



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 21 April 2020

Session 5



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Pàrlamaid na h-Alba

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE.....	2
Council Tax Reduction (Scotland) Amendment (No 3) (Coronavirus) Regulations 2020 (SSI 2020/108)	2
Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Regulations 2020 (SSI 2020/117)	3
Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (SSI 2020/122)	4
Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/123)	4
Gender Representation on Public Boards (Scotland) Act 2018 (Reports) Regulations 2020 (SSI 2020/120)	5
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE.....	6
Act of Adjournal (Criminal Procedure (Scotland) Act 1995 Amendment) (Miscellaneous) 2020 (SSI 2020/93).....	6
Non-Domestic Rates (Scotland) Act 2020 (Commencement No 1 and Transitional Provision) Regulations 2020 (SSI 2020/107 (C 11))	6
Gender Representation on Public Boards (Scotland) Act 2018 (Commencement No 2) Regulations 2020 (SSI 2020/119 (C 12))	6
Coronavirus Act 2020 (Commencement No 1) (Scotland) Regulations 2020 (SSI 2020/121 (C 13))	6

DELEGATED POWERS AND LAW REFORM COMMITTEE

13th Meeting 2020, Session 5

CONVENER

*Bill Bowman (North East Scotland) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

Mary Fee (West Scotland) (Lab)

*Gordon Lindhurst (Lothian) (Con)

Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Tom Arthur (Renfrewshire South) (SNP) (Committee Substitute)

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 21 April 2020

[The Convener opened the meeting at 12:32]

Decision on Taking Business in Private

The Convener (Bill Bowman): Good afternoon. I welcome everyone to the 13th meeting in 2020 of the Delegated Powers and Law Reform Committee. We have apologies from two of our members—Mary Fee and Gil Paterson—and I again welcome Tom Arthur as a substitute member.

Under agenda item 1, it is proposed that the committee takes item 4 in private, as it involves consideration of a report that will be published once it has been agreed. Does the committee agree to take item 4 in private?

Members *indicated agreement.*

Instruments subject to Negative Procedure

12:33

The Convener: Agenda item 2 is consideration of a number of negative instruments. Before I turn to the instruments, I will say something about the 28-day rule. Regular followers of the committee will know that there is a requirement that at least 28 days should elapse between the laying of an instrument that is subject to the negative procedure and the coming into force of that instrument. The Scottish Government can bring a Scottish statutory instrument into force sooner than that, but it must be accompanied by a letter to the Presiding Officer that explains the reason for breaching the 28-day rule.

Although I acknowledge that we are in difficult and challenging times and that legislation might be required that is unable to meet the 28-day requirement, I wish to emphasise that the committee will still carefully scrutinise the Scottish Government's reasons for failing to comply with the rule. The 28-day rule protects the Parliament's scrutiny function by allowing time for the appropriate scrutiny of would-be law, and it should be breached only when it is absolutely necessary to do so.

Council Tax Reduction (Scotland) Amendment (No 3) (Coronavirus) Regulations 2020 (SSI 2020/108)

The Convener: SSI 2020/108 increases the amount of earnings that are to be disregarded in calculating the income of an applicant for the purposes of an award of council tax reduction. The instrument was laid before the Parliament on 1 April and came into force on 6 April, which is a clear breach of the 28-day rule. Under standing orders, the committee is required to draw the instrument to the attention of the Parliament on reporting ground (j) for failing to comply with the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

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

Members *indicated agreement.*

The Convener: The Scottish Government's reasons for the breach are set out in a letter to the Presiding Officer that is dated 1 April 2020. It explains that the instrument was made in response to a United Kingdom Government announcement on 20 March about increasing the basic rate of working tax credit as part of its response to Covid-19. The Scottish Government

states that the amending regulations could not be finalised until sufficient detail of the implementation of the UK Government's announcement was known. The instrument then had to be brought into force quickly to reflect the UK Government's timing.

Is the committee content with the reasons that have been given for the failure to comply with section 28(2) of the 2010 act?

Members indicated agreement.

The Convener: Members will have seen correspondence between the committee and the Minister for Parliamentary Business and Veterans on a previous set of council tax reduction regulations. Those are the latest in a long line of letters on the need to consolidate the council tax reduction regulations. I am grateful for the minister's latest update. Although I appreciate that Government resources are currently being used to meet more pressing needs, I propose that I respond to the minister to let him know that we are still keen for a consolidation exercise to be carried out in the near future.

Do members agree to my writing such a letter as convener?

Members indicated agreement.

Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Regulations 2020 (SSI 2020/117)

The Convener: SSI 2020/117 relaxes the eligibility criteria for carers allowance to take account of the effects of coronavirus. As the instrument was laid before the Parliament on 1 April and came into force on 2 April, it does not respect the requirement that at least 28 days should elapse between the laying of an instrument that is subject to the negative procedure and the coming into force of that instrument. Therefore, as with the previous instrument, the committee is required to draw the instrument to the attention of the Parliament on reporting ground (j) for failing to comply with the requirements of section 28(2) of the 2010 act.

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

Members indicated agreement.

The Convener: The reasons for the instrument's failure to meet those requirements are set out in a letter to the Presiding Officer that is dated 2 April 2020. It explains that, because the changes that are made in the regulations would ease pressures on carers throughout the UK in response to the effects of coronavirus, the Scottish Government wished to make them as quickly as

possible. The response also indicates that the changes are in line with corresponding changes in England and Wales.

Is the committee content with the reasons that have been given for the failure to comply with section 28(2) of the 2010 act?

Members indicated agreement.

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (SSI 2020/122)

The Convener: SSI 2020/122 amends the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (SSI 2011/331) to provide governors with flexibility with regard to compliance with timescales and the provision of certain services that are not deemed to be critical to the security and health of Scottish Prison Service staff and prisoners during the coronavirus outbreak.

The instrument was laid before the Parliament on 7 April and came into force immediately, which again represents a breach of the 28-day rule. The committee is therefore required to draw the instrument to the attention of the Parliament on reporting ground (j) for failing to comply with the requirements of section 28(2) of the 2010 act.

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

Members indicated agreement.

The Convener: The reasons for the breach of the 28-day rule are set out in a letter to the Presiding Officer that is dated 7 April 2020. It explains that changes to prison rules were required quickly, to give the Prison Service the flexibility that it needs to manage the rapidly evolving position with respect to Covid-19 and to ensure the safe and humane operation of prisons, which are currently under exceptional pressures.

Is the committee content with the reasons that have been given for the failure to comply with section 28(2) of the 2010 act?

Members indicated agreement.

Electricity Works (Miscellaneous Temporary Modifications) (Coronavirus) (Scotland) Regulations 2020 (SSI 2020/123)

The Convener: SSI 2020/123 temporarily alters various regulations to remove requirements that documents and information be physically available and instead requires them to be electronically available to allow people to follow current social distancing requirements.

The instrument was laid before the Parliament on 14 April and comes into force on 24 April,

which again represents a breach of the 28-day rule. Under standing orders, the committee is required to draw the instrument to the attention of the Parliament on reporting ground (j) for failing to comply with the requirements of section 28(2) of the 2010 act.

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

Members *indicated agreement.*

The Convener: The reasons for the breach are set out in a letter that is dated 14 April 2020. It explains that the changes that are made by the regulations allow for documents that previously had to be physically available to be electronically available instead, to allow people to follow social distancing instructions. It was considered necessary to bring those modifications into force as early as possible. The letter states that that will support future economic and societal recovery, ensure consistency of approach across the planning system, thus providing certainty for developers and the public, and maintain the ability of the energy consents unit to continue to process applications efficiently.

Is the committee content with the reasons that have been given for the failure to comply with section 28(2) of the 2010 act?

Members *indicated agreement.*

Gender Representation on Public Boards (Scotland) Act 2018 (Reports) Regulations 2020 (SSI 2020/120)

The Convener: No points have been raised on SSI 2020/120. Is the committee content with the instrument?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

12:40

The Convener: Agenda item 3 is consideration of four instruments that are not subject to parliamentary procedure and on which no points have been raised.

Act of Adjournal (Criminal Procedure (Scotland) Act 1995 Amendment) (Miscellaneous) 2020 (SSI 2020/93)

Non-Domestic Rates (Scotland) Act 2020 (Commencement No 1 and Transitional Provision) Regulations 2020 (SSI 2020/107 (C 11))

Gender Representation on Public Boards (Scotland) Act 2018 (Commencement No 2) Regulations 2020 (SSI 2020/119 (C 12))

Coronavirus Act 2020 (Commencement No 1) (Scotland) Regulations 2020 (SSI 2020/121 (C 13))

The Convener: Members will recall that, when we last met, we agreed to write to the Lord President to ask whether there would be a time limit on the operation of SSI 2020/93. Members will have seen the Lord President's interesting response, in which he says that there is currently no time limit, as the act of adjournal might be

"of utility beyond the end of the pandemic and its operational recovery period."

I propose to write back to the Lord President to thank him for his update and to highlight that correspondence to the lead committee—the Justice Committee—for its interest and information. Do members agree to that?

Members *indicated agreement.*

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

12:41

Meeting continued in private until 12:43.

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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