



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 13 December 2016

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 13 December 2016

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DELEGATED POWERS AND LAW REFORM COMMITTEE

14th Meeting 2016, Session 5

CONVENER

*John Scott (Ayr) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Alison Harris (Central Scotland) (Con)
*Monica Lennon (Central Scotland) (Lab)
David Torrance (Kirkcaldy) (SNP)

*attended

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 13 December 2016

[The Convener opened the meeting at 10:43]

Instruments subject to Negative Procedure

Caseins and Caseinates (Scotland) Regulations 2016 (SSI 2016/383)

The Convener (John Scott): I welcome members to the Delegated Powers and Law Reform Committee's 14th meeting in session 5.

It is regrettable that various provisions in the Caseins and Caseinates (Scotland) Regulations 2016 (SSI 2016/383) appear to be defectively drafted. First, regulation 4 contains restrictions on the marketing and use of caseins and caseinates, the breach of which is an offence in accordance with regulation 7. However, the provisions are drafted inconsistently, as regulation 4(a) provides for alternative restrictions on

"edible acid caseins, edible rennet caseins or edible caseinates",

but regulations 4(b) and 4(c) provide for a conjunctive restriction on

"edible acid caseins, edible rennet caseins and edible caseinates".

To specify what actions properly constitute an offence, paragraphs (a) to (c) should have been drafted in a consistent manner.

Secondly, regulation 4(c) appears to be defectively drafted. It refers to non-compliance with standards that are set out in

"points (b) and (c) of schedules 1, 2 or 3".

The schedules contain numbered paragraphs and tables, so the applicable standards are not properly referred to.

10:45

Thirdly, regulations 5(1)(a) and 5(1)(b)(ii) appear to be defectively drafted. There are similar errors in those provisions, as they refer to the cations—processing aids or additives—that are listed in

"point (d) of schedule 3".

Fourthly, regulation 7 appears to be defectively drafted. It provides that

"A person is guilty of an offence if they fail to comply with any of the foregoing provisions of these regulations",

but the Scottish Government has acknowledged that there is no intention to extend the offence provision in regulation 7 to the obligation on a food authority under regulation 6 to enforce the regulations.

Fifthly, there appears to be defective drafting in schedule 4, which modifies the application of provisions of the Food Safety Act 1990 for the purposes of the regulations. The modifications of sections 29 and 35(1) of the 1990 act are incorrect. It appears that the two references to

"regulation 9 and the schedule"—

to be read within the 1990 act for the purposes of the regulations—should be references to regulation 8 and schedule 4. Furthermore, the modification of section 32 is incorrect. It appears that the reference to regulation 9 should be a reference to regulation 8 and schedule 4.

Does the committee agree to draw the regulations to the Parliament's attention under reporting ground (i), as some provisions appear to be defectively drafted?

Members indicated agreement.

The Convener: In schedule 4, in the modification of section 29 of the Food Safety Act 1990, there is an incorrect citation of the regulations as

"the Caseins and Caseinates Groups (Scotland) Regulations 2016".

Does the committee therefore also agree to draw the instrument to the Parliament's attention under the general reporting ground, on account of this more minor and patent error?

Members indicated agreement.

The Convener: Does the committee welcome the fact that the Scottish Government has undertaken to revoke the regulations and will make corrected regulations, which would also come into force on 22 December 2016?

Members indicated agreement.

The Convener: Notwithstanding that, does the committee express its concern that an instrument of such poor quality should have been laid before the Parliament at all?

Members indicated agreement.

**National Health Service (Dietitian
Supplementary Prescribers and
Therapeutic Radiographer Independent
Prescribers) (Miscellaneous Amendments)
(Scotland) Regulations 2016 (SSI 2016/393)**

The Convener: In regulation 3(b)(ii), the word “or” could be used instead of “and” at the end of subparagraph (f) of the definition of “prescriber” in regulation 2(1) of the National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 (SSI 2004/115). That would put it beyond doubt that the subcategories that are listed in that definition are alternatives and not cumulative. On the same basis, in regulation 6(b)(ii) of SSI 2016/393, the word “or” could be used instead of “and” at the end of subparagraph (f) of the definition of “prescriber” in regulation 2(1) of the National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 (SSI 2004/116).

Does the committee agree to draw the instrument to the Parliament’s attention under reporting ground (h), on the basis that it could be made clearer in the aforementioned respects?

Members *indicated agreement.*

The Convener: No points have been raised by our legal advisers on the following five instruments.

**Lyon Court and Office Fees (Variation)
(Devolved Functions) Order 2016 (SSI
2016/390)**

**Tweed Regulation (Salmon Conservation)
(No 2) Order 2016 (SSI 2016/391)**

**Conservation of Salmon (Scotland)
Amendment Regulations 2016 (SSI
2016/392)**

**Patient Rights (Complaints Procedure and
Consequential Provisions) (Scotland)
Amendment Regulations 2016 (SSI
2016/401)**

**Financial Assistance for Environmental
Purposes (Scotland) Order 2016 (SSI
2016/406)**

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

**Instruments not subject to
Parliamentary Procedure**

10:51

The Convener: No points have been raised by our legal advisers on the following seven instruments.

**Higher Education Governance (Scotland)
Act 2016 (Commencement, Transitory,
Transitional and Savings Provisions)
Regulations 2016 (SSI 2016/382 (C 36))**

**Act of Sederunt (Rules of the Court of
Session 1994 and Sheriff Court Rules
Amendment) (No 5) (Miscellaneous) 2016
(SSI 2016/384)**

**Human Trafficking and Exploitation
(Scotland) Act 2015 (Commencement No 2
and Transitional Provisions) Regulations
2016 (SSI 2016/385 (C 37))**

**Education (Scotland) Act 2016
(Commencement No 2) Regulations 2016
(SSI 2016/386 (C 38))**

**Community Empowerment (Scotland) Act
2015 (Commencement No 5) Order 2016
(SSI 2016/394 (C 39))**

**Apologies (Scotland) Act 2016
(Commencement and Transitory
Provision) Amendment Regulations 2016
(SSI 2016/395 (C 40))**

**Community Empowerment (Scotland) Act
2015 (Commencement No 6) Order 2016
(SSI 2016/410 (C 41))**

The Convener: In relation to SSI 2016/385, while noting that no policy note was provided at the point of laying, the committee may wish to welcome the Scottish Government’s provision of a detailed policy note in response to the committee’s questions, which assisted the committee’s subsequent scrutiny of the regulations by clarifying the operation of regulation 3. Does the committee wish to welcome the provision of that policy note?

Members *indicated agreement.*

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Limitation (Childhood Abuse) (Scotland) Bill: Stage 1

10:53

The Convener: The next item is consideration of the delegated powers in the Limitation (Childhood Abuse) (Scotland) Bill. The bill contains only commencement powers, which are set out in section 2. In connection with the commencement powers in section 2(3), does the committee agree to ask the Scottish Government in what circumstances it could be necessary or appropriate for the Scottish Government to exercise the power in section 2(3)(a) to appoint different days for different purposes when commencing section 1 by regulations?

Does the committee also agree to ask the Scottish Government in what circumstances it could be necessary or appropriate for the Scottish Government to exercise the power in section 2(3)(b) to make transitional, transitory or saving provision, given that proposed section 17B of the Prescription and Limitation (Scotland) Act 1973 provides that proposed section 17A also has effect as regards a right of action that accrues before the date of commencement of section 17A?

Members *indicated agreement.*

Criminal Finances Bill

10:55

The Convener: The committee is invited to consider the powers to make subordinate legislation that are conferred on the Scottish ministers in the United Kingdom Parliament's Criminal Finances Bill. A briefing paper has been provided that suggests that the committee may wish to be content with the powers that the bill delegates to the Scottish ministers in clauses 13, 25 and 49.

However, in relation to the powers in clause 53, the committee may wish to recommend to the Justice Committee that the powers that subsections (2) and (9) confer on the Scottish ministers to make commencement regulations should be subject to the parliamentary procedure that usually applies to commencement regulations—that is to say that the regulations should be laid before the Parliament and not subject to further affirmative or negative procedure, in accordance with section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. Does the committee agree to report to the Justice Committee accordingly?

Members *indicated agreement.*

The Convener: Our next meeting will be held on Tuesday 20 December, when we will again consider Scottish statutory instruments.

Meeting closed at 10:56.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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