human and animal health as adjusted to operate effectively when the UK is no longer an EU member state.
22. The instrument has been categorised by the Scottish Government as of medium significance under the SSI Protocol.

23. The Committee is content that the instrument is categorised as of medium

significance under the SSI Protocol.

Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/draft)

24. The instrument relates to EU exit. It is made under the enabling powers in two separate Acts:
- the deficiency-correcting power in the European Union (Withdrawal) Act 2018; and
 - sections 2, 3 and 4 of the Agriculture (Retained EU Law and data) (Scotland) Act 2020.
25. The Committee considered the elements of the instrument made under the European Union (Withdrawal) Act 2018, which are a very minor element of the whole instrument. Those aspects of the instrument make technical changes to retained EU law concerning the Common Agriculture Policy, to enable it to operate effectively from the end of the transition period.
26. The instrument has been categorised by the Scottish Government as of low significance under the SSI Protocol.

27. The Committee is content that the instrument is categorised as of low significance under the SSI Protocol.

No points raised

Health and Sport Committee

Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/372)

- During its consideration of the instrument, the Committee agreed to invite the Scottish Government to consider, going forward, that when an instrument amends provisions that do not yet exist, the reader's attention is drawn to this. This could be done, for example, by a footnote or at least in the accompanying documents.
- The Committee welcomed that regulation 9(5) amends SSI 2019/285. This fulfils an earlier Scottish Government commitment to the Committee.

COVID-19 Committee

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 3) Regulations 2020 (SSI 2020/389)

- During its consideration of the instrument, the Committee noted the significance of these regulations and the issues they raise and anticipated further discussions would take place in the COVID-19 Committee.

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/392)

Rural Economy and Connectivity Committee

Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/380)

Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/381)

Plant Health (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/draft) (re-laid)

- During its consideration of the instrument, the Committee noted that regulation 26(3)(c) of the draft Plant Health (Amendment etc.) (EU Exit) Regulations 2020 laid before the UK Parliament on 15 October 2020 inserts a definition of "the Phytosanitary Conditions Regulation" into Regulation (EU) 2016/2031, rather than regulation 27(2)(c) of the original draft instrument as stated in the Scottish Government's response to the Committee's questions. The Committee considered that a footnote in the instrument could have explained the insertion of this definition.

Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/draft) (re-laid)

Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/draft)

Environment, Climate Change and Land Reform Committee

Land Reform (Scotland) Act 2016 (Commencement No. 11) Regulations 2020 (SSI 2020/

383 (C. 33))

Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2020 (SSI 2020/387)

Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/draft) (re-laid)

- One of the reasons for withdrawing and re-laying this instrument was to enable the Scottish Government to consider whether it could be made clearer to the reader how the parallel text in this SSI and an associated UK SI apply. The Committee welcomed the Scottish Government's commitment that it will work with the UK Government to produce guidance for stakeholders to further assist their understanding of the legislation.

Local Government and Communities Committee

Valuation Appeal Committee (Procedure in Civil Penalty Appeals) (Scotland) Regulations 2020 (SSI 2020/382)

Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Amendment Order 2020 (SSI 2020/draft)

Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Amendment Regulations 2020 (SSI 2020/draft)

Justice Committee

Criminal Justice and Data Protection (Protocol No. 36) Amendment (Scotland) Regulations 2020 (SSI 2020/386)

