



The Scottish Parliament
Pàrlamaid na h-Alba

SUBORDINATE LEGISLATION COMMITTEE

AGENDA

8th Meeting, 2012 (Session 4)

Tuesday 20 March 2012

The Committee will meet at 2.30 pm in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take items 5 and 6 in private.
2. **Instruments subject to negative procedure:** The Committee will consider the following—

[Civil Legal Aid \(Scotland\) Amendment Regulations 2012 \(SSI 2012/64\);](#)
[Food Hygiene \(Scotland\) Amendment Regulations 2012 \(SSI 2012/75\).](#)
3. **Instruments not subject to any parliamentary procedure:** The Committee will consider the following—

[General Teaching Council for Scotland \(Legal Assessor\) Rules 2012 \(SSI 2012/86\).](#)
4. **Advisory Committee on Hazardous Substances (Abolition) Order 2012 [draft]:** The Committee will consider a draft order brought forward under section 9 of the Public Bodies Act 2011.
5. **Police and Fire Reform (Scotland) Bill:** The Committee will consider a draft report to the Justice Committee.
6. **Consolidation of instruments:** The Committee will consider its approach to the consolidation of Scottish statutory instruments.

SL/S4/12/8/A

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The papers for this meeting are as follows—

Agenda Items 2 and 3

Legal Brief (private) SL/S4/12/8/1 (P)

Agenda Item 2

Instrument Responses SL/S4/12/8/2

Agenda Item 4

[Public Body Consent Memorandum](#)

Briefing paper (private) SL/S4/12/8/3 (P)

Agenda Item 5

[Police and Fire Reform \(Scotland\) Bill](#)

[Delegated Powers Memorandum](#)

Draft report (private) SL/S4/12/8/4 (P)

Agenda Item 6

Briefing paper (private) SL/S4/12/8/5 (P)

SUBORDINATE LEGISLATION COMMITTEE**8th Meeting, 2012 (Session 4)****Tuesday 20 March 2012****Instrument Responses****INSTRUMENTS SUBJECT TO THE NEGATIVE PROCEDURE****Civil Legal Aid (Scotland) Amendment Regulations 2012 (SSI 2012/64)****On 8 March 2012, the Scottish Government was asked:**

1. These Regulations insert a new paragraph (5A) into regulation 40 of the Civil Legal Aid (Scotland) Regulations 2002 (“the principal Regulations”), the effect of which is to disapply the obligations in paragraph (4)(e) on the Board to make payment if it is unable to do so within a period of five years from when it first endeavours to do so. However, paragraph (4)(d) imposes an obligation on the Board to deposit money paid to it in “one general account with a bank or building society”. That obligation is not disapplied by paragraph (5A). The Scottish Government is accordingly asked whether the obligation imposed by paragraph (4)(d) is intended to subsist, notwithstanding the apparent intention of these Regulations that the Board be able to pay such monies into the Scottish Legal Aid Fund.

(a). If the obligation in paragraph (4)(d) subsists, then the Scottish Government is asked to explain the basis on which it purports to make the Ministerial Determination accompanying these Regulations (which requires the Board to pay into the Scottish Legal Aid Fund monies to which paragraph (4)(e) has ceased to apply), given that the Determination appears to contradict the obligation in paragraph (4)(d) requiring those funds to be deposited in a general account?

(b). If the obligation in paragraph (4)(d) is considered not to subsist, the Scottish Government is asked to explain the basis for that view, in the absence of any provision which disapplies it expressly and in the absence of anything in the wording of paragraph (4)(d) itself which suggests that it is of limited duration or effect only?

The Scottish Government responded as follows:

In relation to (a), the Scottish Government’s view is that the obligation subsists in the sense that the monies require to be retained by the Board in a general account subject to other provision that is made for their dispersal whether through the principal Regulations or provision that may be made under other Ministerial powers in the Legal Aid (Scotland) Act 1986 (“the Act”). The Board is a creature of statute and only has the power to intromit with monies as specified in provision made by virtue of primary and secondary legislation.

Currently dispersal is provided for by paragraph (4)(e) of the principal Regulations if the Board can identify the correct recipient of the monies, permitting the payment of the monies to the recipient.

The Regulations deal with the situation where the Board has not been able to pay those monies to the correct recipient over a period of 5 years. At present, the Board is unable to utilise these monies.

It would not have been possible to provide in the Regulations that the monies should in these circumstances now be paid into the Legal Aid Fund as none of the circumstances set out in section 4(3)(a) to (d) of the Act apply (monies which can be paid into the Fund) and there are, therefore, no subordinate legislation powers which the Board could use to pay the monies into the Fund.

However, Ministers have a separate power under section 4(3)(e) of the Act to determine that other receipts of the Board shall be paid into the Fund. The monies that are held under regulation 40(4)(e) are receipts of the Board. Scottish Ministers, therefore, have power under the Act to determine that these monies can be paid into the Fund provided the circumstances set out in new regulation 40(5A) apply.

This means that dispersal of the funds from the general account is now provided for by regulation 40(4)(e) and by the Determination made under section 4(3)(e) of the Act in circumstances where regulation 40(4)(e) is disapplied by new regulation 40(5A).

The Explanatory Note to the Regulations explains the basis upon which the Determination has been made by Ministers and where it can be accessed.

Food Hygiene (Scotland) Amendment Regulations 2012 (SSI 2012/75)**On 9 March 2012 the Scottish Government was asked:**

- (1) When will mutual recognition arrangements for the special mark provided by new regulation 32A and new Schedule 6A be brought into force in the rest of the United Kingdom?
- (2) Why it is considered competent under EU law to make provision for a new national measure laying down the format of a special health mark to be applied to carcasses of animals which have undergone emergency slaughter outside the slaughterhouse when the measure only applies to Scotland and in the absence of mutual recognition arrangements within the UK national law does not permit such meat to be marketed throughout the UK Member State or provide for the health mark specified for Scotland to be recognised in the rest of the UK?
- (3) What is the practical effect of the absence of mutual recognition arrangements for Scottish producers and can prosecutions be brought for non-compliance with the regulations or EU law in this respect?

The Scottish Government responded as follows:

(1) The detailed specifications of the special health mark provided by new regulation 32A and new Schedule 6A have been agreed by the 4 UK administrations and the special health mark will be identical throughout the UK. It was originally intended that all 4 administrations would make implementing provisions to come into force on 1 April 2012, in relation to the special health mark, and all the other provisions now contained within the Food Hygiene (Scotland) Amendment Regulations (“the Scottish Regulations”). England proceeded with 2 separate draft Regulations, to allow the time required for clearance with regulatory committees. In February 2012 they confirmed revised timetables, with the Regulations implementing the provisions relating to hygiene, including the special health mark, to come into force on 1 April, and the Regulations implementing the provisions on remedial action notices, to come into force on 6 April.

In Scotland it was decided to continue to combine into one instrument, to come into force on 1 April 2012, all of the provisions dealing with remedial action notices, food hygiene amendments and the special health mark. This decision was made to avoid the necessity of 2 separate Regulations coming into force on 1 and 6 April, both amending the Food Hygiene (Scotland) Regulation 2006, which it was felt would have been an inefficient use of parliamentary time, which might attract criticism, and in addition, would be confusing to food business operators.

It was only on 2 March 2012, after the Scottish Regulations had been made on 29 February 2012 and laid on 2 March, that the Food Standards Agency in Scotland were advised that the timetables for the English Regulations had slipped further. England now intend to bring into force in May 2012 their Regulations which deal with the special health mark, and those dealing with remedial action notices as soon as they have passed all parliamentary scrutiny. Wales has considered its position and

aims to follow a similar timetable to England. Northern Ireland has considered its position and aims to implement the provisions relating to remedial action notices by 6 April 2012 and those relating to Hygiene, including the special health mark, during May 2012.

Whilst this situation is not ideal, the Scottish Government takes the view that there will still be only a short gap, of a few weeks, when the provisions relating to the special health mark in Scotland are in force, before the provisions for the rest of the UK come into force.

For the intervening period, and as explained in the answer to question 3, below, the Food Standards Agency will be writing to stakeholders, local authorities and COPFS to advise that no enforcement action should be taken until legislation in the rest of the UK has come into force. Once that legislation in the rest of the UK is in force, an identical special health mark will be required throughout the UK. Accordingly, there is no need for a mutual recognition provision and the measure will be fully implemented under EU law.

(2) This instrument provides for a "special health mark" as required by paragraph 9 of Chapter VI of Section I of Annex III to EC Regulation 853/2004 and paragraph 7 of Chapter III of Section I of Annex I to EC Regulation 854/2004. These EC Regulations do not prohibit a mark being implemented in one part of a member state in advance of another part. In terms of EU law, this measure has been implemented in Scotland.

(3) In the meantime, to fully cover the period between 1 April 2012 and the date that equivalent legislation comes into force in the rest of the UK, the Food Standards Agency in its capacity as Central Competent Authority, will be writing to stakeholders, local authorities and the Crown Office and Procurator Fiscal Service, in advance of the application date of 1 April, to advise that no enforcement action should be taken until equivalent provisions are in force throughout the UK. The letter will also give general advice advocating a graduated approach to enforcement for these new provisions, once they are adopted in each of the UK countries.

With respect to the practical effect of the new provisions, in so far as they relate to special health marks applied to carcasses of animals subject to emergency slaughter, a square health mark has been in use in the UK for these purposes since 2006 when the EU provisions took effect. FSA guidance is provided in the UK Manual for Official Controls. Application of the special health mark has been custom and practice in all UK countries since then. The Scottish Regulations simply set out the formal legal basis for the format of the mark, as required by the EU, for controls that have been consistently applied since 2006. Therefore there will be no practical effect for the Scottish Regulations providing a new legal basis for this, a few weeks in advance of the rest of the UK.

With respect to the practical effect of the application of the new identification mark on further processed minced meat and meat products and meat preparations derived from emergency slaughtered meat, this will be a new requirement. However the overall number of emergency slaughtered animals is relatively small. A large proportion of these carcasses are supplied directly to the final retail butcher for delivery directly to the final consumer sector, and an identification mark will not be required. In light of the small numbers involved, and the effect of the letter being sent

to all local authorities advising against enforcement until the equivalent legislation is in force throughout the UK, there will be no practical adverse effect of the earlier introduction of the legislation in Scotland.