



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Delegated Powers and Law Reform Committee

Tuesday 9 November 2021

Session 6



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

9th 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 9 November 2021

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

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

As we are meeting both in the Parliament and online, I appreciate that it will be more challenging for members appearing online to indicate agreement to the items being discussed. I therefore ask members who are appearing on BlueJeans to raise their hand if they are not content when questions are put.

The first item of business is to decide whether to take items 8 and 9 in private. Is the committee content to take those items in private?

Members *indicated agreement.*

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

10:00

The Convener: Under agenda item 2, we are considering two instruments 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 following Scottish statutory instruments.

Storage of Carbon Dioxide (Licensing etc) (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/354)

Storage of Carbon Dioxide (Licensing etc) (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 (SSI 2021/383)

The Convener: Both instruments have been laid under the negative procedure and are considered by the Scottish Government to be of low significance. Is the committee content that the appropriate scrutiny procedure has been applied to the instruments and that the SSIs are of low significance?

Members *indicated agreement.*

Plant Health (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2021 [Draft]

The Convener: Under agenda item 3, we are considering a further instrument laid under the European Union (Withdrawal) Act 2018. In this case, the committee is considering whether the appropriate category has been applied to the draft regulations. The instrument has been categorised by the Scottish Government as being of medium significance. Is the committee content that the SSI has been categorised properly?

Members *indicated agreement.*

Instruments subject to Made Affirmative Procedure

10:01

The Convener: Under agenda item 4, we are considering three made affirmative instruments. An issue has been raised on the following instrument.

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 5) Regulations 2021 (SSI 2021/359)

The Convener: The instrument makes a number of changes to the principal international travel regulations, which are the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 (SSI 2021/322), including expanding the criteria for defining “eligible vaccinated arrivals” and amending the exemptions that are in place for diplomatic personnel, their staff and dependents in relation to the 26th United Nations climate change conference of the parties, or COP26.

Regulation 4(d) inserts paragraph (4A) into regulation 3 of the principal regulations. As amended, regulation 3 provides that a person is an eligible vaccinated arrival if, among other things, they are

“a person who, by virtue of a determination made in accordance with ... (i) the Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 ... , or (ii) the Health Protection (Coronavirus, International Travel and Operator Liability) (England) Regulations 2021 ... , is not vaccinated for medical reasons”.

As neither of those sets of regulations makes explicit provision for such a determination to be made, it could be clearer how and by whom an exemption from vaccination on medical grounds is made in accordance with a determination made under either of those sets of regulations.

In written correspondence with the committee, the Scottish Government stated that the position is set out in guidance to which travel operators or persons that are responsible for premises must have regard, and that it considers that the guidance makes clear the process for obtaining and evidencing a medical exemption in accordance with the requirements regulations and the English international travel regulations.

Does the committee nevertheless wish to draw the instrument to the attention of the Parliament on reporting ground (h), in that the instrument’s meaning could be clearer as there is no reference to any determination in respect of exemption from vaccination on medical grounds in either of the

sets of regulations that are cited in regulation 4(d)?

Members indicated agreement.

The Convener: Does the committee also wish to call on the Scottish Government to clarify the matter at the next legislative opportunity?

Members indicated agreement.

The Convener: Also under this agenda item, no points have been raised on the following instruments.

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 6) Regulations 2021 (SSI 2021/382)

Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No 3) Regulations 2021 (SSI 2021/384)

The Convener: Is the committee content with the instruments?

Members indicated agreement.

Instruments subject to Affirmative Procedure

10:04

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

Relevant Adjustments to Common Parts (Disabled Persons) (Scotland) Amendment Regulations 2021 [Draft]

Eggs (Amendment) (Scotland) Regulations 2021 [Draft]

Scottish Dog Control Database Order 2021 [Draft]

Plant Health (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2021 [Draft]

Redress for Survivors (Historical Child Abuse in Care) (Payments Materially Affected by Error) (Scotland) Regulations 2021 [Draft]

Coronavirus Act 2020 (Early Expiry of Provisions) (Scotland) Regulations 2021 [Draft]

The Convener: Members will note that the Plant Health (EU Exit) (Scotland) (Amendment) (No 2) Regulations 2021 were originally laid on 7 October 2021 and subsequently withdrawn and relaid following initial questions from the committee.

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 negative instruments. Issues have been raised on the following instrument.

Storage of Carbon Dioxide (Licensing etc) (EU Exit) (Scotland) (Amendment) Regulations 2021 (SSI 2021/354)

The Convener: The instrument amends definitions, references and expressions related to European Union law in the Storage of Carbon Dioxide (Licensing etc) (Scotland) Regulations 2011 that require updating or correction following the United Kingdom's withdrawal from the EU. The amendments are minor and technical in nature.

The committee wrote to the Scottish Government to ask whether regulation 8 of the instrument contained an error in respect of references to certain EU law applying, as they had effect immediately before the implementation period completion day. The Scottish Government, in its response, said that it was grateful to the committee for highlighting the error and that SSI 2021/383, which the committee is also considering under this agenda item, has since been laid to correct that. The correcting instrument will come into force on Tuesday 30 November, which is a day before the provision containing the error will come into force.

Full details of the error in regulation 8 can be found in the correspondence between the committee and the Scottish Government. The correspondence is included in paper 4 for the meeting, which can be found in the agenda on the committee's website.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (h), on the basis that the meaning of regulation 8, as outlined in correspondence with the Scottish Government, could be clearer?

Members *indicated agreement.*

The Convener: Does the committee also wish to welcome that the Scottish Government has acknowledged that this was a drafting error and that a correcting instrument has been laid that will correct the error before it would have come into force?

Members *indicated agreement.*

The Convener: Also under this agenda item, no points have been raised on the following instruments.

National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2021 (SSI 2021/367)

Protection of Vulnerable Groups (Scotland) Act 2007 (Applications for Removal from List and Late Representations) Amendment Regulations 2021 (SSI 2021/379)

Disclosure (Scotland) Act 2020 (Commencement No 1 and Transitory Provision) Regulations 2021 (SSI 2021/380 (C 28))

Storage of Carbon Dioxide (Licensing etc) (EU Exit) (Scotland) (Amendment) Amendment Regulations 2021 (SSI 2021/383)

The Convener: With regard to SSI 2021/383, we have just welcomed that it corrects the error in SSI 2021/354.

Is the committee content with the instruments?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

10:07

The Convener: Under agenda item 7, we are considering two instruments that are not subject to procedure. No points have been raised on the following instruments.

Criminal Justice and Licensing (Scotland) Act 2010 (Commencement No 16) Order 2021 (SSI 2021/355)

Lands Tribunal for Scotland (Miscellaneous Amendments) Amendment Rules 2021 (SSI 2021/386)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

The Convener: Does the committee wish to welcome the fact that SSI 2021/386 fulfils a commitment that was given by the Scottish Government to rectify a numbering error that the session 5 Delegated Powers and Law Reform Committee highlighted at its meeting on 19 January 2021 with respect to the Lands Tribunal for Scotland (Miscellaneous Amendments) Rules 2020 (SSI 2020/433)?

Members *indicated agreement.*

10:08

Meeting continued in private until 10:40.

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