



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Health and Sport Committee

**Tuesday 23 October 2018**

**Session 5**



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Pàrlamaid na h-Alba

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**HEALTH AND SPORT COMMITTEE**  
**26<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

\*Lewis Macdonald (North East Scotland) (Lab)

**DEPUTY CONVENER**

\*Emma Harper (South Scotland) (SNP)

**COMMITTEE MEMBERS**

\*Miles Briggs (Lothian) (Con)  
\*Keith Brown (Clackmannanshire and Dunblane) (SNP)  
\*Alex Cole-Hamilton (Edinburgh Western) (LD)  
\*David Stewart (Highlands and Islands) (Lab)  
\*David Torrance (Kirkcaldy) (SNP)  
\*Sandra White (Glasgow Kelvin) (SNP)  
\*Brian Whittle (South Scotland) (Con)

\*attended

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Health and Sport Committee

*Tuesday 23 October 2018*

*[The Convener opened the meeting in private at 09:30]*

12:38

*Meeting continued in public.*

## European Union (Withdrawal) Act 2018

### Human Tissue (Quality and Safety for Human Application) (Amendment) (EU Exit) Regulations

### Quality and Safety of Organs Intended for Transplantation (Amendment) (EU Exit) Regulations

### Blood Safety and Quality (Amendment) (EU Exit) Regulations

**The Convener (Lewis Macdonald):** Good afternoon and welcome to the 26th meeting in 2018 of the Health and Sport Committee. We have already considered a couple of items in private, and have heard informal advice to inform our scrutiny of the Human Tissue (Authorisation) (Scotland) Bill. That scrutiny will commence two weeks from today, on Tuesday 6 November.

Agenda item 3 is consideration of a further proposal by the Scottish Government to consent to the United Kingdom Government legislating, using powers under the European Union (Withdrawal) Act 2018, in relation to three UK statutory instruments. As we discussed and agreed at an earlier meeting, I wrote to stakeholders and to the Scottish Government to seek further information, and the responses that have been received have been circulated to members. I hope that members have had an opportunity to look at them.

We have until 10 November to respond to the Scottish Government, so we should consider the matter today in order to determine our approach.

The question is simply whether—on the basis of the responses that we have received from stakeholders—members feel that we have sufficient evidence to confirm that we are content for the Scottish Government to consent to the statutory instruments being passed by the UK Government, or wish to take further evidence. Do members have views?

**Keith Brown (Clackmannanshire and Dunblane) (SNP):** I think that what is happening is quite unsatisfactory, convener. You had to write to the Scottish Government, and what we got back from it in the letter of 28 September is just its best guess as to what the Department of Health and Social Care is going to do. The UK Government failed to give advance notice, and we have asked the Scottish Government to try to guess what might happen, so that we can base a decision on that. Even if the Scottish Government professes itself to be satisfied that it has enough time and is content with what is proposed, I do not think that it is good enough that the committee has to rely on the Scottish Government's best guess about what the UK Government will do. That is not a proper basis on which to take decisions, in my view.

**Sandra White (Glasgow Kelvin) (SNP):** I was going to point that out, too. I raised the timescale previously, along with the lack of proper replies from Westminster. On the other concerns that have come through, I note that most of the organisations say that we need to go forward and work together, but the charity Anthony Nolan has raised a lot of issues that will affect it terribly. It is the main recipient of organs and tissues—the main importer—and it says that the regulations are relevant to its work in distributing stem cells. It needs to look ahead and is concerned about bureaucracy and so on. I would like to hear more from Anthony Nolan, because it has raised an awful lot of important issues.

**Emma Harper (South Scotland) (SNP):** I have concerns about the issues. The General Food Law (EU Exit) Regulations 2018 talk about—

**The Convener:** We will come to those in a moment.

**Emma Harper:** Oh, right. I thought that we were discussing all the instruments together.

**The Convener:** Let us stick with the human tissue and blood safety regulations. I think that you are right—there are some serious issues with the regulations that you mentioned, and we will discuss them next.

**Brian Whittle (South Scotland) (Con):** Looking at the response from the Scottish Government, I note that the Minister for Public Health, Sport and Wellbeing offers to update the committee once the final SIs have been laid in the UK Parliament. Do we know the timing for that?

**The Convener:** I can tell members that we were asked to consider the first instrument on the basis that it would be laid in the UK Parliament by 10 October, which did not happen. That was a previous instrument and not one that we are discussing today, but that suggests that the concerns that have been highlighted about timetabling are well founded. The UK Government

has indicated its expected timetable to the Scottish Government, but it is not bound by that. That is one of the problems.

**Brian Whittle:** We have 28 days to consider the regulations. My point is that if the UK Government gives us the final SIs within the timeframe, that gives us an opportunity to postpone our decision. If we have to make a decision based on—

**The Convener:** We have 28 days. That is why we have until 10 November to respond. We have sought evidence from stakeholders. If we feel that that is not a sufficient basis on which to make a decision, we can choose today to invite the minister to attend between now and 10 November to answer questions that have been raised.

**Alex Cole-Hamilton (Edinburgh Western) (LD):** I was struck by Sandra White's comment that she would like to hear more from Anthony Nolan. I wonder whether there is capacity in our work programme to bring that organisation to the committee within the timeframe.

**The Convener:** As we have discovered today, the work programme is already pretty full, so I think that that would be difficult. We have asked Anthony Nolan for evidence. If we feel that we would like it to provide additional evidence, we could request it in correspondence, then raise it with the minister—if we choose to seek further information from him.

**Alex Cole-Hamilton:** Okay.

**Keith Brown:** I take Brian Whittle's point, but the issue is that even if we get the Scottish Government minister to come and update us, that will not give us 28 days to consider the matter, because we are operating on the Scottish Government's current best guess as to what the regulations will contain.

If that is the case, and if the information that we need in order to take a decision is required from the UK Government—in another context, it has not done that when it said that it would—why should we not ask the relevant UK Government minister to come and explain what it intends to put in and why it is late?

**The Convener:** The accountability in this case is clearly that of the Scottish Government. As the Scottish Parliament, we have to make recommendations on the instruments.

**Keith Brown:** Other committees regularly invite UK ministers.

**The Convener:** Sure—they absolutely do.

12:45

**Keith Brown:** How can we hold the Scottish Government to account if it has not been given the information?

**The Convener:** I completely understand the point and I am not saying that we should not or could not do that. I simply suggest that the next item on the agenda, which Emma Harper has referred to, is one for which the problem is much greater, as the UK Government has not provided the necessary 28 days' notice for consideration. On the whole, we might deem that to be a more appropriate item on which to take that position, but that is a matter for the committee. I am not saying that we could not do so for this case, too, but the next agenda item is all the more significant because the UK Government has failed to allow the necessary 28 days for the Scottish Government.

**Keith Brown:** Is it likely to be the same minister for the instruments?

**The Convener:** The instrument is to do with food safety. It will certainly be the same Scottish Government minister.

Does the committee wish to take more evidence on the matter before we proceed? We could seek further written evidence or ask the Scottish Government minister to attend.

**Keith Brown:** I agree that we need further evidence. We have to ask the source of the information that we are not getting. It seems to be utterly pointless to get a Scottish Government minister here to berate them on information with which they have not been provided. I do not see the logic of that. We should be concentrating on where the information is not coming from, which is separate from the issues that Sandra White raised.

**Sandra White:** Can the committee write to the relevant minister?

**The Convener:** We can certainly write to the relevant minister of the UK Government.

**Sandra White:** We can do that, but we cannot get them to come to the committee.

**The Convener:** We cannot oblige UK ministers to attend the committee, but we can let them know that we are not content with their failure to provide the necessary information to the Scottish Government to allow it to respond to us. Does that approach command support? Shall we write to the relevant UK Government minister and press them to respond and provide the necessary information to the Scottish Government, so that we are fully informed before we are required to make a report on the regulations?

**Members indicated agreement.**

## **General Food Law (EU Exit) Regulations 2018**

### **General Foodstuffs Hygiene (EU Exit) Regulations 2018**

### **Specific Foodstuffs (Hygiene) (EU Exit) Regulations 2018**

### **Contaminants in Food (EU Exit) Regulations 2018**

## **Quick-Frozen Food (EU Exit) Regulations 2018**

**The Convener:** Agenda item 4 is consideration of a further proposal by the Scottish Government to consent to the UK Government legislating using powers under the European Union (Withdrawal) Act in relation to five UK statutory instruments.

A number of points require clarification. In light of the timescale, I took an executive decision to ask officials to seek clarification in advance of the meeting. That letter has been sent and is available to colleagues.

The UK Government indicated that it proposes to lay the instruments between 31 October and 5 November 2018. In this instance, the UK Government did not take into account the fact that the Scottish Parliament was in recess for two weeks in October. Due to the timing by the UK Government, the committee has not been provided with 28 days for consideration, which was an agreed provision for regulations of this type, and we have only 10 days to consider them.

The committee's first decision is on whether we agree that, in the circumstances, 10 days' notice is acceptable and adequate. There is no obvious explanation for the UK Government's timetable, other than the fact that it is operating to a Westminster parliamentary schedule. There would be no legal consequence of its having followed the 28-day period, rather than the 10-day period.

We might wish to consider seeking further information, and possibly also asking the appropriate Scottish Government minister to attend on 30 October—in order to meet the UK Government's timetable—or at a later date in the 28-day period that it ought to have provided, according to the protocol.

Those are the questions on the regulations.

**Brian Whittle:** If we are to look at the instruments within the 28-day period, which is what the protocol suggests should happen, is it the committee's desire to write to the UK minister to indicate our expectations about the protocol being met?

**The Convener:** That option is certainly open to us. First, we would have to respond to the Scottish Government to say that we were not content for it to consent to the legislation in less than 28 days.

**Emma Harper:** My issue is that the Scottish Government is being asked to consent to UK ministers making regulations. In light of there being a BSE episode involving one cow on an Aberdeenshire farm, because we must consider traceability and the overarching safety requirements for food and feed, and the associated responsibilities of food and feed businesses, the issue warrants further investigation.

**Members indicated agreement.**

**The Convener:** I see that it is generally agreed that the issue is significant enough to warrant further investigation. We have already written to seek clarification of the proposal, but we might also ask the clerks whether it is possible to accommodate a session on the topic with the minister within the 28 days, if not within the 10 days that have been allowed.

**David Cullum (Clerk):** We can always accommodate emergency or urgent pieces of information. The knock-on effect is likely to be on the timing of the committee's meeting, or on the time that is available to take evidence on the Human Tissue (Authorisation) (Tissue) (Scotland) Bill.

**The Convener:** Okay. That is understood. Clearly, that bill is a substantial piece of business that we will all take seriously. However, I think that we should seek further information. We do not need to make that decision today, unless we decide to accept the 10 days that we have been allowed by the UK Government's timetable.

**Sandra White:** Convener, I accept what you are saying—I think that you have already written about the matter. The issue is so important for the committee. We have a job to do, that we will not be doing properly if we do not hear evidence. Rather than kick the issue into the long grass, I would prefer that we say that we will not make a decision within the 10-day period, but will observe the 28-day period, and that we will have word—either by letter or by a minister from the UK Government coming here to give evidence—on the BSE issue. Rather than put back the matter, I would deal with it now.

**Miles Briggs (Lothian) (Con):** I will make a more general point. I see from our work programme that Brexit-related Scottish statutory instruments will be coming thick and fast. We have appointed two EU rapporteurs to keep an eye on the situation and to update us on progress. I agree that it is not acceptable that we have just 10 days to look at the topic. We also need to consider how

the committee will function in order to keep on top of the instruments as they come in. The first two major groups of instruments are in front of us, and we can see from the work programme that lots more are coming, so it is important that we start to plan and timetable properly.

**The Convener:** I completely agree. However, a protocol has been agreed between the Scottish Government and the Scottish Parliament that says that, in the ordinary course of events, there should be a 28-day period. Although we do not want to interrogate in detail every regulation unless we have to, there is a point of principle about the protocol and the timetabling that means that we should treat this situation a little bit differently.

**Keith Brown:** I agree entirely. I do not know enough about Anthony Nolan or about the BSE case that Emma Harper mentioned to know whether those matters raise genuine concerns. My greater concern is about the principle. How is the committee meant to plan and timetable its affairs if it cannot rely on the primary source of information being compliant? More than that, the UK Government knew about the 28-day period, but it has given only 10 days, with no reason or justification for providing fewer days and for not complying with the protocol. That is the point at issue.

For the forthcoming instruments, the least that we can expect from the Westminster Government is that it gets its act together and gives us the information that the committee—never mind the Scottish Government—needs. It is not doing that; it is treating the Scottish Parliament with contempt. We must get to the source of the issue.

**The Convener:** That point is understood. Nonetheless, the process of bringing forward such matters for the committee's consideration lies with the Scottish Government. I, in my role as convener, will meet the Minister for Parliamentary Business and Veterans in a few days. I will certainly have a discussion about the matter and the implications for our future business. What Keith Brown has said is absolutely right, but I think that we should seek further information, indicate that we are not content with the schedule that has been put in front of us and then, on the basis of the further information that comes back, make a decision about whether we need to seek attendance by the minister or, indeed, a UK minister. Do members agree to that approach?

**Members** *indicated agreement.*

**The Convener:** Excellent. Thank you very much, colleagues. That completes the committee's public session.

12:55

*Meeting continued in private until 13:00.*



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