



OFFICIAL REPORT
AITHISG OIFIGEIL

Health and Sport Committee

Tuesday 27 October 2020

Session 5



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HEALTH AND SPORT COMMITTEE

27th Meeting 2020, Session 5

CONVENER

*Lewis Macdonald (North East Scotland) (Lab)

DEPUTY CONVENER

*Emma Harper (South Scotland) (SNP)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
Donald Cameron (Highlands and Islands) (Con)
Alex Cole-Hamilton (Edinburgh Western) (LD)
*David Stewart (Highlands and Islands) (Lab)
*David Torrance (Kirkcaldy) (SNP)
*Sandra White (Glasgow Kelvin) (SNP)
*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Joe FitzPatrick (Minister for Public Health, Sport and Wellbeing)

CLERK TO THE COMMITTEE

David Cullum

LOCATION

Virtual Meeting

Scottish Parliament

Health and Sport Committee

Tuesday 27 October 2020

[The Convener opened the meeting in private at 10:00]

11:00

Meeting continued in public.

Subordinate Legislation

Human Tissue (Excepted Body Parts) (Scotland) Regulations 2020 [Draft]

The Convener (Lewis Macdonald): Good morning, and welcome to the 27th meeting of the Health and Sport Committee in 2020. We have received apologies from Donald Cameron and Alex Cole-Hamilton. I ask everyone present to ensure that their mobile phones are on silent.

The first item on our agenda to be taken in public is item 2, on subordinate legislation. The committee will consider a draft affirmative Scottish statutory instrument. We will have an evidence session on the draft instrument with the Minister for Public Health, Sport and Wellbeing and supporting officials. Once all our questions have been answered, we will move to a formal debate on the motion that is before us.

I welcome Joe FitzPatrick, the Minister for Public Health, Sport and Wellbeing, to the meeting. He is accompanied by two Scottish Government officials: Gemma Grant, a lawyer from the legal directorate; and Sharon Grant, team lead for the implementation of the Human Tissue (Authorisation) (Scotland) Act 2019. Thank you all for joining us today. I invite the minister to make an opening statement.

The Minister for Public Health, Sport and Wellbeing (Joe FitzPatrick): Thank you for the opportunity to make an opening statement.

The draft Human Tissue (Excepted Body Parts) (Scotland) Regulations are a necessary component of Scotland's new deemed authorisation donation system, which was established under the Human Tissue (Authorisation) (Scotland) Act 2019.

As the committee will know, the legislation will introduce what is commonly referred to as an opt-out organ and tissue donation system, whereby a person is deemed to have authorised transplantation unless they have expressly opted out of being a donor.

Following a delay in the implementation of the 2019 act as a result of the Covid-19 pandemic, I have now confirmed that the act will be implemented, subject to parliamentary consideration of secondary legislation, on 26 March 2021. Implementation of the act will add to the on-going long-term work to increase the opportunity for donation and transplantation.

The effect of the regulations that are before the committee is to specify the body parts to which the new system of deemed authorisation will not apply. Deemed authorisation for donation under the opt-out scheme will apply only to what are considered to be commonly transplanted organs and tissues. That includes the lungs, kidneys and heart, for example. Public information will make clear which organs and tissues can be transplanted when authorisation is not expressed but deemed.

The regulations set out the organs, tissues and material that are considered to be novel or rare in a donation and transplantation setting. It is important to be clear that most of the body parts that are specified in the regulations are not currently able to be transplanted in the United Kingdom.

In preparing the regulations, the Scottish Government has worked very closely with a variety of clinical stakeholders, including NHS Blood and Transplant, which is responsible for co-ordinating organ donation across the UK, and the Scottish National Blood Transfusion Service, which is responsible for tissue donation in Scotland.

The Scottish Government has taken into account the responses that were provided to a formal consultation to ensure that the regulations correctly reflect current clinical practice. The regulations will formalise and reflect current practice in a deemed authorisation system, and setting out excepted body parts is one of the legal safeguards that is provided for under the 2019 act, in relation to the functioning and extent of deemed authorisation. Those safeguards also include fulfilling the statutory duty to inquire and establishing the latest known views of a person on deceased donation for transplantation.

Those safeguards will also have to be undertaken in the rare circumstances where donation of an excepted body part may be able to take place. Their effects are that, where authorisation for transplantation is deemed under provisions in the 2019 act, the specified body parts under paragraphs (2) and (3) of regulation 2 will only be able to be removed for transplantation purposes following nearest relative authorisation. That reflects current practice regarding how such novel transplants are managed by specialist nurses for donors who have recorded an express

authorisation in the rare circumstances in which that arises.

Nearest relative authorisation for the removal of an excepted body part for transplantation is consistent with the robust authorisation requirements under the 2019 act. Safeguards in the act ensure that donation would not proceed without discussion of the donor's most recently held views and any unwillingness to donate an excepted body part, which will be taken account of before a nearest relative may authorise a listed part for transplantation.

The regulations also make specific provision in order not to inadvertently impact on routine tissue donations through the functioning of paragraphs (3) and (5) of regulation 2, whereby tissue can still be removed from certain body parts listed in those paragraphs where someone is deemed to have authorised transplantation. For example, a patch of skin could be removed from a leg as part of deemed authorisation for tissue donation, but the leg itself could not be removed in its entirety, as it is specified as an excepted body part.

Specific exception is also made in the regulations for the trachea—otherwise known as the windpipe—which is routinely retrieved for transplantation as part of a dual lung or heart-lung block transplant. The regulations create an exception for the trachea to be included within deemed authorisation in so far as it is attached to a lung; otherwise, the trachea remains an excepted body part.

I hope that that summarises the purpose of the regulations and is helpful. I am happy to take questions from the committee.

The Convener: I invite members who have questions to indicate that in the chat box. That would be helpful.

Emma Harper (South Scotland) (SNP): Good morning, minister. I have a quick question. Although we have the process for exempt and non-exempt organs—you outlined very clearly issues around the trachea—I am keen to highlight that we still want to encourage people to join the organ donation register so that we know what their wishes would be in any future tragic event. Am I correct that it is important to continue to encourage people to join the register?

Joe FitzPatrick: You make an important point. We are still encouraging people to record their wishes on the organ donation register. Crucially, we are also encouraging people to have a discussion with their family and friends so that, should they pass away in circumstances in which their organs or tissue can be used, the discussion around donation is made much easier for their loved ones. You are quite right to suggest that it is better that people continue to register on the organ

donation register and make sure that they have those conversations.

Brian Whittle (South Scotland) (Con): Good morning, minister. I have a quick follow-up to Emma Harper's question. One of the key elements that came out of the Human Tissue (Authorisation) (Scotland) Bill was the need to continually publicise the desire for people to make their own decision by registering as a donor. I said at the time that I did not realise that I was not a donor until I renewed my driving licence. How will the Government promote that avenue and encourage people to register as donors?

Joe FitzPatrick: The most important thing for the Government to do is to ensure the widest possible awareness of the regulations. We have already started that process. Awareness raising will step up in the new year, as we come closer to the date of implementation. We are in discussion with a number of groups—religious groups, belief groups and other stakeholders—who are keen to make sure that their groups understand the new law as well as possible.

I hope that, with maximum transparency, we will be able to maximise the number of transplants that happen in Scotland. Having the best regulations and laws in the world makes no difference; having transplants happening makes a difference. Transplants save lives and improve quality of life.

The Convener: Can you confirm that the responses that you received to the consultation were all supportive of the approach taken in the regulations?

Joe FitzPatrick: It was a public consultation to which anyone could respond. Most of the responses came from experts in the field—as you would expect, given the nature of the regulations—who were able to help us shape the regulations. I mentioned the trachea. That came from the consultation: a respondent mentioned that excluding the trachea created a risk of making it more difficult to carry out crucial heart-lung or double lung transplants. Engagement, particularly with that expert group, helped to shape the bill and the secondary legislation.

The Convener: There are no further questions from members, so we move to the next item on the agenda, which is the formal debate on the SSI on which we have just taken evidence.

I invite the minister to move motion S5M-22821.

Motion moved,

That the Health and Sport Committee recommends that the Human Tissue (Excepted Body Parts) (Scotland) Regulations 2020 [draft] be approved.—[*Joe FitzPatrick*]

The Convener: No members wish to contribute to the debate, and the minister has nothing further to add.

Motion agreed to.

**Health Protection (Coronavirus)
(International Travel) (Scotland)
Amendment (No 17) Regulations 2020
(SSI 2020/307)**

**Health Protection (Coronavirus)
(International Travel) (Scotland)
Amendment (No 18) Regulations 2020
(SSI 2020/326)**

The Convener: Under agenda item 4, which is also subordinate legislation, we will consider two made affirmative instruments. As in previous weeks, the regulations relate to coronavirus and international travel and are laid under section 94(1) (International Travel) of the Public Health etc (Scotland) Act 2008.

The 2008 act provides that such measures should be brought forward as affirmative regulations, but that the full affirmative procedure does not apply if ministers consider that they need to be made urgently. Section 122(7) of the act sets out that emergency regulations must be laid before the Scottish Parliament and that they cease to have effect on the expiry of the period of 28 days beginning with the date on which the regulations were made unless, before the expiry of that period, the regulations have been approved by a resolution of the Parliament.

It is for the Health and Sport Committee to consider the instruments and to report to Parliament accordingly. We have an evidence session today on the instruments with the Minister for Public Health, Sport and Wellbeing and officials.

The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 17) Regulations 2020 remove Turkey, Poland and Bonaire, Sint Eustatius and Saba from the exempt country list and add Madeira and the Azores to the said list. The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 18) Regulations 2020 remove Italy, San Marino and Vatican City State from the exempt country list and make changes to broaden the existing exemptions for elite sportspeople.

I again welcome Joe FitzPatrick, Minister for Public Health, Sport and Wellbeing. The minister is accompanied by Rachel Sunderland, deputy director at the population and migration division; Viki Calpin, performance team lead at test and protect performance and delivery; and Anita

Popplestone, head of police complaints and scrutiny in the police division.

With the minister's agreement, we will deal with both instruments together. I will invite questions from members on either or both of the instruments, and when we come to the formal proceedings I will invite the minister to move both motions.

I ask any member who has questions on the instruments to indicate that now. Does the minister have—[*Inaudible.*—] to offer us on the publication of data by Public Health Scotland on the matters under consideration?

11:15

Joe FitzPatrick: I am sorry, I did not catch all of your question. Did you ask about the data from Public Health Scotland?

The Convener: Yes, that is correct.

Joe FitzPatrick: The latest quarantine statistics for the week that ended on 18 October showed 27,340 people arriving in Scotland—15,157 of whom were required to quarantine and were contacted by email. In addition, staff from the national contact tracing centre followed up with 3,132 people, which is a significant increase—considerably above our rolling target of 2,000 contacts. That increase in the contact level is a significant achievement for the call centre.

The Convener: That update on the numbers is helpful for the committee.

No other members wish to ask a question at this stage, so we move to agenda items 5 and 6—the formal debates on the made affirmative instruments on which we have just taken evidence.

Members are content to have a single debate on the instruments. I invite the minister to speak to and move motions S5M-22946 and S5M-23079, in the name of Humza Yousaf. Members will then have an opportunity to contribute and to come to a conclusion.

Motions moved,

That the Health and Sport Committee recommends that The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 17) Regulations 2020 (SSI 2020/307) be approved.

That the Health and Sport Committee recommends that The Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No. 18) Regulations 2020 (SSI 2020/326) be approved.—[*Joe FitzPatrick*]

Motions agreed to.

The Convener: I thank the minister and his officials for their attendance and input today.

European Union (Withdrawal) Act 2018

Food and Feed Safety and Hygiene (Miscellaneous Amendments) (EU Exit) Regulations 2020

The Convener: Our next agenda item is consideration of the Food and Feed Safety and Hygiene (Miscellaneous Amendments) (EU Exit) Regulations 2020, which relate to an EU Exit provision.

The notification proposes that the Scottish Government give consent to the UK Government legislating using the powers under the European Union (Withdrawal) Act 2018 in relation to the instrument. I invite comments from members on the regulations.

Emma Harper: A lot of food safety issues have been raised recently in various forms in the different bills that are in progress right now—the Agriculture Bill, the Trade Bill and the United Kingdom Internal Market Bill. I am curious about whether the legislation that Westminster is taking forward will directly impact on those EU withdrawal regulations.

The Convener: I think that the short answer is that some of the provisions will have wider significance. Let me come back to you on that in a moment.

Sandra White (Glasgow Kelvin) (SNP): Like Emma Harper, I have looked closely at the EU regulations on food standards. I have read our paper on Food Standards Scotland's responses and I have a simple question to get some clarification.

If we pass the instrument and agree with the Scottish Government that this method be adopted, does that mean that there will be absolutely no genetically modified food in Scotland?

The Convener: The short answer is that this makes no difference to the Scottish Government's devolved power to make judgments of the type that it can currently make. It would be the same for the provisions that apply to Food Standards Scotland.

Emma Harper and Sandra White have asked important questions that we should put directly to the Scottish Government. We can conclude consideration of the instrument next week, if members agree to that.

The paper suggests that, when we give consent to the Scottish Government's proposal, we might place some conditions on that and that we might ask further questions. We can raise those specific

points this week and come back to formal consideration next week if colleagues are content.

Sandra White: Thank you.

Medicines and Medical Devices Bill (Legislative Consent Memorandum)

11:23

Meeting continued in private until 11:42.

The Convener: The final item on our public agenda is consideration of a legislative consent memorandum and a supplementary LCM in relation to the Medicines and Medical Devices Bill, which is a UK Government bill.

The bill as introduced did not relate to matters within the legislative competence of the Scottish Parliament. However, following the UK Government amendment to insert clause 16 on information systems, legislative consent is required on the basis that the information systems established under the clause could be used for purposes relating to both reserved and devolved matters.

It is for the committee to consider the LCM and supplementary LCM and to report to Parliament accordingly. Do members have comments to make on the instrument?

There appear to be no comments. Are members therefore content with the LCM and the supplementary LCM and with the Scottish Government's view that the Scottish Parliament should consent to the UK Parliament legislating in this area?

That is agreed and the committee will report to Parliament on that basis.

Thank you. We now move into private session.

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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