



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 19 March 2019

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 19 March 2019

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
EUROPEAN UNION (WITHDRAWAL) ACT 2018: INSTRUMENT PROCEDURE AND CATEGORY	1
Wildlife and Countryside Act 1981 (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/84) ...	1
EUROPEAN UNION (WITHDRAWAL) ACT 2018: INSTRUMENT CATEGORY	2
Cross-border Health Care (EU Exit) (Scotland) (Amendment etc) Regulations 2019 [Draft].....	2
INSTRUMENT SUBJECT TO AFFIRMATIVE PROCEDURE	3
Cross-border Health Care (EU Exit) (Scotland) (Amendment etc) Regulations 2019 [Draft].....	3
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE	4
Wildlife and Countryside Act 1981 (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/84) ...	4
Sea Fish Licensing (Foreign Vessels) (EU Exit) (Scotland) Order 2019 (SSI 2019/87)	4
Sea Fishing (Licences and Notices) (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/88)	5
Agriculture Market Measures (EU Exit) (Scotland) (Amendment) Amendment Regulations 2019 (SSI 2019/89).....	5
Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses) 2019 (SSI 2019/74)	5
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE	6
Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2019 (SSI 2019/81)	6
Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Regulation (EC) No 44/2001) (Transitional Provisions) 2019 (SSI 2019/85)	6

DELEGATED POWERS AND LAW REFORM COMMITTEE
10th 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 19 March 2019

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Graham Simpson): I welcome everyone to the 10th meeting in 2019 of the Delegated Powers and Law Reform Committee.

Under agenda item 1, it is proposed that the committee take item 7, on the legislative consent memorandum for the Immigration and Social Security Co-ordination (EU Withdrawal) Bill, in private. Does the committee agree to do so?

Members indicated agreement.

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

Wildlife and Countryside Act 1981 (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/84)

10:01

The Convener: Agenda item 2 is consideration of an instrument that has been laid under the European Union (Withdrawal) Act 2018. We are considering the scrutiny procedure under which the instrument has been laid and the categorisation that the Scottish Government has applied. The instrument has been laid under the negative procedure and has been categorised as being of low significance.

The regulations amend the definition of “wild bird” in the Wildlife and Countryside Act 1981, so that, when the United Kingdom leaves the European Union, birds that are resident in or visitors to the UK will continue to be caught by the definition and will benefit from the protection that that status confers.

Our advisers indicate that the scrutiny procedure and categorisation could be appropriate. Is the committee content that that is the case?

Members indicated agreement.

European Union (Withdrawal) Act 2018: Instrument Category

Cross-border Health Care (EU Exit) (Scotland) (Amendment etc) Regulations 2019 [Draft]

10:02

The Convener: Agenda item 3 is consideration of another instrument that has been laid under the European Union (Withdrawal) Act 2018. We are considering the instrument under the Scottish statutory instrument protocol.

The instrument has been laid under the mandatory affirmative procedure in paragraph 1(6) of schedule 7 to the 2018 act. Our advisers have indicated that it appears that the instrument does not engage the criteria for the mandatory affirmative procedure and that the instrument could have been laid under paragraph 1(7) of schedule 7. That would have engaged the sift under the EU exit SSI protocol in respect of the choice of parliamentary procedure. Nevertheless, had the affirmative procedure been chosen under paragraph 1(7), our advisers indicate that, in their view, that would have been the appropriate parliamentary procedure, so the practical effect would have been the same.

The Government recommends that the instrument be categorised as being of medium significance, and our advisers indicate that that categorisation could be appropriate.

Is the committee content that medium significance is the appropriate categorisation?

Members indicated agreement.

Instrument subject to Affirmative Procedure

Cross-border Health Care (EU Exit) (Scotland) (Amendment etc) Regulations 2019 [Draft]

10:03

The Convener: Under agenda item 4, we are considering the instrument that we considered under item 3. We are now undertaking technical scrutiny of the instrument.

The instrument contains an error relating to the definition of an EU regulation. Full details can be found in the correspondence with the Government, which is included in our published papers.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground in respect of the error in regulation 5(8)?

Members indicated agreement.

The Convener: Does the committee wish to call on the Scottish Government to correct the error at the next legislative opportunity?

Members indicated agreement.

Instruments subject to Negative Procedure

Wildlife and Countryside Act 1981 (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/84)

10:04

The Convener: In relation to the first four instruments that we will consider under agenda item 5, the time between the instrument being laid before the Parliament and the date of its coming into force does not respect the requirement that at least 28 days should elapse between those dates. In each case, the reasons for the breach are set out in correspondence with the Presiding Officer, which is available in our published papers. The standing orders require the committee to draw to the Parliament's attention any failure to respect the 28-day laying requirement.

The first instrument under item 5 is SSI 2019/84, which we considered under item 2. We are now undertaking technical scrutiny of the instrument. It was laid before the Parliament on 8 March and will come into force on 29 March.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j), as it fails to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010?

Members indicated agreement.

The Convener: Is the committee content that the failure to comply with section 28(2) of the 2010 act is acceptable in the circumstances?

Members indicated agreement.

Sea Fish Licensing (Foreign Vessels) (EU Exit) (Scotland) Order 2019 (SSI 2019/87)

The Convener: SSI 2019/87 prohibits foreign fishing boats fishing in the Scottish zone without first obtaining a licence from the Scottish ministers. The instrument has been made in consequence of the UK's withdrawal from the EU to ensure that fisheries within the Scottish zone can be managed and controlled appropriately. It was laid before the Parliament on 12 March and will come into force on exit day, which is scheduled for 29 March.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j), as it fails to comply with the requirements of section 28(2) of the 2010 act?

Members indicated agreement.

The Convener: Is the committee content that the failure to comply with those requirements is acceptable in the circumstances?

Members indicated agreement.

Sea Fishing (Licences and Notices) (EU Exit) (Scotland) (Amendment) Regulations 2019 (SSI 2019/88)

The Convener: SSI 2019/88 extends the application of the Sea Fishing (Licences and Notices) (Scotland) Regulations 2011 (SSI 2011/70) to licences that are granted by the Scottish ministers to foreign fishing boats. The instrument was laid before the Parliament on 12 March and will come into force on exit day, which is currently scheduled for 29 March.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j), as it fails to comply with the requirements of section 28(2) of the 2010 act?

Members indicated agreement.

The Convener: Is the committee content that the failure to comply with those requirements is acceptable in the circumstances?

Members indicated agreement.

Agriculture Market Measures (EU Exit) (Scotland) (Amendment) Amendment Regulations 2019 (SSI 2019/89)

The Convener: SSI 2019/89 corrects the drafting error in SSI 2019/73, which the committee considered and reported on last week. It was laid before the Parliament on 13 March and will come into force on 27 March.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j)?

Members indicated agreement.

The Convener: Does the committee find the failure to comply with section 28(2) of the 2010 act to be acceptable?

Members indicated agreement.

Act of Sederunt (Rules of the Court of Session, Sheriff Appeal Court Rules and Ordinary Cause Rules Amendment) (Taxation of Judicial Expenses) 2019 (SSI 2019/74)

The Convener: We have one more instrument to consider under item 5, on which no points have been raised by our advisers. Is the committee content with the instrument?

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

10:08

The Convener: We have two instruments to consider under agenda item 6, on which no points have been raised by our advisers.

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2019 (SSI 2019/81)

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Regulation (EC) No 44/2001) (Transitional Provisions) 2019 (SSI 2019/85)

The Convener: Is the committee content with the instruments?

Members indicated agreement.

10:08

Meeting continued in private until 10:22.

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.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba