



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 31 August 2021

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Tuesday 31 August 2021

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
INSTRUMENTS SUBJECT TO MADE AFFIRMATIVE PROCEDURE	2
Health Protection (Coronavirus) (Requirements) (Scotland) Regulations 2021 (SSI 2021/277)	2
Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 29) Regulations 2021 (SSI 2021/252).....	4
Health Protection (Coronavirus) (International Travel etc) (Miscellaneous Amendments) (Scotland) (No 3) Regulations 2021 (SSI 2021/254).....	4
Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 30) Regulations 2021 (SSI 2021/255).....	4
Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 14) Regulations 2021 (SSI 2021/256)	4
Health Protection (Coronavirus) (International Travel etc) (Miscellaneous Amendments) (Scotland) (No 4) Regulations 2021 (SSI 2021/261).....	4
Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 31) Regulations 2021 (SSI 2021/262).....	4
Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 32) Regulations 2021 (SSI 2021/263).....	4
Health Protection (Coronavirus) (International Travel etc) (Miscellaneous Amendments) (Scotland) (No 5) Regulations 2021 (SSI 2021/264).....	4
Health Protection (Coronavirus) (International Travel etc) (Miscellaneous Amendments) (Scotland) (No 6) Regulations 2021 (SSI 2021/265).....	5
Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 15) Regulations 2021 (SSI 2021/275)	5
Health Protection (Coronavirus) (International Travel etc) (Miscellaneous Amendments) (Scotland) (No 7) Regulations 2021 (SSI 2021/278).....	5
INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE	6
Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment (No 2) Order 2021 [Draft].....	6
Conference of the Parties to the United Nations Framework Convention on Climate Change (Immunities and Privileges) (Scotland) Order 2021 [Draft]	6
European Union and European Atomic Energy Community (Immunities and Privileges) (Scotland) Order 2021 [Draft]	6
National Bus Travel Concession Scheme for Young Persons (Scotland) Amendment Order 2021 [Draft].....	6
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE	7
Age of Criminal Responsibility (Scotland) Act 2019 (Register of Child Interview Rights Practitioners) Regulations 2021 (SSI 2021/233)	7
National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Amendment Regulations 2021 (SSI 2021/241).....	8
Council Tax Reduction (Scotland) Regulations 2021 (SSI 2021/249)	9
Milk and Healthy Snack Scheme (Scotland) Amendment (No 2) Regulations 2021 (SSI 2021/274)	9
Registration of Independent Schools (Scotland) Amendment Regulations 2021 (SSI 2021/251).....	10
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE.....	11
Planning (Scotland) Act 2019 (Commencement No 7) Regulations 2021 (SSI 2021/244 (C 15)).....	11
Coronavirus Act 2020 (Suspension: Disposal of Bodies) (Scotland) Regulations 2021 (SSI 2021/250)...	11

DELEGATED POWERS AND LAW REFORM COMMITTEE

2nd Meeting 2021, 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

The Adam Smith Room (CR5)

Scottish Parliament
Delegated Powers and Law
Reform Committee

Tuesday 31 August 2021

[The Convener opened the meeting at 10:09]

Decision on Taking Business in
Private

The Convener (Stuart McMillan): Good morning and welcome to the second meeting in session 6 of the Delegated Powers and Law Reform Committee. I hope that all members were able to get a break over the summer. Before we move to the first item on the agenda, I remind everyone present to switch mobile phones to silent mode.

Agenda item 1 is a decision on whether to take item 6 in private. Is the committee content to do that?

Members *indicated agreement.*

Instruments subject to Made
Affirmative Procedure

Health Protection (Coronavirus)
(Requirements) (Scotland) Regulations
2021 (SSI 2021/277)

10:10

The Convener: We come to agenda item 2. An issue has been raised concerning SSI 2021/277, which revokes the Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Regulations 2020 (SSI 2020/344) but retains some requirements that are still considered necessary by the Scottish Government and provides that those are applied uniformly across Scotland.

The instrument requires that, subject to some exemptions, face coverings should still be worn in most indoor spaces. The guidance accompanying the instrument states that face coverings are not required to be worn while dancing in a nightclub or dance hall. However, a specific exemption for dancing is not listed in the instrument. In correspondence, the Scottish Government said:

“It is considered that dancing is a form of exercise which reasonably requires that the person is not wearing a face covering”,

which is an exemption provided for by regulation 5(1)(r).

Does the committee wish to bring the instrument to the attention of the Parliament on reporting ground (h), which is that its meaning or form could be clearer?

Members *indicated agreement.*

The Convener: Also, although the instrument revokes SSI 2020/344, it fails to revoke all the instruments that amended SSI 2020/344. The Scottish Government was grateful that that oversight was brought to its attention and confirmed by correspondence that the relevant amending instruments

“will be revoked at the earliest convenient opportunity.”

Does the committee wish to bring the instrument to the attention of the Parliament on the general reporting ground, and at the same time welcome the Scottish Government’s commitment to revoke the relevant amending instruments at the next legislative opportunity?

Members *indicated agreement.*

The Convener: Does anyone have any questions on the instrument?

Graham Simpson (Central Scotland) (Con): I agree with everything that the convener has said,

but the instrument highlights a problem concerning the need to be clear in law about what is meant. If it was the Scottish Government's intention that people in nightclubs who are dancing are not required to wear face masks, why did it not just say that? The word "dancing" appears nowhere. That is probably because it is very difficult, if not impossible, to define dancing in law.

We saw an example of someone dancing in a nightclub in Aberdeen over the weekend. Some people may call that dancing, but some will not. One man's backward walk is another man's dancing. It is very difficult to say what we mean. The Scottish Government said that dancing can be

"taking part in exercise of a type that reasonably requires that the person is not wearing a face covering."

However, while dancing can be exercise, it does not have to be. It is a recreational activity that is not necessarily strenuous. That makes it difficult, if we want to be clear in law, which we do.

It is worth highlighting to the lead committee that there are issues with the instrument. My guess is that the reality in nightclubs—not that I have been to one for many years—is that people take off their face masks as soon as they get inside, whether or not they are dancing. The lead committee should look at the matter, accepting that as a reality. The instrument falls down in terms of clarity of the law and we should highlight that.

Craig Hoy (South Scotland) (Con): Following up on Graham Simpson's point on the definition of dancing, I wonder about the use of regulation 5(1)(r), as it raises a question about the context. The provision governs nightclubs but, hypothetically, if I were to dance my way round a supermarket—or go very fast round the supermarket, as in the TV programme "Supermarket Sweep"—would that be a form of exercise that would allow me not to wear a mask?

Mr Simpson raised questions in relation to the definition of dancing, but I also wonder whether the way in which the provision is framed opens up an issue to which we should be alerting the lead committee regarding the context and the premises in which the activity takes place.

Paul Sweeney (Glasgow) (Lab): There may be opportunities to investigate how the regulations interact with licensing law and the definitions there. Perhaps the committee could express that point to the Government. We could also note the extent to which the explanatory notes cover practical scenarios where the consideration could arise. Perhaps there could be a better definition in the explanatory notes, too.

Bill Kidd (Glasgow Anniesland) (SNP): I have nothing in particular to say, except that we need to refer the regulations to the lead committee to

ensure that we are not dealing with people dancing on the head of a pin. We have to put down what dancing is, and that is the end of it.

The Convener: The suggestion is to write to the lead committee, and I think we should do that in relation to the points raised by Graham Simpson and Craig Hoy. I think it would also be worth writing to the lead committee on the points raised by Paul Sweeney regarding licensing, so that the lead committee can take that up. There could be policy matters that are important for licensing legislation. Are you content with that, Paul?

Paul Sweeney: Yes.

The Convener: No points have been raised on the remaining instruments under this agenda item.

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 29) Regulations 2021 (SSI 2021/252)

Health Protection (Coronavirus) (International Travel etc) (Miscellaneous Amendments) (Scotland) (No 3) Regulations 2021 (SSI 2021/254)

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 30) Regulations 2021 (SSI 2021/255)

Health Protection (Coronavirus) (International Travel) (Scotland) Amendment (No 14) Regulations 2021 (SSI 2021/256)

Health Protection (Coronavirus) (International Travel etc) (Miscellaneous Amendments) (Scotland) (No 4) Regulations 2021 (SSI 2021/261)

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 31) Regulations 2021 (SSI 2021/262)

Health Protection (Coronavirus) (Restrictions and Requirements) (Local Levels) (Scotland) Amendment (No 32) Regulations 2021 (SSI 2021/263)

Health Protection (Coronavirus) (International Travel etc) (Miscellaneous Amendments) (Scotland) (No 5) Regulations 2021 (SSI 2021/264)

**Health Protection (Coronavirus)
(International Travel etc) (Miscellaneous
Amendments) (Scotland) (No 6)
Regulations 2021 (SSI 2021/265)**

**Health Protection (Coronavirus)
(International Travel) (Scotland)
Amendment (No 15) Regulations 2021
(SSI 2021/275)**

**Health Protection (Coronavirus)
(International Travel etc) (Miscellaneous
Amendments) (Scotland) (No 7)
Regulations 2021 (SSI 2021/278)**

The Convener: In relation to SSI 2021/275, the committee may wish to welcome the fact that, shortly after the regulations came into force during the parliamentary recess, the Scottish Government corrected a referencing error in regulation 3 by amendment in SSI 2021/278.

Is the committee content with the instruments?

Members *indicated agreement.*

**Instruments subject to
Affirmative Procedure**

10:17

The Convener: We come to agenda item 3. No points have been raised on the following orders.

**Provision of Early Learning and Childcare
(Specified Children) (Scotland)
Amendment (No 2) Order 2021 [Draft]**

**Conference of the Parties to the United
Nations Framework Convention on
Climate Change (Immunities and
Privileges) (Scotland) Order 2021 [Draft]**

**European Union and European Atomic
Energy Community (Immunities and
Privileges) (Scotland) Order 2021 [Draft]**

**National Bus Travel Concession Scheme
for Young Persons (Scotland) Amendment
Order 2021 [Draft]**

The Convener: Is the committee content with the draft orders?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:18

The Convener: We come to agenda item 4. Issues have been raised on four of the instruments under consideration.

Age of Criminal Responsibility (Scotland) Act 2019 (Register of Child Interview Rights Practitioners) Regulations 2021 (SSI 2021/233)

The Convener: The regulations make provision for the establishment and maintenance of a register of child interview rights practitioners to provide children with advice, support and assistance in relation to their involvement in investigative interviews. Regulation 3(6)(a) provides that

“A person who is included in the register must comply with ... the Code of Practice”

for child interview rights practitioners that has been published by the Scottish Government. However, regulation 3(7), when compared against the mandatory requirements contained in paragraph 17 of the code of practice, appears to provide differing notification timescales and requirements for child interview rights practitioners—yet both must be complied with.

In light of that, does the committee wish to bring the instrument to the attention of the Parliament on reporting ground (h), on the basis that its meaning or form could be clearer, while also calling on the Scottish Government to clarify that issue as soon as possible?

Members indicated agreement.

The Convener: There also appears to be an unusual or unexpected use of the enabling powers that are conferred by the parent statute. It would be more usual and expected for the Parliament to be given the opportunity to scrutinise the code of practice where there is a requirement in law to comply with it.

Does the committee wish to bring the regulations to the Parliament’s attention on reporting ground (g), on the basis that they have been made by the Scottish ministers with what appears to be an unusual and unexpected use of the enabling power?

Members indicated agreement.

National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Amendment Regulations 2021 (SSI 2021/241)

The Convener: The second negative instrument on which an issue has been raised is SSI 2021/241. The amendment regulations amend the original regulations and provide for free dental treatment for all young people aged between 18 and 25. They were laid on 15 June 2021 and came into force on 24 August. As the Parliament was in recess from 26 June until 29 August, during which time the clock stopped, the regulations were laid less than 28 days before they came into force. They are therefore in breach of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, which requires that negative instruments are laid at least 28 days before they come into force, not counting recess periods of more than four days.

Do members have any comments?

Graham Simpson: The reason for the 28-day rule is to allow parliamentary scrutiny. There will be occasions when the Government will breach the rule for very good reasons—for example, there can be emergency legislation—and we will often accept that. However, I do not believe that the regulations fall into that category. There was simply no good reason, in my view, for the Government to breach the rule in this case, and we should push back strongly on it. The explanation, to be frank, does not wash. A change of minister is not a reason to breach the 28-day rule, in my submission.

The Convener: On the point about the change of minister, it is clear that the officials would remain the same, unless there was also a change there. You raise a valid point, Graham.

Does the committee wish to draw the regulations to the Parliament’s attention on reporting ground (j), as they were laid less than 28 days before they came into force?

Members indicated agreement.

The Convener: Although the committee’s expectation is that the Scottish Government should adhere to the 28-day rule in order to facilitate proper parliamentary scrutiny, does it nevertheless wish to note that it is satisfied with the explanation that has been provided for the failure to comply with the laying requirements, given the particular circumstances in this instance, notwithstanding the point that Graham Simpson raised a moment ago?

Members indicated agreement.

The Convener: We will have the minister in front of the committee in a couple of weeks’ time,

so we will be able to raise the point directly with him then.

Council Tax Reduction (Scotland) Regulations 2021 (SSI 2021/249)

The Convener: Before we turn to the two drafting errors that have been raised regarding SSI 2021/249, I highlight that the regulations will consolidate the Council Tax Reduction (Scotland) Regulations 2012 (SSI 2012/303). For a number of years, the session 5 committee called on the Scottish Government to consolidate SSI 2012/303 and also the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319). This is a positive start to the new session. Does the committee wish to welcome the consolidation of the Council Tax Reduction (Scotland) Regulations 2012, as called for by the previous committee?

Members indicated agreement.

The Convener: The Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012 (SSI 2012/319) are, however, yet to be consolidated. Does the committee wish to write to the Scottish Government asking whether and when those regulations will be consolidated?

Members indicated agreement.

The Convener: Turning to the two drafting errors in SSI 2021/249, I note that there are incorrect references in regulations 20(3)(h) and 77(1). The full detail of those errors is in the published paper that lists all the correspondence with the Scottish Government. Does the committee wish to draw the regulations to the Parliament's attention on the general reporting ground, in respect of those drafting errors?

Members indicated agreement.

The Convener: Does the committee wish to welcome that the Scottish Government intends to introduce an amending SSI to correct those errors before the regulations come into force on 1 April 2022?

Members indicated agreement.

Milk and Healthy Snack Scheme (Scotland) Amendment (No 2) Regulations 2021 (SSI 2021/274)

The Convener: An issue has been raised on SSI 2021/274, which makes a number of amendments to the Milk and Healthy Snack Scheme (Scotland) Regulations 2021 (SSI 2021/82). The amendment regulations were laid on 28 July 2021 and came into force on the following day, so they are clearly in breach of the 28-day rule.

A letter from the Scottish Government to the Presiding Officer explains that there was a need to bring the regulations into force with immediate effect in order to enable local authorities to make payments for the launch of the Scottish milk and healthy snack scheme on 1 August 2021. This is the second amending instrument that we are considering that has breached the 28-day rule. The instrument makes provision for the basis for the calculation of payments under the scheme, which is an important aspect of its operation.

Does the committee wish to draw the instrument to the Parliament's attention on reporting ground (j), as it was laid less than 28 days before it came into force?

Members indicated agreement.

The Convener: Although the committee might recognise the necessity for breach of the 28-day rule in this instance, does it wish to add in its report that it considers the circumstances of the breach to be unsatisfactory and to emphasise that the Scottish Government should normally comply with the laying requirements in order to facilitate timely parliamentary scrutiny of such important policy choices?

Members indicated agreement.

Registration of Independent Schools (Scotland) Amendment Regulations 2021 (SSI 2021/251)

The Convener: No points have been raised on SSI 2021/251. Is the committee content with the regulations?

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

10:27

Meeting continued in private until 10:43.

10:27

The Convener: Agenda item 5 is consideration of two instruments that are not subject to parliamentary procedure and on which no points have been raised.

Planning (Scotland) Act 2019 (Commencement No 7) Regulations 2021 (SSI 2021/244 (C 15))

Coronavirus Act 2020 (Suspension: Disposal of Bodies) (Scotland) Regulations 2021 (SSI 2021/250)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

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.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba