



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Delegated Powers and Law Reform Committee

Tuesday 20 February 2024

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE	2
Scottish Food Commission (Appointment) Regulations 2024 [Draft]	2
Budget (Scotland) Act 2023 Amendment Regulations 2024 [Draft]	2
Local Government Finance (Scotland) Order 2024 [Draft]	2
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE	3
Firefighters' Pension Schemes (Scotland) Amendment Order 2024 (SSI 2024/26)	3
Dangerous Dogs (Designated Types) (Scotland) Order 2024 (SSI 2024/31)	4
Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2024 (SSSI 2024/30)	6
Council Tax Reduction (Scotland) Amendment Regulations 2024 (SSI 2024/35)	6
Sandeel (Prohibition of Fishing) (Scotland) Order 2024 (SSI 2204/36)	6
INSTRUMENT NOT SUBJECT TO PARLIAMENTARY PROCEDURE	7
Good Food Nation (Scotland) Act 2022 (Commencement No 2) Regulations 2024 (SSI 2024/29 (C 4)) ...	7

DELEGATED POWERS AND LAW REFORM COMMITTEE
6th Meeting 2024, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)

*Foyso Choudhury (Lothian) (Lab)

*Oliver Mundell (Dumfriesshire) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

CLERK TO THE COMMITTEE

Greg Black

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 20 February 2024

[The Convener opened the meeting at 11:53]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the sixth meeting in 2024 of the Delegated Powers and Law Reform Committee. I remind everyone to switch off, or put to silent, mobile phones and other electronic devices. I welcome Christine Grahame, who is attending for the public part of the meeting.

The first item of business is to decide whether to take items 5 and 6 in private. Is the committee content to take those items in private?

Members *indicated agreement.*

Instruments subject to Affirmative Procedure

11:53

The Convener: Under agenda item 2, we are considering three instruments, on which no points have been raised.

Scottish Food Commission (Appointment) Regulations 2024 [Draft]

Budget (Scotland) Act 2023 Amendment Regulations 2024 [Draft]

Local Government Finance (Scotland) Order 2024 [Draft]

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments subject to Negative Procedure

11:53

The Convener: Under agenda item 3, we are considering five instruments. Issues have been raised on two of the instruments.

Firefighters' Pension Schemes (Scotland) Amendment Order 2024 (SSI 2024/26)

The Convener: The instrument amends the Firemen's Pension Scheme Order 1992 and the Firefighters' Pension Scheme (Scotland) Order 2007 to extend the period during which persons who were employed in Scotland as retained firefighters have access to a pension scheme.

At rule 1C(3), the order states:

"where the deceased was not married, or a member of a civil partnership, at the time of the deceased's death ... a child of the deceased may apply in writing to the authority for a death grant and any such application must be made on or before 30 September 2024."

Elsewhere in the order, the date 31 March 2025 is given for similar eligibility for civil partners and spouses.

In correspondence with the Scottish Government, which has been published alongside the papers for the meeting, the committee queried that issue, and the Scottish Government confirmed that it is an error and is regretted. The Scottish Government proposes to correct that

"in the next amending instrument".

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (i), in that the drafting appears to be defective, on the basis that the date specified in new rule 1C(3), which is inserted by article 4 of the instrument, is incorrect?

Members indicated agreement.

The Convener: While acknowledging that the Scottish Government proposes to amend the instrument to correct the error at the next opportunity—with retrospective effect if necessary—does the committee wish to call on the Government to fix the error sooner rather than waiting until the next amending instrument?

Members indicated agreement.

The Convener: Also in relation to this instrument, the committee queried what would happen if an eligible spouse, civil partner or child of a firefighter who died close to or on 31 March 2025 did not make their application before that date.

The Scottish Government confirmed that it is the intention that 31 March 2025 is specified as the deadline for applications, but it is also the intention that eligible spouses, civil partners or children will be entitled to the grant if they miss the deadline. However, late applications are not provided for by the order as amended.

Does the committee wish to report the instrument on the general reporting ground, in that the Scottish Government's answer suggests that late applications will be allowed but no provision for that is made in the order?

Members indicated agreement.

The Convener: Does the committee wish to invite the Scottish Government to consider correcting that issue along with the issue with the dates, and to highlight to the lead committee the Scottish Government's response regarding the deadline?

Members indicated agreement.

Dangerous Dogs (Designated Types) (Scotland) Order 2024 (SSI 2024/31)

The Convener: The committee has received a considerable level of correspondence in relation to this instrument, which designates the XL bully as a dog type that is bred for fighting and is subject to controls and safeguards under the Dangerous Dogs Act 1991.

Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments that are subject to the negative procedure must be laid at least 28 days before they come into force, not counting recess periods of more than four days. The instrument breaches that requirement, as it was laid on 31 January 2024 and comes into force on Friday 23 February 2024.

In correspondence with the Presiding Officer, which has been copied to the committee and will be published in the committee's report on the subordinate legislation that has been considered at today's meeting, the Scottish Government stated that it did not meet the laying requirements because it considered it necessary to act

"with urgency to address growing public safety and animal welfare concerns",

following reports of some owners coming to Scotland to sell their XL bully dogs after changes to the law in relation to these dogs in England and Wales. The Government stated:

"by introducing the same safeguards as operate in England and Wales, this removes the loophole created by the UK Government in relation to English and Welsh XL Bully dog owners who come to Scotland."

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j), for failure to comply with laying requirements, as it was not laid 28 counting days before it comes into force?

Oliver Mundell (Dumfriesshire) (Con): I am happy for us to report the instrument on those grounds, but it is regrettable that the 28-day breach occurred, given the statements by the First Minister in the chamber. There was sufficient time to introduce the legislation earlier, given that, in essence, it replicates legislation in England and Wales.

The Convener: I think that we all recognise that there has been a delay, but we would also recognise that the Scottish Government indicated that it wanted to consult organisations and individuals in Scotland. It is safe to say that part of the delay, at least, would be because of that consultation process. We know that there was no dialogue with the Scottish Government prior to the regulations in England and Wales being introduced.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I have a short technical question, convener. What remedies are open to the committee if there is a breach of the 28-day requirement? Can you just complain about it, or is there anything else that is open to you to do?

The Convener: We can bring it to the attention of the Parliament—we would report it to the Parliament.

Christine Grahame: And then what? Apart from just reporting, is there any remedy? Can you say that you are not prepared to accept the situation? Is there a nuclear option?

The Convener: That would be an issue for the lead committee. We report to the Parliament and the lead committee, which could then take that forward.

Christine Grahame: Thank you.

The Convener: In correspondence with the Scottish Government, which has been published alongside the papers for the meeting, the committee also questioned whether the instrument is sufficiently clear in identifying what an XL bully type of dog is. Does the committee wish to draw the attention of the lead committee to our correspondence with the Scottish Government, as that provides further information on definitions for XL bully dogs?

Members indicated agreement.

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

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2024 (SSI 2024/30)

Council Tax Reduction (Scotland) Amendment Regulations 2024 (SSI 2024/35)

Sandeel (Prohibition of Fishing) (Scotland) Order 2024 (SSI 2204/36)

The Convener: Is the committee content with the instruments?

Members indicated agreement.

The Convener: In relation to SSI 2024/35, does the committee welcome that the instrument fulfils an earlier commitment by the Scottish Government to amend schedule 4 to the Council Tax Reduction (Scotland) Regulations 2021 to insert a new part and section heading?

Members indicated agreement.

Instrument not subject to Parliamentary Procedure

12:01

The Convener: Under agenda item 4, we are considering one instrument, on which no points have been raised.

Good Food Nation (Scotland) Act 2022 (Commencement No 2) Regulations 2024 (SSI 2024/29 (C 4))

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

The Convener: With that, I will move the committee into private.

12:02

Meeting continued in private until 12:09.

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Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447
Fax: 0131 348 5423

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