



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 18 January 2022

Session 6



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Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE

2nd 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

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

Virtual Meeting

Scottish Parliament
Delegated Powers and Law Reform Committee

Tuesday 18 January 2022

[The Convener opened the meeting at 10:11]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the second meeting in 2022 of the Delegated Powers and Law Reform Committee, which is taking place fully online. Before we move to the first agenda item, as we are again meeting online, it will be more challenging for members to indicate agreement to the items that are discussed. I therefore ask you to raise your hand if you are not content when a question is put or if you wish to speak about an instrument.

The first item of business is to decide whether to take items 6 to 9 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 we are agreed.

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

10:12

The Convener: Under agenda item 2, we are considering one instrument.

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No 3) Regulations 2021 (SSI 2021/493)

The Convener: The committee is considering whether the appropriate scrutiny procedure and the appropriate category have been applied to the instrument. The instrument relates to the start date from which imports of animal products and certain plants, plant products and other objects to Scotland from European Union, European Economic Area and related countries will be subject to additional requirements.

The instrument has been laid under the negative procedure and is considered by the Scottish Government to be of low significance.

Is the committee content that the appropriate scrutiny procedure and categorisation have been applied to the instrument?

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

Instruments subject to Made Affirmative Procedure

10:13

The Convener: Under agenda item 3, we are considering two made affirmative instruments. Issues have been raised on the following instrument.

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2022 (SSI 2022/2)

The Convener: The instrument amends the requirements and restrictions that affect international travellers arriving in Scotland. A number of issues have been raised on the instrument. I will cover each in turn.

First, regulation 7 amends the principal international travel regulations to insert regulation 16A, which requires eligible vaccinated arrivals to report the outcome of a day 2 lateral flow device test, and to insert regulation 16B, which requires such people to take a confirmatory test from a public provider if their lateral flow test result is positive. Neither the principal regulations nor this instrument specifies that the confirmatory test should be a PCR—polymerase chain reaction—test, although the policy note and Scottish Government guidance indicate that the confirmatory test should be a PCR test.

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 the instrument could be clearer that the confirmatory test that is taken by an eligible vaccinated arrival following a positive day 2 lateral flow device test must be a PCR test? In so doing, does the committee wish to call on the Scottish Government to amend new regulation 16B of the Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Regulations 2021 to define the term “confirmatory test” at the next legislative opportunity?

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

10:15

Secondly, the policy note and the letter to the Presiding Officer that accompany the instrument state that the amended definition of World Health Organization list vaccines in regulation 3 comes into force at 4 am on 10 January 2022, alongside the changes to the list of relevant countries that can provide acceptable vaccination certification in

schedule 1A. However, regulation 1 provides that regulation 3 came into force at 4 am on the earlier date of 7 January.

The Scottish Government confirmed that the commencement of regulation 3 on 7 January is an error. The change should have been implemented in Scotland at the same time as in England, on 10 January. As a result, it is possible that some travellers may have been classed as eligible vaccinated arrivals in Scotland sooner than intended.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (i), on the basis that its drafting appears to be defective?

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

Finally, the instrument is in breach of laying requirements in section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, which provides that an instrument not subject to the negative or affirmative procedure must be laid before the Scottish Parliament as soon as practicable after the legislation is made, and in any event before the legislation is due to come into force. Regulations 1 to 5, 8, 9, 12 and 13 came into force at 4 am on 7 January, and the instrument came into force at 9.30 am later the same day.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j), on the basis that it fails to comply with the laying requirements?

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

Also under this agenda item, no technical points have been raised on the following instrument.

Health Protection (Coronavirus) (Requirements) (Scotland) Amendment Regulations 2022 (SSI 2022/6)

The Convener: The instrument provides for the removal of the capacity limits on live events outdoors and removes the requirement for 1m physical distancing at outdoor event venues, outdoor exhibitions and outdoor spaces in sports stadia. It also amends the definition of the term “fully vaccinated” to introduce booster vaccinations.

Is the committee content with the instrument?

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

Instruments subject to Affirmative Procedure

10:18

The Convener: Under agenda item 4, we are considering five affirmative instruments.

Disability Assistance for Working Age People (Scotland) Regulations 2022 [Draft]

The Convener: A number of issues were raised with the Scottish Government on the instrument. First, do members wish to report the following three errors on the general reporting ground? The first is that the definition of “EU withdrawal agreement” in regulation 2 is unnecessary, given that a definition of the term that is contained in schedule 1 to the Interpretation and Legislative Reform (Scotland) Act 2010 already applies.

The second error is that regulation 17(4)(b) refers to

“a child in respect of whom a person listed in paragraph (2)(a) has a relationship equivalent to those listed under the law of Scotland”,

and should instead refer to paragraph (3)(a) of regulation 17.

The third error is that the definitions of “civil partnership” and

“person who is living with another person as if they were in a civil partnership”

in regulation 17(4) are unnecessary in so far as they refer specifically to same-sex couples, on the basis that both same-sex and mixed-sex couples may enter into marriages and civil partnerships.

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

Secondly, do members wish to report the following three errors on reporting ground (h), on the basis that the meaning could be clearer? The first error is that regulation 7(2) relates to how an individual’s ability to carry out both daily living and mobility activities is to be determined, and therefore that regulation 7(2)(a) should refer to both the tables in schedule 1, at part 2, on “Daily Living Activities”, and part 3, on “Mobility Activities”.

The second error is that the meaning of the term “medical treatment” as defined in regulations 2 and 16 could be clearer, and that the definition in regulation 2 could be removed.

The third error is that the meaning of “qualifying services” in regulation 2 within the definition of “residential educational establishment”, and in

regulations 27(4) and 27(5)(b), and 32(3) and 32(4)(b) could be clearer.

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

Additionally, do members wish to call on the Government to lay an amending instrument to rectify the errors in regulation 7(2)(a) and in respect of the term “medical treatment” as defined in regulation 2 before the instrument comes into force on 21 March 2022? Furthermore, do members wish to call on the Government to rectify in that amending instrument the other errors that the committee has identified?

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

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

Deposit and Return Scheme for Scotland Amendment Regulations 2022 [Draft]

Registers of Scotland (Digital Registration, etc) Regulations 2022 [Draft]

Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2022 [Draft]

Aquaculture and Fisheries etc (Scheme for Financial Assistance) (Scotland) Regulations 2022 [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 we are agreed.

Instruments subject to Negative Procedure

10:21

The Convener: Under agenda item 5, issues have been raised on three negative instruments.

Greenhouse Gas Emissions Trading Scheme (Amendment) Order 2021 (SI 2021/1455)

The Convener: Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground in respect of the incorrect reference in paragraph 4(3) of new schedule 8A to the Greenhouse Gas Emissions Trading Scheme Order 2020, which is inserted by article 27 of the instrument, to article 18(11) of the free allocation regulation, which should have been to article 18a(11) of that regulation?

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

Does the committee also wish to welcome that the Scottish Government is liaising with the other United Kingdom Administrations with a view to correcting the error at the next available opportunity?

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

Nutritional Requirements for Food and Drink in Schools (Scotland) Amendment Regulations 2021 (SSI 2021/481)

The Convener: Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to the negative procedure are required to be laid at least 28 days before they come into force, not counting recess periods of more than four days. In its letter to the Presiding Officer on the instrument, the Scottish Government explained that urgent action was required, as concerns have been raised by education authorities and managers of grant-aided schools about their ability to comply with the duties under earlier regulations as a result of an inability to procure certain foods due to disruption in the school food supply chain.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j), in relation to the failure to lay the instrument in accordance with the laying requirements under the 2010 act?

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

At the same time, is the committee content with the explanation that the Scottish Government has provided for this breach of the laying requirement?

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

A similar issue has been raised on the following instrument.

Official Controls (Transitional Staging Period) (Miscellaneous Amendments) (Scotland) (No 3) Regulations 2021 (SSI 2021/493)

The Convener: The instrument relates to the phasing-in of border controls on imports of certain goods following EU withdrawal. It breaches section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, as it was laid on 22 December 2021 and came into force on 1 January 2022.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j), in relation to the failure to lay the instrument in accordance with laying requirements under the 2010 act?

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

The Scottish Government has provided an explanation of the reasons for the failure in a letter to the Presiding Officer and in response to the committee's written questions. All of the committee's correspondence on today's instruments can be found in paper 3 of the online papers. Clearly, there is an issue between the Scottish Government and the UK Government. I suggest that we highlight that to the subject committee, which is planning to look at the instrument next week. It can then make any decision that it wishes to take as a result.

No member has indicated that they are not content with that course of action or that they wish to speak, so we are agreed on that.

Finally under this agenda item, no points have been raised on the following instrument.

10:27

Meeting continued in private until 11:47.

Council Tax (Dwellings and Part Residential Subjects) (Scotland) Amendment Regulations 2021 (SSI 2021/489)

The Convener: Is the committee content with the instrument?

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

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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