



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 24 November 2020

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
EUROPEAN UNION (WITHDRAWAL) ACT 2018: INSTRUMENT PROCEDURE AND CATEGORY	2
Cross-border Health Care (EU Exit) (Scotland) (Amendment) Regulations 2020 [Draft]	2
Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/372)	2
Agriculture (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/368)	3
EUROPEAN UNION (WITHDRAWAL) ACT 2018: INSTRUMENT CATEGORY	4
Public Procurement etc (EU Exit) (Scotland) (Amendment) Regulations 2020 [Draft]	4
Common Agricultural Policy (Less Favoured Area Support) (EU Exit) (Scotland) Amendment Regulations 2020 [Draft]	4
Plant Health (EU Exit) (Scotland) (Amendment etc) Regulations 2020 [Draft]	4
Trade in Animals and Related Products (EU Exit) (Scotland) (Amendment) Regulations 2020 [Draft]	4
INSTRUMENTS SUBJECT TO MADE AFFIRMATIVE PROCEDURE	5
Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 2) Regulations 2020 (SSI 2020/374)	5
Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 23) Regulations 2020 (SSI 2020/378)	5
INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE	6
Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations 2020 [Draft]	6
Cross-border Health Care (EU Exit) (Scotland) (Amendment) Regulations 2020 [Draft]	7
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE	8
Common Agricultural Policy (Simplifications and Improvements) (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/349)	8
Management of Offenders etc (Scotland) Act 2005 (Specification of Persons) Amendment Order 2020 (SSI 2020/365)	8
Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment (No 2) Order 2020 (SSI 2020/366)	8
Agriculture (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/368)	8
Police Act 1997 and the Protection of Vulnerable Groups (Scotland) Act 2007 (Fees) (Coronavirus) (Amendment) Regulations 2020 (SSI 2020/376)	8
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE	9
Act of Sederunt (Registration Appeal Court) 2020 (SSI 2020/364)	9
Age of Criminal Responsibility (Scotland) Act 2019 (Commencement No 3) Regulations 2020 (SSI 2020/369 (C 30))	9
Reciprocal Enforcement of Foreign Judgments (Norway) Amendment (Scotland) Order 2020 (SSI 2020/371)	9
Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Commencement No 2) Regulations 2020 (SSI 2020/373 (C 31))	10
Coronavirus Act 2020 (Suspension: Adult Social Care) (Scotland) Regulations 2020 (SSI 2020/377)	10
Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (Commencement No 1 and Transitional Provision) Regulations 2020 (SSI 2020/379 (C 32))	10

DELEGATED POWERS AND LAW REFORM COMMITTEE

36th Meeting 2020, Session 5

CONVENER

*Bill Bowman (North East Scotland) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Michelle Ballantyne (South Scotland) (Con)

*Mary Fee (West Scotland) (Lab)

*Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament
Delegated Powers and Law Reform Committee

Tuesday 24 November 2020

[The Convener opened the meeting at 11:45]

Decision on Taking Business in Private

The Convener (Bill Bowman): Good morning. I welcome everyone to the 36th meeting in 2020 of the Delegated Powers and Law Reform Committee.

Under agenda item 1, it is proposed that the committee take items 8 to 11 in private. Does the committee agree to do so?

Members *indicated agreement.*

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

11:45

The Convener: Agenda item 2 is consideration of three instruments that have been laid under the European Union (Withdrawal) Act 2018. The committee is considering whether the appropriate scrutiny procedure has been applied to the instruments and whether they have been properly categorised by the Scottish Government.

Cross-border Health Care (EU Exit) (Scotland) (Amendment) Regulations 2020 [Draft]

The Convener: The first instrument has been laid under the affirmative procedure, which our advisers consider is appropriate in the circumstances. Is the committee content that the appropriate scrutiny procedure has been applied to the instrument?

Members *indicated agreement.*

The Convener: Our advisers also consider that the instrument has been properly categorised as being of medium significance under the Scottish statutory instrument protocol. Is the committee content that the instrument has been properly categorised as being of medium significance?

Members *indicated agreement.*

Food and Feed (EU Exit) (Scotland) (Amendment) Regulations 2020 (SSI 2020/372)

The Convener: The committee's consideration of the second instrument relates only to the Scottish ministers' deficiency-correcting power in the European Union (Withdrawal) Act 2018. The instrument has been laid under the negative procedure, which our advisers consider is appropriate in the circumstances. Is the committee content that the appropriate scrutiny procedure has been applied to the instrument?

Members *indicated agreement.*

The Convener: Our advisers also consider that the instrument has been properly categorised as being of low significance under the SSI protocol. Is the committee content that the instrument has been properly categorised as being of low significance?

Members *indicated agreement.*

**Agriculture (EU Exit) (Scotland)
(Amendment) Regulations 2020
(SSI 2020/368)**

The Convener: The committee's consideration of the third instrument relates only to the Scottish ministers' deficiency-correcting power in the European Union (Withdrawal) Act 2018. The instrument has been laid under the negative procedure, which our advisers consider is appropriate in the circumstances. Is the committee content that the appropriate scrutiny procedure has been applied to the instrument?

Members indicated agreement.

The Convener: Our advisers also consider that the instrument has been properly categorised as being of low significance under the SSI protocol. Is the committee content that the instrument has been properly categorised as being of low significance?

Members indicated agreement.

**European Union (Withdrawal) Act
2018: Instrument Category**

11:48

The Convener: Agenda item 3 is consideration of four further instruments that have been laid under the European Union (Withdrawal) Act 2018. Unlike our consideration under agenda item 2, we are considering only how the instruments have been categorised by the Scottish Government.

**Public Procurement etc (EU Exit)
(Scotland) (Amendment) Regulations 2020
[Draft]**

The Convener: The committee's consideration of the first instrument relates only to the Scottish ministers' deficiency-correcting power in the 2018 act. Our advisers consider that the instrument has been properly categorised as being of high significance under the SSI protocol. Is the committee content that the instrument has been properly categorised as being of high significance?

Members indicated agreement.

**Common Agricultural Policy (Less
Favoured Area Support) (EU Exit)
(Scotland) Amendment Regulations 2020
[Draft]**

The Convener: The committee's consideration of the second instrument relates only to the Scottish ministers' deficiency-correcting power in the 2018 act. The instrument has been categorised by the Scottish Government as being of low significance, which our advisers consider is appropriate. Is the committee content that the instrument has been properly categorised as being of low significance?

Members indicated agreement.

**Plant Health (EU Exit) (Scotland)
(Amendment etc) Regulations 2020 [Draft]**

**Trade in Animals and Related Products
(EU Exit) (Scotland) (Amendment)
Regulations 2020 [Draft]**

The Convener: The committee's consideration of the third and fourth instruments relates only to the Scottish ministers' deficiency-correcting power in the 2018 act. Our advisers consider that the instruments have been properly categorised as being of medium significance under the SSI protocol. Is the committee content that the instruments have been properly categorised as being of medium significance?

Members indicated agreement.

Instruments subject to Made Affirmative Procedure

11:49

The Convener: Agenda item 4 is consideration of two instruments that are subject to the made affirmative procedure, on which no points have been raised.

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 2) Regulations 2020 (SSI 2020/374)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 23) Regulations 2020 (SSI 2020/378)

The Convener: Is the committee content with the instruments?

Members indicated agreement.

The Convener: The committee will be interested to note that SSI 2020/374 corrects errors that the committee identified at its meeting on 10 November in relation to SSI 2020/344, which set the new levels of restrictions that apply across Scotland.

Instruments subject to Affirmative Procedure

Direct Payments to Farmers (Miscellaneous Amendments) (Scotland) Regulations 2020 [Draft]

11:50

The Convener: Agenda item 5 is consideration of six draft affirmative instruments, in the first of which our legal advisers have identified a drafting error. Does the committee wish to draw the instrument to the attention of the Parliament under the general reporting ground, on the basis that the words "its share of" could have been omitted from article 14 of the direct payments regulation for consistency with the equivalent amendments that the instrument makes to articles 22(2), 23(2) and 25(1)?

Members indicated agreement.

The Convener: The Government has indicated that it may include provision in a future instrument to omit the wording in order to tidy up the relevant provision. Does the committee wish to call on the Scottish Government to correct the error at the next available legislative opportunity?

Members indicated agreement.

The Convener: With regard to the other five draft affirmative instruments, although no points have been raised on them, the first three were withdrawn and relaid following questions from our legal advisers.

Common Agricultural Policy (Less Favoured Area Support) (EU Exit) (Scotland) Amendment Regulations 2020 [Draft]

Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 [Draft]

Public Procurement etc (EU Exit) (Scotland) (Amendment) Regulations 2020 [Draft]

First-tier Tribunal for Scotland Social Security Chamber and Upper Tribunal for Scotland (Allocation of Functions, Procedure and Composition) (Miscellaneous Amendments) Regulations 2020 [Draft]

**Cross-border Health Care (EU Exit)
(Scotland) (Amendment) Regulations 2020
[Draft]**

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

**Instruments subject to Negative
Procedure**

11:52

The Convener: Agenda item 6 is consideration of five negative instruments, on which no points have been raised.

**Common Agricultural Policy
(Simplifications and Improvements)
(Miscellaneous Amendments) (Scotland)
Regulations 2020 (SSI 2020/349)**

**Management of Offenders etc (Scotland)
Act 2005 (Specification of Persons)
Amendment Order 2020 (SSI 2020/365)**

**Town and Country Planning (General
Permitted Development) (Coronavirus)
(Scotland) Amendment (No 2) Order 2020
(SSI 2020/366)**

**Agriculture (EU Exit) (Scotland)
(Amendment) Regulations 2020 (SSI
2020/368)**

**Police Act 1997 and the Protection of
Vulnerable Groups (Scotland) Act 2007
(Fees) (Coronavirus) (Amendment)
Regulations 2020 (SSI 2020/376)**

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

11:52

The Convener: Agenda item 7 is consideration of six instruments that are not subject to parliamentary procedure and on which no points have been raised.

Act of Sederunt (Registration Appeal Court) 2020 (SSI 2020/364)

Age of Criminal Responsibility (Scotland) Act 2019 (Commencement No 3) Regulations 2020 (SSI 2020/369 (C 30))

Reciprocal Enforcement of Foreign Judgments (Norway) Amendment (Scotland) Order 2020 (SSI 2020/371)

Agriculture (Retained EU Law and Data) (Scotland) Act 2020 (Commencement No 2) Regulations 2020 (SSI 2020/373 (C 31))

Coronavirus Act 2020 (Suspension: Adult Social Care) (Scotland) Regulations 2020 (SSI 2020/377)

Animals and Wildlife (Penalties, Protections and Powers) (Scotland) Act 2020 (Commencement No 1 and Transitional Provision) Regulations 2020 (SSI 2020/379 (C 32))

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

11:52

Meeting continued in private until 13:18.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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