



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

Tuesday 22 February 2022

Session 6



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Pàrlamaid na h-Alba

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**6<sup>th</sup> Meeting 2022, 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

**THE FOLLOWING ALSO PARTICIPATED:**

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

**CLERK TO THE COMMITTEE**

Andrew Proudfoot

**LOCATION**

The Adam Smith Room (CR5)

## Scottish Parliament

### Delegated Powers and Law Reform Committee

Tuesday 22 February 2022

[The Convener opened the meeting at 10:12]

### Decision on Taking Business in Private

**The Convener (Stuart McMillan):** Welcome to the Delegated Powers and Law Reform Committee's sixth meeting in 2022. We have received apologies from Graham Simpson, and I welcome back Maurice Golden as a committee substitute. Before we move to the first item on the agenda, I remind everyone present to switch mobile phones to silent.

The first item of business is a decision on whether to take items 6 and 7 in private. Is the committee content to take those items in private?

**Members** *indicated agreement.*

## Instruments subject to Made Affirmative Procedure

10:13

**The Convener:** Under agenda item 2, we are considering three instruments. An issue has been raised on the following instrument.

### Coronavirus Act 2020 (Alteration of Expiry Date) (Scotland) Regulations 2022 (SSI 2022/40)

**The Convener:** The instrument extends the expiry date of various provisions of the Coronavirus Act 2020 that apply in Scotland, from 24 March 2022 to 24 September 2022. In correspondence with the Scottish Government, the committee asked two questions related to the instrument. First, clarification was sought on the statement in the accompanying policy note that only the made affirmative procedure was available for the instrument. Secondly, the committee sought clarification on the extension of the expiry, by regulation 2(a) of the instrument, of section 18(2) of the 2020 act and part 2 of schedule 13 to the act.

In response, the Scottish Government first confirmed that section 95(5) of the Coronavirus Act 2020 gives a choice between the affirmative and made affirmative procedures.

Secondly, the Scottish Government acknowledged that regulation 2(a), read on its own, implies that the transitional provisions in paragraphs 15 and 16 of schedule 13, and section 18(2) and paragraph 10 of that schedule so far as it relates to paragraphs 15 and 16, are also extended to 24 September 2022. However, the lead-in text to regulation 2 makes clear explicitly that the instrument, and so regulation 2(a), extends the relevant provisions only

"when they would otherwise expire by virtue of section 89 of the Act".

The Scottish Government thanked the committee for drawing this matter to its attention. It has since laid an amended policy note to clarify that a choice of procedure is available and to add an explanation of the combined effect of regulation 2(a) of the instrument and section 89(2)(s) of the Coronavirus Act 2020.

Do members have any comments on the instrument?

**Craig Hoy (South Scotland) (Con):** I want to put on record some concerns about the instrument and suggest how we might satisfactorily address those concerns.

I have a general concern about the extension of the powers at this time, given that we are emerging from the Covid pandemic and that it could be perceived that the emergency powers are being extended into a non-emergency period. A number of the provisions come into effect from 24 March to 24 September. There was an opportunity to use either the affirmative or made affirmative procedure—the Government has clarified that both routes were open—but the Government still decided to use the made affirmative procedure, which limits the scrutiny by the Parliament of the measures in the instrument.

I therefore propose that we delay further consideration of the instrument and write to the relevant minister, who is the Deputy First Minister, to ask whether we can have an evidence session with him so that we can put those concerns to him and seek reassurance in relation to the measures that will be extended and the use of the made affirmative procedure for the instrument.

**The Convener:** We have a short space of time available, so I would be content for the committee to write as suggested, and then we can take the matter from there. Is that okay with everyone?

**Members** *indicated agreement.*

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

**Scottish Landfill Tax (Standard Rate and Lower Rate) Order 2022 (SSI 2022/46)**

**Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 3) Regulations 2022 (SSI 2022/53)**

**The Convener:** Is the committee content with the instruments?

**Members** *indicated agreement.*

## **Instruments subject to Affirmative Procedure**

10:17

**The Convener:** Under agenda item 3, we are considering five instruments, on which no points have been raised.

**Forensic Medical Services (Self-Referral Evidence Retention Period) (Scotland) Regulations 2022 [Draft]**

**Forensic Medical Services (Modification of Functions of Healthcare Improvement Scotland and Supplementary Provision) Regulations 2022 [Draft]**

**Budget (Scotland) Act 2021 Amendment Regulations 2022 [Draft]**

**Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No 4) Regulations 2022 [Draft]**

**Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2022 [Draft]**

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

**Craig Hoy:** I want to flag up the draft Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No 4) Regulations 2022 as an instrument of concern. If approved, it would come into effect on 27 February, which is a matter of days away. I am concerned about the expedited nature of the process. I accept that it is an affirmative instrument, so the Parliament will get a vote on it, but the measures in it are really quite fundamental. They include measures on the ongoing wearing of face coverings and the use of vaccination passports. Certainly, the committee has taken considerable interest in the latter of those issues. Given that we are no longer in an emergency situation, it is hard to see the justification for gifting the powers to the Government any longer.

We are debating the use of delegated legislation this afternoon, so I do not want to rehearse the arguments on that. However, we do not have much time to scrutinise the instrument, and the lead committee has expressed reservations about the window of opportunity to examine the regulations and their extension. I cannot see the justification for the regulations or for using a delegated route to extend them, especially given

that primary legislation is coming that will deal with the issues—we will discuss that in private later and the Parliament will debate it in future. On that basis, I am not content for us not to draw the attention of the Parliament to the instrument, and therefore I seek to have a vote on it.

**The Convener:** You raise a number of points. Some of your concerns relate to policy issues and others relate to the route by which the instrument has been brought to the Parliament. Clearly, it would be for the relevant committee to put questions on the policy matters to the Deputy First Minister.

The regulations came up in the committee before we knocked off for the February recess. There were two options for the instrument to come to us. It could have come as a made affirmative instrument or through the expedited affirmative process. I agreed to the latter, so that there could be some dialogue with the committee and so that we could undertake our role better.

I am content with the instrument, given the opportunity that we have had to discuss it. The recommended action is that we do not draw it to the attention of the Parliament. If colleagues have any other comments to make, I am happy to hear them.

It is clear that there will be a division on whether we wish to make no recommendations in relation to the Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No 4) Regulations 2022.

#### **For**

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

#### **Against**

Golden, Maurice (North East Scotland) (Con)  
Hoy, Craig (South Scotland) (Con)

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

The committee is therefore agreed. However, the member's concerns have been expressed and noted on the record.

Do members have comments on any of the other instruments?

**Craig Hoy:** In relation to the draft Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2022, and in light of the discussion that we had on the extension of the expiry date, might there be an opportunity for us to have further discussion and scrutiny of the instrument if we have the Deputy First Minister in next week?

**The Convener:** We are going to contact the DFM, so we can highlight that particular instrument.

**Craig Hoy:** I appreciate that—thank you.

**The Convener:** No problem.

As there are no other comments, and notwithstanding the vote that we just had and the points that Mr Hoy has just made, is the committee content with the instruments?

**Members indicated agreement.**

## Instruments subject to Negative Procedure

10:24

**The Convener:** Under agenda item 4, we are considering nine instruments, on which no points have been raised.

**Disability Assistance for Working Age People (Consequential and Miscellaneous Amendment and Transitional Provision) (Scotland) Regulations 2022 (SSI 2022/31)**

**Non-Domestic Rate (Scotland) Order 2022 (SSI 2022/36)**

**Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2022 (SSI 2022/37)**

**Red Rocks and Longay Urgent Marine Conservation (No 2) Order 2021 (Urgent Continuation) Order 2022 (SSI 2022/39)**

**Social Security (Industrial Injuries) (Prescribed Diseases) Amendment (Scotland) Regulations 2022 (SSI 2022/42)**

**Personal Injuries (NHS Charges) (Amounts) (Scotland) Amendment Regulations 2022 (SSI 2022/45)**

**Non-Domestic Rates (Levying and Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/48)**

**Town and Country Planning (Fees for Applications) (Scotland) Regulations 2022 (SSI 2022/50)**

**Non-Domestic Rating (Unoccupied Property) (Scotland) Amendment Regulations 2022 (SSI 2022/51)**

**The Convener:** Is the committee content with the instruments?

**Members** *indicated agreement.*

## Instruments not subject to Parliamentary Procedure

10:25

**The Convener:** Under agenda item 5, we are considering three instruments subject to the laid-only procedure, on which no points have been raised.

**Victims and Witnesses (Scotland) Act 2014 (Commencement No 9) Order 2022 (SSI 2022/22 (C 1))**

**Forensic Medical Services (Victims of Sexual Offences) (Scotland) Act 2021 Commencement Regulations 2022 (SSI 2022/24 (C 3))**

**Health (Tobacco, Nicotine etc and Care) (Scotland) Act 2016 (Commencement No 5) Regulations 2022 (SSI 2022/43 (C 4))**

**The Convener:** Is the committee content with the instruments?

**Members** *indicated agreement.*

10:25

*Meeting continued in private until 10:53.*

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