



The Scottish Parliament
Pàrlamaid na h-Alba

Published 30 October 2019
SP Paper 606
52nd Report, 2019 (Session 5)

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 29 October 2019



Published in Scotland by the Scottish Parliamentary Corporate Body.

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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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Committee Membership



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Tom Arthur
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Jeremy Balfour
Scottish Conservative
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Mary Fee
Scottish Labour

Introduction

Instruments drawn to the attention of the lead committee

1. The Committee considered the following instrument laid for consultation and agreed to draw it to the attention of the lead committee:
 - the proposed draft regulations – The Deposit and Return Scheme for Scotland Regulations 2020 (SG/2019/164)
2. The Committee's recommendation and conclusions in relation to this instrument are set out later in the report.

Other instruments considered

3. 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 Drawn to the Attention of the Lead Committee

Proposed Draft Regulations – The Deposit and Return Scheme for Scotland Regulations 2020 (SG/2019/164)

Purpose

4. The purpose of the proposed draft Regulations is to establish a deposit and return scheme for drinks containers in Scotland under sections 84, 89, 90 and 96(2) of the Climate Change (Scotland) Act 2009 (“the 2009 Act”).
5. The draft Regulations propose the introduction of a scheme which would require retailers to include a 20p deposit in the sale price of drinks (“scheme articles”) contained in packaging made wholly or mainly from PET plastic, glass, steel or aluminium. The scheme would require producers of scheme articles to register with SEPA. Consumers would be enabled under the scheme to return the containers to any retailer selling drinks covered by the scheme and redeem the 20p deposit.
6. The instrument is subject to a “super-affirmative” procedure. At this stage the draft Regulations are only laid for consultation purposes. The Regulations require to be laid before the Parliament for at least 90 days, along with an Explanatory Document which complies with the requirements of section 97 of the 2009 Act. The Regulations will be laid in draft for approval by the Parliament, after the 90 day period has elapsed, and after Ministers have had regard to representations.

Committee Consideration

7. Regulation 9 provides that SEPA must consider any representations made by a “scheme administrator” before their registration may be cancelled. Additionally, this should provide that SEPA must consider any representations made by producers themselves as well as those made by “scheme administrators” on producers’ behalf.
8. Regulations 14(1), 15(1)(a) and 15(5) make reference to a “scheme administrator” applying for approval. Elsewhere, “scheme administrator” is defined as having already been approved. The regulations should therefore instead refer to an “applicant” applying for approval.
9. The definition of scheme administrator also means that reference to “approved scheme administrators” in regulations 15(4) and 16 should remove the word “approved” as, by definition, “scheme administrators” are approved.
10. There is also an error in regulation 27(8) where it mistakenly refers to paragraph 7 rather than paragraph 6.
11. The Scottish Government has acknowledged that these are errors and has undertaken to correct them when the draft Regulations are laid.

Recommendation

12. The Committee reports the instrument to the Environment, Climate Change and Land Reform Committee under the general reporting ground and welcomes the Scottish Government's commitment to correct these errors when the draft Regulations are laid.

No Points Raised

Environment, Climate Change and Land Reform Committee

Conservation (Natural Habitats, &c.) (Miscellaneous Amendments)(Scotland) Regulations 2019 (SSI 2019/draft)

Conservation (Natural Habitats, &c.) Amendment (No. 2) (Scotland) Regulations 2019 (SSI 2019/320)

Regulatory Reform (Specification of EU Instruments) (Scotland) Order 2019 (SSI 2019/304)

Justice Committee

Act of Sederunt (Challenges to Validity of EU Instruments (EU Exit) in the Court of Session) 2019 (SSI 2019/328)

Act of Sederunt (Challenges to Validity of EU Instruments (EU Exit) in the Sheriff Appeal Court and Sheriff Court) 2019 (SSI2019/329)

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Challenges to Validity of EU Instruments (EU Exit)) 2019 (SSI 2019/330)

Local Government and Communities Committee

Planning (Scotland) Act 2019 (Commencement No. 1) Regulations 2019 (SSI 2019/314 (C. 15))

Rural Economy and Connectivity Committee

Bovine Viral Diarrhoea (Scotland) Order 2019 (SSI 2019/310)

M8 Motorway (Junction29A Off Slip Road) (40mph Speed Limit) Regulations 2019 (SSI 2019/312)

Environmental Impact Assessment (Transport) (Scotland) Regulations 2019 (SSI 2019/322)

Social Security

Social Security (Iceland) (Liechtenstein) (Norway) (Citizens' Rights Agreement) (Further provision in respect of Scotland) Order 2019 (SSI 2019/317)

Social Security (Switzerland) (Citizens' Rights Agreement) (Further provision in respect of Scotland) Order 2019 (SSI 2019/318)

