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Pàrlamaid na h-Alba

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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 18 June 2024**



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No points raised	1
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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



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Foyso Choudhury**  
Scottish Labour



**Tim Eagle**  
Scottish Conservative  
and Unionist Party

# No points raised

1. At its meeting on 18 June<sup>i</sup>, the Committee considered the following instruments under its remit and agreed not to draw them to the attention of the Parliament.

## Economy and Fair Work Committee

Tied Pubs (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/Draft)

- The Committee welcomed that the above draft instrument fulfils commitments made by the Scottish Government to correct errors in two other draft instruments: the draft Scottish Pubs Code Regulations 2024; and the draft Tied Pubs (Fees and Financial Penalties) (Scotland) Regulations 2024.

## Equalities, Human Rights and Civil Justice Committee

Trusts and Succession (Scotland) Act 2024 (Commencement No. 1) Regulations 2024 (SSI 2024/164 (C.14))

## Net Zero, Energy and Transport Committee

Environmental Protection (Single-use Vapes) (Scotland) Regulations 2024 (SSI 2024/Draft)

- The Committee noted, and highlights to the lead Committee, the potential for the operation of the above instrument to be affected by the mutual recognition principle in the United Kingdom Internal Market Act 2020.

The “mutual recognition” principle, in section 2 of UKIMA, requires that goods which have been lawfully produced in (or imported into) one part of the UK can be sold in any other part of the UK whether or not the goods meet the legal requirements of the destination part.

The result is that the ban imposed by this instrument will apply to single-use vapes which are produced in Scotland, but it will not apply to the sale in Scotland of single-use vapes which were produced in another part of the UK unless they are also banned in that part of the UK. Similarly, the ban will not apply to products which were first imported into a part of the UK where they are not banned, and are then sold in Scotland.

Whilst the Policy Note does not make reference to the possible effect of UKIMA on the instrument, the BRIA does so. The BRIA explains that it is not anticipated that this measure will impact on intra-UK trade as all nations have plans to impose a similar sale and supply ban. The BRIA states that the UK Government and devolved governments have agreed to a common commencement date of April 2025 and that in the event of there being any misalignment in the introduction of legislation, the four UK nations have agreed to work together through the Resources and Waste Common Framework process to minimize or mitigate any impact on the UK internal market.

In March 2024 the UK Government published a draft instrument ([Environmental Protection \(Single-use Vapes\) \(England\) Regulations 2024](#)) to ban the sale and supply of single-use vapes in England and sought views on this. However, given that a general election has been called, it will be for the incoming UK administration to decide whether it wishes to continue with this policy and/or the timings agreed by the previous administration.

Accordingly, the Committee understands that the governments across the UK have been operating on the basis that the ban will apply throughout the UK. However, if a ban is not put in place in the other parts of the UK by 1 April 2025, UKIMA will have the effect that single-use vapes which are produced/imported into another part of the UK can in fact be sold and supplied in Scotland, notwithstanding the ban that this instrument provides for. Therefore, the instrument would not achieve the legal effect that, on the face of it, it appears to have.

