



The Scottish Parliament
Pàrlamaid na h-Alba

Published 18th January 2017

SP Paper 60

2nd Report, 2017 (Session 5)

Web

Delegated Powers and Law Reform Committee

Subordinate Legislation



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
www.scottish.parliament.uk/documents

For information on the Scottish Parliament
contact Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@scottish.parliament.uk

© Parliamentary copyright. Scottish Parliamentary Corporate Body

The Scottish Parliament's copyright policy can be found on the website –
www.scottish.parliament.uk

Contents

Introduction	1
Points raised: Instruments subject to negative procedure	
Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434) (Rural Economy and Connectivity)	2
No points raised	4
Annexe A	5

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.



parliament.scot/delegated-powers-committee



DPLR.Committee@scottish.parliament.uk



0131 348 5175



Follow the Scottish Parliament @ScotParl

Committee Membership



Convener
John Scott
Scottish Conservative
and Unionist Party



Deputy Convener
Stuart McMillan
Scottish National Party



Alison Harris
Scottish Conservative
and Unionist Party



Monica Lennon
Scottish Labour



David Torrance
Scottish National Party

Introduction

1. At its meeting on 17 January 2017, the Committee agreed to draw the attention of the Parliament to the following instrument—

Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434)
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

Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434) **(Rural Economy and Connectivity)**

4. The Regulations, in summary, implement two Commission Directives (2016/11 and 2016/317) and a Commission Decision (2016/320) to (a) implement a requirement in EU law for officially assigned serial numbers to be set out on the official label of various seeds; and (b) reduce the minimum varietal purity of seed of hybrids of swede rape.
5. In addition, the Regulations also amend the Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68) to correct defective drafting identified by the Committee on 23 February 2016.
6. The error previously identified by the Committee relates to regulation 15 of SSI 2016/68. Paragraphs (2), (6) and (7) of regulation 15 require the Scottish Ministers to take certain steps before and after taking a decision as to whether to grant various types of seed licence. The error was that those steps were to be taken in respect of “licence holders”, which meant that the steps did not apply to those who were applying for a licence or someone who had been refused a licence.
7. The previous Committee encouraged the Scottish Government to rectify this issue as soon as possible and in any event prior to the commencement of SSI 2016/68 on 1 July 2016.
8. Regulation 8(3) of the current Regulations amends regulation 15 to insert a reference to “the person refused a licence”.
9. However, the step at paragraph (2) of regulation 15 is that, before making a decision to refuse, grant or suspend a licence, the Scottish Ministers must notify the applicant of what they are proposing to do and the reasons for it, allowing that person to make representations to the Scottish Ministers before a final decision is taken.
10. Accordingly, the amended reference to a “person refused a licence” is incorrect as no formal decision will have been taken at the notification stage to refuse a licence.
11. The Scottish Government agrees that regulation 8(3)(a) (which amends regulation 15(2)) could be clearer and has agreed to amend the provision further at the next available opportunity.
- 12. The Committee draws the instrument to the attention of the Parliament under reporting ground (h). The meaning of regulation 8(3) could be clearer**

insofar as it amends regulation 15(2) of Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016 (SSI 2016/68) to include the words “the person refused a licence” in circumstances where no formal decision will have been taken to refuse the licence.

13. The Committee welcomes the undertaking given by the Scottish Government to further amend regulation 15(2) of SSI 2016/68 at the next available opportunity to make that provision clearer. However, it notes that it is not wholly satisfactory that:
 - i. a further amending instrument is required to correct regulation 15(2) of SSI 2016/68 in circumstances where regulation 8(3) seeks to amend defective drafting in relation to regulation 15(2) highlighted by the Committee previously; and
 - ii. the amendment contained in regulation 8(3) was not made before SSI 2016/68 came into force on 1 July 2016 despite the Committee encouraging the Scottish Government do so.

No points raised

14. At its meeting on 17 January 2017, 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.

Justice

Stop and Search Code of Practice (Appointed Day) (Scotland) Regulations 2017 [draft]

Local Government and Communities

Licensing of Relevant Permanent Sites (Scotland) Regulations 2016 (SSI 2016/433)

Annexe A

Seed (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/434)

On 5 January 2017, the Scottish Government was asked:

1. Regulation 1(1) provides that, with the exception of the regulations set out in regulation 1(2), the Regulations come into force on 31st March 2017. A number of the remaining provisions of the Regulations implement Commission Implementing Directive (EU) 2016/317 and Commission Implementing Decision 2016/320. Article 7(1) of Directive 2016/317 provides that Member States shall apply the laws, regulations and administrative provisions necessary to comply with this Directive from 1 April 2017. Likewise, Article 3 of the Decision states that the Decision shall apply from 1 April 2017.

Please explain why the remaining provisions of the Regulation that implement Directive 2016/317 and Decision 2016/320 properly come into force on 31st March 2017, given the requirements in the Directive and the Decision that they are applied from 1 April 2017.

2. Regulation 1(2) provides that regulations 3(4) and 8 come into force on 6th February 2017. The transposition note indicates that regulation 3(4) implements article 1 of Commission Implementing Directive (EU) 2016/11. Article 2(1) of Directive 2016/11 provides that Member States shall apply the laws, regulations and administrative provisions necessary to comply with this Directive from 1 January 2017.

As a supplementary question to question 1 above, please explain why 6th February 2017 has been properly determined as the coming into force date of regulation 3(4) in light of article 2 of Directive 2016/11.

3. Regulation 8(3) amends regulation 15 of the Seed (Licensing and Enforcement etc.) (Scotland) Regulations 2016/68 to correct drafting errors identified by the Committee at its meeting on 23 February 2016. The Committee considered at that meeting that certain of the steps required to be taken by Ministers in paragraphs (2), (6) and (7) of regulation 15 of SSI 2016/68 are in relation to persons who are not “licence holders”, having regard to the definition of that term in regulation 2 of SSI 2016/68, but who have simply applied for a licence under regulation 4. The amendments in regulation 8(3) clarify that those steps also have to be taken to a person refused a licence.

Regulation 15(2) of SSI 2016/68 provides that, before making any decision mentioned in paragraph (1) (including a decision to refuse a licence under sub-paragraph (a)) the Scottish Ministers must give a licence holder (and, as amended, a person refused a licence) a notice stating (a) what they are proposing to do and the reasons for it; and (b) the opportunity of making representations within such period as the Scottish Ministers consider reasonable. It appears that at this point a decision will not have been taken to refuse an application. Indeed, in light of representations from the applicant, the Scottish Ministers may subsequently decide not to refuse the licence.

Accordingly, does the Scottish Government consider that regulation 8(2) could be made clearer insofar as it refers to “the person refused a licence” in circumstances where no decision has been taken by the Scottish Ministers under regulation 15(2)(a) of SSI 2016/68 to refuse the application?

The Scottish Government responded as follows:

1. In relation to question 1, the Scottish Government agrees that the measures in both Commission Implementing Directive (EU) 2016/317 and Commission Implementing Decision 2016/320 apply from 1 April 2017. Both of these EU instruments make provision for the introduction by Member States’ competent authorities of an officially assigned serial number in official labels which will be applied to packages of seed once certified for marketing. As further explained in the recitals to both instruments (recital (2)), these measures were introduced to enhance the security of official labels and protect against their fraudulent use. So in the first instance is it primarily addressed to the Member States’ competent authorities as an anti-fraud measure. In respect of Scotland, the Scottish Government acts as the competent authority via Science and Advice for Scottish Agriculture (SASA). In practice, the new labelling requirements will only apply to the marketing of seed approved for certification from 1 April onwards because Ministers (acting through SASA) will only apply an officially assigned serial number in official labels to packages of seed once certified for marketing from that date.

2. In relation to question 2, we agree that the requirements of Commission Implementing Directive (EU) 2016/11 apply from 1 January 2017. Originally, it had been the Scottish Government’s intention to implement those requirements by that date. However, in order to deploy resources efficiently, it was decided that the implementation of those requirements should be combined with the implementation of Commission Implementing Directive (EU) 2016/317 and Commission Implementing Decision 2016/320 (as discussed in Question 1). Unfortunately, given complications arising from the drafting of amendments relating to the latter 2 EU instruments, it was not ultimately possible to achieve implementation of Commission Implementing Directive (EU) 2016/11 by 1 January 2017 whilst at the same time implementing those latter 2 EU instruments. Having regard to a relatively short delay in implementation and the limited practical effects arising from that, bearing in mind the limited trade in oil and fibre plants in Scotland at this time of year, in the circumstances the Scottish Government did not consider that it was necessary either to decouple the implementation of Commission Implementing Directive (EU) 2016/11 from the other 2 EU instruments or that there was a strong policy justification to breach the 28 day rule in relation to the implementation of Commission Implementing Directive (EU) 2016/11.

3. In relation to question 3, the Scottish Government agrees that regulation 8(2) could be clearer. However, in context, in the case of a proposed decision to refuse a licence the Scottish Government considers that the reference in regulation 15(2) of SSI 2016/68 as amended by regulation 8(2) of this instrument can only logically be interpreted to mean the person whose application for a licence the Scottish Ministers propose to refuse. Indeed, that is how that provision has been interpreted by the Scottish Ministers in practice even before the amendment made by regulation 8(2). However, to put the matter beyond doubt, the Scottish Government will further amend the provision at the next available opportunity.

