RURAL ECONOMY AND CONNECTIVITY COMMITTEE

AGENDA

21st Meeting, 2018 (Session 5)

Wednesday 5 September 2018

The Committee will meet at 10.15 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private**: The Committee will decide whether to take item 3 and any future consideration of the draft report on its Salmon farming in Scotland inquiry in private.

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

   The Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 (SSI 2018/202)

3. **Salmon farming in Scotland**: The Committee will consider a draft report.

   Steve Farrell
   Clerk to the Rural Economy and Connectivity Committee
   Room T3.40
   The Scottish Parliament
   Edinburgh
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The papers for this meeting are as follows—

**Agenda Item 2**
SSI cover note  
REC/S5/18/19/1

**Agenda Item 3**
PRIVATE PAPER  
REC/S5/18/19/2
Rural Economy and Connectivity Committee

21st Meeting, 2018 (Session 5), Wednesday 5 September 2018

Subordinate Legislation

1. The Committee will consider the following negative SSI:

   • SSI 2018/202: The Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 (see Annex A).

2. The annexes contain, in respect of the instrument, the clerk’s note, correspondence from the Scottish Government, and the instrument itself. No Policy Note is provided for SSI 2018/202 due to it being a revoking instrument for another instrument.

Rural Economy and Connectivity Committee Clerks
31 August 2018
Annex A – SSI 2018/202: The Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018

Type of Instrument: Negative

Laid Date: 22 June 2018

Coming into force: 30 June 2018

Minister to attend the meeting: No

Procedure

1. Under the negative procedure, an instrument comes into force on the date specified on it (the “coming into force date”) unless a motion to annul is agreed to by the Parliament within the 40-day period. Lead committees are not obliged to report to the Parliament on negative instruments, except where a motion recommending annulment has been lodged.

Policy Objectives and Background

2. The instrument revokes the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 (SSI 2018/164) that the REC Committee considered at its meeting on 20 June 2018. The REC Committee has previously welcomed the decision to revoke that SSI (due to difficulties associated with stakeholders being unable to submit consultation responses to the Scottish Government on that draft SSI). The Committee was contacted by the affected stakeholders before considering SSI 2018/164, and had corresponded with the Scottish Government to highlight the difficulties, which resulted in the revocation.

3. The Scottish Government have sent correspondence to the Presiding Officer to explain the background to this revoking SSI (dated 22 June 2018) which is attached in this Annexe.

4. The instrument is attached and available online at the below link:


Consideration by the Delegated Powers and Law Reform Committee

5. At its meeting on 26 June 2018, the Delegated Powers and Law Reform (DPLR) Committee considered the instrument and agreed to draw the attention of Parliament to this instrument as the instrument breaches the 28 day rule.

6. The ‘28 day rule’ provides that where a Scottish statutory instrument is subject to the negative procedure, it must be laid at least 28 days before the instrument comes into force. A breach of the rule does not affect the validity of the Order.

7. In the Scottish Government correspondence of 22 June 2018 to the Presiding Officer, the Scottish Government explained that the rule was breached due to
problems with consultation responses not being received (as described above), in relation to the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 (SSI 2018/164). After becoming aware of those consultation responses, the Scottish Government decided to revoke the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018. The DPLR Committee accepted these reasons provided for the breach of the 28 day rule.

**Recommendation**

8. The Committee is invited to consider any issues that it wishes to raise in relation to this instrument.

   Rural Economy and Connectivity Committee Clerks
   August 2018
Correspondence to the Presiding Officer from the Scottish Government

Dear Presiding Officer

NOTIFICATION OF BREACH OF THE 28 DAY RULE

The Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 was made by the Scottish Ministers under sections 1, 8(1), 28, 32(2), 32(3), 34(7) and 83(2) of the Animal Health Act 1981 on 22 June 2018. It is being laid before the Scottish Parliament today. This instrument is subject to negative procedure by virtue of section 33 of the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”).

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. To meet the requirements of 31(3) of that Act, I am writing to explain why.

However, before doing so, I should explain that regrettably due to an oversight the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 (“the principal Order”) which is being revoked by this instrument, was laid under the incorrect procedure, (namely laid no procedure as defined in section 30 of the 2010 Act). This overlooked the fact that one of the enabling powers relied on for the instrument (section 32(3) of the Animal Health Act 1981) was specifically subject to negative procedure (by virtue of express provision to that effect in section 32(3)) and hence the instrument as a whole required to be subject to such procedure, in accordance with section 33 of the 2010 Act. Whilst in light of section 31(2) of the 2010 Act this did not affect the underlying validity of the principal Order and, in any event, the principal Order respected in practice the requirements of section 28(2) of the 2010 Act, I apologise for this oversight.

From 7 September to 30 November 2017 the Scottish Government ran a public consultation on proposals to amend aspects of our bovine tuberculosis (TB) control and compensation policy. Following this consultation and analysis of the responses received The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 was signed by the responsible Cabinet Secretary on 17 May 2018 and laid before the Scottish Parliament on 21 May 2018. This Order should have been subject to negative Parliamentary procedure, however as explained above, was inadvertently laid as ‘laid no procedure’.

On 11 June 2018 it came to light that two consultation responses, one from the NFUS and the other from the British Veterinary Association (BVA) had been submitted (by e-mail, not through Citizen Space) but not received by the Scottish Government and consequently were not included in our analysis of responses. A retrospective analysis of these responses showed that the BVA agreed with the proposals set out in our consultation paper. The NFUS agreed with the majority of the Scottish Government’s
proposals, however they do not agree with one of the more significant changes, that being to cap compensation payments for high-value animals that are culled for disease control reasons.

On 13 June 2018, we received notice from the Clerk to the Rural Economy and Connectivity Committee that the NFUS had made representations to the Committee highlighting that their consultation response had not been considered nor had their concerns on the proposed cap been addressed. We were further advised that the Committee, in light of the NFUS correspondence, intended to discuss The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 in Committee on 20 June 2018. We subsequently wrote to the Committee on the 20 June to advise of our intention to revoke the Order to ensure transparency and that due process is followed. The Committee welcomed this decision.

While the Scottish Government believes that the provisions set out in The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 are sound, we feel that it would be prudent to engage further with the NFUS on this matter, particularly given their significance as a key and valued stakeholder and the importance of this issue to their members. Accordingly, the Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 is being laid today to revoke The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018 prior to its coming into force date of 10 July 2018 and it has therefore been necessary to breach the 28 day rule. The Scottish Government will lay a new amending Instrument before the Scottish Parliament once our deliberations with the NFUS have concluded.

I am copying this letter to Edward Mountain, Convenor of the Rural Economy and Connectivity Committee and Graham Simpson, Convenor of the Delegated Powers and Legislative Reform Committee.

Yours sincerely

John Nicolson

ARE – Animal Health & Welfare

22 June 2018
The Scottish Ministers make the following Order in exercise of the powers conferred by sections 1, 8(1), 28, 32(2) and (3), 34(7) and 83(2) of the Animal Health Act 1981(a) and all other powers enabling them to do so.

Citation and commencement

1. This Order may be cited as the Tuberculosis (Miscellaneous Amendments) (Scotland) Revocation Order 2018 and comes into force on 30th June 2018.

Revocation

2. The Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018(b) is revoked.

FERGUS EWING
A member of the Scottish Government

St Andrew’s House,
Edinburgh
22nd June 2018

(a) 1981 c.22. The functions of the Secretary of State in so far as within devolved competence were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46). See section 86 of the Animal Health Act 1981 for the exercise of functions in relation to tuberculosis. The requirement to obtain Treasury consent in section 32(3) of the Animal Health Act 1981 was removed by section 55 of the Scotland Act 1998.

(b) S.S.I. 2018/164.
EXPLANATORY NOTE

(This note is not part of the Order)

This Order revokes the Tuberculosis (Miscellaneous Amendments) (Scotland) Order 2018.