



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Health and Sport Committee

**Tuesday 16 March 2021**

**Session 5**



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**HEALTH AND SPORT COMMITTEE**

**10<sup>th</sup> Meeting 2021, Session 5**

**CONVENER**

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

**DEPUTY CONVENER**

\*Emma Harper (South Scotland) (SNP)

**COMMITTEE MEMBERS**

\*George Adam (Paisley) (SNP)

\*Donald Cameron (Highlands and Islands) (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

**CLERK TO THE COMMITTEE**

David Cullum

**LOCATION**

Virtual Meeting



# Scottish Parliament

## Health and Sport Committee

*Tuesday 16 March 2021*

*[The Convener opened the meeting at 10:00]*

### European Union (Withdrawal) Act 2018

#### Food and Feed Hygiene and Safety (Miscellaneous and Transitional Provisions) (EU Exit) Regulations 2021 [Draft]

**The Convener (Lewis Macdonald):** Good morning, and welcome to the Health and Sport Committee's 10th meeting in 2021. We have received apologies from Alex Cole-Hamilton, and David Torrance will be joining us a little later in the meeting.

The first item on our agenda is consideration of a consent notification proposing that the Scottish Government give consent to the United Kingdom Government legislating using the powers in the European Union (Withdrawal) Act 2018 in relation to a UK statutory instrument. The regulations in question make the necessary amendment of the authorisation provisions for genetically modified food and feed and feed additives, and clarify that ministerial authorisation decisions are prescribed in the form of legislation. They address the need to amend general food law to ensure that ministers can, when taking emergency measures, capture third-country goods coming to Great Britain via Northern Ireland.

Do members have any questions or comments on the instrument?

**Sandra White (Glasgow Kelvin) (SNP):** I seek some clarification on several points. I thank the clerks who have written the briefing paper on the instrument, because the subject is quite complicated. Paragraph 3 of the letter to you, convener, which is at annex A of our paper, states:

"Please note, we are yet to have sight of the final draft SI and it is not available in the public domain at this stage."

I am concerned about that. In addition, the notification summary states:

"However the proposals remain under consideration and are subject to change. FSS will provide an update in the event of any changes."

I am a wee bit concerned about what happens if we simply agree to the instrument and hand it over, given the concerns that I have mentioned. I would like a wee bit of clarification on that.

To summarise my understanding—if I am wrong, I can be corrected—the statutory instrument provides for emergency powers under the Covid-19 regulations to stop the import of genetically modified food and feed and feed additives from entering the four nations—that is, Great Britain—directly from third countries or via Northern Ireland. That is a result of Brexit, the Northern Ireland protocol and the United Kingdom Internal Market Act 2020. I want a wee bit of clarification on my summary and the two areas of concern that I raised.

**The Convener:** I hear your points. I ask David Cullum, as the clerk, if he would like to comment on those concerns and clarify the position.

**David Cullum (Clerk):** On the point about having sight of the final SI, it has been the norm with a lot of these EU exit instruments for the committee to consider them in advance, based on the detail that the Scottish Government has provided following its discussions with the UK Government.

I am afraid that I do not know the answer to the second question. I am not sure what the position is.

**The Convener:** I guess that, if there is concern on that matter, we can return to it at our next meeting, as time will, I think, allow us to do so.

**Sandra White:** I am sorry, convener—I think that the instrument is being laid at Westminster on 21 March. As you know, I always raise these matters in relation to the SIs.

**The Convener:** Yes—indeed.

**Sandra White:** We need to keep an eye on these things. If we were to agree to the instrument and something came up in the SI—David Cullum did not know the answer to my second question—could we rectify any of the issues retrospectively, or would there be nothing that we could do?

**The Convener:** We can indicate our concerns, and say that we expect full details to be provided in the notification regarding which provisions of the legislation are being amended and how that will work. We can approve the instrument, but with the qualification that we make it clear that we want the Scottish Parliament to be kept in the loop on all these matters as we move forward.

**Sandra White:** Okay—I am content with that, as long as the issue is highlighted.

**The Convener:** We will take that approach, if colleagues are content that we do so.

Members will have seen the separate briefing paper from the Scottish Parliament information centre and Scottish Parliament legal services, which sets out, at paragraphs 18 to 20, how we may choose to approach the matter so as to

ensure that the Parliament and its committees are fully engaged on these matters.

Are members content with that approach?

**Members indicated agreement.**

**The Convener:** We will write to the Scottish Government to indicate that we are content with the regulations, but we will highlight the recommendations as discussed, taking on board the points that Sandra White raised.

## Subordinate Legislation

### National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2021 (SSI 2021/76)

### National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2021 (SSI 2021/77)

### National Assistance (Assessment of Resources and Sums for Personal Requirements) Amendment (Scotland) Regulations 2021 (SSI 2021/115)

10:06

**The Convener:** Item 2 is consideration of negative subordinate legislation. We have before us five instruments; we will consider the first three together.

The National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2021 increase the value of personal expenses allowance in line with average earnings, by an increase of 1.9 per cent. The National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2021 increase the value of savings credit disregard in line with average earnings, which is currently forecast at 1.9 per cent. The National Assistance (Assessment of Resources and Sums for Personal Requirements) Amendment (Scotland) Regulations 2021 amend the dates on which the National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2021 and the National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2021 come into force. I hope that members have followed all that. I see that David Stewart has a query.

#### **David Stewart (Highlands and Islands) (Lab):**

It is not really a query, convener—I just want to say that I have looked into the instruments, given that I have an interest in pensions. They address the issues very positively, which is helpful for national health service workers from a rights point of view. I flag up the fact that, although they are technical, they are important for people who happen to fall into those categories, and I strongly endorse them.

**The Convener:** As there are no further comments from members, does the committee agree to make no recommendations on the three negative instruments?

**Members indicated agreement.**

**National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/102)**

**The Convener:** The next instrument makes changes to the employee contribution table for 2021-22, which updates the salary and earnings bands on which the employee contribution percentages are set. I see that there are no comments from members. Does the committee agree to make no recommendations on the instrument?

**Members indicated agreement.**

**Foods for Specific Groups (Infant Formula and Follow-on Formula) (Scotland) Amendment Regulations 2021 (SSI 2021/123)**

**The Convener:** The purpose of the instrument is to apply, until 22 February 2022, the law that was in existence before 21 February 2021 on compositional and labelling standards for infant formula and follow-on formula that is manufactured from protein hydrolysates, which represents an annual uprating. I see that members have no comments on the instrument. Does the committee agree to make no recommendations on the instrument?

**Members indicated agreement.**

**Health and Care Professions Council (Coronavirus) (Amendment) (No 2) Rules Order of Council 2021 (SI 2021/167)**

**Health and Care Professions Council (Registration and Fees) (Amendment) Rules Order of Council 2021 (SI 2021/170)**

**The Convener:** Item 3 is consideration of two negative order of council statutory instruments. The instruments are orders of the Privy Council, which approve rules that were made by the Health and Care Professions Council. Members will note that the first instrument has been drawn to our attention by the Delegated Powers and Law Reform Committee. The DPLR Committee drew the instrument to the attention of the Parliament on the basis that it was laid less than 28 days before coming into force and, therefore, breached the usual laying requirements under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. The DPLR Committee was, however, content with the explanation that the Scottish Government provided for its failure to comply with the laying requirements.

The DPLR Committee also noted that the instrument rectified the drafting error in SI 2021/27 before that instrument came into force on 4 March

2021. The error was identified by the DPLR Committee in its report on subordinate legislation that it considered on 2 February 2021.

I see that there are no comments from members on the instrument. Members may have seen the letter that was sent to me, as convener, by the Health and Care Professions Council, in which it laid out the basis on which it intended to proceed.

Does the committee agree to make no recommendations on the instruments?

**Members indicated agreement.**

## European Union (Withdrawal) Act 2018

**Food, Natural Mineral Water, Spring Water  
and Bottled Drinking Water (EU Exit)  
(Scotland) (Amendment) Regulations 2021  
(SSI 2021/66)**

**Food, Natural Mineral Water, Spring Water  
and Bottled Drinking Water (EU Exit)  
(Scotland) (Amendment) Amendment  
Regulations 2021 (SSI 2021/109)**

10:10

**The Convener:** Item 4 is consideration of the procedure and categorisation of two negative EU exit Scottish statutory instruments.

The Scottish Government has designated the first instrument, SSI 2021/66, as being of medium significance under the SSI protocol, and the second instrument, SSI 2021/109, as being of low significance. The instruments were considered by the Delegated Powers and Law Reform Committee at its meeting on 23 February 2021. The committee agreed that the negative procedure was appropriate and that the first instrument should be categorised as being of medium significance under the SSI protocol. Subsequently, at its meeting on 9 March, the committee considered the second instrument and agreed that the negative procedure was appropriate and that the instrument should be categorised as being of low significance under the SSI protocol.

We are invited to decide whether the Scottish Government's categorisation is correct. If members are agreed, we will consider the instruments under the negative procedure at agenda item 5.

First, I see that Emma Harper wants to come in on the instruments. Is it on a matter that relates to the categorisation of the instruments or their substance?

**Emma Harper (South Scotland) (SNP):** It relates not to categorisation, but to the substance of what the instruments contain.

**The Convener:** Okay—great. I see that no member has any comments on the categorisation of the instruments, which—as I said—has already been considered by the DPLR Committee, which was content in that regard. Does the committee agree with the categorisation?

**Members** *indicated agreement.*

## Subordinate Legislation

**Food, Natural Mineral Water, Spring Water  
and Bottled Drinking Water (EU Exit)  
(Scotland) (Amendment) Regulations 2021  
(SSI 2021/66)**

**Food, Natural Mineral Water, Spring Water  
and Bottled Drinking Water (EU Exit)  
(Scotland) (Amendment) Amendment  
Regulations 2021 (SSI 2021/109)**

10:15

**The Convener:** Item 5 is consideration of the two negative instruments that we have just discussed. The DPLR Committee, although it agreed with the categorisation, brought the second instrument—SSI 2021/109—to the attention of our committee because it had been laid less than 28 days before coming into force, thereby breaching the laying requirements under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. However, the DPLR Committee was content with the Scottish Government's explanation of its failure to comply with the usual laying requirements.

I ask any other member who has a comment on the instruments to put an R in the chat box, and I invite Emma Harper to comment.

**Emma Harper:** We received a late submission from Food Standards Scotland, in response to the committee's questions, in our inbox this morning. I have been reading about what constitutes "natural mineral water", and the reciprocal agreements between the EU and the UK about what is spring water and what is mineral water. The committee referred, in a question to FSS, to

"Scottish businesses not supporting the continued recognition of waters from EU and EEA countries after the UK left the EU"

and noted that

"perhaps not surprisingly, retailers and distributors of EU and EEA ... Mineral Waters wished for recognition to continue as long as possible",

which, as we have exited the EU, has not been the case.

Businesses in Scotland that export mineral water to the EU might not be very happy if they can no longer do so. I am sure that that will have an impact on Scottish water businesses and on reciprocal arrangements. I want to have it confirmed that the regulations mean that spring water and mineral water from Scotland will not be recognised in the EU and vice versa. That would have a negative effect on businesses, as a result of exiting the EU and the inability to come to an



agreement. It was hoped that there would be sufficient scope to enable the status quo to continue as far as possible.

**The Convener:** I think that you are saying, with regard to the late submission that we received, that the regulations do not, of themselves, overcome that obstacle. Is that your understanding of the position?

**Emma Harper:** Yes. I understand that we need to ensure that any bottled water is safe and that we know what its contents are, but it looks as if we will no longer be able to get certain natural mineral water or spring water, or other bottled drinking water, into the EU.

**The Convener:** Yes—that is clearly disappointing. With regard to the instruments, there are two options open to the committee, and to any individual member. It is open to us to make no recommendations on the instrument; equally, we have the option of lodging a motion to annul the regulations. I am not sure whether that is what you are proposing, or whether you are simply seeking clarification from the Government.

**Emma Harper:** I am seeking recognition that the regulations would stop bottled water going from the EU into Scotland and vice versa. I am interested in the business impact, and in whether the situation will continue unless there are further negotiations and agreement is obtained, or other recommendations are made.

**The Convener:** Presumably, the matter will be the subject of continuing discussions between the relevant authorities in the EU and the UK, including the Scottish Government. If there was—as you suggest—further discussion leading to a different agreement, the regulations would no doubt return, in the form of subordinate legislation, to our successor committee in the next session of Parliament.

The point is that, in our consideration of the instruments today, it is open to us, and to you as an individual member, to lodge a motion to annul, but that would not, of itself, affect the position with regard to relations and discussions between the EU and the Scottish Government on these issues.

Although the committee may agree to make no recommendations in relation to the instruments, would it be helpful for us to write separately to the Scottish Government to express concerns about the implication of the regulations and what they might mean for Scottish water producers in the future?

**Emma Harper:** Yes—I would be interested in taking that route. I know that one producer exports to around 30 countries, eight of which are European; it exports to three countries in Asia and four in the middle east. The regulations would

obviously impact businesses, and I am concerned that we might end up having more water than we know what to do with, because Scotland has very successful businesses that would no longer be able to export water.

**The Convener:** Indeed. There are many precedents for Scotland having more water than we know what to do with; that would be a new version of the same tale. If members are content, I suggest that we make no recommendations on the regulations, but that we write separately to the Scottish Government to ask for its views on the concerns that Emma Harper has raised. Do members agree to do so?

**Members indicated agreement.**

**The Convener:** We will proceed on that basis. We now move into private session.

10:21

*Meeting continued in private until 11:19.*



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