



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 10 November 2020

Session 5



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

34th Meeting 2020, Session 5

CONVENER

*Bill Bowman (North East Scotland) (Con)

DEPUTY CONVENER

Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Michelle Ballantyne (South Scotland) (Con)

*Mary Fee (West Scotland) (Lab)

*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 10 November 2020

[The Convener opened the meeting at 12:08]

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

Criminal Justice (EU Exit) (Scotland) (Amendment etc) Regulations 2020 (SSI 2020/339)

The Convener (Bill Bowman): Good afternoon. I welcome everyone to the 34th meeting in 2020 of the Delegated Powers and Law Reform Committee. We have received apologies from Stuart McMillan, and Tom Arthur has kindly joined us as a substitute member.

The first instrument for consideration under agenda item 1 is SSI 2020/339, which has been laid under the European Union (Withdrawal) Act 2018. The committee is looking at the instrument under the Scottish statutory instrument protocol, so we are considering the scrutiny procedure under which it has been laid and the categorisation that the Scottish Government has applied.

The instrument addresses failures of retained European Union law to operate effectively and other deficiencies in retained EU law. It has been laid under the negative procedure and has been categorised by the Scottish Government as being of low significance. Our advisers consider that, in the circumstances, the use of the negative procedure is appropriate.

Is the committee content that the appropriate scrutiny procedure has been applied?

Members indicated agreement.

The Convener: The Scottish Government has categorised the instrument as being of low significance, but our advisers suggest that it should be categorised as being of medium significance under the SSI protocol.

Does the committee wish to recommend that the instrument should be categorised as being of medium significance?

Members indicated agreement.

European Union (Withdrawal) Act 2018: Instrument Category

Civil and Family Justice (EU Exit) (Scotland) (Amendment etc) Regulations 2020 [Draft]

12:09

The Convener: Agenda item 2 is consideration of two further instruments that have been laid under the European Union (Withdrawal) Act 2018. Unlike under item 1, we are considering only how they have been categorised by the Scottish Government.

The first instrument has been categorised by the Scottish Government as being of low significance, but our advisers suggest that it should be categorised as being of medium significance under the SSI protocol.

Does the committee wish to recommend that the instrument should be categorised as being of medium significance?

Members indicated agreement.

Invasive Non-native Species (EU Exit) (Scotland) (Amendment etc) Regulations 2020 [Draft]

The Convener: The second instrument has been categorised by the Scottish Government as being of medium significance, but our advisers suggest that it should be categorised as being of high significance under the SSI protocol, as it gives the Scottish ministers new powers to legislate.

Does the committee wish to recommend that the instrument should be categorised as being of high significance?

Members indicated agreement.

Instruments subject to Made Affirmative Procedure

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (SSI 2020/344)

12:10

The Convener: The first instrument for consideration under agenda item 3 is SSI 2020/344, in which our legal advisers have identified drafting errors.

The purpose of the instrument is to implement a levels-based approach to the coronavirus-related restrictions and requirements across Scotland. The various layers are numbered from level 0 to level 4. The instrument sets out which levels apply to different geographical areas across Scotland and revokes the instruments that previously implemented such restrictions and requirements.

Our legal advisers asked the Scottish Government a number of questions on the instrument. As members will have seen from the Scottish Government's response to those questions, it has acknowledged that there are drafting errors in regulations 5 and 6, and in paragraph 8 of schedule 1.

The committee may wish to draw the instrument to the attention of the Parliament under reporting ground (i)—that the instrument's drafting appears to be defective—in relation to regulation 5(1) and paragraph 8(1) of schedule 1, as the drafting of those provisions fails to deliver the policy intention. The committee may wish to note that the Scottish Government has undertaken to lay an amending instrument in early course.

The committee may also wish to draw the instrument to the attention of the Parliament on the general reporting ground in relation to regulation 6, on account of cross-referencing errors. Again, the committee may wish to note that the Scottish Government has undertaken to legislate in early course to correct the errors.

Does the committee wish to draw the instrument to the attention of the Parliament under reporting ground (i), as there appears to be defective drafting in regulation 5(1) and in paragraph 8(1) of schedule 1?

Members indicated agreement.

The Convener: Does the committee also wish to draw the instrument to the attention of the Parliament under the general reporting ground, as there are drafting errors in regulation 6(5)?

Members indicated agreement.

The Convener: Does the committee wish to note the Scottish Government's commitment to lay an amending instrument in early course?

Members indicated agreement.

The Convener: Although we acknowledge that mistakes happen, given the great significance of SSI 2020/344 in setting the restrictions that apply to the various levels around the country, does the committee wish to call on the Scottish Government to lay an amending instrument as a matter of urgency?

Members indicated agreement.

The Convener: No points have been made on the following two instruments, which are also subject to the made affirmative procedure.

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 20) Regulations 2020 (SSI 2020/343)

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment Regulations 2020 (SSI 2020/347)

The Convener: Is the committee content with the instruments?

Members indicated agreement.

Instruments subject to Affirmative Procedure

12:13

The Convener: Agenda item 4 is consideration of five draft affirmative instruments, on which no points have been raised.

Civil and Family Justice (EU Exit) (Scotland) (Amendment etc) Regulations 2020 [Draft]

Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2020 [Draft]

Scottish National Investment Bank plc (Miscellaneous Listings) Order 2020 [Draft]

Scottish National Investment Bank plc and South of Scotland Enterprise (Miscellaneous Listings) Regulations 2020 [Draft]

Island Communities Impact Assessments (Publication and Review of Decisions) (Scotland) Regulations 2020 [Draft]

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments subject to Negative Procedure

12:14

The Convener: Agenda item 5 is consideration of four negative instruments, on which no points have been raised.

Criminal Justice (EU Exit) (Scotland) (Amendment etc) Regulations 2020 (SSI 2020/339)

Social Security (Personal Independence Payment) Amendment (Scotland) Regulations 2020 (SSI 2020/340)

Water and Sewerage Services Undertaking (Borrowing) (Scotland) Order 2020 (SSI 2020/341)

Carer's Allowance (Coronavirus) (Breaks in Care) (Scotland) Amendment Regulations 2020 (SSI 2020/350)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

**Instrument not subject to
Parliamentary Procedure**

Meeting closed at 12:14.

**Islands (Scotland) Act 2018
(Commencement No 3) Regulations 2020
(SSI 2020/346 (C 29))**

12:14

The Convener: Agenda item 6 is consideration of an instrument that is not subject to any parliamentary procedure, on which no points have been raised. Is the committee content with the instrument?

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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