



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 28 October 2020  
SP Paper 837  
62nd Report, 2020 (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 27 October 2020**



**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>



[dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot)



0131 348 5212

# Committee Membership



**Convener**  
**Bill Bowman**  
Scottish Conservative  
and Unionist Party



**Deputy Convener**  
**Stuart McMillan**  
Scottish National Party



**Mary Fee**  
Scottish Labour



**Michelle Ballantyne**  
Scottish Conservative  
and Unionist Party



**Gil Paterson**  
Scottish National Party

# Introduction

## Instrument considered under the European Union (Withdrawal) Act 2018

1. At its meeting on 27 October 2020, the Committee considered the following instrument under the 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:

Town and Country Planning, Management of Extractive Waste and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2020 (SSI 2020/310)

2. The Committee's recommendations and conclusions in relation to this instrument are set out in the following section of this report.

## Technical scrutiny of instruments

3. At its meeting on 27 October 2020, the Delegated Powers and Law Reform Committee considered the following instrument and agreed to draw it to the attention of the lead committee:
  - Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020 (SSI 2020/318)
4. The Committee's conclusion in relation to this instrument is set out later in the report.
5. The Committee also 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.

# Instrument considered under the European Union (Withdrawal) Act 2018

## Town and Country Planning, Management of Extractive Waste and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2020 (SSI 2020/310)

### Purpose

6. These Regulations update references to “exit day” in the Management of Extractive Waste (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019/273, and the Town and Country Planning and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2019/80. The references are updated to refer to “IP completion day” rather than “exit day”. IP completion day means 31 December 2020 at 11pm.

### Committee consideration

7. The Scottish Government has laid the instrument under the negative procedure and it has been categorised by the Scottish Government as of low significance under the [SSI Protocol](#).
8. The Committee is content that the negative procedure is appropriate and that the instrument may be considered as being of low significance. This is because the amendments made are technical in nature and consequential on changes made by the European Union (Withdrawal Agreement) Act 2020.

9. The Committee recommends to the Local Government and Communities Committee that the negative procedure is the appropriate scrutiny procedure for this instrument.
10. The Committee also recommends to the Local Government and Communities Committee that the Regulations are appropriately categorised as low in terms of their significance under the SSI Protocol.

# Technical scrutiny: instrument drawn to the attention of the lead committee

## Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020 (SSI 2020/318)

### Purpose

11. The purpose of this instrument is to implement additional temporary restrictions and requirements on businesses and the population. The instrument suspends the Health Protection (Coronavirus) (Restrictions and Requirements) (Scotland) Regulations (“the Principal Regulations”) during this time, but the measures in that instrument are replicated in this instrument along with the additional measures.
12. This instrument sets out measures which apply in the “protected area”, and in the rest of Scotland, “outside the protected area”. Measures contained in the Principal Regulations that are being replicated by this instrument apply uniformly across Scotland.

### Committee Consideration

13. Regulation 18 of the instrument sets out the requirement to collect and share information where people visit “relevant hospitality premises”. This includes restaurants, cafes, bars and public houses; and hotels in which food and drink is sold for consumption on the premises. The Committee noted that the associated guidance produced by the Scottish Government makes clear that take away activities are excluded from this requirement. It nevertheless asked the Scottish Government (please see the Annex) whether regulation 18 was clear enough that visitor information did not need to be collected if food or drink was being purchased for consumption off the premises.
14. In its response (please see the Annex) the Scottish Government said that the use of the term “visitor” rather than “customer” excludes those people who are on the premises for the purpose of purchasing or collecting food for consumption off the premises. It accepted that the intention of the provision could be clarified further and thanked the Parliament for bringing this to its attention. The Scottish Government said that it will also legislate at the next opportunity to provide clarity on this point.
15. While the Committee noted that the Scottish Government has undertaken to clarify the provision at the next opportunity to do so, it agreed to draw the instrument to the attention of the COVID-19 Committee under reporting ground (h); that the form or meaning could be clearer.



# No points raised

## COVID-19 Committee

Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Amendment Regulations 2020 (SSI 2020/325)

Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Amendment (No. 2) Regulations 2020 (SSI 2020/329)

## Culture, Tourism, Europe and External Affairs Committee

UEFA European Championship (Trading and Advertising) (Scotland) Regulations 2020 (SSI 2020/draft)

## Education and Skills Committee

Glasgow School of Art Order of Council 2020 (SSI 2020/303)

## Environment, Climate Change and Land Reform Committee

Waste (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/314)

## Health and Sport Committee

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 17) Regulations 2020 (SSI 2020/307)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 18) Regulations 2020 (SSI 2020/326)

Health Protection (Coronavirus, Public Health Information for Passengers Travelling to Scotland) Amendment Regulations 2020 (SSI 2020/328)

## Justice Committee

International Organisations (Immunities and Privileges) (Scotland) Revocation Order 2021 (SSI 2020/draft)

Age of Criminal Responsibility (Scotland) Act 2019 (Independent Review of Disclosure of Information) Regulations 2020 (SSI 2020/305)

Electronic Monitoring (Approved Devices) (Scotland) Regulations 2020 (SSI 2020/308)

Electronic Monitoring (Relevant Disposals) (Modification) (Scotland) Regulations 2020 (SSI 2020/309)

## Local Government and Communities Committee

Valuation (Postponement of Revaluation) (Coronavirus) (Scotland) Order 2020 (SSI 2020/draft)

Town and Country Planning, Management of Extractive Waste and Electricity Works (EU Exit) (Scotland) (Miscellaneous Amendments) Regulations 2020 (SSI 2020/310)

**Delegated Powers and Law Reform Committee**

Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 27 October 2020, 62nd Report, 2020 (Session 5)

Non-Domestic Rates (Scotland) Act 2020 (Commencement No. 2, Transitional and Saving Provisions) Regulations 2020 (SSI 2020/327 (C. 28))

Rural Economy and Connectivity Committee

Mandatory Use of Closed Circuit Television in Slaughterhouses (Scotland) Regulations 2020 (SSI 2020/draft)

Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Commencement No. 1) Regulations 2020 (SSI 2020/315 (C.27))

# Annex

## Correspondence with the Scottish Government

### **Health Protection (Coronavirus) (Restrictions and Requirements) (Additional Temporary Measures) (Scotland) Regulations 2020 (SSI 2020/318)**

#### **On 20 October 2020, the Scottish Government was asked**

1. We have previously discussed the requirement to collect and store customer information informally with colleagues at SGLD. Regulation 18 of these Regulations state that a person who is responsible for a “relevant hospitality premises” must take measures to obtain and record visitor information, record visitor information in a filing system (which may be an electronic system) suitable for recording, storing and retrieving the information, and retain visitor information for a period of at least 21 days beginning with the date on which the visit occurred. “Relevant hospitality premises” is defined in regulation 18(3) as:

- a) a restaurant, cafe, bar or public house, or
- b) a hotel in which food or drink is sold for consumption on the premises

Guidance published by the Scottish Government provides that “hospitality businesses that are serving people on their premises – either indoors or in outdoor spaces such as beer gardens – will need to gather minimum contact details from all visitors to support Test and Protect. This only applies to those being served on the premises, and not to activities such as take-away”.

Regulation 18 does not appear to us to make any exemption for food that is purchased from a relevant hospitality premises for consumption off of those premises

- a) Please could you confirm whether it is the policy intention is to exclude take-away activities from the scope of regulation 18?
- b) If so, please could you advise why there is no exemption in law for take-away activities?

2. Regulation 5(1) defines “café” as “an establishment whose primary business activity, in the ordinary course of its business, is the sale of non-alcoholic drinks, snacks or light meals, which may be consumed on the premises”.

The term “café” is used in a number of places in the Regulations with other terms that are not defined in the Regulations. For example, regulation 8(9)(a) refers to “café or canteen” and regulation 18(3)(a) refers to “restaurant, cafe, bar or public house”. There are also references to “workplace canteens” in a number of places. In regulations 9(6) and 13(7) separate provision is made for “café or canteen” and for “workplace canteens”. The term “workplace canteen” is not defined in the Regulations.

Regulation 17(4)(c) refers to "cafes, including workplace canteens" for the purposes of providing a definition of "reduced distance premises". In the Schedule, paragraph 1(b) refers to "cafes, except workplace canteens" for the purposes of specifying where face coverings must be worn.

Please could you advise whether the intention is that the definition of “café” includes or excludes workplace canteens? If the intention is to include workplace canteens in that definition:

a) What is the legislative intention of the separate references to “cafe or canteen” in the Regulations?

b) Why are workplace canteens specifically included in the reference to café in regulation 17(4)?

Otherwise, if that is not the intention, please explain why the schedule specifically excludes workplace canteens from the reference to cafes.

**On 22 October 2020, the Scottish Government responded as follows:**

1. The Scottish Government thanks the Scottish Parliament for drawing this matter to its attention and confirms that it is the policy intention to exclude take-away activities from the scope of regulation 18. The Scottish Government’s intention in using the word “visitor” (as opposed to “customer”, or similar) was that a person collecting food and drink from a restaurant, cafe, bar or public house would not be considered a “visitor” to those premises for the purposes of the duty imposed by regulation 18(1).

However, the Scottish Government agrees that the intention of the provision could be clarified further. The Scottish Government proposes to legislate at the next opportunity to make explicit that the requirement to collect “track and trace” information does not apply to any visitor to relevant hospitality premises who is there solely for the purpose of purchasing or collecting food or drink for consumption off the premises.

2. The Scottish Government is grateful to the Parliament for bringing this to our attention. The different terminology used throughout the regulations reflects the existing range of different hospitality sectors and the efforts the Government has made to tailor the rules to reflect the different characteristics of those settings.

We can confirm that it is the intention that the definition of “café” include canteen. Regulations 8, 9, 13 and 17 specifically include canteens to assist the general reader of the regulations with the scope of the provision albeit it was not strictly necessary from a legal interpretation point of view.

In Regulations 9 and 13 there is an intention to make distinct provision for workplace canteens so specifying ‘canteen’ assists us to provide separately for workplace canteens. We will consider whether the drafting could be made clearer.

