Delegated Powers and Law Reform Committee

Subordinate Legislation
## Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Points raised: Instruments subject to negative procedure</td>
<td>2</td>
</tr>
<tr>
<td>No points raised</td>
<td>3</td>
</tr>
<tr>
<td>Annexe A</td>
<td>4</td>
</tr>
</tbody>
</table>
Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

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;

h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

i. any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

www.parliament.scot/delegated-powers-committee

DPLR.Committee@scottish.parliament.uk

0131 348 5175

Follow the Scottish Parliament @ScotParl
## Committee Membership

<table>
<thead>
<tr>
<th>Convener</th>
<th>Deputy Convener</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Scott</td>
<td>Stuart McMillan</td>
</tr>
<tr>
<td>Scottish Conservative and Unionist Party</td>
<td>Scottish National Party</td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Alison Harris</td>
<td>Scottish Conservative and Unionist Party</td>
<td>Monica Lennon</td>
</tr>
</tbody>
</table>

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>David Torrance</td>
<td>Scottish National Party</td>
<td></td>
</tr>
</tbody>
</table>
Introduction

1. At its meeting on 20 December 2016, the Committee agreed to draw the attention of the Parliament to the following instrument—

   Caseins and Caseinates (Scotland) (No. 2) Regulations 2016 (SSI 2016/422)

2. The Committee’s recommendation in relation to the above instrument is set out below.

3. The Committee determined that it did not need to draw the Parliament’s attention to the instruments that are set out at the end of this report.
Points raised: Instruments subject to negative procedure

**Caseins and Caseinates (Scotland) (No. 2) Regulations 2016 (SSI 2016/422)**
(Health and Sport)

4. The main purpose of the Regulations is to transpose Directive (EU) 2015/2203 relating to caseins and caseinates intended for human consumption, and to provide powers to enforce the Regulations to food authorities across Scotland. Caseins and caseinates are proteins and salts present in milk products, used primarily in cheese making, protein supplements, formula milk and additives.

5. Regulation 4 provides for restrictions in use and marketing of edible caseins and caseinates. Regulation 5 provides for labelling requirements.

6. The Regulations revoke the Caseins and Caseinates (Scotland) Regulations 1986 (as amended). They therefore consolidate and update the provisions. They also revoke the Caseins and Caseinates (Scotland) Regulations 2016.

7. The Regulations are subject to the negative procedure. The operative provisions come into force on 22 December 2016. The revocation of those 2016 Regulations has effect from 21 December.

8. The Committee draws the Regulations to the attention of the Parliament on reporting ground (j). The instrument fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (although this does not affect the validity of the instrument).

9. The Regulations were laid before the Parliament on 15th December, and come into force on 21st and 22nd December 2016. They do not respect the requirement that at least 28 days should elapse between the laying of an instrument which is subject to the negative procedure and the coming into force of that instrument.

10. As regards its interest in the Scottish Government’s decision to proceed in this manner, the Committee finds the failure to comply with section 28 to be acceptable in the circumstances. The reasons for doing so are outlined by the Chief Executive of Food Standards Scotland in his letter to the Presiding Officer of 14 December 2016. This letter is appended as Annexe A.
No points raised

11. At its meeting on 20 December 2016, the Committee considered the following instruments. The Committee determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit.

**Health and Sport**

- Regulation of Care (Prescribed Registers) (Scotland) Amendment Order 2016 (SSI 2016/413)
- Burial and Cremation (Scotland) Act 2016 (Commencement No. 1, Transitory and Transitional Provisions) Regulations 2016 (SSI 2016/417 (C.43))

**Justice**

- Act of Sederunt (Sheriff Court Rules Amendment) (Electronic Authentication) 2016 (SSI 2016/415)

**Local Government and Communities**

- Valuation for Rating (Decapitalisation Rate) (Scotland) Regulations 2016 (SSI 2016/402)
- Community Empowerment (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/411)

**Rural Economy and Connectivity**

- Road Traffic (Permitted Parking Area and Special Parking Area) (East Lothian Council) Designation Order 2016 (SSI 2016/407)
- Parking Attendants (Wearing of Uniforms) (East Lothian Council Parking Area) Regulations 2016 (SSI 2016/408)
- Road Traffic (Parking Adjudicators) (East Lothian Council) Regulations 2016 (SSI 2016/409)
Annexe A

Caseins and Caseinates (Scotland) (No. 2) Regulations 2016 (SSI 2016/422)

Breach of laying requirements: letter to the Presiding Officer

The Caseins and Caseinates (Scotland) (No. 2) Regulations 2016 ("the instrument") are made under sections 6(4), 16(1), 17(1), 26(1) and (3), 31(1) and 48(1) of the Food Safety Act 1990 and section 2(2) of the European Communities Act 1972 on 15 December 2016.

They are being laid before the Scottish Parliament on 15 December 2016 and come into force on 21 and 22 December 2016.

The Caseins and Caseinates (Scotland) Regulations 2016 (S.S.I. 2016/383) contained a number of errors as a result of a version control issue during legal drafting. As a result the Scottish Government decided that these Regulations should be revoked and remade. It is acknowledged that this situation is unsatisfactory and steps have been taken to avoid errors of this type in future.

As a result of the decision to revoke and re-make, section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with.

The instrument implements certain provisions of Directive (EU) 2015/2203 of the European Parliament and of the Council on the approximation of the laws of the Member States relating to caseins and caseinates intended for human consumption. The provisions of the Directive are due to come into force on 22 December 2016. The Instrument requires be in force at the same time to achieve conformity with EU law and accordingly, the 28 day notice period has not been given.