



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 9 February 2021

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

5th 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 9 February 2021

[The Convener opened the meeting at 11:50]

Decision on Taking Business in Private

The Convener (Bill Bowman): Good morning. I welcome everyone to the fifth meeting in 2021 of the Delegated Powers and Law Reform Committee.

As we are meeting online, 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, or if they wish to speak about the instrument in question.

The first agenda item is a decision on whether to take item 6 in private. Is the committee content to do so?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

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

11:51

The Convener: Agenda item 2 is consideration of two instruments that have 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 the instruments.

Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/28)

The Convener: The first instrument is SSI 2021/28, which has been laid under the negative procedure and has been categorised by the Scottish Government as being of medium significance. Is the committee content that the appropriate scrutiny procedure has been applied to the instrument and that the instrument has been categorised properly as being of medium significance?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

Rural Development (Miscellaneous Amendment) (Scotland) Regulations 2021 (SSI 2021/33)

The Convener: The second instrument is SSI 2021/33, which 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 the instrument has been categorised properly as being of low significance?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

Instruments subject to Made Affirmative Procedure

11:52

The Convener: Agenda item 3 is consideration of three instruments that are subject to the made affirmative procedure, on which no points have been raised.

Health Protection (Coronavirus) (Restrictions and Requirements) (Miscellaneous Amendment) (Scotland) Regulations 2021 (SSI 2021/49)

Health Protection (Coronavirus) (International Travel, Prohibition on Travel from the United Arab Emirates) (Scotland) Amendment Regulations 2021 (SSI 2021/52)

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 15) Regulations 2021 (SSI 2021/54)

The Convener: Is the committee content with the instruments?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

Instruments subject to Affirmative Procedure

Low Emission Zones (Emission Standards, Exemptions and Enforcement) (Scotland) Regulations 2021 [Draft]

11:52

The Convener: An issue has been raised on the first instrument for consideration under agenda item 4, which makes provision for the operation of low-emission zone schemes. A cross-referencing error has been identified in regulation 4—specifically, regulation 4(9) incorrectly refers to regulation 9, not regulation 7. However, it is clear from reading the regulations that regulation 7, not regulation 9, is the applicable regulation.

While noting that the Scottish Government has undertaken to amend the error by way of a correction slip, does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground, on the basis that there is a cross-referencing error in regulation 4?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

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

Companies Act 2006 (Scottish public sector companies to be audited by the Auditor General for Scotland) Order 2021 [Draft]

Bankruptcy (Miscellaneous Amendments) (Scotland) Regulations 2021 [Draft]

The Convener: Is the committee content with the instruments?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

Instruments subject to Negative Procedure

Low Emission Zones (Scotland) Regulations 2021 (SSI 2021/26)

11:54

The Convener: Issues have been raised on two of the instruments for consideration under agenda item 5. A cross-referencing error has been identified in regulation 5 of SSI 2021/26. Regulation 5 refers to a local authority making a low-emission zone scheme under section 6 of the Transport (Scotland) Act 2019, but it is section 9 of the 2019 act that gives local authorities the power to make or modify a low-emission zone scheme.

While noting that the Scottish Government has undertaken to amend the error by way of a correction slip, does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground, on the basis that there is a cross-referencing error in regulation 5?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

Education (Fees and Student Support) (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/28)

The Convener: A number of issues have been raised on SSI 2021/28. The related correspondence between the committee and the Scottish Government is listed in full in paper 4 of the committee's published papers.

In its response, the Scottish Government highlighted that it previously made a commitment to consolidate and update the various instruments that regulate student fees and student support in the higher education sector in Scotland, with a view to ensuring greater clarity and consistency. The Scottish Government added that that has been delayed for reasons connected with the Covid-19 pandemic, but that it remains committed to doing so at the earliest opportunity.

Before I move on to the specific errors, does the committee wish to note that commitment but, given that it is a commitment that was made previously, does it also wish to call on the Scottish Government to prioritise the matter?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

The Scottish Government has committed to correcting a number of the specific errors, namely: the cross-referencing error in regulation 3(b),

which is discussed in response to question 2 in the related correspondence in paper 4 of today's papers; the fact that a definition of "residence scheme immigration rules" is missing, which is discussed in response to question 4; the cross-referencing error in regulations 11(a), 11(b) and 13(h), which was raised in question 5; the references to "EU national", which should be to "EC national", as identified in question 6; and the cross-referencing error in regulation 25(f), which was raised in question 8.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground in respect of those errors, and to welcome the Scottish Government's commitment to correct them at the earliest opportunity?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

Further issues were identified, in relation to which the Scottish Government did not consider that corrective action was necessary. Those issues can be found under questions 3, 7 and 10 of paper 4.

Questions 3 and 7 concern whether, in the absence of the word "and" in a list of requirements, it is sufficiently clear that the requirements are cumulative. The committee notes the Scottish Government's explanation that the absence of a conjunction is in line with modern drafting style, but the committee considers that, in this case, the use of a conjunction would be preferable for consistency, and therefore clarity, because conjunctions are used in the existing paragraphs of the schedules and in other amendments that the instrument makes to those schedules.

In relation to question 10, the Scottish Government recognised that it might have been clearer for consistency if the paragraphs that the instrument inserts into the relevant schedule adopted the same introductory wording as the other paragraphs in that schedule.

Taking a proportionate approach, given that the Scottish Government is in any event taking action to address the other issues, the committee invites the Scottish Government to address those three issues at the same time. The issues will be listed in full in the committee's report.

Does the committee also wish to draw the instrument to the attention of the Parliament on the general reporting ground in respect of those additional issues, and to call on the Scottish Government to address them at the same time as making the other corrections?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

11:59

Meeting continued in private until 12:13.

**Forestry and Land Management (Scotland)
Act 2018 (Consequential, Saving and
Transitional Provisions) Regulations 2021
(SSI 2021/44)**

The Convener: No points have been raised in relation to SSI 2021/44, but the committee notes that the instrument fulfils undertakings that the Scottish Government gave in 2019 to correct drafting errors that the committee identified in its report on subordinate legislation dated 5 March 2019, which had been highlighted in the Forestry and Land Management (Scotland) Act 2018 (Commencement and Transitional and Saving Provisions) Regulations 2019 (SSI 2019/247) and in the Felling (Scotland) Regulations 2019 (SSI 2019/49).

No points have been raised on the following negative instruments.

**Rural Development (Miscellaneous
Amendment) (Scotland) Regulations 2021
(SSI 2021/33)**

**M8 and M9 Trunk Roads (Newbridge to
Hermiston Gait) (Actively Managed Hard
Shoulder and Speed Limit Amendment)
Regulations 2021 (SSI 2021/43)**

**Scottish Road Works Register (Prescribed
Fees) Regulations 2021 (SSI 2021/48)**

**Council Tax Reduction (Scotland)
Amendment (No 2) Regulations 2021 (SSI
2021/51)**

**Legal Aid and Advice and Assistance
(Miscellaneous Amendment) (Scotland)
Regulations 2021 (SSI 2021/56)**

The Convener: Is the committee content with the instruments?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

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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