

Delegated Powers and Law Reform Committee
Tuesday, 18th November 2025
32nd Meeting, 2025 (Session 6)

Instrument Responses

The Food Safety Act 1990 Amendment (Scotland) Regulations 2026 ([SSI 2026/Draft](#))

On 7 November 2025, the Committee asked:

This draft instrument cites as its enabling power section 12(1) of the Retained EU Law (Revocation and Reform) Act 2023, the power to restate secondary assimilated law. It uses this power to amend section 17 of the Food Safety Act 1990 by replacing references to “EU” terminology with references to “assimilated” terminology. The provisions being amended are significant in that they contain powers to make subordinate legislation. The effect is to convert what were originally powers to make provision to give effect to international obligations into powers to make provision to give effect to assimilated law.

The enabling power can only be used to restate “secondary assimilated law” as defined in section 12(2). Given that the law being restated here is primary legislation, subsection (2)(b) applies, under which the power can only be used to restate “assimilated law that is primary legislation the text of which was inserted by subordinate legislation”. Most of the text being amended by the draft instrument was inserted by subordinate legislation. However, the text amended by regulation 2(2)(c)(i) includes text that was not inserted by subordinate legislation.

Could more information please be provided with regard to the power(s) relied on for the amendment made by regulation 2(2)(c)(i)?

On 11 November 2025, the Scottish Government responded:

The amendment made by regulation 2(2)(c)(i) relies on the power in section 12(1) of the Retained EU Law (Revocation and Reform) Act 2023. This power includes that of section 20(1)(b) which states: “A power to make regulations under this Act includes power to make supplementary, incidental, consequential, transitional, transitory or saving provision (including provision modifying any enactment, including this Act).” The text referred to in the question above which was not inserted by subordinate legislation is being amended in consequence of the exercise of the regulation making power in section 12(1): without this consequential amendment the text of the amended provision would have no meaning in law.

Public Procurement (Agreement on Government Procurement) (Thresholds) (Miscellaneous Amendments) (Scotland) Regulations 2025 ([SSI 2025/299](#))

On 3 November 2025, the Committee asked:

1. Does the requirement for explanatory statements in paragraph 16 of schedule 8 of the European Union (Withdrawal) Act 2018 apply to this instrument? If so, has the requirement been fulfilled?
2. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 10 November 2025, the Scottish Government responded:

SSI 2015/446, SSI 2016/49, and SSI 2016/65 (“Scottish Procurement Regulations”) were each made under section 2(2) of the European Communities Act 1972 (“ECA 1972”). These instruments set procurement thresholds by cross-referring to figures specified in EU legislation.

The Public Procurement etc. (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/468) amended those threshold figures. SSI 2020/468 also inserted new powers into the Scottish Procurement Regulations that allowed further amendments to be made without relying on section 2(2) of the ECA 1972.

Subsequent amendments to the thresholds were made by SSI 2021/378 and SSI 2023/300. Those two instruments used the new powers inserted into the Scottish Procurement Regulations by SSI 2020/468 and were not made under section 2(2) of the ECA 1972. The present instrument continues this approach by substituting new threshold figures again using the powers in the Scottish Procurement Regulations.

Paragraph 16(7)(a) of schedule 8 of the European Union (Withdrawal) Act 2018 (“EUWA 2018”) confirms that provisions amended using powers other than section 2(2) of the ECA 1972 are not treated as subordinate legislation made under that section. This is supported by paragraph 375 of the Explanatory Notes, concerning paragraph 13 of schedule 8 of EUWA 2018 (now repealed), which was in the same terms as paragraph 16(7)(a) of schedule 8.

Therefore, for the purposes of paragraph 16 of schedule 8 of EUWA 2018, the present instrument does not amend or revoke subordinate legislation made under section 2(2) of the ECA 1972 and so no explanatory statement is required under paragraph 16 of schedule 8 of EUWA 2018.

No corrective action is proposed.