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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 1 October 2019



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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

Instruments considered under the European Union (Withdrawal) Act 2018

1. At its meeting on 1 October 2019, the Committee considered the following instrument under the protocol agreed between the Scottish Government and the Scottish Parliament in respect of SSIs made using powers under the European Union (Withdrawal) Act 2018:
 - Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/288)
2. The Committee's recommendations and conclusions in relation to this instrument are set out later in the report.

Instruments drawn to the attention of the lead committee

3. The Committee also considered the following negative instrument and agree to draw it to the attention of the lead Committee:
 - Food Information, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/285)
4. The Committee's recommendations and conclusions in relation to this instrument are set out later in the report.

Other instruments considered

5. The Committee 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

Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/288)

Purpose

6. Part 2 of this instrument updates the the Official Controls (Animals, Feed and Food) (Scotland) Regulations 2007 and the Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 to bring them into line with current EU law before exit day. The power used to make these amendments is the general power in section 2(2) of the European Communities Act 1972 to implement EU law.
7. Part 3 of the regulations is made under the European Union (Withdrawal) Act. This Part amends the above regulations, the Trade in Animals and Related Products (Scotland) Regulations 2012 and the Animal Health (EU Exit) (Amendment) (Scotland) Regulations 2019 to correct deficiencies which would otherwise arise on EU Exit.

Committee Consideration

8. The Scottish Government has laid this instrument under the negative procedure and has categorised it as of low significance under the SSI Protocol.
9. The amendments made by this instrument are mainly minor and technical and the Committee is content that the amendments made by the instrument are appropriate and are a reasonable course of action.
10. The Committee agrees that the negative procedure is appropriate and that the instrument is properly categorised as low in accordance with the protocol.

Recommendation

11. The Committee recommends to the Rural Economy and Connectivity Committee that the negative procedure is the appropriate scrutiny procedure for this SSI and that it is appropriately categorised as Low in terms of its significance under the SSI Protocol.

Instruments Drawn to the Attention of the Lead Committee

Food Information, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/285)

Purpose

12. This instrument intends to ensure the operability of domestic food legislation in Scotland following the UK's exit from the EU. The instrument deals with deficiencies which will arise as a result of the UK's exit from the EU in blended honey country of origin labelling and other food labelling.
13. The instrument inserts transitional provisions into the Quick-frozen Foodstuffs Regulations 1990, the Food Hygiene (Scotland) Regulations 2006, the Food Additives, Flavouring, Enzymes and Extraction Solvents (Scotland) Regulations 2013, and the Caseins and Caseinates (Scotland) (No.2) Regulations 2016 to allow the food industry time to adjust to new labelling and information requirements for EU businesses and food products following the UK's exit from the EU. A transitional period of 21 months is being provided during which time if food information and labelling complied with the law immediately before exit day, no offence will have been committed by the food business operator.
14. The instrument also amends the Honey (Scotland) Regulations 2015 ("the 2015 regulations") to make technical changes to the origin labelling information requirements for blended honey. The amendments are to EU focused terminology and provide various new options for providing information on the origin of blended honey to ensure continuity in Scots law following the UK's exit from the EU.

Committee Consideration

15. EU legislation requires countries of origin to be included on labelling for blended honey. Regulation 5(3) of the instrument amends regulation 16(1) of the 2015 regulations to make changes to origin labelling information required for blended honey after the UK's exit from the EU. Regulation 16(1) provides six options for blended honey suppliers to use when labelling the countries of origin of their honey. It also provides that similar wording to the options listed may be used.
16. The fourth option provided in new regulation 16(1) provides "blends of honey from (*insert name of a specified country*) and (*insert name of non-specified other countries*)". The phrase "insert name of non-specified other countries" is used again in the final option provided in new regulation 16(1).
17. It was not clear how "non-specified countries" could be named on labels. The Scottish Government was therefore asked to clarify how "specified countries" and "non-specified countries" are defined so that it is clear to a trader in honey how they might comply with new regulation 16(1) of the 2015 regulations.
18. The Scottish Government explained that there is no specific definition of "specified country" and "non-specified country". It stated that the intention of the provision is to allow a label to state, for example, "a blend of honey from Scotland and other

countries”, or “a blend of honey from the EU and other countries”. It stated that the words “a specified country” have their ordinary and natural meaning, e.g. Scotland. However, the Scottish Government acknowledged that the drafting would be clearer if the words “*insert name of non-specified countries*” were replaced simply by “other countries” so that the provision would read “blends of honey from (*insert name of a specified country*) and other countries.”

19. The Scottish Government explained that the options provided in regulation 16(1) of the 2015 regulations are flexible and that honey businesses will be in no doubt of that. This is because the opening paragraph in new regulation 16(1) state that the “similar wording” to the six options for labelling provided in new regulation 16(1) may be used when labelling.
20. Despite this, the Scottish Government acknowledges the wording could be clearer. It stated that it intends to “amend this instrument at the earliest opportunity to substitute the words “other countries” for the phrase “insert name of non-specified countries” where it appears twice.”
21. The flexibility offered by the words “(or similar wording)” in regulation 16(1) does allow honey businesses to avoid naming a “non-specified” country on their labels. However, the meaning of the provision could be clearer.

Recommendation

22. The Committee reports the instrument to the Health and Sport Committee under reporting ground (h) (meaning or form could be clearer) and welcomes the Scottish Government’s commitment to bringing forward amending legislation at the earliest opportunity.

No Points Raised

Justice Committee

Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2019

Victims and Witnesses (Scotland) Act 2014 (Commencement No. 5) Order 2019 (SSI 2019/283 (C.11))

Local Government and Communities Committee

Caravan Sites Act 1968 (Amendment of Definition of Caravan) (Scotland) Order 2019 (SSI 2019/295)

Rural Economy and Connectivity Committee

The Animal Health and Welfare and Official Controls (Animals, Feed and Food) (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/288)

The Seed, Propagating Material and Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/289)

