



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 5 March 2019

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

8th Meeting 2019, Session 5

CONVENER

*Graham Simpson (Central Scotland) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Mary Fee (West Scotland) (Lab)

*Alison Harris (Central Scotland) (Con)

*attended

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 5 March 2019

[The Convener opened the meeting at 10:00]

European Union (Withdrawal) Act 2018: Instrument Procedure and Category

The Convener (Graham Simpson): I welcome everyone to the eighth meeting in 2019 of the Delegated Powers and Law Reform Committee.

The first item of business is consideration of Scottish statutory instruments that have been laid under the European Union (Withdrawal) Act 2018. We are looking at the instruments under the SSI protocol, so we are considering the scrutiny procedure under which they have been laid and the categorisation that the Scottish Government has applied to them.

The following five instruments have all been laid under the negative procedure and have been categorised by the Government as being of low significance.

Seed and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/59)

Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/60)

Fisheries (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2019 (SSI 2019/69)

Animal Health (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/71)

Agriculture Market Measures (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/73)

The Convener: In each case, our advisers indicate that the scrutiny procedure and the categorisation could be appropriate. Is the committee content with the scrutiny procedure and the categorisation?

Members *indicated agreement.*

Instrument subject to Affirmative Procedure

Services of Lawyers and Lawyer's Practice (EU Exit) (Scotland) (Amendment etc) Regulations 2019 [Draft]

10:01

The Convener: The next item of business is consideration of an affirmative instrument, on which no points have been raised by our advisers. Is the committee content with the instrument?

Members *indicated agreement.*

Instruments subject to Negative Procedure

Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2019 (SSI 2019/45)

10:01

The Convener: The first instrument for consideration under agenda item 3, SSI 2019/45, contains a drafting error relating to a company name in article 6. The Scottish Government accepts that names must be consistent with their entries in Companies House. Full details can be found in our correspondence with the Government, which is included in our published papers. The Government has now laid an amending instrument to correct the error.

Does the committee wish to draw the order to the attention of the Parliament on the general reporting ground, as it contains a drafting error in article 6?

Members indicated agreement.

The Convener: Does the committee wish to welcome the Government's prompt response to rectifying that drafting error?

Members indicated agreement.

Felling (Scotland) Regulations 2019 (SSI 2019/49)

The Convener: SSI 2019/49 is the first of three instruments that we will consider in relation to the Forestry and Land Management (Scotland) Act 2018, which the Parliament passed last year.

The instrument contains drafting errors that relate to the way in which certain paragraphs have been presented. Members will have seen from the Scottish Government's correspondence in the published papers that it has thanked the committee for drawing the matter to its attention and that it will correct the errors at the earliest opportunity.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground, because of the drafting errors in paragraphs (1) and (2) of regulation 4?

Members indicated agreement.

The Convener: Does the committee wish to welcome the Scottish Government's proposal to correct the errors by amending instrument at the earliest opportunity?

Members indicated agreement.

Scotland Act 1998 (Specification of Functions and Transfer of Property etc) Order 2019 (SI 2019/183)

The Convener: SI 2019/183, which also relates to forestry regulation under the 2018 act, contains an error that relates to defective drafting. There is an erroneous reference in article 3 of the order to a section in the Climate Change (Scotland) Act 2009 concerning duties of public bodies. Again, the detail can be found in our published papers.

Does the committee wish to draw the order to the attention of the Parliament on reporting ground (i), as there appears to be defective drafting in paragraph (2)(c) of article 3?

Members indicated agreement.

The Convener: Does the committee wish to accept the Scottish Government's assurance that there is no intention for the provision to be acted on and its proposal to correct the error at the earliest opportunity?

Members indicated agreement.

National Health Service Superannuation and Pension Schemes (Scotland) (Miscellaneous Amendments) Regulations 2019 (SSI 2019/46)

The Convener: Although our legal advisers have identified no errors in SSI 2019/46, there remains an outstanding commitment by the Government to rectify an error in SSI 2017/27, which amends one of the same instruments that SSI 2019/46 amends. The commitment was made when SSI 2017/27 was considered by the committee in 2017.

The Scottish Government has highlighted in correspondence, which can be read in paper 3, that a planned instrument to correct the error has been paused following a recent decision in the English courts. However, given that the error was identified by the committee as defective drafting, which related to provisions that should have been made retrospective, the committee may wish to encourage the Scottish Government to rectify the error as soon as possible.

Does the committee agree to encourage the Scottish Government to rectify the error in SSI 2017/27 as soon as possible?

Members indicated agreement.

The Convener: There are a further seven negative instruments on our agenda, on which no points have been raised by our legal advisers.

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

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

Conservation of Salmon (Scotland) Amendment Regulations 2019 (SSI 2019/56)

Common Agricultural Policy (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/60)

Conservation (Natural Habitats, etc) Amendment (Scotland) Regulations 2019 (SSI 2019/64)

Police Pensions (Miscellaneous Amendments) (Scotland) Regulations 2019 (SSI 2019/68)

Fisheries (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2019 (SSI 2019/69)

The Convener: Is the committee content with the instruments?

Members indicated agreement.

Instrument not subject to Parliamentary Procedure

Forestry and Land Management (Scotland) Act 2018 (Commencement, Transitional and Saving Provisions) Regulations 2019 (SSI 2019/47 (C1))

10:06

The Convener: SSI 2019/47 is the third instrument on our agenda that relates to forestry regulation under the 2018 act. It contains a drafting error that relates to references that should have been footnotes. Again, members will have seen from the Scottish Government's correspondence in the published papers that it has thanked the committee for drawing the matter to its attention and that it will correct the error at the earliest opportunity.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground for drafting errors in paragraphs (2)(a) and (2)(b) of regulation 19 and paragraphs (2)(a) and (3) of regulation 20?

Members indicated agreement.

The Convener: Does the committee wish to welcome the Scottish Government's undertaking to correct the errors by amending regulations at the earliest possible opportunity?

Members indicated agreement.

Meeting closed at 10:07.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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