



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 2 March 2021

Session 5



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

8th Meeting 2021, Session 5

CONVENER

*Bill Bowman (North East Scotland) (Con)

DEPUTY CONVENER

*Gil Paterson (Clydebank and Milngavie) (SNP)

COMMITTEE MEMBERS

*Michelle Ballantyne (South Scotland) (Reform)

*Mary Fee (West Scotland) (Lab)

*Joe FitzPatrick (Dundee City West) (SNP)

*attended

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

Virtual Meeting

Scottish Parliament
Delegated Powers and Law Reform Committee

Tuesday 2 March 2021

[The Convener opened the meeting at 11:58]

Decision on Taking Business in Private

The Convener (Bill Bowman): Good morning. I welcome everyone to the eighth meeting in 2021 of the Delegated Powers and Law Reform Committee.

As we are meeting online, it will be more challenging for members to indicate agreement to the items that are discussed. Therefore, I ask members to raise their hand if they are not content with the question that is being put, or if they wish to speak about the instrument in question.

The first agenda item is a decision on whether to take items 6, 7 and 8 in private. Is the committee content to take those items in private?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

Instruments subject to Made Affirmative Procedure

Health Protection (Coronavirus) (International Travel) (Managed Accommodation and Testing) (Scotland) Regulations 2021 (SSI 2021/74)

11:59

The Convener: Under agenda item 2, an issue has been raised on SSI 2021/74. A drafting error in new regulation 5J(1)(c) means that that regulation fails to achieve the policy intention of creating a criminal offence in respect of a responsible adult failing to ensure that a child undertakes tests in accordance with the requirements in the regulations. Further, a drafting error in new regulation 5J(3)(d) means that that regulation fails to achieve the policy intention of creating a reasonable excuse for failing to undertake tests on account that the person failing to undertake such tests has travelled in order to leave Scotland, provided that they have done so directly. Those errors therefore impede the delivery of the intended policy.

Does the committee agree to draw the instrument to the attention of the Parliament on ground (i)—that the instrument's drafting appears to be defective—on account of drafting errors in new regulations 5J(1)(c) and 5J(3)(d), and does the committee wish to note that the Scottish Government has corrected those errors in SSI 2021/107?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

No points have been raised on the following three made affirmative instruments.

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 6) Regulations 2021 (SSI 2021/81)

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 16) Regulations 2021 (SSI 2021/86)

Scottish Landfill Tax (Standard Rate and Lower Rate) Order 2021 (SSI 2021/89)

The Convener: Is the committee content with the instruments?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

Instruments subject to Affirmative Procedure

12:00

The Convener: Agenda item 3 is consideration of three draft affirmative instruments, on which no points have been raised.

Social Security Up-rating (Scotland) Order 2021 [Draft]

Coronavirus (Scotland) Acts (Amendment of Expiry Dates) Regulations 2021 [Draft]

Disability Assistance for Children and Young People (Scotland) Regulations 2021 [Draft]

The Convener: Is the committee content with the instruments?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

Instruments subject to Negative Procedure

Disability Assistance for Children and Young People (Consequential Amendment and Transitional Provision) (Scotland) Regulations 2021 (SSI 2021/73)

12:01

The Convener: Issues have been raised on two of the instruments for consideration under agenda item 4. SSI 2021/73 makes provision that is transitional and consequential to the draft re-laid Disability Assistance for Children and Young People (Scotland) Regulations 2021. An issue was raised with the Scottish Government about the clarity of the meaning of “care home” in the subordinate legislation that is amended by certain regulations of the instrument. The Scottish Government accepts that those regulations should be consistent with the definition of “care home” in regulation 2 of the draft Disability Assistance for Children and Young People (Scotland) Regulations 2021, which is used in respect of amendments that the instrument makes to other subordinate legislation.

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 “care home” in the subordinate legislation that is amended by regulations 10, 11(5), 13(5)(h)(ii) and 14(6)(c)(ii) of the instrument could be clearer, and does the committee wish to welcome the Scottish Government’s commitment to lay an instrument to come into force alongside and amend the relevant provisions of SSI 2021/73 to include consistent definitions of “care home”?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

Health and Care Professions Council (Coronavirus) (Amendment) (No 2) Rules Order of Council 2021 (SI 2021/167)

The Convener: SI 2021/167 corrects a drafting error in the Health and Care Professions Council (Coronavirus) (Amendment) Rules Order of Council 2021 (SI 2021/27) before that instrument comes into force on 4 March. In doing so, it has breached the rule that requires instruments that are subject to the negative procedure to be laid at least 28 days before they come into force.

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

breached the laying requirements under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010? At the same time, does the committee wish to note that it is satisfied with the explanation that has been provided for the failure to comply with those laying requirements, and to welcome the fact that the instrument rectifies the drafting error in SI 2021/27 that the committee identified in its report following its consideration of that instrument on 2 February 2021 before the earlier instrument comes into force on 4 March 2021?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

No points have been raised on the following instruments.

National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2021 (SSI 2021/76)

National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2021 (SSI 2021/77)

Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 (SSI 2021/79)

Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2021 (SSI 2021/80)

Plant Health (Export Certification) (Scotland) Amendment Order 2021 (SSI 2021/88)

Bee Diseases and Pests Control (Scotland) Amendment Order 2021 (SSI 2021/91)

Coronavirus (Scotland) Acts (Early Expiry and Suspension of Provisions) Regulations 2021 (SSI 2021/93)

Social Security (Industrial Injuries Benefit and Personal Independence Payment) (Telephone and Video Assessment) (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/97)

Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Order 2021 (SSI 2021/98)

**National Health Service Superannuation
and Pension Schemes (Miscellaneous
Amendments) (Scotland) Regulations 2021
(SSI 2021/102)**

**Health and Care Professions Council
(Registration and Fees) (Amendment)
Rules Order of Council 2021 (SI 2021/170)**

The Convener: Is the committee content with the instruments?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

**Instrument not subject to
Parliamentary Procedure**

**Planning (Scotland) Act 2019
(Commencement No 6 and Transitional
Provision) Regulations 2021 (SSI 2021/101
(C 4))**

12:04

The Convener: Agenda item 5 is consideration of an instrument that is not subject to parliamentary procedure and on which no points have been raised. Is the committee content with the instrument?

No member has indicated that they are not content or that they wish to speak, so that is agreed.

12:05

Meeting continued in private until 12:15.

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