

DELEGATED POWERS AND LAW REFORM COMMITTEE

12th Meeting, 2022 (Session 6)
Tuesday, 19 April 2022

Instrument Responses

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/90)

On 24 March 2022, the Committee asked the Scottish Government:

1. Regulation 2 of the instrument, inserting sub-paragraph (3B) into schedule 5 of the Trade in Animals and Related Products (Scotland) Regulations 2012, provides that “goods are taken to be produced in Northern Ireland if they are processed there”, whereas the equivalent provision made by regulation 3 (and by the related UK SI referred to in the Policy Note) states that “goods are taken to be produced in Northern Ireland or the Republic of Ireland if they are processed there” (emphasis added). Is the absence of reference to the Republic of Ireland in sub-paragraph (3B) intentional?
2. The enabling power cited for the instrument is paragraph 1(1) and (3) of schedule 2 of the European Union (Withdrawal) Act 2018 (supplemented by paragraph 21(b) of schedule 7). There is a choice of procedure under this power (unless the affirmative procedure is mandatory under paragraph 1(6) because the instrument contains provision of a type falling within paragraph 1(2), which does not appear to be the case here). However, under the heading in the Policy Note for the Scottish Ministers’ reasons for their choice of procedure, it is stated: “[n]egative procedure is considered appropriate as the powers under the European Union (Withdrawal) Act 2018 are subject to negative procedure”. Do you agree that there is in fact a choice of procedure for this instrument, and if so, could further explanation be given for the choice of the negative procedure?

On 1 April 2022, the Scottish Government responded:

1. This is a drafting error and the words “or the Republic of Ireland” should be included. We intend to rectify this error by making a further amendment in an SSI which will be laid in the Scottish Parliament at the next available opportunity.
2. As the Regulations do not include provisions which fall within paragraph 1(2) of schedule 7 of the European Union (Withdrawal) Act 2018 (“EUWA”), it is agreed there is a choice of procedure open to the Scottish Ministers. The negative procedure was considered appropriate in this case. This is because these measures have been introduced to alter pre-notification requirements on goods entering Scotland from the Republic of Ireland as part of transitional arrangements and to ensure the same import provisions apply across GB. This choice of procedure is in line with the approach taken in relation to previous recent SSIs making changes to the transitional arrangements using relevant EUWA powers which were similarly subject to negative procedure (see most recently S.S.I. 2021/493). In addition, as there are no established trade routes from the Republic of Ireland to Scotland the impact of the changes are limited.