



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Health and Sport Committee

**Tuesday 5 March 2019**

**Session 5**



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**HEALTH AND SPORT COMMITTEE**  
**7<sup>th</sup> Meeting 2019, Session 5**

**CONVENER**

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

**DEPUTY CONVENER**

\*Emma Harper (South Scotland) (SNP)

**COMMITTEE MEMBERS**

\*George Adam (Paisley) (SNP)  
Miles Briggs (Lothian) (Con)  
\*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

**THE FOLLOWING ALSO PARTICIPATED:**

Joe FitzPatrick (Minister for Public Health, Sport and Wellbeing)

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

The James Clerk Maxwell Room (CR4)



# Scottish Parliament

## Health and Sport Committee

*Tuesday 5 March 2019*

*[The Convener opened the meeting at 11:15]*

### European Union (Withdrawal) Act 2018

#### **Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 [Draft]**

**The Convener (Lewis Macdonald):** Good morning and welcome to the seventh meeting in 2019 of the Health and Sport Committee. We have received apologies this morning from Miles Briggs and Sandra White. I ask everyone to ensure that their mobile phones are switched off or to silent, and that no one uses mobile devices to record proceedings or take photographs, please.

Agenda items 1, 2 and 3 are consideration of regulations that are related to the European Union (Withdrawal) Act 2018. The purpose of the draft Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 is to make minor technical amendments to the Fishery Products (Official Controls Charges) (Scotland) Regulations 2007, to ensure that they will continue to function as required after the United Kingdom exits the European Union.

Agenda item 1 is to consider the categorisation of the instrument. Under the protocol that has been agreed between the Scottish Government and Scottish Parliament on the process for considering Scottish statutory instruments that are laid under the European Union (Withdrawal) Act 2018, the SSI has been categorised as being of low significance. Categorisation assists committees' prioritisation and gives the Delegated Powers and Law Reform Committee a role in highlighting any concerns that it might have about the Scottish Government's categorisation.

The instrument has, as it must be, been laid under affirmative procedure on the basis that certain amendments in the regulations relate to a fee in respect of a function that is exercisable by a public authority in the UK.

The DPLR Committee considered the instrument at its meeting on 19 February 2019. It agreed that the instrument had been given the appropriate categorisation and determined that it did not need to draw the instrument to Parliament's attention on any grounds in its remit.

No members have comments on the categorisation of the instrument. Does the committee agree that it is appropriate to have categorised it as being of low significance?

**Members indicated agreement.**

## Subordinate Legislation

### Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 [Draft]

11:17

**The Convener:** Agenda item 2 is to hear evidence on the instrument from the Minister for Public Health, Sport and Wellbeing and his officials, following which we will have the debate on the motion. I welcome to the committee Joe FitzPatrick, the minister; Neel Mojee, who is a solicitor from the legal directorate of the Scottish Government; and Steve Hardie, who is the regulatory policy branch head at Food Standards Scotland. I invite the minister to make an opening statement.

**Joe FitzPatrick (Minister for Public Health, Sport and Wellbeing):** Thank you, convener. I am pleased to join you this morning to consider the draft Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019. The instrument is one of a number of Scottish statutory instruments that are being progressed by Food Standards Scotland to ensure that our domestic food and feed regulatory regime will continue to function effectively after the UK exits the European Union.

Although it remains the Scottish Government's clear position that the interests of Scotland would be best served by remaining in the European Union, we have, as a responsible Government, a duty to make all necessary preparations to ensure that the Scottish statute book is ready to help to mitigate damage in the event of a no-deal Brexit. Following the outcome of the referendum in June 2016, and the UK Government's decision to leave the EU, the Scottish Government has been reviewing the operability of all Scottish legislation as part of necessary contingency planning, in order to identify the legislative amendments that are needed to ensure that our statute book continues to function, should the UK leave the EU without a deal.

Food Standards Scotland has been leading on the elements of the review that deal with our domestic food and feed law, including our domestic food and feed official controls legislation, for which it has policy responsibility.

Using powers in the European Union (Withdrawal) Act 2018 to correct deficiencies in retained EU law, the regulations will make minor technical corrections to the Fishery Products (Official Controls Charges) (Scotland) Regulations 2007, so that they can continue to operate effectively after exit day in a no-deal scenario.

The 2007 regulations provide the mechanism for charges to be levied in Scotland on food businesses for the costs that are incurred by enforcement authorities in carrying out hygiene controls on fish that are landed at Scottish ports and sold at fish markets. The charges are part of the EU official control charging regime for fishery and aquaculture products, and are a mandatory requirement of the directly applicable EU framework law in this area.

The retained version of the framework official controls regulation is being corrected under a no-deal scenario by one of the UK statutory instruments that the Food Standards Agency is progressing. The Scottish Parliament was notified of the relevant UK instrument on 30 October 2018, and members agreed to the Scottish ministers giving consent to the UK Government extending the statutory instrument to Scotland in respect of devolved matters.

The regulations propose amendments to the 2007 Scottish enforcement and execution regulations so that they will continue to function after we leave the EU, and will provide for appropriate alignment with the retained framework legislation, specifically with regard to the required new definition of a third country and the euro-sterling conversion rate that applies to charge calculations.

I stress, as the convener said, that the amendments are technical and do not amount to a change in policy. They are necessary to ensure legislative continuity for business and enforcement authorities in the event of a no-deal Brexit. Impacts on business and local authorities are expected to be minimal, and any that occur will be marginally preferential to industry.

In December 2018, Food Standards Scotland carried out a four-week stakeholder consultation on its proposed approach to fixing deficiencies in Scottish food and feed law. I am advised that FSS has also spoken directly to Aberdeenshire Council, which is the local authority that will be most affected by the proposed changes that will be made through the regulations. That council has expressed no concerns about the required changes.

I hope that members agree that, as part of the Scottish Government's overall programme of legislative contingency planning for Brexit, the regulations provide necessary changes to the Fishery Products (Official Controls Charges) (Scotland) Regulations 2007 to ensure that they continue to function effectively, by helping to minimise regulatory disruption to Scottish business and enforcement authorities in the event of a no-deal Brexit.

We are, of course, happy to answer questions.

**The Convener:** Thank you very much, minister. At the end of your remarks, you referred to having regulations in place in the event of a no-deal Brexit. If there is a negotiated outcome from the Brexit process, will the regulations continue to apply in the same way?

**Joe FitzPatrick:** As with other such legislation that we have taken through Parliament, in the event of a deal of some sort being agreed by the Westminster Parliament and the European Union, we expect that the regulations will be repealed.

**The Convener:** It is good to have that understanding.

You mentioned that Aberdeenshire will be particularly affected if there is a no-deal Brexit and the regulations stand. Will ports there or elsewhere require border checks or other procedures to be put in place so that the regulations can be applied?

**Joe FitzPatrick:** The regulations will not require much change—probably no change—to the work that is carried out in those areas. The overwhelming majority of fish that are landed come from Scottish or UK vessels. A small amount of landings come from other locations: some come from Faroe Islands vessels, and those fish are already considered as coming from a third country, and a small amount come from Norway and Iceland, which would become third countries. However, we are not talking about significant volumes, compared with the volumes that come from Scottish or UK vessels.

**The Convener:** I invite questions from members. I remind members that the opportunity to ask questions is confined to this part of the proceedings. Once we move to the debate, there will be no opportunity to do so.

**Emma Harper (South Scotland) (SNP):** Our briefing papers say that the regulations make “minor and technical amendments” to ensure that we have the ability to transfer legislation in case there is no deal. The minister mentioned the conversion of pounds to euros. Our papers say that the exchange rate will be “GBP1 = EUR1.1413.” The issue is very technical and complicated, but I assume that using a fixed exchange rate will enable some stability when the market or the pound falls, or when everything fluctuates. How will that mitigate the effects of a no-deal Brexit?

**Joe FitzPatrick:** If we did not do that, the charges would be fixed at the previous euro-sterling exchange rate, which involves a slightly detrimental charge for the industry. We are all still hoping that we do not get to the point at which the regulations will apply. My preference is that we continue to be subject to EU law, which is the gold standard, but if that is not the case, we will need in

the future to introduce primary legislation to give a power to vary the exchange rate, if necessary. However, the regulations are about dealing with what will happen immediately after a no-deal Brexit.

**David Stewart (Highlands and Islands) (Lab):** Emma Harper raised a good point. I understand the reasons for the exchange rate specificity that you have laid out, but are you saying that the rate would last forever?

**Joe FitzPatrick:** The rate is aligned with the rest of the framework, so if we do not follow it there will be an anomaly. It would obviously not be helpful to business if we were to use different exchange rates. The regulations simply set the rate: if we want to change it in the future, we will need to do so through primary legislation. However, that is not as much of a priority as getting regulations in place in order to have legislation that works on day 1 after Brexit.

**David Stewart:** I am sympathetic, minister, and I understand why you are introducing the regulations. My only issue is that rates go up and rates go down. As Winston Churchill knew, having fixed rates that are linked to the gold standard is not always a good thing. If the rate were to become uncompetitive, we would need to pass primary legislation, which could take some time.

**Joe FitzPatrick:** I hope that we never get to the point at which we require primary legislation. However, if we do, and not being in the European Union is our long-term position, the primary legislation would create a power that would allow regulations to be used to vary any rates, as is the case for other charges. However, the regulations are very much about the here and now—the short term.

**The Convener:** There being no other questions, I invite the minister to move motion S5M-15927.

*Motion moved,*

That the Health and Sport Committee recommends that the Fishery Products (Official Controls Charges) (EU Exit) (Scotland) (Amendment) Regulations 2019 [draft] be approved.—[Joe FitzPatrick]

*Motion agreed to.*

**The Convener:** We will pause for a moment to let the minister leave.

**Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2019 (SSI 2019/32)**

**Food Standards and Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/33)**

**The Convener:** We move on to consideration of two instruments that are subject to negative procedure. The first is the Materials and Articles in Contact with Food (Scotland) Amendment Regulations 2019. The Delegated Powers and Law Reform Committee considered the instrument on 26 February 2019 and agreed to draw the instrument to Parliament's attention on the general reporting ground, and recommended that the Scottish Government correct the drafting error at the next legislative opportunity. It is worth pointing out that it is a minor drafting error.

Members have no comments to make on the instrument, so does the committee agree to make no recommendation?

**Members** *indicated agreement.*

**The Convener:** The second instrument is the Food Standards and Hygiene (Miscellaneous Amendments) (Scotland) Regulations 2019. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 19 February 2019 and determined that it did not need to draw Parliament's attention to the instrument on any grounds within its remit.

Members have no comments to make on the instrument, so does the committee agree to make no recommendation?

**Members** *indicated agreement.*

**European Union (Withdrawal) Act 2018**

**Food and Feed Safety and Hygiene (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/52)**

**Food Composition, Labelling and Standards (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/53)**

**Nutrition (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/54)**

11:29

**The Convener:** We move on to consideration of three instruments relating to the European Union (Withdrawal) Act 2018.

A protocol has been agreed between the Scottish Government and Scottish Parliament on the process for considering SSIs that are laid under the European Union (Withdrawal) Act 2018. The protocol sets out an approach that categorises SSIs as being of high, medium or low significance to assist committees' prioritisation for scrutiny, and gives the Delegated Powers and Law Reform Committee a role in highlighting to a lead committee SSIs in respect of which it disagrees with the Scottish Government's categorisation.

All three SSIs have been categorised as being of low significance. Scottish Ministers have also determined to apply the negative procedure to scrutiny of the three SSIs.

The Delegated Powers and Law Reform Committee considered all three instruments at its meeting on 26 February 2019 and agreed that the instruments had been given the appropriate categorisation. We need only consider the matter of categorisation today; we will return to matters of substance at a later date. The categorisation of all three instruments is that they are of low significance. Do members agree with that?

**Members** *indicated agreement.*

**The Convener:** Thank you.

11:31

*Meeting continued in private until 11:34.*

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