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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 21 September 2021



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Textphone: 0800 092 7100
Email: sp.info@parliament.scot

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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.



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Stuart McMillan
Scottish National Party



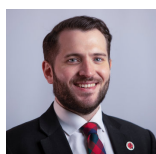
Bill Kidd
Scottish National Party



Convener
Graham Simpson
Scottish Conservative
and Unionist Party



Craig Hoy
Scottish Conservative
and Unionist Party



Paul Sweeney
Scottish Labour

Introduction

1. At its meeting on 21 September 2021, the Committee considered the following instrument 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:
 - Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/297).
2. The Committee's recommendations in relation to this instrument are set out in the next section of the report.
3. The Committee also determined that it did not need to draw the Parliament's attention to the instruments and documents set out 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

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/297)

4. The instrument amends:
 - the Official Controls (Extension of Transitional Periods) Regulations 2021 by extending the transitional period relating to checks on imports of certain types of product arriving in Scotland to 28 February 2022; and
 - the Trade in Animals and Related Products (Scotland) Regulations 2012 providing for the official controls to be carried out at any appropriate place rather than at the place of destination as previously provided for (regulation 3).
 5. The Committee only considered this instrument for its procedure and categorisation in relation to the provision made in regulation 3 of the instrument, because that was the only provision in the instrument that was made using powers under the under the European Union (Withdrawal) Act 2018 ("the 2018 Act").
 6. 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 provision made under the 2018 Act.
 7. The Committee also noted that the instrument allows checks to be carried out on animals and related products at an appropriate place rather than, as required at present, at the place of destination of the goods. However, it was unclear why this should be the case and there may be concern from some stakeholders in relation to this matter.
 8. While the Committee acknowledged that this is a policy matter for the lead committee to consider, it agreed to highlight these wider points to the Rural Affairs, Islands and Natural Environment Committee .
9. **The Committee is content that the use of the negative procedure is appropriate for the 2018 Act element of this instrument.**
 10. **The Committee is also content that the provision in the instrument that is made under the 2018 Act is of low significance under the SSI Protocol.**

No points raised

COVID-19 Recovery Committee

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 18) Regulations 2021 (SSI 2021/307)

Coronavirus Act 2020 (Suspension: Children and Young Persons Social Care) (Scotland) Regulations 2021 (SSI 2021/315)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 19) Regulations 2021 (SSI 2021/319)

Education, Children and Young People Committee

Redress for Survivors (Historical Child Abuse in Care) (Reimbursement of Costs and Expenses) (Scotland) Regulations 2021 (SSI 2021/312)

Redress for Survivors (Historical Child Abuse in Care) (Payment of Legal Fees) (Scotland) Regulations 2021 (SSI 2021/313)

Equalities, Human Rights and Civil Justice Committee

Act of Sederunt (Registration Appeal Court) 2020 (SSI 2021/309)

Local Government, Housing and Planning Committee

Code of Conduct for Councillors (SG/2021/229)

Net Zero, Energy and Transport Committee

UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (Commencement No. 2) Regulations 2021 (SSI 2021/304 (C.18))

Carbon Accounting Scheme (Scotland) Amendment Regulations 2021 (SSI 2021/318)

Rural Affairs, Islands and Natural Environment Committee

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/297)

Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (Commencement No. 3 and Transitional Provision) Regulations 2021 (SSI 2021/303 (C.17))

Scottish Crown Estate Act 2019 (Commencement No. 3) Regulations 2021 (SSI 2021/308 (C.19))

Social Justice and Social Security Committee

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

Social Security (Claims and Payments) (Miscellaneous Amendments) (Scotland)

Regulations 2021 (SSI 2021/305)

Standards, Procedures and Public Appointments Committee

Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2021 (SSI 2021/draft)

Scottish Local Government Elections Amendment Order 2021 (SSI 2021/draft)

Representation of the People (Variation of Limits of Candidates' Local Government Election Expenses) (Scotland) Order 2021 (SSI 2021/310)

Scottish Elections (Reform) Act 2020 (Commencement No. 3 and Transitional Provision) Regulations 2021 (SSI 2021/311 (C.20))

Model Code of Conduct for Members of Devolved Public Bodies (SG/2021/230)

Annex

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2021 (2021/297)

The Scottish Government was asked:

The Protocol on the scrutiny of SSIs made using powers under the European Union (Withdrawal) Act provides at paragraph 28 that SSIs made under this Act must include a statement setting out the Scottish Ministers' reasons for their choice of procedure to attach to the regulations. This was not included within the Policy Note. Could this please be provided?

The Scottish Government responded:

Negative procedure is considered appropriate as regulation 3 makes minor amendments to provisions for the transitional staging period provided for in schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012. It is also considered appropriate because the powers under Article 144(6) of, and paragraph 2 of Annex 6 to, Regulation (EU) 2017/625 to make provision incidental and supplementary to appointing the end date of the transitional staging period (and which the powers under the European Union (Withdrawal) Act 2018 are being exercised together with) are subject to negative procedure. Regulation 3 does not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018.

