



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 1 December 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 1 December 2020

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DELEGATED POWERS AND LAW REFORM COMMITTEE

37th 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) (Ind)

*Mary Fee (West Scotland) (Lab)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 1 December 2020

[The Convener opened the meeting at 12:14]

Decision on Taking Business in Private

The Convener (Bill Bowman): Good afternoon. I welcome everyone to the 37th meeting in 2020 of the Delegated Powers and Law Reform Committee.

Under agenda item 1, it is proposed that the committee takes items 8, 9 and 10 in private. Does the committee agree to do so?

Members indicated agreement.

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

12:14

The Convener: Agenda item 2 is consideration of three instruments that have been laid under the European Union (Withdrawal) Act 2018. The committee is considering whether the appropriate scrutiny procedure has been applied to the instruments and whether they have been properly categorised by the Scottish Government.

Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/380)

The Convener: The first instrument has been laid under the negative procedure and has been categorised by the Scottish Government as being of low significance. Our advisers consider that the use of the negative procedure is appropriate in the circumstances and that the instrument has been properly categorised as being of low significance under the Scottish statutory instrument protocol.

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

Members indicated agreement.

The Convener: Is the committee content that the instrument has been properly categorised as being of low significance?

Members indicated agreement.

Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc) Regulations 2020 (SSI 2020/381)

The Convener: The second instrument has been laid under the negative procedure and has been categorised by the Scottish Government as being of low significance. Our advisers consider that the use of the negative procedure is appropriate in the circumstances and that the instrument has been properly categorised as being of low significance under the SSI protocol.

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

Members indicated agreement.

The Convener: Is the committee content that the instrument has been properly categorised as being of low significance?

Members indicated agreement.

**Aquaculture and Fisheries (EU Exit)
(Scotland) (Amendment etc) Regulations
2020 (SSI 2020/393)**

The Convener: The third instrument has been laid under the negative procedure and has been categorised by the Scottish Government as being of low significance. Our advisers consider that the use of the negative procedure is appropriate in the circumstances and that the instrument has been properly categorised as being of low significance under the SSI protocol.

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

Members indicated agreement.

The Convener: Is the committee content that the instrument has been properly categorised as being of low significance?

Members indicated agreement.

**European Union (Withdrawal) Act
2018: Instrument Category**

12:16

The Convener: Agenda item 3 is consideration of three further instruments that have been laid under the European Union (Withdrawal) Act 2018. Unlike under item 2, we are considering only how the instruments have been categorised by the Scottish Government.

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

The Convener: The first instrument is a revised version of the instrument of the same name that was laid on 3 November. That version was subsequently withdrawn and the present instrument was laid on 19 November.

The instrument has been categorised by the Scottish Government as being of medium significance. Our advisers suggest that the instrument 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.

**Trade in Animals and Related Products
(EU Exit) (Scotland) (Amendment)
Regulations 2020 [Draft]**

The Convener: The second instrument is a revised version of the instrument of the same name that was laid on 12 November. That version was subsequently withdrawn and the present instrument was laid on 24 November.

The committee considered the categorisation of the original instrument at its meeting last week and agreed to report that it was content that the instrument be categorised as being of medium significance under the SSI protocol. Our advisers consider that the relaid instrument is also properly categorised as being of medium significance under the SSI protocol.

Is the committee content that the instrument has been properly categorised as being of medium significance?

Members indicated agreement.

**Rural Development (EU Exit) (Scotland)
(Amendment) Regulations 2020 [Draft]**

The Convener: Our advisers consider that the third instrument has been properly categorised as being of low significance under the SSI protocol.

Is the committee content that the instrument has been properly categorised as being of low significance?

Members *indicated agreement.*

**Instruments subject to Made
Affirmative Procedure**

**Health Protection (Coronavirus)
(Restrictions and Requirements) (Local
Levels) (Scotland) Amendment (No 3)
Regulations 2020 (SSI 2020/389)**

12:18

The Convener: The first instrument for consideration under agenda item 4 is SSI 2020/389, on which our legal advisers have not raised any issues or recommended any matter that we might consider relevant to report to the lead committee. However, the committee notes the significance of the regulations and the issues that they raise, which it anticipates will be discussed further by the COVID-19 Committee.

Is the committee content with the instrument?

Members *indicated agreement.*

**Health Protection (Coronavirus)
(Restrictions and Requirements) (Local
Levels) (Scotland) Amendment (No 4)
Regulations 2020 (SSI 2020/392)**

The Convener: No points have been raised on SSI 2020/392. Is the committee content with the instrument?

Members *indicated agreement.*

Instruments subject to Affirmative Procedure

Plant Health (EU Exit) (Scotland) (Amendment etc) Regulations 2020 [Draft]

12:19

The Convener: Although no points have been raised on the first instrument for consideration under agenda item 5, the committee may wish to note that regulation 26(3)(c) of the draft Plant Health (Amendment etc) (EU Exit) Regulations 2020, laid before the UK Parliament on 15 October, inserts a definition of the “Phytosanitary Conditions Regulation” into Regulation (EU) 2016/2031, rather than regulation 27(2)(c) of the original draft instrument, as stated in the Scottish Government’s response to the committee’s questions. A footnote in the instrument could have explained the insertion of that definition.

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

The Convener: No points have been raised on the second instrument for consideration under agenda item 5, a previous version of which was originally laid on 3 November. It was withdrawn after the committee’s legal advisers raised points that needed to be addressed. Those issues have been addressed in the relaid version.

One of the issues was whether it could be made clearer to the reader how the parallel text in the original instrument and an associated United Kingdom statutory instrument applied. The committee may wish to welcome the Scottish Government’s commitment that it will work with the UK Government to produce guidance for stakeholders to further assist their understanding of the legislation.

No points have been raised on the following four draft affirmative instruments.

Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2020 [Draft]

Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Amendment Order 2020 [Draft]

Housing (Scotland) Act 2006 (Modification of the Repairing Standard) Amendment Regulations 2020 [Draft]

Rural Development (EU Exit) (Scotland) (Amendment) Regulations 2020 [Draft]

The Convener: Is the committee content with the instruments, noting the additional points that I have highlighted?

Members *indicated agreement.*

Instruments subject to Negative Procedure

12:21

The Convener: Agenda item 6 is consideration of six negative instruments, on which no points have been raised.

Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/372)

Animal Health and Welfare and Official Controls (Agriculture) (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/380)

Genetically Modified Organisms and Pesticides (EU Exit) (Scotland) (Amendment etc) Regulations 2020 (SSI 2020/381)

Valuation Appeal Committee (Procedure in Civil Penalty Appeals) (Scotland) Regulations 2020 (SSI 2020/382)

Criminal Justice and Data Protection (Protocol No 36) Amendment (Scotland) Regulations 2020 (SSI 2020/386)

Producer Responsibility Obligations (Packaging Waste) Amendment (Scotland) Regulations 2020 (SSI 2020/387)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

The Convener: On SSI 2020/372, the committee may wish to invite the Scottish Government to consider, in future, that when an instrument amends provisions that do not yet exist, the reader's attention should be drawn to that. That could be done, for example, by a footnote or at least in the accompanying documents.

The committee may nevertheless wish to welcome the fact that regulation 9(5) amends SSI 2019/285, which fulfils a previous commitment to the committee.

Is the committee content to highlight both those points?

Members *indicated agreement.*

Instrument not subject to Parliamentary Procedure

Land Reform (Scotland) Act 2016 (Commencement No 11) Regulations 2020 (SSI 2020/383 (C 33))

12:22

The Convener: Agenda item 7 is consideration of an instrument that is not subject to parliamentary procedure and on which no points have been raised. Is the committee content with the instrument?

Members *indicated agreement.*

12:22

Meeting continued in private until 12:38.

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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