DELEGATED POWERS AND LAW REFORM COMMITTEE

AGENDA

3rd Meeting, 2018 (Session 5)

Tuesday 30 January 2018

The Committee will meet at 10.00 am in the Adam Smith Room (CR5).

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.

2. **Instruments subject to affirmative procedure:** The Committee will consider the following—
   
   - Representation of the People (Scotland) Amendment Regulations 2018 [draft];
   - Continuing Care (Scotland) Amendment Order 2018 [draft].

3. **Instruments subject to negative procedure:** The Committee will consider the following—
   
   - Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018 (SSI 2018/15).

4. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—
   
   - Education (Listed Bodies) (Scotland) Order 2018 (SSI 2018/7).

5. **Planning (Scotland) Bill:** The Committee will consider its approach to the delegated powers provisions in this Bill at Stage 1.

Euan Donald
Clerk to the Delegated Powers and Law Reform Committee
Room T1.01
The Scottish Parliament
Edinburgh
Tel: 0131 348 5212
Email: euan.donald@parliament.scot
The papers for this meeting are as follows—

**Agenda Items 2, 3 and 4**

Briefing on Instruments (private)  
DPLR/S5/18/3/1(P)

**Agenda Items 3 and 4**

Instrument Responses  
DPLR/S5/18/3/2

**Agenda Item 5**

*Planning (Scotland) Bill - As Introduced*  

*Planning (Scotland) Bill - Delegated Powers Memorandum*  

Briefing Paper 1 (private)  
DPLR/S5/18/3/3(P)

Briefing Paper 2 (private)  
DPLR/S5/18/3/4(P)
DELEGATED POWERS AND LAW REFORM COMMITTEE

3rd Meeting, 2018 (Session 5)

Tuesday 30 January 2018

Instrument Responses

INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE

Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018 (SSI 2018/15)

On 18 January 2018, the Scottish Government was asked:

1. A letter of 16th January has been sent from the Solicitors Food, Children, Education, Health and Social Care Division of the Scottish Government to the Presiding Officer, to explain why section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ('the 28 day rule') has not been complied with. The letter explains that the UK Government notified, on behalf of the UK Government and the devolved administrations, the draft transposing measures of Council Directive 2013/59/Euratom as they apply to the deliberate addition of radiological substances to animal feed, on 13 October 2017. Due to the "3 months standstill period" referred to in the letter, it also explains that regulations required to be laid on 16th January, which involved the breach of the 28 day rule given that a commencement date of 6th February 2018 was required for this instrument.

To assist the Committee, please explain why in the circumstances the UK Government required to make the notification as described above on 13 October, or whether the notification could have been made on an earlier date, which in turn could have meant that the instrument could have been laid on an earlier date, and so to comply with the 28 day rule?

2. Regulation 5 provides that a person who contravenes regulation 3 (deliberate addition of a radioactive substance in the production of feeding stuff) is guilty of an offence and liable to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 3 months. The penalty for contravening regulation 4 (import or export of feeding stuff to which a radioactive substance has been deliberately added during production) appears to be specified in section 74A(3) of the Agriculture Act 1970, but "or to both" is added in that subsection, so that both a fine and imprisonment may be imposed.

(i) Please clarify therefore whether the policy intention is that the penalty for contravening regulation 3 is the alternative of a fine or imprisonment, or otherwise whether it is intended that either or both may be imposed?

(ii) If the former, please explain the difference in approach. If the latter, is corrective action proposed?
The Scottish Government responded as follows:

1. Food Standards Scotland did not originally anticipate that implementation of Article 21 (prohibition of practices) of Council Directive 2013/59/Euratom in relation to animal feed would require the making of an explicit statutory offence relating to animal feed as it was thought that the considerable safeguards in the existing food and feed legislation law would suffice. However, following prolonged discussions with colleagues across the UK, it was agreed that the preferred course of action would be to make such specific statutory provisions. Unfortunately the matter was not resolved in sufficient time to allow for an earlier notification of the relevant technical standard which would have ensured that all Parliamentary timetables were respected. The Scottish Government takes seriously its responsibility to make sure that the timetable for notification of a technical standard takes account of the timescales required for Scottish Parliament scrutiny and apologises that this was not possible in this case.

2. As the Committee has noted, the penalty for contravening regulation 4 (import or export of feeding stuff to which a radioactive substance has been deliberately added during production) is specified in section 74A(3) of the Agriculture Act 1970 as a fine not exceeding level 5 on the standard scale or imprisonment for a term not exceeding three months, or both.

Under section 74A(4) there are certain powers to make regulations in implementation of an EU Instrument but these powers do not extend to prohibiting the deliberate addition of radioactive substances in the production of feeding stuffs. Accordingly, regulations 3 and 5 are made under section 2(2) of the European Communities Act 1972. Paragraph 1(1)(d) of Schedule 2 to that Act provides for restrictions on the penalties applicable to new criminal offences created under section 2(2). The view taken at the time of making these Regulations was that it could not be punishable by both a fine not exceeding level 5 and a term of imprisonment not exceeding three months. On further consideration, however, it is accepted that this is an overly restrictive view. The Scottish Government will amend these Regulations at the earliest suitable opportunity.

---

1 of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom
Breach of laying requirements: letter to the Presiding Officer

The Animal Feed (Basic Safety Standards) (Scotland) Regulations 2018 are made by Scottish Ministers under sections 74A and 84 of Agriculture Act 1970 and section 2(2) of the European Communities Act 1972.

These Regulations are subject to the negative resolution procedure. Unfortunately, although these Regulations need to come into force on 6 February 2016 in order to comply with our EU obligations, they could not be delayed until today and thus breach the requirement in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 for instruments to be laid at least 28 days before they are due to come into force. As required by section 31(3) of the 2010 Act, I am writing to you to explain why the laying requirements have not been complied with.

These Regulations transpose Article 21 (prohibition of practices) of Council Directive 2013/59/Euratom in relation to animal feed. Article 106 of that Directive requires Member States to bring into force laws necessary to comply with the Directive by 6 February 2018. Article 33 of the Euratom Treaty requires Member States to communicate draft provisions to the Commission and allows the Commission to issue any recommendations on such drafts within 3 months of that date. The UK Government notified on behalf of the UK Government and the devolved administrations the draft transposing measures of Council Directive 2013/59/Euratom as they apply to the deliberate addition of radiological substances to animal feed on 13 October 2017. The effect of this 3 month standstill period in which the Commission can issue recommendations is that the Regulations cannot be laid until 15 January.

Ideally, the Commission would have been notified earlier, thus allowing the 3 month period to expire 28 days (or indeed preferably 40 days) before the coming into force date. Given the delay, we sought to aid Scottish Parliament lawyers in considering the regulations by sharing a draft of the Instrument on 11 January 2018.

Food Standards Scotland (FSS) did not originally anticipate that implementation of this Article would require the making of an explicit statutory offence relating to animal feed as it was thought that the considerable safeguards in the existing food and feed legislation law would suffice. However, following prolonged discussions with colleagues across the UK, it was agreed that the preferred course of action would be to make such specific statutory provisions.

FSS consulted on these regulations during November 2017 and is satisfied from stakeholder responses that there will be no adverse impact.

I trust you will find this helpful.

---

2 of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom
INSTRUMENTS NOT SUBJECT TO ANY PARLIAMENTARY PROCEDURE

Education (Listed Bodies) (Scotland) Order 2018 (SSI 2018/7)

On 19 January 2018, the Scottish Government was asked:

1. Part 1 of the schedule includes "Mary Hare Grammer School" as a body authorised to provide courses in preparation for a degree. The website of the body, [www.maryhare.org.uk](http://www.maryhare.org.uk), describes it as "Mary Hare School", comprising the Primary and Secondary schools. "Mary Hare" appears to be a limited company (03085006) and a registered charity (1048386). The Charity Commission website also describes under its "aims and activities" that Mary Hare operates the 2 schools, but it also provides training for teachers and other practitioners in deaf education. The schedule of the instrument includes various limited companies.

Accordingly, is it considered that the description of the body is properly "Mary Hare", rather than "Mary Hare Grammer School"?

2. Part 1 of the schedule also lists "St Philips's Centre". It appears that the Centre (in Leicester) is a limited company- St Philip's Centre Ltd (company number 05657062). Similarly is it considered that the description of the body is properly "St Philip's Centre Ltd"?

3. Would corrective action be proposed?

The Scottish Government responded as follows:

1. We agree that the entry for “Mary Hare Grammer School” is inaccurate and that the body is properly described as “Mary Hare”.

2. We agree that the entry for “St. Philip’s Centre” is inaccurate and that the body is properly described as “St. Philip’s Centre Ltd”.

3. We consider that, despite the current description of these two bodies in the schedule being inaccurate, the inaccuracies are unlikely to result in either body being mistaken for a different body. Consequently, we do not intend to take corrective action at this stage. We would however, undertake to correct these two entries in the next amending instrument.