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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 25 January 2022



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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.



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Introduction

1. At its meeting on 25 January, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the relevant lead committee:
 - Private Storage Aid Scheme (Pigmeat) (Scotland) Amendment Regulations 2021 (SSI 2021/492)
2. The Committee's recommendations in relation to this instrument are set out later in the next section of the report.
3. The Committee also determined that in terms of its remit it did not need to draw the Parliament's attention to the instruments at the end of the report.

Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the lead committee

Private Storage Aid Scheme (Pigmeat) (Scotland) Amendment Regulations 2021 (SSI 2021/492)

4. The instrument is made under powers in Council Regulation (EU) No. 1370/2013 and Regulation (EU) No. 1308/2013 (retained EU law).
5. The instrument amends the Private Storage Aid Scheme (Pigmeat) (Scotland) Regulations 2021 to add further cuts of pigmeat for which aid may be granted under the scheme while also amending the closing date for applications from 28 February to 31 March 2022.
6. The instrument was laid on 22 December 2021 and came into force on 15 January 2022. As it was laid less than 28 days before it came into force, it is in breach of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. This rule requires that instruments subject to the negative procedure are laid at least 28 days before they come into force, not counting recess periods of more than 4 days.
7. The Scottish Government wrote to the Presiding Officer explaining why the 28-day rule had not been complied with.
8. In subsequent correspondence with the Committee, the Scottish Government explained that it considered it was necessary for the amendments to come into force on 15 January 2022, rather than at a later date to enable compliance with the 28 day rule, to maximise the benefit of the scheme to the industry. This was to avoid delays in applications to the scheme and the consequent backlog of pigs on farms.
9. A copy of all correspondence can be found in the Annex.
10. **The Committee draws the instrument to the attention of the Parliament on reporting ground (j) for failure to lay the instrument in accordance with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
11. **The Committee is nevertheless content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.**

No technical points raised

COVID-19 Recovery Committee

Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/13)

Net Zero, Energy and Transport Committee

Workplace Parking Licensing (Scotland) Regulations 2022 (SSI 2022/4)

Financial Assistance for Environmental Purposes (Scotland) Order 2022 (SSI 2022/8)

Scottish Road Works Register (Prescribes Fees) Regulations 2022 (SSI 2022/9)

Rural Affairs, Islands and Natural Environment Committee

Sea Fish (Prohibition on Fishing) (Firth of Clyde) Order 2022 (SSI 2022/5)

Annex

Private Storage Aid Scheme (Pigmeat) (Scotland) Amendment Regulations 2021 (SSI 2021/492)

On 21 December 2021, the Scottish Government wrote to the Presiding Officer:

The Private Storage Aid Scheme (Pigmeat) (Scotland) Amendment Regulations 2021 were made yesterday, 21 December 2021, by the Scottish Ministers under powers contained in (1) Articles 18 and 20 of Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products, and (2) Article 4(2) of Council Regulation (EU) No 1370/2013 of 16 December 2013 determining measures on fixing certain aids and refunds related to the common organisation of the markets in agricultural products.

They are being laid before the Scottish Parliament today, 22 December 2021, and come into force on 15 January 2022.

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, it has not been possible to comply with this requirement. To meet the requirements of section 31(3) of that Act, this letter explains why.

These Regulations are being made to urgently amend the **The Private Storage Aid Scheme (Pigmeat) (Scotland) Regulations 2021** (“the principal Regulations”) which came into force on 9 November. The sector, due to issues caused by a combination of EU Exit and Covid, are on the verge of a welfare issue, which inevitably would be costly to the industry. Due to a lack of butchers and staff shortages, the Scottish abattoirs have not been able to work to capacity, which has led to a larger number of pigs still on farm that would normally be the case.

The principal Regulations established a scheme which provides funding for the storage of pig meat. The principal Regulations provide which cuts of pigmeat are eligible for the scheme, but did not include either bone-in or bone-out Loins. At the time of making the Regulations, following discussions with industry, our understanding was that we had included the cuts that were required in the scheme. However we have now been approached by an operator on 15 December with an indication that they would be interested in entering a further significant tonnage in the scheme if loins were to be included. As a result, we are now of the view that inclusion of loins would be of greater benefit to the industry. This will significantly increase the effectiveness of the scheme, and considerably assist in reducing the backlog of pigs, and does not fundamentally alter the nature of the scheme.

We are also extending the closing date for applications under the scheme from 28 February 2022 to 31 March 2022.

The failure to comply with section 28(2) of the 2010 Act is necessary to ensure that the scheme is running in the most effective way possible and to maximize the cuts which are able to go into storage. We require to act urgently to avoid causing a potential loss to farmers if the loin was not accepted into the scheme.

The Scottish Government fully acknowledge the difficulties that breaching the 28-day rule

poses in terms of Parliamentary scrutiny, and regret that on this occasion it has not been possible to comply with this requirement.

On 12 January 2022, the Scottish Government was asked:

The Scottish Government has acknowledged that this instrument has not been laid in accordance with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. In accordance with section 31(3) of the 2010 Act, at the time of laying the instrument the Scottish Government laid a letter to the Presiding Officer. This letter explains that the failure to comply with section 28(2) of the 2010 Act is due to the need to act urgently to avoid an economic loss to farmers by not accepting additional cuts of pigmeat into the scheme. We understand that the need for this urgent action was brought to the attention of the Scottish Government on 15 December 2021.

1. The letter to the Presiding Officer explaining the reasons for the breach of the 28-day rule indicates that the Scottish Government was approached by an operator on 15 December 2021, which led to the laying of the instrument on 22 December 2021.

Please explain why the instrument is required to come into force on 15 January 2022, rather than 28 days after it was laid (not counting periods of recess of more than 4 days). In particular, please explain why that particular coming into force date is necessary, as opposed to one which would ensure compliance with the 28-day rule, in terms of the expansion of the cuts of meat caught by the scheme; and/or the extension of the period for applications, bearing in mind that the deadline for making applications is currently 28 February 2022.

On 18 January 2022, the Scottish Government responded:

Staff shortages at Scottish abattoirs have led to larger numbers of pigs on Scottish farms than would normally be the case. The sector is on the verge of a welfare issue, which would, in addition to the welfare impact, be financially costly to the industry. The Scottish Government was informed in mid-December that there was significant immediate demand from industry to include the additional cuts in the private storage aid scheme, and that their inclusion would provide extra assistance to industry, with applications for at least 100 tonnes of loin anticipated. The Scottish Government considered that this amount of product made it necessary to make the amendments to the scheme with effect from 15 January (approximately 3 weeks earlier than would have been possible if the 28 day rule had been complied with), to allow applications to the PSA scheme to include these specific cuts from that date.

In particular, Scottish Government expects the amendment to unlock a significant application which would otherwise be for a smaller volume of pigmeat or even not made at all. If the amendment were to be brought into force at a later date, applications to the scheme would be delayed, with the result that pigs would not be slaughtered and the backlog of pigs on farms would continue. The benefits to the primary pigmeat producers would therefore be reduced if applications for these cuts were not able to be made as early as possible. The Scottish Government regrets that on this occasion it was not possible to comply with the 28 day rule, but considers that making the amendment early is likely to make a significant difference to the effectiveness of the scheme.

The deadline for making applications is amended from 28 February 2022 to 31 March 2022. The extension of the scheme for a further month is not considered relevant for the points noted above which explain the need for applications to be made as soon as

possible.

On 14 January, DEFRA announced an extension of the deadline for applications to their Private Storage Aid scheme for pigmeat to 31 March.

