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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 February 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



**Convener**  
**Bill Bowman**  
Scottish Conservative  
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**Mary Fee**  
Scottish Labour



**Michelle Ballantyne**  
Reform UK



**Joe FitzPatrick**  
Scottish National Party



**Gil Paterson**  
Scottish National Party

# Introduction

1. At its meeting on 23 February 2021, 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:
  - Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/66);
  - Plant Health (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/draft); and
  - Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/draft).
2. The Committee's recommendations in relation to these instruments is set out in the next sections of the report.
3. In relation to its scrutiny of instruments under its remit, the Committee also considered the following instrument and agreed to draw it to the attention of the lead committee:
  - Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/draft).
4. The Committee's recommendations in relation to this instrument are set out later in the report.
5. 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 considered under the European Union (Withdrawal) Act 2018

## Committee consideration of the scrutiny procedure under which an instrument has been laid and the categorisation applied by the Scottish Government

### Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/66)

6. This instrument makes amendments to the Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) (No.2) Regulations 2007, the Food Information (Scotland) Regulations 2014 and the Country of Origin of Certain Meats (Scotland) Regulations 2016 in order to ensure continuity in Scots law now that the UK has withdrawn from the EU.
7. The instrument has been laid under the negative procedure and has been categorised by the Scottish Government as of medium significance under the SSI Protocol in relation to the European Union (Withdrawal) Act 2018.
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 instrument should be categorised as medium in terms of its significance under the SSI Protocol.**

# Instruments considered under the European Union (Withdrawal) Act 2018

## Committee consideration of the categorisation applied by the Scottish Government

### Plant Health (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/draft)

10. The purpose of this instrument is to make provision for an extension to the existing plant health import inspection charging regime to cover import of goods from the EU. This instrument was originally laid on 5 February 2021 but was subsequently withdrawn and re-laid by the Scottish Government on 15 February.
11. The instrument amends the existing fee structure for inspection of imported plants, plant products and plant-related objects and includes fees to be levied on goods arriving in Scotland from the European Union.
12. This instrument has been categorised by the Scottish Government as of medium significance under the SSI Protocol in relation to the European Union (Withdrawal) Act 2018.

13. **The Committee is content that the instrument should be categorised as medium in terms of its significance under the SSI Protocol.**

### Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/draft)

14. The purpose of this instrument is to confer on the Scottish Ministers a new power to make regulations imposing “special import conditions” on imports of certain animals and animal products, “having regard to the animal health situation” in the country of origin. The types of products in question are products obtained from animals for human consumption, including live animals which are prepared for human consumption. This applies to imports from outwith the UK, the Channel Islands and the Isle of Man.
15. This new power can be used to revoke existing special import conditions, being those which were put in place by the European Commission while the UK was a member of the EU and which were brought over into domestic law at the end of the EU Exit Implementation Period.
16. This instrument has been categorised by the Scottish Government as of high significance under the SSI Protocol in relation to the European Union (Withdrawal) Act 2018.

17. **The Committee is content that the instrument should be categorised as high in terms of its significance under the SSI Protocol.**



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

## Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/draft)

18. As outlined earlier in this report, this instrument creates a power to legislate which replaces the former EU function of imposing “special import conditions”.
  19. In the new power, “special import conditions” is not defined or expanded upon. It could be clearer as a matter of domestic law what kinds of condition may be imposed, and whether, for example, only conditions which are stricter than the usual conditions may be imposed.
  20. The Committee wrote to the Scottish Government on 12 February 2021 with questions on the instrument.
  21. A copy of the correspondence with the Scottish Government on the instrument can be found in the **Annex**.
22. **The Committee agrees to draw this instrument to the attention of the Parliament on reporting ground (h), in respect that it could be clearer what “special import conditions” means.**

# No points raised

## Education and Skills Committee

Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) Amendment Regulations 2021 (SSI 2021/71)

## Health and Sport Committee

Food, Natural Mineral Water, Spring Water and Bottled Drinking Water (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/66)

Food Information (Scotland) Amendment Regulations 2021 (SSI 2021/70)

## Justice Committee

Scotland Act 1998 (Agency Arrangements) (Specification) (Overseas Production Orders) Order 2021 (SI 2021/144)

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2021 (SSI 2021/75)

## Rural Economy and Connectivity Committee

Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2021 (SSI 2021/72)

Plant Health (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/draft) (withdrawn and relaid by the Scottish Government)

## Social Security Committee

Disability Assistance for Children and Young People (Scotland) Regulations 2021 (SSI 2021/draft)

Social Security (Up-rating) (Miscellaneous Amendment) (Scotland) Regulations 2021 (SSI 2021/draft)

Social Security Information-sharing (Scotland) Regulations 2021 (SSI 2021/draft)

## Standards, Procedures and Public Appointments Committee

Scottish Parliament (Elections etc.) Amendment (Coronavirus) Order 2021 (SSI 2021/draft)

# Annex

## Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/draft)

### **On 12 February 2021 the Scottish Government was asked:**

1. This instrument creates a power to legislate which replaces the former EU function of imposing “special import conditions”. In the new power, “special import conditions” is not defined or expanded upon. Is it sufficiently clear, in interpreting this term in this instrument as matter of domestic law, what “special import conditions” means?
2. Is the power sufficiently narrowly drawn in relation to the breadth of conditions that can be imposed?

### **On 16 February 2021, the Scottish Government responded:**

1. The Scottish Government considers that what “special import conditions” means is sufficiently clear. The power is expressed in the same terms as the former EU function in Article 8(4) of Council Directive 2002/99/EC laying down the animal health rules governing the production, processing, distribution and introduction of products of animal origin for human consumption. It is a power to impose conditions on imports that are special in respect of imports from a third country or countries.
2. The Scottish Government considers that the power is sufficiently narrowly drawn. The power is limited in its application to products of animal origin intended for human consumption, and is to be exercised having regard to the animal health situation in the country or countries concerned. The power may not be used to amend, modify or revoke legislation other than retained direct minor EU legislation made under Article 8(4) of Council Directive 2002/99/EC.

