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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 23 June 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.



<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>



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Introduction

1. At its meeting on 23 June 2020, the Delegated Powers and Law Reform Committee considered the following instruments and agreed to draw them to the attention of the lead committee:
 - Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2020 (SSI 2020/175)
 - Plant Health (Official Controls and Miscellaneous Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/176)
2. The Committee's conclusions in relation to these instruments 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.

Instruments drawn to the attention of the lead committee

Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2020 (SSI 2020/175)

Purpose

4. The instrument makes amendments to the Prison and Young Offenders Institutions (Scotland) Rules 2011. The amendments provide for the possession and use of personal communications devices (i.e mobile phones) which have been authorised under the Prisons (Scotland) Act 1989 and make provision for the use of communal and in-cell telephones and for the use of virtual visits – a form of video call between a prisoner and the prisoner’s family or friends.

Committee Consideration

5. The instrument was laid before the Parliament on 15 June 2020 and came into force on the same day. This does not respect 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 the instrument.
6. The Committee is therefore required under standing orders to draw the instrument to the attention of the Parliament under reporting ground (j) for failing to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

7. The Committee therefore reports this instrument to the lead committee, the Justice Committee, under reporting ground (j).

8. The Committee also considered the reasons for the breach of the 28 day rule, which in this case are set out in a letter to the Presiding Officer dated 15 June 2020.
9. The letter explains that the changes made by the instrument were required to be implemented quickly in order to properly equip prison Governors with the means to provide those in their care with the ability maintain contact with their family and friends both during the coronavirus outbreak and beyond.
10. It states that the outbreak has necessitated a number of restrictions to the prison regime including restrictions on prison visits and that the new forms of telecommunications are therefore vital in order to safeguard the Convention rights of prisoners and their families during the COVID-19 outbreak.

11. In these circumstances, the Committee is content with the reasons for the breach of the 28 day rule.

Plant Health (Official Controls and Miscellaneous Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/176)

Purpose

12. The instrument amends the Plant Health (Official Controls and Miscellaneous Provision) (Scotland) Regulations 2019 (SSI 2019/421) ("the 2019 Regulations") to introduce temporary national measures to strengthen plant health protection and introduce import controls against certain pests which pose an unacceptable level of risk for Scotland and the rest of the UK.
13. The instrument also makes amendments to the 2019 Regulations to implement further required measures associated with plant health and imported wood and wood packaging material under Regulation (EU) 2016/2031 ("the EU Plant Health Regulation" and the plant health elements of the EU Official Controls Regulation (Regulation (EU) 2017/625) and associated tertiary legislation.
14. In addition, the instrument:
 1. provides for minor and consequential amendments to the Plant Health (Import Inspection Fees) (Scotland) Regulations 2014 and the Plant Health (Fees) (Forestry) (England and Scotland) Regulations 2015; and
 2. revokes The Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Amendment Regulations 2020 (SSI 2020/152 which were due to come into force on 27 June 2020).

Committee Consideration

15. The instrument was laid before the Parliament on 16 June and Parts of the instrument come into force on 26 June and the rest coming into force on 27 June. As with the previous instrument, this does not respect 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 the instrument. The Committee is therefore required to draw the instrument to the attention of the Parliament for breaching the 28 day rule.
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 the breach of the 28 day rule in this case are set out in a letter to the Presiding Officer dated 16 June 2020.
18. The letter explains that the EU Commission reviewed UK measures that were due to come into force on 27 June and decided they were not justified in respect of two of the four identified pests. In light of that Decision, SSI 2020/152 has to be revoked before it comes into force. This instrument revokes SSI 2020/152 and the content of SSI 2020/152 is remade removing the appropriate provisions in relation to the unjustified measures.
19. The revocation of SSI 2020/152 comes into force on 26 June, to prevent it coming into force as it would have on 27 June. The remainder of the instrument comes into force on 27 June, when SSI 2020/152 would have come into force if not for this instrument.

20. In these circumstances, the Committee is content with the reasons for the breach of the 28 day rule.

No points raised

COVID-19 Committee

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No. 4) Regulations 2020 (SSI 2020/182)

Education and Skills Committee

Glasgow Caledonian University Amendment Order of Council 2020 (SSI 2020/172)

Parliament

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 2) Regulations 2020 (SSI 2020/184)

Annex A

Letter to the Presiding Officer dated 15 June 2020

Presiding Officer,

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (CORONAVIRUS) (SCOTLAND) AMENDMENT RULES 2020

The above instrument was made by the Scottish Ministers under sections 39 of the Prisons (Scotland) Act 1989 on 15 June 2020. It is being laid before the Scottish Parliament today and is to come into force on 15 June 2020, immediately after it is made.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter explains why.

COVID-19 continues to impact on the operation of the prison system in Scotland. These changes to the Prison Rules are being taken forward to further support SPS' response to the exceptional pressures facing prisons during this outbreak. The amendments provide for the introduction of virtual visits, prisoner mobile telephony and in-cell telephony and will enable those in our care to maintain contact with family and friends during times when actual physical visits to an establishment are not possible and, guided by public health advice, are likely to be more challenging to facilitate in future.

Families and social networks are a significant motivating and stabilising factor on those in our care. Providing them with the ability to maintain those relationships is seen as a key factor in enabling SPS to maintain operational stability during this challenging time, and helps us to maintain the safe and humane operation of prisons in Scotland. These changes are also designed to help SPS reduce the risks of the virus spreading within prisons and to protect the health of those living and working in our prisons.

It has not been possible to comply with the 28-day rule in these circumstances. This is due to the need to implement a change to the Prison Rules quickly in order to properly equip prison Governors with the means to provide those in our care with the ability maintain contact with their family and friends both during the coronavirus outbreak and beyond. These new forms of communication require specific provision in the Prison Rules to ensure that SPS can properly and legally regulate their use so as to protect prisoners, their family and friends and those who work in the prison.

The outbreak has necessitated a number of restrictions to the prison regime including restrictions on prison visits. These new forms of telecommunications are therefore vital in order to safeguard the Convention rights of prisoners and their families during this difficult time. As a result, the changes to the Prison Rules need to be brought into effect immediately.

SPS requires these changes to the Prison Rules, which are designed to support SPS' continuing response to the exceptional pressures facing prisons during the current COVID-19 outbreak, to be in force as soon as possible. These changes are intended to remain in place after the outbreak so as to continue to maximise the contact that prisoners can have with their family and friends while detained in prison.

TERESA MEDHURST

Chief Executive (Interim), SPS

Annex B

Letter to the Presiding Officer dated 16 June 2020

Dear Presiding Officer

The Plant Health (Official Controls and Miscellaneous Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2020 The Plant Health (Official Controls and Miscellaneous Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2020 (the “2020 Regulations”) were made by the Scottish Ministers under section 2(2) of the European Communities Act 1972 today, 16 June 2020, and are being laid before the Scottish Parliament this afternoon. Part of the provisions contained within the 2020 Regulations are due to come into force on 26 June, with the remainder coming into force on the 27 June 2020.

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 EU Plant Health Regulation (Regulation (EU) 2016/2031) and the EU Official Controls Regulation (Regulation (EU) 2017/625) and associated tertiary legislation (“the EU Regulations”) establish controls and restrictions which apply to the imports from third countries, and internal movement within and between EU Member States, of certain plants, plants pests and other material (such as soil). The purpose of the EU Regulations is to help reduce biosecurity risk, strengthen the current plant health regime and protect the environment from the spread of harmful pests. The EU Regulations in so far as they relate to plant health, were implemented through domestic legislation - the Plant Health (Official Controls and Miscellaneous Provision) (Scotland) Regulations 2019 (SSI 2019/421) (the “2019 Regulations”).

Since the introduction of the 2019 Regulations, subsequent amendments were needed and after due diligence and careful consideration, it was agreed to take this opportunity to bring forward provision under Article 52 (temporary national measures) of the EU Plant Health Regulation for four pests, *Agrilus Planipennis*, *Candidatus Phytoplasma ulmi*, *Ceratocystis plantani* and *Xylella fastidiosa*. The introduction of these measures and other provisions were to be made through the Plant Health (Official Controls and Miscellaneous Provisions) (Scotland) Amendment Regulations 2020 (“SSI 2020/152”), which were laid before the Scottish Parliament on 15 May 2020 and are due to come into force on 27 June 2020. Equivalent measures were introduced in England from 21 April 2020 (see amendments in the Official Controls (Plant Health and Generically Modified Organisms) (England) (Amendment) Regulations 2020 (SI 2020/381)) and the other Devolved Administrations were starting their parliamentary procedures.

On receipt of the UK notification to introduce temporary national measures under Article 52 of the EU Regulations, the European Commission took the opportunity to review the requirements being introduced in respect of two of the four plant pests namely *Ceratocystis plantani* and *Xylella fastidiosa*. Their review concluded that the new UK measures in relation to those pests were not justified.

Subsequently, the Commission has, in accordance with Article 52(4) of the EU Plant Health Regulation, and adopted and published Commission Implementing Decision 2020/758 requiring the revocation of the equivalent provisions relating to these pests for which provision was made in the Official Controls (Plant Health and Generically Modified Organisms) (England) (Amendment) Regulations 2020. In light of that Decision, SSI 2020/152 is revoked by the 2020 Regulations in its entirety before it comes into force. The 2020 Regulations also remake the content of SSI 2020/152 with the provisions relating to the two pests addressed in Commission Implementing Decision 2020/758 removed.

The remainder of the provisions from SSI 2020/152 are to be retained as they implement further required measures associated with plant health and imported wood and wood packaging material under the EU Regulation and associated tertiary legislation including other temporary national measures not the subject of Decision 2020/758.

The provision relating to the revocation of SSI 2020/152 is due to come into force on 26 June 2020 (the day before SSI 2020/152 was to come into force) and the remainder of the 2020 Regulations will come into force on 27 June 2020, the date on which SSI 2020/152 was originally to come into force.

Jim Dewar

Scottish Forestry

