



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 23 November 2021

Session 6



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE
11th 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 23 November 2021

[The Convener opened the meeting at 10:07]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the Delegated Powers and Law Reform Committee's 11th 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.

The first item of business is to decide whether to take items 4 and 5 in private. Is the committee content to take those items in private?

Members *indicated agreement.*

Instrument subject to Affirmative Procedure

10:07

The Convener: Under agenda item 2, we are considering an instrument subject to the affirmative procedure. No points have been raised on the following draft instrument.

Best Start Grants and Scottish Child Payment (Miscellaneous Amendments) Regulations 2021 [Draft]

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:07

The Convener: Under agenda item 3, we are considering instruments subject to the negative procedure. Issues have been raised on the following instrument.

Ethical Standards in Public Life etc (Scotland) Act 2000 (Register of Interests) Amendment Regulations 2021 (SSI 2021/397)

The Convener: The instrument amends the Ethical Standards in Public Life etc (Scotland) Act 2000 (Register of Interests) Regulations 2003 (SSI 2003/135) in light of changes that have been made to the code of conduct for councillors and the model code of conduct for members of devolved public bodies.

Regulation 2(2) substitutes a schedule to the 2003 regulations with a new schedule, in which the registrable interests of councillors and members of devolved public bodies are described by reference to various paragraphs in the councillors code and the members code respectively.

The committee wrote to the Scottish Government to draw its attention to an error in table B of the schedule that is to be inserted by regulation 2(2). In its response, the Scottish Government confirmed that the omission of category nine, concerning close family members, was an error and has undertaken to lay an amending instrument in early course.

Full details of the error in regulation 2(2) can be read in the correspondence between the committee and the Scottish Government, which can be found in the published papers for this meeting on the committee's website.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (i), in that the instrument's drafting appears to be defective due to the error in table B of the schedule?

Members indicated agreement.

The Convener: Does the committee also wish to welcome that the Scottish Government will lay an amending instrument in early course to rectify the error?

Members indicated agreement.

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

Diligence against Earnings (Variation) (Scotland) Regulations 2021 (SSI 2021/409)

Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 (SSI 2021/410)

Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment (No 2) Order 2021 (SSI 2021/411)

Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2021 (SSI 2021/412)

The Convener: Is the committee content with the instruments?

Members indicated agreement.

The Convener: Finally, in relation to Scottish statutory instrument 2021/410, does the committee wish to note the effect on the instrument of the United Kingdom Internal Market Act 2020, as highlighted in the policy note, and highlight that to the lead committee, which is the Net Zero, Energy and Transport Committee?

Mr Simpson wants to comment.

Graham Simpson (Central Scotland) (Con): As you rightly say, convener, the policy note attached to the regulations points out the effect of the United Kingdom Internal Market Act 2020, which is that the policy intent behind the regulations might not be achieved. The result is that the ban that the instrument imposes will apply to products that are produced in Scotland, but it will not apply to products that are produced in other parts of the UK where they are not banned.

It is a significant measure to ban any product, whatever it is, and to stop its supply. As you said, the negative procedure applies to the instrument. I would normally argue that that was not appropriate and that it should be the affirmative procedure, but that is not legally available in this case. Therefore, if it is okay with you, convener, we should highlight the issue to the lead committee, which I think is the Net Zero, Energy and Transport Committee, possibly saying that, although the instrument is subject to the negative procedure, that committee can still take evidence on it. If I was a member of that committee, I would want to do that, because I would want to hear from Scottish producers that are potentially affected by the measure.

I should point out that a consultation is going on in England—I read about it at the weekend. Ideally, we probably want the same policy to apply across the UK, so that we do not end up with one set of rules in one area and a different set of rules in another, which is potentially what will happen. The lead committee could address those matters. We should write to the lead committee to point that out and maybe suggest to it that, if it wishes, it could write to the Scotland Office, and probably the department that is dealing with the issue in England, which I think is the Department for Environment, Food and Rural Affairs. I think that the issue sits under the Environment Act 2021.

I am content with the recommendations, but we should highlight a number of issues to the lead committee.

The Convener: Thank you, Mr Simpson. I am absolutely content with your suggestions regarding highlighting the issue to the lead committee. On the point about the negative and affirmative procedure, which is the most important thing for our committee, you are correct that the affirmative procedure is not available in this instance. Writing to the lead committee is the right thing to do. It is also right to ask the lead committee to consider doing some other work on the issue. I am content to do that. Do other members agree to that approach?

Members *indicated agreement.*

10:14

Meeting continued in private until 10:40.

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