



The Scottish Parliament
Pàrlamaid na h-Alba

Published 6 May 2020
SP Paper 724
26th 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 5 May 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 5 May 2020, the Delegated Powers and Law Reform Committee agreed not to report any of the instruments considered under any of the technical reporting grounds.
2. However, in relation to the following instrument, the Committee wishes to draw the lead committee's attention to a related matter:
 - Direct Payments (Crop Diversification Derogation) (Scotland) Regulations 2020 (SSI 2020/135)

Instrument highlighted to the lead committee

Direct Payments (Crop Diversification Derogation) (Scotland) Regulations 2020 (SSI 2020/135)

Purpose

3. This instrument disapplies an environmental and climate change requirement, the “crop diversification requirement” for the year 2020. This requirement is one of the conditions in the Direct Payments Regulation (EU1307/2013 in retained EU law) for entitlement to a farm subsidy payable to farms for compliance with farming practices that are beneficial to the environment, known as a “greening” payment. The requirement being disapplied is that farms over a particular size must grow more than one type of crop. The requirement is being removed to address difficulties experienced by farmers in cultivating crops due to extreme weather in the past winter. The removal of the requirement is called a “derogation” from the Direct Payments Regulation.
4. The instrument is made under an emergency power. The emergency being, in this case, the effect of the extreme weather.

Committee Consideration

5. The power under which these Regulations are made (article 69(1) of the Direct Payments Regulation) can only be used to derogate from the Direct Payments Regulation where the following preconditions are met:
 - the derogation must only be “to the extent and for such a period as is strictly necessary”, and
 - the regulations must be “both necessary and justifiable in an emergency”.
 6. Establishing whether these preconditions have been met involves consideration of many different policy questions. These might include whether in fact an emergency situation exists due to problems in the cultivation of crops caused by severe weather; whether the removal of the crop diversification requirement is necessary and justified; whether the extent of the derogation is “strictly necessary” (e.g. is a wholesale removal of the requirement covering for the whole of Scotland and all farms strictly necessary); and whether the period for which the derogation applies is no longer than is strictly necessary.
 7. While the preconditions need to be met in order for the instrument to be within vires, they are matters that the lead committee, with its policy expertise in this area, would be best placed to consider.
8. The Committee therefore wishes to draw these preconditions to the attention of the lead committee, the Rural Economy and Connectivity Committee, so that it may consider whether they have been met.

No points raised

Social Security (Scotland) Act 2018 (Commencement No. 7) Regulations 2020 (SSI 2020/127 (C.14)) - Lead Committee: Social Security Committee

- No points have been raised on this instrument but the Committee notes that it did not adhere to the convention that the provisions brought into force by a commencement instrument should be brought into force at least 10 days, and preferably at least 14 days, after laying the instrument in the Parliament and its publication.
- The Committee wishes to encourage the Scottish Government to adhere to this convention in future commencement instruments.

