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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 20 September 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 20 September, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the relevant lead committee:
 - Non-Commercial Movement of Pet Animals (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/262); and
 - Food Information (Transitional Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/265).
2. The Committee's recommendations in relation to both instruments are set out in the next section of this 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

Non-Commercial Movement of Pet Animals (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/262)

4. The instrument is made under powers in Council Regulation (EU) No. 576/2013 of the European Parliament and of the Council on the non-commercial movement of pet animals.
5. The instrument amends Annex 4 to that Regulation, which sets out the validity requirements for rabies antibody titration tests on pet dogs, cats and ferrets moved into Great Britain.
6. The amendments extend the ability of Scottish Ministers, from 1 October 2022 to 1 April 2023, to authorise an alternative test, which has a faster turnaround time of 2 to 3 days.
7. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to negative procedure are to be laid at least 28 days before they come into force, not counting recess periods of more than 4 days. The instrument was laid on 31 August 2022 and will come into force on 1 October 2022.
8. In its letter to the Presiding Officer, which can be read in the **Annex**, the Scottish Government explained that the need to extend the ability to administer the alternative test beyond 1 October 2022 became apparent during the summer recess, which ended on 5 September.
9. The Scottish Government added that the extension is also being brought into force at the same time as England and Wales in order to ensure there is no disruption to the operational delivery of this work and the best use of quarantine facilities throughout Great Britain.
10. **The Committee draws the instrument to the attention of the Parliament under reporting ground (j) for failure to comply 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 explanations provided by the Scottish Government for failure to comply with the laying requirements.**

Food Information (Transitional Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/265)

12. Section 16(1)(e) of the Food Safety Act 1990 provides that the Scottish Ministers may by regulations make provision for imposing requirements or prohibitions as to, or otherwise regulating, the labelling, marking, presenting or advertising of food,

and the descriptions which may be applied to food.

13. The instrument extends the effect of food labelling transitional provisions until the end of 2023. The transitional provisions were due to expire at the end of September 2022.
14. As with the previous instrument, these Regulations breach the 28 day period in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.
15. In its letter to the Presiding Officer, which can also be read in the **Annex**, the Scottish Government explained that it was unable to comply with the laying requirements due to the timing of the announcement from the UK Government that the import controls on goods from the EU to Great Britain were to be delayed from July 2022 until the end of 2023.
16. The Scottish Government also explained that it was necessary to breach the 28-day rule in order that the transitional provisions would be extended beyond 30 September as intended, so that labelling requirements remain in line with those in England and Wales.

17. **The Committee draws the instrument to the attention of the Parliament under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
18. **The Committee is nevertheless content with the explanations provided by the Scottish Government for failure to comply with the laying requirements.**

No points raised

COVID-19 Recovery Committee

Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No. 7) Order 2022 (SSI 2022/266 (C.13))

Registration of Births, Still-births and Deaths (Prescription of Forms and Attestation) (Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/267)

Criminal Justice Committee

Scottish Biometrics Commissioner Act 2020 (Code of Practice) (Appointed Day) (Scotland) Regulations 2022 (SSI 2022/Draft)

Judicial Appointments Board for Scotland (Membership) Modification Order 2022 (SSI 2022/268)

Economy and Fair Work Committee

Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) (No. 2) Order 2022 (SSI 2022/Draft)

Education, Children and Young People Committee

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2022 (SSI 2022/264)

Health, Social Care and Sport Committee

Sports Grounds and Sporting Events (Designation) (Scotland) Amendment (No. 2) Order 2022 (SSI 2022/263)

Social Justice and Social Security Committee

Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (No. 2) (Scotland) Regulations 2022 (SSI 2022/271)

Local Government, Housing and Planning Committee

Council Tax (Exempt Dwellings) (Scotland) Amendment (No. 2) Order 2022 (SSI 2022/272)

Annex

Non-Commercial Movement of Pet Animals (Scotland) Amendment (No. 2) Regulations 2022 (SSI 2022/262)

On 26 August 2022, the Scottish Government wrote to the Presiding Officer:

The Non-Commercial Movement of Pet Animals (Scotland) Amendment (No.2) Regulations 2022, SSI 2022/262 was made by the Scottish Ministers under Articles 38 and 39(6) of Regulation (EU) 576/2013 of the European Parliament and of the Council on the non-commercial movement of pet animals on Wednesday 31 August 2022 and laid before the Scottish Parliament on the same day. It comes into force on Saturday 1 October 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, this has not been complied with and to meet the requirements of section 31(3) that Act, this letter explains why.

As a result of the conflict in Ukraine, the Scottish Government, in alignment with the UK Government and Welsh Government, have introduced a temporary streamlined process for Ukrainian Nationals entering Great Britain with their pets. On 9 April 2022, as part of these measures, the Non-Commercial Movement of Pet Animals (Scotland) Amendment Regulations 2022 introduced a provision to give Scottish Ministers the ability until 1 October 2022, to administer an alternative rabies antibody test (a specific form of *enzyme-linked immunosorbent assay (ELISA) test*), which has a turnaround time of two to three days. Under normal circumstances, there is only one type of antibody titre test that can be used for entry into GB from Ukraine and to authorise release from quarantine if the animal is non-compliant on entry. This test (*the Fluorescent Antibody Virus Neutralisation (FAVN) testⁱ*) has a turnaround time of two weeks. As pets must remain in quarantine until there is confirmation of their vaccination status, the ELISA test has been used since 9 April 2022 to reduce time in quarantine. This instrument extends the ability to administer the ELISA test from 1 October 2022 to 1 April 2023.

It has not been possible to comply with the 28 day rule because the need to extend the ability to administer the ELISA test beyond 1 October 2022 has become apparent during the summer recess. Whilst the initial influx of refugees and their pets from Ukraine has diminished, extending this provision will significantly speed up the rabies testing process at a time when the system still faces a significant backlog. Although quarantine facilities are not currently at capacity there are a finite number of spaces available and, at this time, there are approximately 600 outstanding applications for pets from Ukraine waiting to enter Great Britain. In addition, if the situation in Ukraine were to deteriorate then it may be possible that we would see a further influx of persons with pets that are displaced by the conflict. Extending the provision permitting the use of the ELISA test will continue to meet the urgent need to relieve pressure on quarantine facilities and enable refugees to be reunited with their pets earlier than if the normal rabies antibody titration test were used.

The date of the coming into force of this instrument could not be moved until 3 October 2022, without there being a gap in the ability to use the ELISA test and disruption to the operational delivery of this work. Englandⁱⁱ and Walesⁱⁱⁱ have similar provisions in place

ⁱ [Fluorescent Antibody Virus Neutralisation \(FAVN\) Tests \(defra.gov.uk\)](https://defra.gov.uk)

permitting the use of the ELISA test (which is carried out on behalf of all administrations by the Animal and Plant Health Agency) and will be extending these provisions to permit use of the test from 1 October 2022. The extension is being brought into force at the same time as England and Wales in order to ensure there is no disruption to the operational delivery of this work and the best use of quarantine facilities throughout Great Britain.

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.

Food Information (Transitional Provisions) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/265)

On 5 September 2022, the Scottish Government wrote to the Presiding Officer:

The Food Information (Amendment of Transitional Provisions) (Scotland) Regulations 2022 (“the instrument”) is due to be made and laid by the Scottish Ministers today in exercise of the powers conferred by sections 16(1)(e) and 48(1)(c) of the Food Safety Act 1990, and will come into force on 30th September 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, this has not been complied with and to meet the requirements of section 31(3) that Act, this letter explains why.

The transitional period allowing the current law to apply rather than several EU exit related changes to food labelling requirements is due to expire on 30th September 2022 after which date the changes were due to come into effect. These labelling changes became necessary to reflect the UK’s departure from the EU and the transitional period were to allow businesses time to use up existing labelling stocks and implement the revised labelling requirements. This instrument provides for an extension to the expiry date of the transitional period when the current law applies, and relates to the following pieces of legislation;

- The Food Information (Scotland) Regulations 2014
- The Food Hygiene (Scotland) Regulations 2006
- The Quick-frozen Foodstuffs Regulations 1990
- The Country of Origin of Certain Meats (Scotland) Regulations 2016
- The Food Additives, Flavourings, Enzymes and Extraction Solvents (Scotland) Regulations 2013
- The Caseins and Caseinates (Scotland) Regulations 2016
- Commission Regulation (EC) No 1825/2000

ii [The Non-Commercial Movement of Pet Animals \(Amendment\) \(England\) Regulations 2022 \(legislation.gov.uk\)](#)

iii [The Non-Commercial Movement of Pet Animals \(Amendment\) \(Wales\) Regulations 2022 \(legislation.gov.uk\)](#)

- Commission Implementing Regulation (EU) No 29/2012
- Commission Implementing Regulation (EU) No 543/2011
- The Beef and Veal Labelling (Scotland) Regulations 2010
- The Marketing of Fresh Horticultural Produce (Scotland) Regulations 2009
- Commission Regulation (EC) No 589/2008
- Commission Delegated Regulation (EU) No 2019/33

The UK Government announced that import controls on goods from the EU to GB were to be delayed from July 2022 until the end of 2023, including changes to food labelling changes. The UK Government's reason for extending the duration of these provisions is to recognise the significant supply chain impact due to Russia's illegal invasion of Ukraine and the recent rise in global energy costs. In their view it would be wrong to impose new administrative requirements on businesses who may pass on the associated costs to consumers already facing pressures on their finances. Scottish Government are progressing with a similar postponement as failure to do so would see labelling requirements in Scotland out of step with England and Wales. This would have the potential to lead to uncertainty and confusion for enforcement authorities and food businesses. Scottish Ministers and Welsh Ministers have agreed to postpone labelling changes.

The requirement for the breach is to ensure the instrument comes into force timeously in order to have the desired effect of extending the transition period and to ensure alignment with analogous legislation being made at Westminster and in Wales. The existing EU exit legislation which provides for these specific labelling changes is due to come into force on 1 Oct 2022. The decision to postpone these changes was only made recently and the instrument, which will extend the coming into force date from 1 Oct 2022 until 1st January 2024, needs to come into force on 30 Sept 2022 otherwise the originally planned labelling changes will still come into force on 1 Oct 2022. Consequently, the provisions in the instrument will not fulfil the requirement to delay the changes until 1st January 2024 if they do not come into force on 30 September. This in turn would see us out of step with legislation in the rest of GB and could cause issues for our enforcement authorities.

The instrument only changes the coming into force date of these labelling changes for the specific areas described above and does not alter the substance of the provisions themselves. However, as a result of the occurrence and timing of this change, it has not been possible for us to comply with the 28 day rule.

FSS and the Scottish Government are cognisant of the difficulties that breaching the 28 day rule poses in terms of Parliamentary scrutiny, and regret that on this occasion, due to the time constraints imposed by the original coming into force date and UK Government's announcement of these changes, it has been impossible to comply with this requirement.

