



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Delegated Powers and Law Reform Committee

Tuesday 5 October 2021

Session 6



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

7th Meeting 2021, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Craig Hoy (South Scotland) (Con)

*Graham Simpson (Central Scotland) (Con)

*Paul Sweeney (Glasgow) (Lab)

*attended

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament
Delegated Powers and Law Reform Committee

Tuesday 5 October 2021

[The Convener opened the meeting at 10:09]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the seventh meeting in session 6 of the Delegated Powers and Law Reform Committee. Before we move to the first item on the agenda, I remind everyone to switch their mobile phones to silent.

Agenda item 1 is to decide whether to take business in private. Is the committee content to take item 6 in private?

Members indicated agreement.

Instruments subject to Made Affirmative Procedure

10:09

The Convener: Agenda item 2 is consideration of three made affirmative instruments.

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/322)

The Convener: An issue has been raised on Scottish statutory instrument 2021/322. The instrument revokes three previous sets of regulations and replaces them with consolidated international travel regulations, with the aim of improving their readability and accessibility, as well as making certain specific changes.

In correspondence with the Scottish Government, the committee highlighted that schedule 4 to the instrument provides exemptions from requirements in the international travel regulations for certain people, including a “member of aircraft crew” as defined in subparagraph 10(2)(a)(ii).

The term “EU-OPS” is used in that paragraph, and it is defined in subparagraph 10(2)(c) with reference to the meaning of that term in paragraph 1 of schedule 1 to the Air Navigation Order 2016. However, there is no reference to EU-OPS in that order. The Scottish Government has confirmed that that is an error, in so far as there is no longer such a reference in the order, and it undertook to correct the error at the next available opportunity.

Are members content to report the instrument on reporting ground (h), on the basis that the instrument’s meaning could be clearer in that respect, and to welcome the Scottish Government’s commitment to clarify the position by updating the reference at the next available opportunity, which it has done in SSI 2021/343?

Members indicated agreement.

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 2) Regulations 2021 (SSI 2021/343)

The Convener: We turn now to SSI 2021/343. Are members content with the amending instrument?

Members indicated agreement.

**Health Protection (Coronavirus)
(Requirements) (Scotland) Amendment
(No 2) Regulations 2021 (SSI 2021/349)**

The Convener: The final made affirmative instrument for consideration brings into force the Covid-19 vaccination certification scheme. Members will recall that the committee asked the Minister for Parliamentary Business a number of questions on the proposed scheme at its recent evidence session, and followed that up with a number of points of clarification.

The regulations were laid on Thursday 30 September before being brought into force on Friday 1 October. As such, this is the first opportunity that the committee has had to consider the regulations. No technical points have been raised on the regulations. I invite comments from members on the instrument.

Graham Simpson (Central Scotland) (Con): Thank you, convener. As you have said, the instrument deals with what we shall call the vaccination passport scheme, and everyone knows what that is. The committee has been asking a number of questions of the Government about the scheme for several weeks.

What we decide today is not whether we agree with the policy—that is for the Covid-19 Recovery Committee and, at some point, for the full Parliament. Our role is to decide whether the procedure that is being used is the correct one. The Government has put the regulations through under the made affirmative procedure, which means that they have come into effect without proper scrutiny by any committee. Committees have looked at the policy in general terms but, until today, no committee has managed to discuss it while having the regulations in front of it—and they are already in force.

For me, the question is whether that was the right procedure. The First Minister announced weeks ago that she and the Scottish Government wanted to bring in a vaccination passport scheme. The regulations came into force last Friday, but the Government has said that it will not enforce them for another two weeks. Given all that, I argue very strongly that that gives the Parliament time to properly scrutinise the regulations and therefore that the made affirmative procedure that the Government has used—which avoids scrutiny—is the wrong procedure. The Government should have put the regulations through under the affirmative procedure. That would have given the Parliament a chance to scrutinise the regulations in some detail, unpick them and possibly avoid some of the problems that we all know have come up with the policy.

I am not content with the regulations as laid and will vote against them.

10:15

Craig Hoy (South Scotland) (Con): I echo what Mr Simpson said. I am on the record already as saying in the committee and elsewhere that I have policy concerns, practical concerns and concerns about civil liberties. That is not what we are being asked to consider, although the minister's letter to us does not reassure me that the concerns that we raised prior to the regulations being laid have been addressed. However, that is for the lead committee to consider.

We are considering whether the use of the made affirmative procedure is the right approach. We are the arbiter and gatekeeper in respect of that and it is right that we do that. The question falls on whether the regulations have been implemented in response to a serious and imminent threat. Given the fact that the Government has been talking about vaccination passports for three weeks and has now delayed their implementation, I echo Mr Simpson's concern that the regulations do not meet that requirement. They are being put through the made affirmative procedure not because of urgency but because of political expediency, to avoid the due scrutiny that would show that the policy is deficient in many respects and, to be honest with members, simply will not work.

I have concerns that the Government is not going down the right route in that respect and I will follow Mr Simpson in voting against the regulations.

Paul Sweeney (Glasgow) (Lab): I share concerns regarding the level of parliamentary oversight and scrutiny of the instrument, particularly in light of the logistical difficulties that have been encountered in the past few days, which demonstrate that the policy was immature in its delivery and would have benefited from parliamentary oversight.

In light of constituency representations that I have received regarding international compatibility, as well as the value for money of the technical solution that ministers decided upon, I say that the policy merited greater debate in the Parliament, regardless of whether we support the principle of vaccination passports. Therefore, I agree that the regulations would be better suited to the affirmative procedure than the made affirmative procedure. In particular, although it is valid to talk about a serious and imminent threat in relation to the broad context of the pandemic, the primary purpose of the vaccination passport system is, as far as I can see, to create a negative incentive structure for vaccine uptake rather than an immediate need to deal with transmission, which is more readily dealt with through test and protect.

For those reasons, the regulations would merit greater parliamentary scrutiny and I support using the affirmative procedure.

Bill Kidd (Glasgow Anniesland) (SNP): The Government should be made well aware of the failure to use the affirmative procedure and the fact that the committee is unhappy with the procedure that it followed. The nature of the coronavirus situation that we are dealing with means that things have moved on apace but, because of that, the regulations have potentially skipped some of the oversight that is required in the Parliament. Therefore, they should be affirmative.

The Convener: Notwithstanding the points that colleagues have made about whether the made affirmative procedure or the affirmative procedure should have been used, no technical points have been raised on the regulations that are in front of us and on which we have to vote. As no technical points have been raised, I will vote for them.

It would be right for the committee to write to the Scottish Government to ask some questions about procedure and highlight the concerns that colleagues have raised. Who knows what will happen over the winter and what actions may or may not have to be taken as a result?

I will ask the question, although I understand what the answer will be: is the committee content with the regulations?

Members: No.

The Convener: There will be a division.

For

Kidd, Bill (Glasgow Anniesland) (SNP)
McMillan, Stuart (Greenock and Inverclyde) (SNP)

Against

Hoy, Craig (South Scotland) (Con)
Simpson, Graham (Central Scotland) (Con)
Sweeney, Paul (Glasgow) (Lab)

The Convener: The result of the division is: For 2, Against 3, Abstentions 0.

The committee is not content with the regulations. A report will be published setting out the committee's decision on all the instruments that it is considering today. That will include a summary of the committee's discussion. We will also write to the Government as agreed to highlight the points that have been raised regarding the procedure that was used.

Instruments subject to Affirmative Procedure

10:21

The Convener: Agenda item 3 is consideration of two affirmative instruments, on which no points have been raised.

Winter Heating Assistance for Children and Young People (Scotland) Amendment Regulations 2021 [Draft]

First-tier Tribunal for Scotland (Chambers) Amendment Regulations 2021 [Draft]

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:22

The Convener: Agenda item 4 is consideration of four negative instruments, on which no points have been raised.

Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No 2) Regulations 2021 (SSI 2021/333)

National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2021 (SSI 2021/335)

Fish Farming Code of Practice (Scotland) Order 2021 (SSI 2021/340)

Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2021 (SSI 2021/341)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

10:22

The Convener: Agenda item 5 is consideration of two instruments not subject to parliamentary procedure, on which no points have been raised.

Fuel Poverty (Targets, Definition and Strategy) (Scotland) Act 2019 (Commencement No 2) Regulations 2021 (SSI 2021/332 (C 22))

Children (Scotland) Act 2020 (Commencement No 2) Regulations 2021 (SSI 2021/339 (C 24))

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

10:22

Meeting continued in private until 10:27.

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