



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Delegated Powers and Law Reform Committee

Tuesday 26 October 2021

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

8th 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)

THE FOLLOWING ALSO PARTICIPATED:

Maurice Golden (North East Scotland) (Con) (Committee
Substitute)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 26 October 2021

[The Convener opened the meeting at 10:00]

Interests

The Convener (Stuart McMillan): Welcome to the Delegated Powers and Law Reform Committee's eighth meeting in session 6.

We have received apologies from Craig Hoy and Paul Sweeney. I welcome Maurice Golden as a substitute member for the Scottish Conservative and Unionist Party. Before we move to the first item on the agenda, I remind everyone present to switch mobile phones to silent.

The first item on our agenda is a declaration of interests. In accordance with section 3 of the code of conduct, I invite Maurice Golden to declare any interests that are relevant to the committee's remit.

Maurice Golden (North East Scotland) (Con): I have nothing to declare.

The Convener: Thank you, and welcome to the committee, Maurice.

Decision on Taking Business in Private

The Convener: The second item of business is to decide whether to take item 8 in private. Is the committee content to take that item in private?

Members indicated agreement.

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

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No 2) Regulations 2021 (SSI 2021/342)

10:01

The Convener: Under agenda item 3, we are considering a Scottish statutory instrument laid under the European Union (Withdrawal) Act 2018. The committee is considering whether the appropriate scrutiny procedure and the appropriate category have been applied to the instrument.

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 the SSI has been categorised properly as being of low significance?

Members indicated agreement.

Instruments subject to Made Affirmative Procedure

10:02

The Convener: Under agenda item 4, we are considering two instruments. No issues have been raised on the following instruments.

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 3) Regulations 2021 (SSI 2021/350)

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 4) Regulations 2021 (SSI 2021/357)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

The Convener: In respect of SSI 2021/357, does the committee nevertheless wish to highlight the importance that it places on consistency of terminology in secondary legislation, particularly when terms are defined?

Members *indicated agreement.*

Instruments subject to Affirmative Procedure

10:02

The Convener: Under agenda item 5, we are considering five instruments. No points have been raised on the following draft instruments.

Budget (Scotland) Act 2021 Amendment Regulations 2021 [Draft]

Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2021 [Draft]

Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2021 [Draft]

Independent Reviewer (Modification of Functions) (Scotland) Regulations 2021 [Draft]

Valuation and Rating (Coronavirus) (Scotland) Order 2021 [Draft]

The Convener: Members will note that the Budget (Scotland) Act 2021 Amendment Regulations 2021 were withdrawn and relaid following initial questions from the committee.

Do members have any comments on any of the instruments?

Graham Simpson (Central Scotland) (Con): I have a brief comment on the Valuation and Rating (Coronavirus) (Scotland) Order 2021. In essence, the order says that business owners cannot appeal the rateable value of their properties after April 2021 by using coronavirus-related impacts as an argument for changing the rateable value of the property. As you will know, convener, this is not a policy committee and we do not look at such matters, but it seems to me that that is pretty significant and that we should at least flag it up to the lead committee. It is a serious matter for businesses if they cannot use coronavirus impacts in that process. We all know that there are very serious impacts on businesses.

We should certainly write to the lead committee to make it aware of the issue. It will scrutinise the order anyway, but it is worthwhile highlighting the issue.

The Convener: I agree that it is right to contact the lead committee about that, so I am happy with that suggestion. Is the committee content with that?

Members *indicated agreement.*

The Convener: Otherwise, is the committee content with the instruments?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:05

The Convener: Under agenda item 6, we are considering five instruments. Issues have been raised on two of the instruments.

Council Tax Reduction (Scotland) Amendment (No 4) Regulations 2021 (SSI 2021/337)

The Convener: Members will note that the instrument was laid on Thursday 23 September 2021 and came into force the following day. Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 requires negative instruments to be laid at least 28 days before they come into force, not counting recess periods of more than four days. That is known as the 28-day rule.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j), as it has been laid less than 28 days before coming into force?

Members *indicated agreement.*

The Convener: However, as the regulations are intended to provide access to the council tax reduction scheme on an emergency basis for those arriving from Afghanistan, is the committee also satisfied with the reasons given for the breach of the 28-day rule?

Members *indicated agreement.*

The Convener: The committee will note that there has previously been a long-standing disagreement with the Scottish Government on whether regulations in respect of the council tax reduction scheme give rise to a devolution issue in so far as they relate to matters that are reserved in section F1, entitled "Social security schemes", of part 2 of schedule 5 to the Scotland Act 1998. The issue is engaged by the instrument in so far as it amends the unconsolidated Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303) and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319).

In 2018, the session 5 committee agreed that, instead of continuing to highlight the disagreement with every new set of council tax reduction regulations, it would instead note its position on the devolution issue and on undertaking consolidation, as stated in its previous reports to the Parliament. The session 5 committee therefore agreed that it did not consider it necessary to repeat that view again. However, it continued to

encourage the Scottish Government to undertake a consolidation of the principal regulations within a reasonable timescale, in the interests of clarity and accessibility.

Does the committee wish to note its predecessor's position on the devolution issue and on undertaking consolidation—to the extent that that is still outstanding in respect of the pension age regulations—and restate that position for this session?

Members indicated agreement.

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No 2) Regulations 2021 (SSI 2021/342)

The Convener: Again, the instrument breaches the 28-day rule, as it was laid on 28 September and came into force on 1 October.

In the Scottish Government's letter to the Presiding Officer outlining its reasons for bringing the instrument into force so quickly, it wrote that this was due to a late announcement by the United Kingdom Government to revise the timetable for the introduction of all remaining border operating model checks that were due to commence on 1 October. Accordingly, the Scottish Government stated that, in order to avoid disruption to imports into Scotland, it was not able to comply with the 28-day rule.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j), as it has been laid less than 28 days before coming into force?

Members indicated agreement.

The Convener: Nevertheless, is the committee satisfied with the reasons given for the breach of the 28-day rule?

Members indicated agreement.

The Convener: Finally, no points have been raised on the following instruments.

NHS Education for Scotland Amendment Order 2021 (SSI 2021/330)

Traffic Regulation Orders (Procedure) (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/348)

Town and Country Planning (Local Place Plans) (Scotland) Regulations 2021 (SSI 2021/353)

The Convener: Do members have any comments on any of the instruments?

Graham Simpson: I have a comment on SSI 2021/348, which deals with something called experimental traffic regulation orders. I was a councillor for 10 years and I have never heard of those. I must admit that when I hear the words "experimental" and "orders" together, that concerns me, particularly where councils are involved.

The instrument seems to introduce a new way of bringing in traffic regulation orders—it is a truncated system. If orders are to be made permanent, a new system is being introduced. As members know, when any changes to roads are made, such as bringing in a cycle lane, they are often controversial and surely deserve the fullest scrutiny. The public should be able to comment within a decent timeframe.

Again, that is a policy matter, but it should be highlighted to the lead committee, which needs to take a good look at the issue and satisfy itself that the measures are appropriate. In this case, I think that the lead committee is the Net Zero, Energy and Transport Committee. Another letter from this committee is probably appropriate.

The Convener: I am content with the suggestion. It is the right thing to do. Clearly, you are correct that it is a policy matter. Are members content with that suggestion?

Members indicated agreement.

The Convener: Is the committee content with the instruments?

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

10:11

The Convener: Under agenda item 7, we are considering four instruments. An issue has been raised on the following instrument.

Social Security Administration and Tribunal Membership (Scotland) Act 2020 (Commencement No 3) Regulations 2021 (SSI 2021/338 (C 23))

The Convener: The instrument commences section 7 of the Social Security Administration and Tribunal Membership (Scotland) Act 2020. Section 8 of the 2020 act makes transitional provision in consequence of section 7 and should be brought into force at the same time. However, the instrument does not bring section 8 into force.

Following a question from the committee, the Scottish Government acknowledged in its response, which can be read in full in meeting paper 3, that that was an oversight. The Government thanked the committee for bringing that to its attention and said that it would introduce further regulations to commence section 8. That has now been done by SSI 2021/352, which is also being considered today.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (i), on the basis that its drafting appears to be defective?

Members *indicated agreement.*

The Convener: Does the committee also wish to welcome the fact that SSI 2021/352 has subsequently been laid to correct the oversight?

Members *indicated agreement.*

The Convener: No points have been raised on the following instruments.

Social Security (Switzerland) (Further provision in respect of Scotland) Order 2021 (SSI 2021/345)

Civil Partnership (Scotland) Act 2020 (Commencement No 4, Saving and Transitional Provision) Regulations 2021 (SSI 2021/351 (C 25))

Social Security Administration and Tribunal Membership (Scotland) Act 2020 (Commencement No 4) Regulations 2021 (SSI 2021/352 (C 26))

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

10:13

Meeting continued in private until 10:21.

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The deadline for corrections to this edition is:

Tuesday 23 November 2021

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

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