The Scottish Parliament
Pàrlamaid na h-Alba

HEALTH AND SPORT COMMITTEE

AGENDA

13th Meeting, 2019 (Session 5)

Tuesday 7 May 2019

The Committee will meet at 10.00 am in the James Clerk Maxwell Room (CR4).

1. **European Union (Withdrawal) Act 2018**: The Committee will consider whether the following instrument has been laid under the appropriate procedure and categorisation—

   The Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/142)

2. **Subordinate legislation**: The Committee will consider the following negative instrument—

   The Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/142)

3. **Human Tissue (Authorisation) (Scotland) Bill**: The Committee will consider the Bill at Stage 2.

4. **Instruments/documents laid for consultation (in private)**: The Committee will consider its approach to the following—


5. **Finance and Constitution Committee (in private)**: The Committee will consider its response to a letter from the Convener of the Finance and Constitution Committee.
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The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk  
PRIVATE PAPER

**Agenda item 2**

Note by the Clerk

**Agenda item 3**

*Human Tissue (Authorisation) (Scotland) Bill: Marshalled List*

*Human Tissue (Authorisation) (Scotland) Bill: Groupings List*

*Human Tissue (Authorisation) (Scotland) Bill: Bill page and associated documents*

**Agenda item 4**

PRIVATE PAPER

**Agenda item 5**

PRIVATE PAPER
Health and Sport Committee

13th Meeting, 2019 (Session 5)

Tuesday 7 May 2019

Agenda item 1 - Subordinate legislation - EU exit

Introduction

1. This paper details subordinate legislation in relation to the following SSI:
   - **The Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/142)**. The purpose of these Regulations is to make minor, technical changes which are required to correct legislative deficiencies that will arise as a consequence of the UK leaving the EU.

2. The SSI was laid on the 23 April 2019 and the Health and Sport Committee must report by 27 May 2019. Further information on the policy objectives of this instrument is set out at Annexe A.

3. This instrument is subject to scrutiny in two stages, as set out below.

4. The first stage at the meeting today is to consider the subordinate legislation and agree whether it is content that the parliamentary procedure and categorisation given to the instrument by the Scottish Government is appropriate.

5. The second stage at the meeting today is the scrutiny of the instrument itself, in accordance with the usual procedures for negative or affirmative SSIs.

Parliamentary Procedure

6. In anticipation of the UK leaving the EU, changes are required to devolved legislation by way of statutory instruments. Under the European Union (Withdrawal) Act 2018, and where the Scottish Government considered a UK-wide approach to the legislative changes would be appropriate, these have been made by UK statutory instruments (SIs) laid by the UK Government with Scottish Ministers’ consent. The Scottish Parliament has considered these legislative changes – notified to them by the Scottish Government – in advance of the Scottish Government giving consent.

7. Other legislative changes are being made through Scottish statutory instruments (SSIs).

8. SSIs related to EU exit are being considered in the same way that ‘domestic’ SSIs are considered except that the lead committee has the opportunity, in advance of its policy consideration, to recommend to the Scottish
Government that the parliamentary procedure allocated to the instrument should be changed. This process is known as the sift.

9. A protocol has been agreed between the Scottish Government and Scottish Parliament on the process for considering SSIs laid under the 2018 Act. The protocol sets out further information about the sifting process.

10. The protocol also sets out an approach which categorises SSIs – high, medium or low – to assist committees’ prioritisation in terms of scrutiny and gives the Delegated Powers and Law Reform Committee (DPLRC) a role in highlighting to a lead committee those SSIs where it disagrees with the Scottish Government about the categorisation. The Categories of prioritisation are set out at Annexe B.

Parliamentary procedure

11. As set out above, the lead committee has the opportunity, in advance of its consideration, to recommend to the Scottish Government that the parliamentary procedure allocated to the instrument should be changed. Thus, the lead committee can recommend that an instrument laid under the negative procedure should be revoked and laid as an affirmative instrument and vice versa. The protocol states this “enables committees to recommend a change where they consider that the matter is of such significance that it requires active Parliamentary approval (or conversely is not so significant that it requires Parliamentary time to be allocated to its approval)”.

12. The DPLRC will also consider the parliamentary procedure allocated to the instrument and make a recommendation to the lead committee where it agrees the procedure should be changed.

13. SPICe and the Office of the Solicitor of the Scottish Parliament (OSSP) have provided advice to inform the Committee’s consideration of the sift. This is set out in the private paper for this agenda item (Paper No. HS/S5/19/13/2 (P)).

14. The Scottish Government has chosen the negative procedure for this instrument.

No recommendation to change the parliamentary procedure

15. Where a lead committee agrees with the parliamentary procedure, the instrument is thereafter considered and disposed of in the same way as a ‘domestic’ SSI.

Recommendation to change the parliamentary procedure

16. Where a lead committee recommends the parliamentary procedure should be changed, it must report to the Parliament. The Scottish Government is expected to meet that recommendation as soon as possible.

17. A change of procedure does not, however, affect the timetable for Parliamentary consideration and the SSI should be considered under the procedure recommended by the lead committee.
18. Scottish Ministers have chosen the negative procedure to apply to the scrutiny of this SSI in the Parliament.

Categorisation

19. The protocol referred to above also sets out three different levels of prioritisation based on the significance of an SSI. As noted above, the categories are set out at Annex B to this paper.

20. Standard scrutiny processes would still apply to the consideration of the SSIs, depending on the procedure assigned to the particular instrument. That is to say, all SSIs will be considered by the DPLR Committee from a technical perspective irrespective of what category they fall into. Furthermore, all instruments will be referred to a lead committee, again irrespective of the category they fall into and they will be considered in the normal way that a laid only, negative or affirmative instrument would be considered.

21. The protocol does not prescribe a process that lead committees should apply to the scrutiny of matters falling into the different categories, but by categorising instruments it provides committees with a guide as to what they might wish to prioritise.

22. The SSI has been categorised as medium.

Delegated Power and Law Reform Committee consideration

23. The DPLR Committee considered this SSI at its meeting on the 30 April 2019. The Committee agreed that the SSI had been laid under the appropriate procedure and given the appropriate categorisation.

For decision

24. The Committee is invited to agree whether it is content the parliamentary procedure and categorisation given to the instrument by the Scottish Government is appropriate.

Next Steps

25. At Agenda item 2, the Committee will consider the policy content of the SSI as per standard procedure and decide if it is content for the instrument to be made.

26. The Committee’s views on this SSI will be recorded in the minutes of today’s meeting together.
POLICY NOTE

THE PUBLIC HEALTH AND TOBACCO (EU EXIT) (SCOTLAND) (AMENDMENT) REGULATIONS 2019 (SSI 2019/142)

1. The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018. The instrument is subject to negative procedure.

Purpose of the instrument. This instrument is being made in order to address deficiencies in legislation arising from the withdrawal of the United Kingdom (UK) from the European Union (EU).

Policy Objectives

2. The policy objective is to ensure that the relevant legislation continues to operate effectively following the UK’s exit from the EU in the event of no deal.

Explanation of the law being amended by the regulations

3. The Public Health etc. (Scotland) Act 2008 includes provisions that prohibit the use of sunbeds by, or sale or hire of sunbeds to, anyone under 18 years old. It provides for offences relating to permitting anyone under 18 years to use, buy or hire a sunbed.

4. The Tobacco and Primary Medical Services (Scotland) Act 2010 includes provisions that prohibit the sale of tobacco products, cigarette papers and nicotine vapour products to anyone under 18 years old. It provides for offences relating to permitting anyone under 18 years old to buy any of these products.

5. Each of these Acts provides for a defence where the person can show that they believed that the child or young person was aged 18 or over and that they had taken reasonable steps to establish that person’s age. Acceptable proof of age currently includes "a European Union photocard driving licence". These Regulations add a “UK driving licence” as proof of age to the relevant legislation to ensure both driving licences issued in the UK as well as those issued in EU Member States are recognised as proof of age when the UK leaves the EU.

6. The Public Health etc. (Scotland) Act 2008 (Sunbed) Regulations 2009, the Tobacco (Prescribed Documents) (Scotland) Regulations 2013 and the Sale of Nicotine Vapour Products (Prescribed Documents) (Scotland) Regulations 2017, prescribe acceptable proof of age documentation in addition to that provided for in the primary legislation. In each case the Regulations prescribe a "national identity card issued by an EU state (other than the UK)" as a valid form of proof of age. As the UK will no longer be a member state of the EU
following EU Exit, the words “other than the United Kingdom” are no longer necessary and will be removed by these Regulations.

**Reasons for and effect of the proposed change or changes on retained EU law**

7. These minor technical changes to existing legislation correct legislative deficiencies arising as a result of the UK leaving the EU. They have been made to ensure that the legislation continues to operate effectively following EU Exit.

**Statements required by European Union (Withdrawal) Act 2018**

**Statement that in their opinion Scottish Ministers consider that the regulations do no more than is appropriate**

The Minister for Public Health, Sport and Wellbeing Joe FitzPatrick has made the following statement.

“In my view the Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019 do no more than is appropriate as they simply ensure that a driving licence issued in the United Kingdom can continue to be accepted as a valid form of proof of age. This is the case because they ensure that the relevant legislation includes a UK Driving Licence as an additional appropriate form of identification.”

**Statement as to why the Scottish Ministers consider that there are good reasons for the regulations and that this is a reasonable course of action**

The Minister for Public Health, Sport and Wellbeing Joe FitzPatrick has made the following statement.

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action as they enable the relevant legislation to operate effectively following the UK’s exit from the EU. The changes made by the Regulations fall within the parameters of the enabling powers in the EU (Withdrawal) Act 2018.”

**Statement as to whether the SSI amends, repeals or revokes any provision of equalities legislation, and, if it does, an explanation of that amendment, repeal or revocation**

The Minister for Public Health, Sport and Wellbeing Joe FitzPatrick has made the following statement.

“In my view the Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019 do not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”
Statement that Scottish Ministers have, in preparing the regulations, had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010

The Minister for Public Health, Sport and Wellbeing Joe FitzPatrick has made the following statement.

“In my view the Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019 have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”

Additional information provided for EU Exit instruments in terms of the protocol agreed between the Scottish Government and the Scottish Parliament

Statement that Scottish Ministers have, in preparing the regulations, had due regard to the guidance principles on the environment and animal welfare

Not applicable.

Statement explaining the effect (if any) of the regulations on rights and duties relating to employment and health and safety and matters relating to consumer protection (so far as is within devolved competence)

Not applicable.

An indication of how the regulations should be categorised in relation to the significance of the change proposed.

Medium - These amendments are minor and technical; however, if they are not made this may lead to uncertainty and concerns amongst those involved in selling tobacco, nicotine vapour products or selling, hiring or allowing customers to use sunbeds as well as difficulties for young people in purchasing or using these products if they cannot use their driving licence as a valid proof of age.

Statement setting out the Scottish Ministers’ reasons for their choice of procedure

The Minister for Public Health, Sport and Wellbeing Joe FitzPatrick has made the following statement regarding the use of negative procedure for the Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019.

“Negative procedure is considered appropriate as these minor and technical amendments to relevant legislation do no more than is necessary to ensure that the legislation continues to operate effectively following the UK’s exit from the EU and they do not impose any additional financial burdens on local authorities...
or businesses. The Regulations do not include provision which falls within paragraph 1(2) of schedule 7 to the European Union (Withdrawal) Act 2018."

Further information

Consultation

No consultation was carried out in relation to the Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations as they do not change existing policy. However, the UK Government did confirm the term “UK driving licence” was appropriate. As mentioned above, these Regulations are required to ensure that the legislation continues to operate effectively following EU Exit.

Impact Assessments

Full impact assessments have not been prepared for this instrument as it does not make any changes to existing policy. The regulations are required to ensure continuity of practice following EU Exit and the impact is thought to be positive as the regulations will ensure that the relevant legislation continues to operate effectively.

Financial Effects

The Minister for Public Health, Sport and Wellbeing is content that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government Population Health Directorate
April 2019
CATEGORIES OF PRIORITISATION (EXTRACT FROM PROTOCOL)

Low

It is expected that proposals for instruments falling into this category will have one or more of the following characteristics:

- Minor and technical in detail;
- Ensuring continuity of law with no policy change;
- Clear there is no significant policy decision for Ministers to make;
- Updating references which are no longer appropriate once the UK has left the EU, such as provisions which refer to “member states other than the United Kingdom” or to “other EEA states”.

This is an illustrative list and not a comprehensive view of what falls into this category. It would be expected that instruments falling into this category would be negative instruments.

Medium

It is expected that proposals for instruments falling into this category will have one or more of the following characteristics:

- Instruments predominantly concerned with technical detail but which include some more significant provisions that may warrant subject committee scrutiny;
- Instruments where Ministers have a limited policy choice but with more significant implications.

This is an illustrative list and not a comprehensive view of what falls into this category.

High

It is expected that proposals for instruments falling into this category will have one or more of the following characteristics:

- Instruments in which a more significant policy decision is being made by Scottish Ministers;
- Transfer of functions - providing for a function of an EU entity to be exercised by a public authority in the UK where there is a policy choice with significant implications about which public authority it should be e.g. a regulatory function exercisable by either SEPA or Scottish Water where Parliament may have an interest in the policy choice made by Scottish Ministers;
• Replacement, abolition, or modification of certain EU functions that have significant implications e.g. reporting (both receiving and making reports), monitoring, compliance and enforcement;

• Sub-delegation – creating or amending a power to legislate, including transferring EU legislative powers to Scottish Ministers or to another UK public authority;

• Provision which materially increases or otherwise relates to a fee in respect of a function exercisable by a UK public authority. This could include changes to the group of bodies or individuals required to pay such fees;

• Provision which creates, or widens the scope of, a criminal offence, or which increases the penalty which may be imposed in respect of a criminal offence;

• Provision which involves a significant financial impact on individuals, business, public sector or the economy;

• Provision which creates, widens the scope of, or increases the level of fine for a fixed penalty.

This is an illustrative list and not a comprehensive view of what falls into this category.
Overview of instruments

1. There is one negative instrument for consideration at today’s meeting:
   - The Public Health and Tobacco (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/142)

Purpose of the instrument

2. The purpose of this instrument is to make minor technical changes to existing legislation to ensure that the relevant legislation continues to operate effectively following the UK’s exit from the EU in the event of a no deal.

3. These Regulations make amendments to primary and subordinate legislation in the field of public health in respect of proof of age and identity requirements where restrictions on the hire and use of sunbeds by persons under 18 and the sale of tobacco and nicotine products to such persons apply.

4. Acceptable proof of age currently includes “a European Union photocard driving licence”. These Regulations add a “UK driving licence” as proof of age to the relevant legislation to ensure both driving licences issued in the UK as well as those issued in EU Member States are recognised as proof of age when the UK leaves the EU and provides for a defence where a person can show that they believed that the child or young person was aged 18 or over and that they had taken reasonable steps to establish that person’s age.

5. Current Regulations prescribe a “national identity card issued by an EU state (other than the UK)” as a valid form of proof of age. As the UK will no longer be a member state of the EU following EU Exit, the words “other than the United Kingdom” are no longer necessary and will be removed from the Regulations.

6. The above instrument was made in exercise of the powers conferred by paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 and is subject to negative procedure.

7. These Regulations come into force on exit day.

8. No impact assessment has been produced for this instrument as no significant impact on the private or voluntary sector is foreseen.
9. An electronic copy of the instrument is available at:
   

10. There has been no motion to annul this instrument.

11. The Committee is due to report by 27 May 2019.

Delegated Powers and Law Reform Committee consideration

12. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 30 April 2019. The Committee determined that it did not need to draw the attention of the Parliament to this instrument on any grounds within its remit.