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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
classify 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.

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Introduction

1. At its meeting on 14 June 2016, the Committee agreed to draw the attention of the Parliament to the following instruments—

   Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment (No. 2) Regulations 2016 (SSI 2016/178);


2. The Committee's recommendations in relation to the above instruments are set out below.

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

Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment (No. 2) Regulations 2016 (SSI 2016/178) (Rural Economy and Connectivity)

4. The Regulations amend the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 (“the principal Regulations”). The amendments have been required urgently, to make provision for revised deadlines for relevant applications under the Common Agricultural Policy (CAP) for this year.

5. The Regulations implement in Scots law certain derogations which are contained in a Commission Implementing Regulation (EU) 2016/761.

6. The Regulations are subject to the negative procedure and came into force on 18 May 2016.

7. The Committee draws the Regulations to the attention of the Parliament under 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 Regulations).

8. The Regulations were laid before the Parliament on 17 May, and came into force on 18 May, 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.

9. However, 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 Minister for Parliamentary Business in his letter to the Presiding Officer dated 17 May 2016 which can be found at Annexe A.
The Regulations amend the list of police stations which are prescribed for the purposes of the notification requirements in the Sexual Offences Act 2003.

The list of prescribed police stations is currently contained in the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2014. This amending instrument updates that list by removing 2 prescribed police stations, adding 7 new prescribed police stations and amending the addresses for 13 prescribed police stations on the current list. The policy note provides details of the changes.

The Regulations are subject to the negative procedure and come into force on 1 July 2016.

The Committee draws the instrument to the Parliament’s attention under the general reporting ground in respect that:

(i) there are errors in the police station postcodes substituted by regulations 2(2)(m), (n) and (o),

(ii) there are errors in the postcodes in the entries for Helensburgh Police Station and Keith Police Station as inserted by regulation 2(2)(p).

The Committee notes that the Scottish Government intends to correct these errors by further amending the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2014 at the first opportunity.
No points raised

15. At its meeting on 14 June 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:

**Environment, Climate Change and Land Reform**

Land Reform (Scotland) Act 2016 (Commencement No. 1 and Transitional Provision) Regulations 2016 (SSI 2016/193 (C.16)).

**Health and Sport**

Food Information (Scotland) Amendment Regulations 2016 (SSI 2016/191).

**Justice**

Air Weapons Licensing (Scotland) Regulations 2016 (SSI 2016/188).
Annexe A

Common Agricultural Policy (Direct Payments etc.) (Scotland) Amendment (No. 2) Regulations 2016 (SSI 2016/178)

Breach of laying requirements: letter to the Presiding Officer

I am writing to inform you that the Scottish Government is unable to comply with the requirement in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (ILRA) of allowing 28 days between laying and bringing into force the provisions of the above instrument. Section 31(3) of ILRA sets out that in these circumstances, a letter explaining the reasons must be sent to the Presiding Officer at the time the SSI is laid.

I would emphasise that while failure to comply with the laying requirements does not affect the validity of the instrument or the ability of Parliament to scrutinise and report on it, I regret we have had to take this action, particularly so early in the parliamentary session and in advance of the establishment of the parliament’s committee structure. Having considered the available options I have, however, concluded that the most appropriate course of action is to lay this instrument and bring it into force on 18 May 2016.

Background to instrument

This Scottish Statutory Instrument (SSI) was made by the Scottish Ministers under section 2(2) of the European Communities Act 1972 on 17 May 2016. It is being laid before the Scottish Parliament on the same date and its provisions will come into force on 18 May 2016. It amends the Common Agricultural Policy (Direct Payments etc.) (Scotland) Regulations 2015 (SSI 2015/58).

The European Commission instrument enabling the extension of the deadlines for applications under the Common Agricultural Policy direct payments scheme came into force only on Friday 13 May 2016. The Scottish Government has sought to make, lay and bring into force this instrument as soon as possible after that date, especially given that the existing deadlines in SSI 2015/58 expire on 16 May for 2016. This provides legal certainty and transparency for farmers, land managers and agents. Land managers, farmers and agents have been made aware of the pending extensions to the deadlines through revised guidance and the change is prominent on the Scottish Government Common Agricultural Policy website. There has also been liaison with representative farming bodies.

Similar amendments were made to the principal Regulations for calendar year 2015 by SSI 2015/215 following the Commission Implementing Regulation (EU) 2015/747. Those Regulations also breached the 28 day rule for similar reasons. In that case the then Delegated Powers and Law Reform Committee queried why the Government had waited 2 working days after making the instrument before laying it, given that we were breaching the 28 day rule. To address that issue we have taken the step to exceptionally make and lay this new instrument on the same day.
The annex to this letter provides further technical explanation of how this amendment will be achieved in law.

**Parliamentary scrutiny**

I don’t want to pre-empt Parliament’s right to determine how it conducts its own business, but I anticipate that once formed, both the Delegated Powers and Law Reform Committee and the appropriate subject Committees will wish to consider the instrument and report on it if necessary. For comparison, the 2015 instrument was laid on 28 May 2015 and came in to force on 1 June. On 16 June it was considered by the Delegated Powers and Law Reform Committee and the Rural Affairs and Climate Change Committee took it on 24 June. While the scrutiny of this instrument was complete within 28 days, the full period for Parliament to determine if it was content with the instrument did not elapse for 40 sitting days - September 2015.

Given the extremely unusual circumstances applying to this instrument being laid, I will bring it to the attention of opposition Business Managers. The Government stands ready to provide any further information relevant committees require following their establishment.

In conclusion I would emphasise again that I regret that the Government has not been able to comply with section 28(2) of ILRA on this occasion and I hope you will agree that the action the Government has taken is justified in the circumstances. I would be happy to discuss the matter further with you.
The amendments to the principal Regulations made by regulations 2 and 3 of this Instrument are required to make provision for the exercise of derogations in respect of deadlines for relevant applications under the Common Agricultural Policy (the CAP) applicable to calendar year 2016, in accordance with Articles 1 and 3 of the 2016 Commission Implementing Regulation.

Regulation 6 of the principal Regulations states that the final date for submission of a single application, aid application, or payment claim for aid or support under the CAP to the Scottish Ministers is 15 May in each calendar year (unless that date is a Saturday, Sunday, Bank Holiday or other public holiday, in which case, the deadline is the next working day). Regulation 9 of the principal Regulations also sets 15 May in each calendar year as the final date of submission of applications for the allocation of, and for the increase in the value of, payment entitlements under the CAP (unless that date is a Saturday, Sunday, Bank Holiday or other public holiday, in which case, the deadline is the next working day).

Articles 1 and 3 of the 2016 Commission Implementing Regulation permit Member States to fix new deadlines in respect of these two aspects of the CAP in relation to 2016. The new CAP is extremely complex and Member States have had some difficulty in their practical implementation of payment schemes and rural development schemes under it. In recognition of that fact, it was considered appropriate to offer applicants more time to submit applications for support or aid, or for allocation of or increase in value of payment entitlements under the CAP.

Articles 1 and 3 of the 2016 Commission Implementing Regulation permit Member States to fix new deadlines up to and including the 15 June 2016. The Instrument accordingly amends the two deadlines from 16 May to 15 June, for 2016 only. The deadlines for subsequent calendar years remain 15 May.