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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 16 November 2021**



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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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# Committee Membership



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**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**Craig Hoy**  
Scottish Conservative  
and Unionist Party



**Paul Sweeney**  
Scottish Labour

# Introduction

1. At its meeting on 16 November 2021, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the relevant lead committees:
  - Public Procurement (Agreement on Government Procurement) (Thresholds etc.) (Amendment) (Scotland) Regulations 2021 (SSI 2021/378); and
  - Private Storage Aid Scheme (Pigmeat) (Scotland) Regulations 2021 (SSI 2021/398).
2. The Committee's recommendations 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 at the end of the report. Some broader points highlighted by the Committee are noted below the relevant instrument.

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

## Public Procurement (Agreement on Government Procurement) (Thresholds etc.) (Amendment) (Scotland) Regulations 2021 (SSI 2021/378)

4. The instrument amends the thresholds that apply in the field of public procurement that are specified in the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016, and the Concession Contracts (Scotland) Regulations 2016. The amendments are made in accordance with the UK's international obligations under the Agreement on Government Procurement ("the GPA").
5. The instrument also changes the calculation of the estimated value of a procurement based on the total amount payable, from a calculation exclusive of value added tax to one inclusive of value added tax where applicable, in order to fully comply with the GPA. In addition, the instrument removes reference to "Regional Development Scotland" from the 2015 Regulations.
6. The instrument also changes the calculation of the estimated value of a procurement based on the total amount payable, from a calculation exclusive of value added tax to one inclusive of value added tax where applicable, in order to fully comply with the GPA. In addition, the instrument removes reference to "Regional Development Scotland" from the 2015 Regulations.
7. In correspondence with the Scottish Government, the Committee highlighted a cross-referencing error in the regulations 3(5) of the instrument (see the "Issues raised with the Scottish Government" section below for further details).
8. In its response, the Scottish Government agreed that this was an error and confirmed that a corrective instrument has been drafted and will be laid in early course. It also highlighted that an incorrect threshold is listed in one of the financial thresholds amended by the instrument and that the corrective instrument will also rectify this error.
9. The full correspondence between the Committee and the Scottish Government is included in the Annex.
10. **The Committee draws the instrument to the attention of the Parliament on the general reporting ground on the basis that:**
  - Regulation 3(5) refers to "Part 2 of Schedule 2" of the Public Contracts (Scotland) Regulations 2015 but should instead refer to Part 2 of Schedule 1; and
  - Regulation 4(2)(b) refers to "£462,955", which should instead refer to "£426,955".

11. **The Committee welcomes that the Scottish Government has acknowledged these errors and that an amending instrument will be laid in early course to rectify them.**

Private Storage Aid Scheme (Pigmeat) (Scotland) Regulations 2021 (SSI 2021/398)

12. The instrument makes provision for a scheme to grant aid for the private storage of pigmeat and specifies the criteria for payment, the procedure for applications and by when these must be made. The scheme is designed to avoid the need for culling of pigs on farms and the financial loss to farmers as a result.
13. The Committee noted that the instrument breached section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 which requires that instruments subject to the negative procedure are laid at least 28 days before they come into force, not counting recess periods of more than 4 days. The instrument was laid on 5 November 2021 and came into force on 8 November 2021.
14. The Scottish Government has written to the Presiding Officer to explain why the 28-day rule has not been complied with (the letter can be read in the Annex).

15. **The Committee draws the instrument to the attention of the Parliament under reporting ground (j) on the basis that there was a failure to lay the instrument in accordance with laying requirements under the Interpretation and Legislative Reform (Scotland) Act 2010.**
16. **The Committee is nevertheless content with the explanation provided by the Scottish Government for the breach of the laying requirements.**



# No points raised

## COVID-19 Recovery Committee

Coronavirus Act 2020 (Suspension: Disposal of Bodies) (Scotland) (No. 2) Regulations 2021 (SSI 2021/391)

## Net Zero, Energy and Transport Committee

Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Amendment Regulations 2021 (SSI 2021/Draft)

- A draft of the Land Reform (Scotland) Act 2016 (Register of Persons Holding a Controlled Interest in Land) Amendment Regulations 2021 was laid on 2 November 2021. Following correspondence between the Committee and the Scottish Government, the instrument was withdrawn and this revised instrument re-laid on 10 November 2021.

## Social Justice and Social Security Committee

Council Tax Reduction (Scotland) Amendment (No. 5) Regulations 2021 (SSI 2021/402)

# Annex

## **Public Procurement (Agreement on Government Procurement) (Thresholds etc.) (Amendment) (Scotland) Regulations 2021 (SSI 2021/378)**

On 5 November 2021 the Scottish Government was asked:

1. Regulation 3(5) refers to “Part 2 of Schedule 2” of the Public Contracts (Scotland) Regulations 2015. However, per schedule 2 of the Public Procurement (Agreement on Government Procurement) (Amendment) (No. 2) Regulations 2021 (SI 2021/872), introduced by regulation 5(3) of that SI, should this refer to “Part 2 of Schedule 1”?
1. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 9 November 2021, the Scottish Government responded:

Regulation 3(5) of the Public Procurement (Agreement on Government Procurement) (Thresholds etc.) (Amendment) (Scotland) Regulations 2021 (SSI 2021/378) should refer to Part 2 of Schedule 1. A corrective SSI has been drafted and will be laid in early course.

The corrective SSI will also correct an incorrect figure in regulation 4(2)(b) of the Public Procurement (Agreement on Government Procurement) (Thresholds etc.) (Amendment) (Scotland) Regulations 2021 (SSI 2021/378). The regulation currently refers to “£462,955” whereas it requires to be amended to “£426,955”.

## **Private Storage Aid Scheme (Pigmeat) (Scotland) Regulations 2021(SSI 2021/398)**

Correspondence from the Scottish Government to the Presiding Officer:

The Private Storage Aid Scheme (Pigmeat) (Scotland) Regulations 2021 were made yesterday, 4 November 2021, by the Scottish Ministers under Articles 18 and 20 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products, and Article 4(2) of Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products.

They are being laid before the Scottish Parliament today, 5 November 2021, and come into force on 8 November 2021.

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. To meet the requirements of section 31(3) of that Act, this letter explains why.

These Regulations are being made to urgently put in place a private aid scheme for the Scottish pig sector. The sector, due to issues caused by a combination of EU Exit and Covid, are on the verge of a welfare issue, which inevitably would also be costly to the industry. A lack of butchers and staff shortages means that Scottish abattoirs have not been able to work to capacity, which has led to a larger number of pigs still on farm than would normally be the case. This legislation will put in place an aid scheme, with funding

provided by the Scottish Government, which will allow a number of pigs to be minimally processed and placed into Private Storage, before being reintroduced into the food chain at a later stage.

It is our wish to maintain alignment, as far as possible and appropriately, with the UK Government regulations, the Private Storage Aid for Piguemeat (England) Regulations 2021, which we understand will be laid imminently.

The failure to comply with section 28(2) of the 2010 Act is necessary to ensure that the scheme comes into force as soon as possible so as to avoid the potential necessity of an on-farm cull of pigs, which would also cause a financial loss to farmers.

The Scottish Government fully 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.

