



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 12 January 2021

Session 5



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

1st Meeting 2021, Session 5

CONVENER

*Bill Bowman (North East Scotland) (Con)

DEPUTY CONVENER

*Gil Paterson (Clydebank and Milngavie) (SNP)

COMMITTEE MEMBERS

*Michelle Ballantyne (South Scotland) (Reform)

*Mary Fee (West Scotland) (Lab)

*Joe FitzPatrick (Dundee City West) (SNP)

*attended

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

Virtual Meeting

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 12 January 2021

[The Convener opened the meeting at 11:53]

Interests

The Convener (Bill Bowman): I welcome everyone to the first meeting in 2021 of the Delegated Powers and Law Reform Committee. As this is the first time that we are meeting online as a committee, I appreciate that it will be more challenging for members to indicate agreement to the items that are discussed. Therefore, I ask members to raise their hand if they are not content with the question that is being put.

The first item on our agenda is a declaration of interests. In accordance with section 3 of the "Code of Conduct for Members of the Scottish Parliament", I invite Joe FitzPatrick to declare any interests that are relevant to the committee's remit.

Joe FitzPatrick (Dundee City West) (SNP): I have no relevant interests to declare.

The Convener: Thank you.

Deputy Convener

11:54

The Convener: Agenda item 2 is the choice of a deputy convener. The Parliament has agreed that only members of the Scottish National Party are eligible for nomination as deputy convener of the committee. That being the case, I seek nominations for the position of deputy convener.

Joe FitzPatrick: I nominate Gil Paterson.

The Convener: Does the committee agree to the appointment of Gil Paterson as deputy convener?

As no member has indicated that they are not content, that is agreed.

Gil Paterson was chosen as deputy convener.

The Convener: I take the opportunity to thank Stuart McMillan, who has been a member and deputy convener of the committee since the start of the session, for his dedication to and enthusiasm for the work of the committee. Even though he is no longer a member, I know that Stuart will continue to be a great champion of the committee in the Parliament.

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

Seed, Plant Propagating Material and Forest Reproductive Material (EU Exit) (Scotland) (Amendment etc) Regulations 2020 (SSI 2020/445)

11:55

The Convener: Agenda item 3 is consideration of an instrument that has been laid under the European Union (Withdrawal) Act 2018. The committee is considering whether the Scottish Government has applied the appropriate scrutiny procedure and the appropriate category to SSI 2020/445.

The instrument amends provisions that are contained in four Scottish statutory instruments concerning the marketing of agricultural seed, fruit and vegetative plant propagating material and forest reproductive material that were made in anticipation of the United Kingdom withdrawing from the European Union in March 2019. The instrument has been laid under the negative procedure and has been categorised by the Scottish Government as being of low significance.

Is the committee content that the appropriate scrutiny procedure has been applied to the instrument and that it has been properly categorised as being of low significance?

No member has indicated that they are not content, so that is agreed.

Instruments subject to Made Affirmative Procedure

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 10) Regulations 2021 (SSI 2021/1)

11:56

The Convener: The first instrument for consideration under agenda item 4 is SSI 2021/1, which introduced the new requirement to stay at home during the pandemic. A number of issues have been raised on the instrument, the first of which is that new regulation 4(7A), which it inserts into the main coronavirus regulations—the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020—provides that where a relevant person, who is defined in the legislation as a constable or a person designated by a local authority, considers that a person is outside the place where that person is living, they can either direct them to return to where they live or remove them to there.

Some enforcement provisions in the main regulations are also subject to the requirement in regulation 4(8) that the relevant person may exercise the power only if the relevant person considers that it is a necessary and proportionate means of ensuring compliance with the requirements of the regulations. New regulation 4(7A) has not been made subject to regulation 4(8). The Scottish Government accepts that the new enforcement provision should be subject to regulation 4(8).

The second issue relates to new paragraph 18 of schedule 5 to the main regulations, which provides examples of reasonable excuses in relation to leaving home in level 4 areas. Paragraph 18(2) refers in subparagraph (t)(iii)(cc) to

“paragraph 12(1)(a), (b) or (c)”.

As paragraph 12(1)(b) has been omitted by regulation 4(b)(ii) of the instrument, it should have been omitted from subparagraph (t)(iii)(cc) of paragraph 18(2) of schedule 5.

The third issue is similar in that subparagraph (t)(iii)(ff) of paragraph 18(2) of schedule 5 to the main regulations provides that it is a reasonable excuse to be outside the place where a person is living to undertake exercise or recreation

“in a gathering within the meaning of paragraph 13(1)(b)(i) or (ii)”.

As paragraph 13(1)(b)(i) has been omitted by regulation 4(c)(ii) of the instrument, it should have been omitted from subparagraph (t)(iii)(ff) of paragraph 18(2) of schedule 5.

The Scottish Government has indicated that it proposes to bring forward amendments to address all three issues. Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground, and does it wish to welcome the fact that the Scottish Government is to bring forward an amending instrument to deal with the errors?

No member has indicated that they are not content, so that is agreed.

No points have been raised on the following seven made affirmative instruments.

**Health Protection (Coronavirus)
(Restrictions and Requirements)
(Miscellaneous Amendments) (Scotland)
Regulations 2020 (SSI 2020/439)**

**Health Protection (Coronavirus)
(International Travel and Public Health
Information) (Scotland) (No 2) Regulations
2020 (SSI 2020/444)**

**Social Care Staff Support Fund
(Coronavirus) (Scotland) Amendment
Regulations 2020 (SSI 2020/469)**

**Health Protection (Coronavirus)
(Restrictions and Requirements) (Local
Levels) (Scotland) Amendment (No 9)
Regulations 2020 (SSI 2020/471)**

**Health Protection (Coronavirus)
(International Travel) (Scotland)
Amendment (No 25) Regulations 2020 (SSI
2020/474)**

**Health Protection (Coronavirus)
(Restrictions and Requirements) (Local
Levels) (Scotland) Amendment (No 11)
Regulations 2021 (SSI 2021/3)**

**Health Protection (Coronavirus)
(International Travel) (Scotland)
Amendment Regulations 2021 (SSI 2021/5)**

The Convener: Is the committee content with the instruments?

No member has indicated that they are not content, so that is agreed.

Instrument subject to Affirmative Procedure

Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2021 [Draft]

11:59

The Convener: Agenda item 5 is consideration of a draft affirmative instrument, on which a number of issues have been raised with the Scottish Government.

First, it could be made clearer in paragraph 1(e) of schedule 1 to the instrument that it is the term “premises licence”, rather than the term “approved activity”, that is being defined by reference to the Licensing (Scotland) Act 2005.

12:00

Secondly, it could be made clearer that paragraphs 2(4) to (7) of schedule 1 to the Civic Government (Scotland) Act 1982, as modified by paragraph 4 of schedule 2 to the instrument, do not place obligations on the applicant to display a public notice at or near the premises indicating that an application for a licence has been made.

Thirdly, the reference to “section 123(a) or (b)” of the Town and Country Planning (Scotland) Act 1997 in new paragraph 2A of schedule 1 to the 1982 act, as modified by paragraph 5 of schedule 1 to the instrument, should in fact be to “section 123(1)(a) or (b)”.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (h) in respect of the first and second of those errors, and the general reporting ground in respect of the third; and, although the committee may wish to welcome the fact that the Scottish Government has committed to laying an amending instrument to rectify the second and third of the errors, does it also wish to call on the Scottish Government to include in that amending instrument provision to address the first of the errors, which relates to paragraph 1(e) of schedule 1?

No member has indicated that they are not content, so that is agreed.

Instruments subject to Negative Procedure

Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/424)

12:01

The Convener: The first instrument for consideration under agenda item 6 is SSI 2020/424. The Scottish Government agrees that the Advice and Assistance (Scotland) Regulations 1996 have been incorrectly cited in the title of regulation 2, and in regulation 2(1), as the “Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996”.

Does the committee agree to draw the instrument to the attention of the Parliament on the general reporting ground, and does it wish to note that the Scottish Government intends to take corrective action to amend that error at the next available legislative opportunity?

No member has indicated that they are not content, so that is agreed.

Seed, Plant Propagating Material and Forest Reproductive Material (EU Exit) (Scotland) (Amendment etc) Regulations 2020 (SSI 2020/445)

The Convener: The second negative instrument for consideration is SSI 2020/445. There has been a failure to lay the instrument in accordance with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, as the instrument breaches the 28-day rule. The Scottish Government has written to the Presiding Officer to explain why the 28-day rule has not been complied with.

Does the committee agree to draw the instrument to the attention of the Parliament on reporting ground (j), while noting that it is satisfied with the explanation that has been given for the failure to comply with the 28-day rule?

No member has indicated that they are not content, so that is agreed.

No points have been raised on the following seven negative instruments.

Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2020 (SSI 2020/434)

Charities (Disclosure of Information to Designated Bodies) (Scotland) Order 2020 (SSI 2020/435)

Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Amendment Order 2020 (SSI 2020/437)

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (Miscellaneous) 2020 (SSI 2020/440)

Fish Farming Businesses (Reporting) (Scotland) Order 2020 (SSI 2020/447)

Children’s Hearings (Provision of Information by Principal Reporter) (Specified Persons) (Scotland) Regulations 2020 (SSI 2020/449)

Census (Scotland) Amendment Regulations 2020 (SSI 2020/450)

The Convener: Is the committee content with the instruments?

No member has indicated that they are not content, so that is agreed.

Instruments not subject to Parliamentary Procedure

Meeting closed at 12:03.

12:03

The Convener: Agenda item 7 is consideration of two instruments that are not subject to any parliamentary procedure, on which no points have been raised.

Lands Tribunal for Scotland (Amendment) (Fees) (No 2) Rules 2020 (SSI 2020/446)

Community Empowerment (Scotland) Act 2015 (Commencement No 12 and Saving Provision) Order 2020 (SSI 2020/448 (C 42))

The Convener: Is the committee content with the instruments?

No member has indicated that they are not content, so that is agreed.

The next meeting of the committee will take place on Tuesday 19 January.

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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