



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 11 August 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 11 August 2020

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DELEGATED POWERS AND LAW REFORM COMMITTEE

23rd 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)

Graham Simpson (Central Scotland) (Con)

Brian Whittle (South Scotland) (Con) (Committee Substitute)

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

The James Clerk Maxwell Room

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 11 August 2020

[The Convener opened the meeting at 12:05]

Decision on Taking Business in Private

The Convener (Bill Bowman): Good afternoon. I welcome everyone to the 23rd meeting in 2020 of the Delegated Powers and Law Reform Committee. We have apologies from three of our members: Gordon Lindhurst, Gil Paterson—I welcome Brian Whittle and Tom Arthur, who are attending in their place—and Mary Fee. Graham Simpson is joining us today and will speak later.

The first item of business is to propose that the committee takes items 6 to 9 in private, as they involve consideration of reports that will be published once they are agreed. Does the committee agree to take items 6 to 9 in private?

Members *indicated agreement.*

Instruments subject to Made Affirmative Procedure

Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 7) Regulations 2020 (SSI 2020/210)

12:06

The Convener: Under agenda item 2 we are considering instruments subject to the made affirmative procedure. The instruments are in force already and the Parliament has 28 days to consider whether to approve them. If the Parliament does not approve the instruments within 28 days, they will cease to have effect.

As I said, we have Graham Simpson with us today to share his views on one of the instruments under this agenda item: the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 7) Regulations 2020 (SSI 2020/210). Graham, would you like to speak?

Graham Simpson (Central Scotland) (Con): Thank you, convener. It is good to be back at the committee, which I used to convene. I feel your pain at having to read out the notes.

As you rightly said, I want to say a brief word about the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 7) Regulations 2020—in particular, the part of the regulations that deals with the requirement to wear a face covering in a shop.

As you well know, it is not for this committee to decide whether that requirement is right or wrong, but it is for this committee to decide whether the procedure that the Government used was the correct one. It is also open to you to make comments on whether the regulations were drafted tightly enough. I will comment on those two issues.

You will have seen an email that I sent to you, which I hope has been shared with the committee. It is a matter of public record. When I looked at the regulations, I felt that there were, shall we say, holes in them. They potentially created a two-tier situation in which certain premises would be exempt from the requirement to wear a face covering and others would not.

The premises that would be exempt are banks, building societies, anywhere that operates a currency exchange office and anywhere where one can transmit money. As I said earlier, it is not for you to decide whether that is right or wrong, but that raised a question. Post offices are often in shops. If someone wanted to go to a currency exchange office that is operated by a post office, they would be exempt from wearing a face

covering. However, they might have to go into a shop to get to it. That does not make sense to me.

Similarly, if someone wished to transmit money in some way, they could go to any one of the thousands of what are usually small shops in Scotland that operate PayPoint facilities. As I said, we ended up with a two-tier situation.

The committee is dealing with the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 7) Regulations 2020, but they have been superseded by the Health Protection (Coronavirus) (Restrictions) (Scotland) Amendment (No 10) Regulations 2020, which were issued last week. The committee is not considering those regulations today, but the Cabinet Secretary for the Constitution, Europe and External Affairs, Mr Russell, appears to be correcting the issues that I raised in my email to you and in an email to him. It seems to me that, if the regulations had been drawn up properly, we would not have needed the amending regulations and that, if Parliament had been able to scrutinise the regulations in the first place, we might not have been in the position that we are now in.

My second point is that it does not matter what the committee thinks about introducing a mandatory requirement to wear face coverings in shops and other places, but that piece of legislation is far-reaching, and it seems to me that it should not just be pushed through without prior scrutiny.

I invite the committee to comment on that.

Stuart McMillan (Greenock and Inverclyde) (SNP): I thank Mr Simpson very much for bringing the matter to the committee's attention.

We probably all agree that none of us and no Government in the world has ever dealt with something like the Covid pandemic before. It is clear that the Scottish Government's action in urgently introducing the regulations has been important to try to help and deal with an ever-evolving situation. Mr Simpson and members of the committee will be aware that the legislation that was passed in the Parliament allowed for such a process. From a procedural and a legal point of view, it therefore appears that what the Scottish Government has undertaken has been correct. Nothing untoward has happened at all.

From a technical point of view, the point about the inside of shops is a valid one to raise, and I again thank Mr Simpson for raising it with the committee. However, it would probably be better for the COVID-19 Committee to consider that, rather than this committee.

Brian Whittle (South Scotland) (Con): Mr Simpson has raised a really interesting point. It has been highlighted that the Government has

acted within the competence of its legal structure, but has it acted with the consent of Parliament? The concern for me is that there is a lack of scrutiny, especially around the wearing of face masks in shops. There are a lot of anomalies within that. I am also a member of the Health and Sport Committee. There is a lot of different expert advice on whether that is the right or the wrong thing to do, and it is not for this committee to investigate that. I happen to think that it is the right thing to do, but things have been done in the wrong way.

That raises the point that, throughout, there has been concern about parliamentary scrutiny. In this particular instance, we have missed the opportunity to introduce legislation that could have been much tighter than the legislation currently is.

The other day, I heard that, if a person is in a queue in a coffee shop and is sitting down, they do not need to wear a face mask, but if they order the same coffee in the queue and are going to have a carry-out, they have to put on a face mask. There are anomalies. If the legislation was properly scrutinised in Parliament, it could have been much more effective.

As Mr McMillan said, the COVID-19 Committee is the right committee to have a look at the issue in its entirety, but we should note that. However, for this committee, the Government has acted within the rules and regulations and the legal framework that has been set out by the Parliament.

12:15

Tom Arthur (Renfrewshire South) (SNP): I echo the comments of colleagues in thanking Mr Simpson for bringing the matter to the committee's attention. I appreciate that the route by which it has done so might have been slightly circuitous, but the Parliament has fulfilled its function in scrutinising the legislation in question, as it seems from Mr Simpson's comments that his letter to the cabinet secretary precipitated the issuing of a revised set of regulations.

It is recognised that when we get to the other side of Covid, which it is clear might not happen for some time yet, there will need to be a period of reflection in which the actions of all public bodies are scrutinised, and that that should include scrutiny of how the Parliament and the Government have functioned. I recall receiving correspondence from constituents at the outset of the crisis, in which they asked why we were waiting for Westminster to pass legislation instead of introducing our own bill immediately. While some people felt that we were being tardy, others asked why everything could not be done at Westminster.

There will be a process of review and reflection for all public bodies, which will include consideration of how we have done our jobs as parliamentarians in scrutinising the legislation that the Government has introduced. Mr Simpson's point is important and I thank him for making it.

The Convener: Would you like to make a brief final comment, Mr Simpson?

Graham Simpson: I thank committee members for their considered comments; I would expect nothing less.

I agree with the point that everyone has made that the Government has acted within the rules—Parliament gave it the power to do what it has done. I am not disputing that; I am merely inviting the committee to comment on whether the Government should have used the procedure that it did, as the committee has commented in relation to other regulations on Covid. I am thinking of regulations on planning, on which I know that the committee has commented previously.

I am happy to leave my comments at that, and I thank the committee for its time.

The Convener: I thank Mr Simpson for his comments and for giving us advance notice of his intention to raise the matter.

In summary, I think that we agree that the Government followed the rules and procedures and used the powers that it had been given, even though some of the drafting could have been tighter. On that basis, I suggest that we mention in our report to the COVID-19 Committee Mr Simpson's comments about the drafting and his views on the use of the made affirmative procedure. Do members agree to that suggestion?

Members indicated agreement.

The Convener: No points have been raised on the instrument on any of the committee's technical reporting grounds. Is the committee content with the instrument from a technical scrutiny standpoint?

Members indicated agreement.

**Social Care Staff Support Fund
(Coronavirus) (Scotland) Regulations 2020
(SSI 2020/188)**

The Convener: SSI 2020/188 provides for the establishment, maintenance and administration of the social care staff support fund, which has been created to ensure that relevant social care workers do not experience financial hardship as a result of being ill with coronavirus or because they are self-isolating in line with guidance.

Regulation 4 sets out that

"In order to make a claim on the Fund, a relevant social care worker must provide evidence satisfactory to the Scottish Ministers, to them, or to such person appointed by the Scottish Ministers in accordance with regulation 2(3)".

The reference should be to regulation 2(4) rather than regulation 2(3). The Scottish Government proposes to deal with the error by way of a correction slip.

Does the committee agree to report the instrument to Parliament on the general reporting ground?

Members indicated agreement.

The Convener: Does the committee wish to note the Scottish Government's commitment to address the error by way of a correction slip?

Members indicated agreement.

The Convener: No points have been raised on the following made affirmative instruments.

**Health Protection (Coronavirus)
(Restrictions) (Scotland) Amendment
(No 5) Regulations 2020 (SSI 2020/190)**

**Health Protection (Coronavirus)
(Restrictions) (Scotland) Amendment
(No 6) Regulations 2020 (SSI 2020/199)**

**Care Homes Emergency Intervention
Orders (Coronavirus) (Scotland)
Regulations 2020 (SSI 2020/201)**

**Health Protection (Coronavirus)
(International Travel) (Scotland)
Amendment (No 3) Regulations 2020
(SSI 2020/209)**

**Health Protection (Coronavirus)
(Restrictions) (Scotland) Amendment
(No 7) Regulations 2020 (SSI 2020/210)**

**Health Protection (Coronavirus)
(Restrictions) (Scotland) Amendment
(No 8) Regulations 2020 (SSI 2020/211)**

**Land and Buildings Transaction Tax (Tax
Rates and Tax Bands) (Scotland)
Amendment (No 2) (Coronavirus) Order
2020 (SSI 2020/215)**

**Health Protection (Coronavirus)
(International Travel) (Scotland)
Amendment (No 4) Regulations 2020
(SSI 2020/221)**

**Health Protection (Coronavirus)
(International Travel) (Scotland)
Amendment (No 5) Regulations 2020
(SSI 2020/224)**

**Health Protection (Coronavirus)
(International Travel) (Scotland)
Amendment (No 6) Regulations 2020
(SSI 2020/229)**

**Health Protection (Coronavirus)
(Restrictions) (Scotland) Amendment
(No 9) Regulations 2020 (SSI 2020/232)**

**Health Protection (Coronavirus)
(International Travel) (Scotland)
Amendment (No 7) Regulations 2020
(SSI 2020/233)**

**Health Protection (Coronavirus,
Restrictions) (Aberdeen City) Regulations
2020 (SSI 2020/234)**

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

**Instruments subject to
Affirmative Procedure**

12:19

The Convener: Agenda item 3 is consideration of a number of affirmative instruments, on which no points have been raised.

**Representation of the People (Electoral
Registers Publication Date) (Coronavirus)
(Scotland) Regulations 2020 [Draft]**

**Abertay University and Robert Gordon
University (Change of Names)
(Miscellaneous Amendments) (Scotland)
Order 2020 [Draft]**

**Advice and Assistance (Assistance by
Way of Representation) (Scotland)
Amendment Regulations 2020 [Draft]**

**Greenhouse Gas Emissions Trading
Scheme Order 2020 [Draft]**

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Stuart McMillan: In the interests of clarity, I point out that I studied at Abertay.

Instruments subject to Negative Procedure

Personal Independence Payment (Transitional Provisions) Amendment (Scotland) Regulations 2020 (SSI 2020/218)

12:20

The Convener: SSI 2020/218 makes provision in Scotland for changes to the age at which individuals in receipt of disability living allowance are invited to claim for the personal independence payment. In certain circumstances, it extends disability living allowance awards to persons who are aged up to 18 years and six months.

The instrument was laid before the Parliament on 17 July and will come into force on 1 September. That 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, so the committee is required under standing orders to draw the instrument to the attention of the Parliament on reporting ground (j), for its failure 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 committee also considers the reasons for breaches of the 28-day rule, which in this case are set out in a letter to the Presiding Officer that is dated 17 July 2020. The letter explains that it has taken time for the regulations to be finalised because of an intensive exercise to determine the impact of Covid-19 on the Scottish Government's plans for the further devolution of social security powers that relate to a range of disability benefits. The Scottish Government and the Department for Work and Pensions needed time to consider whether the changes that are proposed in the regulations were deliverable in the current challenging environment.

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: No points have been raised on the following five negative instruments.

Period Products in Schools (Scotland) Regulations 2020 (SSI 2020/183)

Education (Fees and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/213)

Non-Domestic Rates (Coronavirus Reliefs) (Scotland) Amendment Regulations 2020 (SSI 2020/230)

The Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) Order 2020 (SI 2020/776)

The Scotland Act 1998 (Agency Arrangements) (Specification) (Coronavirus) (No 2) Order 2020 (SI 2020/777)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

12:23

Meeting continued in private until 13:05.

12:22

The Convener: Agenda item 5 is consideration of four instruments that are not subject to parliamentary procedure and on which no points have been raised.

**UEFA European Championship (Scotland)
Act 2020 (Commencement No 2)
Regulations 2020 (SSI 2020/189 (C 17))**

**Act of Sederunt (Rules of the Court of
Session 1994 and Sheriff Court Company
Insolvency Rules Amendment)
(Insolvency) 2020 (SSI 2020/198)**

**Act of Adjournal (Criminal Procedure
Rules 1996 Amendment) (Jury Ballot) 2020
(SSI 2020/200)**

**Act of Sederunt (Rules of the Court of
Session 1994 Amendment) (Group
Proceedings) 2020 (SSI 2020/208)**

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

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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