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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 3 September 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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Tom Arthur
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Mary Fee
Scottish Labour

Introduction

Instruments drawn to the attention of the lead committee

1. At its meeting on 3 September, the Committee considered the following negative instruments and agreed to draw them to the attention of the lead committees:
 - Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2019 (SSI 2019/232)
 - Plant Health (Miscellaneous Amendments) (Scotland) Order 2019 (SSI 2019/242)
2. The Committee's recommendations and conclusions in relation to these instruments are set out later in the report.

Other instruments

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

Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2019 (SSI 2019/232) (Social Security)

Purpose

4. The instrument amends the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (SSI 2019/193) in light of the Committee's report on that instrument dated 18 June 2019 ([33rd Report, 2019 \(Session 5\)](#)). The amendment is technical in nature and does not change the policy intention. It seeks to clarify particular provisions in relation to offences which were highlighted in the Committee's consideration of SSI 2019/193.

Committee consideration

5. The instrument was laid before the Parliament on 27 June 2019 and came into force on 11 August 2019. This does not meet the requirement that at least 28 days should elapse between the laying of an instrument which is subject to the negative procedure and the coming into force of that instrument.
6. The reasons for not complying with the 28-day rule are outlined in a letter from the Scottish Government to the Presiding Officer dated 27 June 2019. This correspondence is reproduced in Annex A.
7. In its letter, the Scottish Government said that it wished to amend SSI 2019/193 to "give full consideration to DPLR Committee comments" and "to cooperate fully with the Scottish Parliament in order to make clear, effective and accessible law." The Scottish Government added that it wanted to make these changes ahead of SSI 2019/193 coming into force on 12 August 2019.

Recommendations

8. Standing Orders require the Committee to draw the Parliament's attention to any failure to respect the 28-day laying requirement. The Committee therefore draws the instrument to the attention of the Parliament on reporting ground (j) as it fails to comply with the requirements of section 28(2) and (8) of the Interpretation and Legislative Reform (Scotland) Act 2010.
9. The Committee is nevertheless content that the failure to comply with the 28-day laying requirement was acceptable in the circumstances as the instrument rectifies the errors identified by the Committee in SSI 2019/193 before that instrument comes into force.

Plant Health (Miscellaneous Amendments) (Scotland) Order 2019 (SSI 2019/242) (Rural Economy and Connectivity)

Purpose

10. This Order is an emergency measure which amends the Plant Health Forestry Order 2005 and the Plant Health (Scotland) Order 2005 to enhance import controls against the introduction of Oak Processionary Moth (OPM). It is made under the Plant Health Act 1967.

Committee consideration

11. The instrument was laid before the Parliament on 12 July 2019 and came into force on 16 July. This does not respect the requirement that at least 28 days should elapse between the laying of an instrument which is subject to the negative procedure and the coming into force of that instrument.
12. The reasons for not complying are outlined in a letter from the Scottish Government to the Presiding Officer dated 12 July 2019. This correspondence is reproduced in Annex B.
13. The Scottish Government's letter identifies that OPM has been found at several new sites in England and Wales. Trees from the same consignments have been imported into Scotland and are being investigated for signs of OPM infestation. Following a review of the relevant import controls, DEFRA and the devolved administrations in Scotland, Wales and Northern Ireland agreed to legislation being made as quickly as possible in July 2019 to tighten the rules on the import of oak trees in Scotland.

Recommendations

14. Standing Orders require the Committee to draw the Parliament's attention to any failure to respect the 28-day laying requirement. The Committee therefore draws the instrument to the attention of the Parliament on reporting ground (j) as it fails to comply with the requirements of section 28(2) and (8) of the Interpretation and Legislative Reform (Scotland) Act 2010.
15. The Committee is nonetheless content that the failure to comply with the 28-day laying requirement was acceptable in the circumstances given the SSI seeks to minimize the threat that OPM poses to oak tree, public and animal health.

No points raised

Education and Skills

Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2019 (SSI 2019/draft)

Environment, Climate Change and Land Reform

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

Equalities and Human Rights

Historical Sexual Offences (Disregarded Convictions and Official Records) (Scotland) Regulations 2019 (SSI 2019/draft)

Justice

Scottish Tribunals (Listed Tribunals) Regulations 2019 (SSI 2019/draft)

Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 2019 (SSI 2019/230)

Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Regulations 2019 (SSI 2019/231)

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Court Sittings) 2019 (SSI 2019/227)

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2019 (SSI 2019/247)

Local Government and Communities

Tenancy Deposit Schemes (Scotland) Amendment Regulations 2019 (SSI 2019/draft)

Rural Economy and Connectivity

Additional Powers Request (Scotland) Regulations 2019 (SSI 2019/draft)

Social Security

Carer's Assistance (Young Carer Grants) (Scotland) Regulations 2019 (SSI 2019/draft)

Social Security (Scotland) Act 2018 (Commencement No. 5, Revocation and Saving Provision) Regulations 2019 (SSI 2019/269)

Annex A

Extract from a letter from the Scottish Government to the Presiding Officer

27 June 2019

Dear Presiding Officer

The Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2019

The Welfare Foods (Best Start Foods) (Scotland) Amendment Regulations 2019 SSI 2019/193 was made by the Scottish Ministers under section 13 of the Social Security Act 1988. It is being laid before the Scottish Parliament today, 27 June 2019 and comes into force on 11 August 2019.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) of that Act, this letter explains why.

The Regulations are required to amend the Welfare Foods (Best Start Foods) (Scotland) Regulations 2019 (“the principal instrument”) in order to offer greater clarity in respect of regulation 18 of the principal instrument. The Regulations are being brought forward following queries from the Delegated Powers and Law Reform Committee (“DPLRC”).

The Committee drew the principal instrument to the attention of SGLD on account of a disconnect between regulation 17 and regulation 18, in reference to offences, and their enabling powers. In order to provide clarity to the application of section 113 of the 1992 Act to regulation 18 by section 13(9) of the 1988 Act it is necessary to lay an amending SSI. The Scottish Government have given full consideration to DPLRC comments and wish to cooperate fully with the Scottish Parliament in order to make clear, effective and accessible law. The amendment is technical in nature and does not change the policy intention. It merely seeks to clarify a particular provision in relation to offences.

We apologise for breaching Standing Orders on this occasion, however it is considered that it is necessary in order to ensure this clarification is in place for the coming into force of the principal instrument on 12 August 2019. For these reasons we are unable to meet the 28 day requirement.

Annex B

Extract from a letter from the Scottish Government to the Presiding Officer

12 July 2019

Dear Presiding Officer

The Plant Health (Miscellaneous Amendments) (Scotland) Order 2019

The Plant Health (Miscellaneous Amendments) (Scotland) Order 2019, SSI 2019/242 (“the SSI”) was made by the Scottish Ministers under sections 2 and 3(1) of the Plant Health Act 1967. It is being laid before the Scottish Parliament today, 12 July 2019 and comes into force on 16 July 2019.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion this provision has not been complied with and, to meet the requirements of section 31(3) of that Act, this letter explains why.

Oak Processionary Moth (“OPM”) is a pest which poses a threat to oak tree, public and animal health is regulated in the EU Plant Health Directive as a “protected zone pest”. Most of the UK (other than an infested area around Greater London) enjoys this protected status. That means that oak trees being moved into the UK protected zone from other parts of the EU and from the infested area around Greater London must be accompanied by a plant passport.

OPM has been found at several new sites in England and Wales. Trees from the same consignments have been imported into Scotland and are being investigated for signs of OPM infestation. A cross-border incident management team has been established and rapid action is being taken to identify and treat all infested trees. Following a review of the relevant import controls, Defra and the Devolved Administrations (“DAs”) in Scotland, Wales and Northern Ireland agreed to legislation being made as quickly as possible in July 2019.

The SSI will minimize the threat that OPM poses to oak tree, public and animal health by tightening the rules on the import of oak trees into the UK protected zone (including Scotland). Defra and the other DAs are introducing similar legislation which will achieve the same result for England, Wales and Northern Ireland.

