



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 5 May 2020

Session 5



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

15th 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

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 5 May 2020

[The Convener opened the meeting at 12:30]

Decision on Taking Business in Private

The Convener (Bill Bowman): Good afternoon. I welcome everyone to the 15th meeting in 2020 of the Delegated Powers and Law Reform Committee. We have apologies from two of our members—Mary Fee and Gil Paterson.

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.*

Instrument subject to Affirmative Procedure

Direct Payments (Crop Diversification Derogation) (Scotland) Regulations 2020 (SSI 2020/135)

12:30

The Convener: Agenda item 2 is consideration of an instrument that is subject to the provisional affirmative procedure. That means that the instrument is already in force but will lapse unless it is approved by the Parliament within 28 days.

The committee notes that the power under which SSI 2020/135 is made can be used to derogate from the European Union direct payments regulation only when two preconditions are met. First, the derogation must be only

“to the extent and for such a period as is strictly necessary”.

Secondly, the regulations must be

“both necessary and justifiable in an emergency”.

For the instrument to be within vires, both preconditions must be met. As the assessment of that is a policy consideration, the committee cannot reach a view on the matter. Therefore, the committee cannot say definitively whether the instrument raises a vires issue.

Does the committee wish to draw the issue to the attention of the lead committee, which is better placed to consider whether the preconditions are met?

Members *indicated agreement.*

Instrument not subject to Parliamentary Procedure

12:33

Meeting continued in private until 12:51.

Social Security (Scotland) Act 2018 (Commencement No 7) Regulations 2020 (SSI 2020/127 (C 14))

12:32

The Convener: Agenda item 3 is consideration of an instrument that is not subject to parliamentary procedure, on which no points have been raised. Is the committee content with SSI 2020/127?

Members *indicated agreement.*

The Convener: The committee might nevertheless wish to note that the instrument was laid before the Parliament on 23 April. Regulation 2(1) appoints 1 May as the day for the coming into force of sections 79 and 80 of the Social Security (Scotland) Act 2018. That does not follow the normal convention that the provisions that are brought into force by a commencement instrument should be brought into force at least 10 days, and preferably at least 14 days, after the laying of the instrument in Parliament and its publication.

Does the committee wish to encourage the Scottish Government to adhere to that convention in future commencement instruments?

Members *indicated agreement.*

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