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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 17 November 2020



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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

1. At its meeting on 17 November 2020, the Committee considered the following instruments under the [SSI 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:
 - the Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/367);
 - the Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/draft); and
 - the Common Agricultural Policy (Less Favoured Area Support) (EU Exit) (Scotland) Amendment Regulations 2020 (SSI 2020/draft).
2. The Committee's recommendations in relation to these instruments is set out in the following section of this report.
3. 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.

Instruments considered under the European Union (Withdrawal) Act 2018

Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/367)

Purpose

4. These Regulations amend domestic legislation concerning technical conservation measures relating to sea fisheries. A number of amendments are made to subordinate legislation to reflect the coming into force of Regulation (EU) 2019/1241 of the European Parliament and of the Council.
5. The Regulations are made under provisions of both the European Union (Withdrawal) Act 2018 (the “2018 Act”) and the European Communities Act 1972. Powers under the 2018 Act are only used to make Regulation 7(3) of this instrument which revokes amendments made by the Fisheries (EU Exit) (Scotland) (Amendment) (No. 2) Regulations 2019 to remedy deficiencies arising from the withdrawal of the United Kingdom from the European Union.

Committee consideration of the scrutiny procedure under which it has been laid and the categorisation applied by the Scottish Government.

6. The instrument has been laid under the negative procedure and has been categorised by the Scottish Government as of low significance under the SSI Protocol.

7. The Committee is content that the use of the negative procedure is appropriate in these circumstances.

8. The Committee is also content that the instrument should be categorised as low in terms of its significance under the SSI Protocol.

Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/draft)

Purpose

9. These regulations deal with deficiencies in retained EU law and implement Part 3 (separation issues) of the Withdrawal Agreement between the EU and the UK. They revoke the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Regulations 2019, the Public Procurement etc. (Scotland) (Amendment) (EU Exit) Amendment Regulations 2019, and the Public Procurement etc. (Scotland) (Amendment) (EU Exit) (Amendment) (No. 2) Regulations 2019. They also amend the Public Contracts (Scotland) Regulations 2015, the Utilities Contracts (Scotland) Regulations 2016 and the Concession Contracts (Scotland) Regulations 2016, which currently implement the EU Procurement Directives in domestic legislation. It

also amends the Procurement Reform (Scotland) Act 2014, and the Procurement (Scotland) Regulations 2016 made under that Act.

Committee consideration on how the instrument has been categorised by the Scottish Government

10. The instrument has been categorised by the Scottish Government as of high significance under the SSI Protocol. Although it deals with a large amount of technical detail, it does transfer a number of functions, including legislative powers, to the Scottish Ministers.

11. The Committee is content that the instrument should be categorised as high in terms of its significance under the SSI protocol.

Common Agricultural Policy (Less Favoured Area Support) (EU Exit) (Scotland) Amendment Regulations 2020 (SSI 2020/draft)

Purpose

12. This instrument is made under the enabling powers in two separate Acts:

- The European Union (Withdrawal) Act 2018, the deficiency-correcting powerⁱ
- The Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (“the 2020 Act”)

Committee consideration on how the instrument has been categorised by the Scottish Government

13. The Committee only considered the deficiency-correcting element of the instrument.

14. The deficiency being corrected is in the Less Favoured Area Support Scheme (Scotland) Regulations 2010 (“the LFASS Regulations”): a reference to “exit day” is amended to refer to “IP completion day”.

15. The deficiency has been categorised by the Scottish Government as of low significance under the SSI Protocol.

16. The Committee is content that, in relation to the deficiency-correcting provision, the instrument should be categorised as low in terms of its significance under the SSI protocol.

ⁱ Schedule 2, paragraphs 1(1) and (3)

No points raised

Health and Sport Committee

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 21) Regulations 2020 (SSI 2020/354)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 22) Regulations 2020 (SSI 2020/358)

Justice Committee

Regulation of Investigatory Powers (Prescription of Offices, etc. and Specification of Public Authorities) (Scotland) Amendment Order 2020 (SSI 2020/361)

Rural Economy and Connectivity Committee

Fisheries (Technical Conservation Measures) (EU Exit) (Scotland) (Amendment etc.) Regulations 2020 (SSI 2020/367)

