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Delegated Powers and Law Reform Committee

Subordinate Legislation



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Contents

Introduction	1
Points raised: instruments subject to negative procedure	2
No points raised	4

Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on—

- a. any—
 - i. subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;
 - ii. [deleted]
 - iii. pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;
- b. proposed powers to make subordinate legislation in particular Bills or other proposed legislation;
- c. general questions relating to powers to make subordinate legislation;
- d. whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;
- e. any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;
- f. proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;
- g. any Scottish Law Commission Bill as defined in Rule 9.17A.1;
- h. any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and
- i. any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Introduction

1. At its meeting on 28 June 2016, the Committee agreed to draw the attention of the Parliament to the following instrument—

Foods for Specific Groups (Scotland) Regulations 2016 (SSI 2016/190).
2. The Committee's recommendations in relation to the above instrument are set out below.
3. The Committee determined that it did not need to draw the Parliament's attention to the instruments which are set out at the end of this report.

Points raised: instruments subject to negative procedure

Foods for Specific Groups (Scotland) Regulations 2016 (SSI 2016/190) (Health and Sport)

4. The Regulations make provision to enforce in Scotland certain provisions of Regulation (EU) 609/2013 of the European Parliament and of the Council (“the EU Regulation”).
5. The EU Regulation repeals and replaces a regime regulating the compositional and labelling requirements which must be met by certain foods for specific groups, before such foods may be marketed in Member States. The groups of foods regulated by the EU Regulation are: (1) infant formula and follow-on formula; (2) food intended for infants and young children; (3) food for special medical purposes; and (4) total diet replacement for weight control.
6. The Regulations provide that any person who fails to comply with certain specified provisions of the EU Regulation in relation to these foods is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
7. The Regulations also make certain modifications and revocations, which are required pursuant to the EU Regulation.
8. The Regulations are subject to the negative procedure and will come into force on 20 July 2016.
9. **The Committee draws the Regulations to the attention of the Parliament on the general reporting ground, as the regulations omit to make further consequential amendments to the Foods Intended for Use in Energy Restricted Diets for Weight Reduction Regulations 1997 (“the 1997 Regulations”) which are required as a result of the changes to the 1997 Regulations introduced by regulation 6.**
10. **Regulation 6 amends the definition of “relevant food” in the 1997 Regulations, by deleting the reference to “food which replaces one or more meals of the daily diet”. The effect of this change is that partial diet replacement weight loss products (as opposed to total diet replacement weight loss products) will no longer be classed as “relevant food” and will no longer fall within the ambit of the 1997 Regulations. Only total diet replacement products will now fall within the ambit of the 1997 Regulations as “relevant food”.**
11. **Regulations 2 and 3 of the 1997 Regulations make further references to partial diet replacement products, which, following the amendment made by**

regulation 6 to the definition of “relevant food”, have no legal meaning or effect. The Regulations omit to make the further consequential amendments to the 1997 Regulations which are required to remove these further references. This has led to a lack of clarity in the 1997 Regulations, as amended, in that redundant text is left on the statute book which should have been removed.

- 12. The Committee notes that the Scottish Government accepts that the amendment made by regulation 6 has not led to sufficient clarity in the 1997 Regulations, and also notes its undertaking to further amend the 1997 Regulations at the earliest available opportunity.**

No points raised

13. At its meeting on 28 June 2016 the Committee considered the following instruments. The Committee determined that it did not need to draw the attention of the Parliament to any of the instruments on any grounds within its remit:

Education and Skills

Education (Scotland) Act 2016 (Commencement No. 1) Regulations 2016 (SSI 2016/192 (C.15)).

Health and Sport

National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2016 (SSI 2016/195).

Justice

Act of Sederunt (Sheriff Appeal Court Rules 2015 and Sheriff Court Rules Amendment) (Miscellaneous) 2016 (SSI 2016/194);

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 (Commencement No. 1 and Transitional Provision) Regulations 2016 (SSI 2016/196 (C.17));

Criminal Justice (Scotland) Act 2016 (Commencement No. 2) Order 2016 (SSI 2016/199 (C.18));

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (No. 3) (Instruction of Representation in the High Court) 2016 (SSI 2016/201).

