



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

**Tuesday 21 December 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](http://www.parliament.scot) or by contacting Public Information on 0131 348 5000

---

**Tuesday 21 December 2021**

**CONTENTS**

	<b>Col.</b>
<b>INSTRUMENT SUBJECT TO MADE AFFIRMATIVE PROCEDURE</b> .....	1
Public Health (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 13) Regulations 2021 (SSI 2021/470) .....	1
<b>INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE</b> .....	3
Scottish Local Government Elections Amendment Order 2022 [Draft] .....	3
Climate Change (Nitrogen Balance Sheet) (Scotland) Regulations 2022 [Draft] .....	3
Maximum Number of Judges (Scotland) Order 2022 [Draft] .....	3
<b>INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE</b> .....	4
Red Rocks and Longay Urgent Marine Conservation (No 2) Order 2021 (SSI 2021/463) .....	4
Abortion (Scotland) Amendment Regulations 2021 (SSI 2021/457) .....	5
Civil Partnership (Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations) (Scotland) Amendment Regulations 2021 (SSI 2021/461) .....	5
Education (Miscellaneous Amendments) (Coronavirus) (Scotland) (No 2) Regulations 2021 (SSI 2021/462) .....	5
Conservation of Salmon (Scotland) Amendment Regulations 2021 (SSI 2021/466) .....	5
Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2021 (SSI 2021/467) .....	5
Social Security (Period for Re-determination Requests) (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/469) .....	5
<b>INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE</b> .....	6
Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules 1999 and Sheriff Appeal Court Rules Amendment) (Age of Criminal Responsibility (Scotland) Act 2019) 2021 (SSI 2021/452) .....	6
Animal Health (Notification and Control Measures) (Miscellaneous Amendments) (Scotland) (No 2) Order 2021 (SSI 2021/456) .....	7

---

**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**15<sup>th</sup> 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**

Virtual Meeting



# Scottish Parliament

## Delegated Powers and Law Reform Committee

Tuesday 21 December 2021

*[The Convener opened the meeting at 10:00]*

### Instrument subject to Made Affirmative Procedure

**The Convener (Stuart McMillan):** Welcome to the Delegated Powers and Law Reform Committee's 15th meeting in session 6, which is taking place fully online. As we are meeting online, it will be more challenging for members to indicate agreement to the items that are discussed. I therefore ask members to raise your hand if you are not content with a question that is put or if you wish to speak about an instrument.

The first item of business is consideration of an instrument subject to the made affirmative procedure, on which an issue has been raised.

#### **Public Health (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No 13) Regulations 2021 (SSI 2021/470)**

**The Convener:** The instrument is one of a series of instruments that amend the Health Protection (Coronavirus) (International Travel and Operator Liability) Regulations 2021. Usual drafting practice requires that each amending instrument in a series should reflect the title of the principal regulations that it amends and should include a number indicating the number of Scottish statutory instruments amending the principal instrument in that year. However, when referring to the principal regulations, the title of this instrument refers to "Public Health" rather than "Health Protection". The Scottish Government has confirmed that that was an error.

The next correctly designated instrument amending the consolidated international travel regulations is also numbered 13. The number in the title of further amending instruments will therefore not accurately reflect the number of instruments that have amended the international travel regulations in 2021. The Scottish Government confirmed that it does not propose to amend the citation provision in regulation 1 of the instrument, because that could cause further confusion. Instead, it will draw users' attention to the instrument in footnotes in subsequent instruments, where appropriate.

Does the committee agree to report the instrument on the general reporting ground, in respect of a failure to follow proper drafting practice in the title of the instrument?

Mr Simpson wishes to comment.

**Graham Simpson (Central Scotland) (Con):** I agree with the recommendation. However, it has to be said that this is very sloppy drafting practice and should not be happening. We need to get the title right. It is all very well for the Scottish Government to say that it will put something in footnotes, but that means that ordinary members of the public will, frankly, find the regulations very difficult to follow. People should not need legal training to follow regulations, which are coming fast and furious at the moment. Perhaps that is why we are seeing more and more mistakes—it is because legislation is being drawn up at pace.

I am concerned about the checks and balances that have—or have not—been put in place. We just should not see such mistakes. It is probably worth sending a letter to the Scottish Government from the committee to highlight that we are not satisfied that such errors are being made.

**The Convener:** Thank you, Mr Simpson. I echo those comments, particularly regarding clarity for members of the public. Anyone who is a lawyer will be able to navigate their way around the situation, but I suggest that, in order to give clarity for members of the public in what is a fast-moving situation—we have seen a number of regulations in the area—the Scottish Government needs to improve. This is not a common occurrence by any manner of means. This is the first time that it has happened, as we will all acknowledge. However, I agree that we should write to the minister to highlight our concerns.

Does the committee also wish to note that the Scottish Government undertakes to clarify the anomaly in the instrument's title in footnotes to subsequent amending instruments?

Other than the comments that have been made, no member has indicated that they are not content or that they wish to speak, so we are agreed on both points.

## Instruments subject to Affirmative Procedure

10:05

**The Convener:** Under agenda item 2, we are considering instruments subject to the affirmative procedure. No points have been raised on the following draft instruments.

### Scottish Local Government Elections Amendment Order 2022 [Draft]

### Climate Change (Nitrogen Balance Sheet) (Scotland) Regulations 2022 [Draft]

### Maximum Number of Judges (Scotland) Order 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

10:06

**The Convener:** Under agenda item 3, we are considering instruments subject to the negative procedure. An issue has been raised on the following instrument.

### Red Rocks and Longay Urgent Marine Conservation (No 2) Order 2021 (SSI 2021/463)

**The Convener:** The instrument revokes and replaces the Red Rocks and Longay Urgent Marine Conservation Order 2021 (SSI 2021/131), due to the extension of the boundary of the designated Red Rocks and Longay area of the inner sound of Skye marine protected area. The instrument is to be brought into force urgently to further the stated conservation objectives for the marine protected area to protect flapper skate and their eggs.

The instrument was made and laid before the Parliament on 9 December 2021 and came into force on 16 December 2021. Accordingly, it does not respect the requirement in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 that at least 28 days should elapse between the laying of an instrument that is subject to the negative procedure and the coming into force of that instrument.

In its letter to the Presiding Officer explaining the reason why the 28-day rule has not been complied with, the Scottish Government outlined that, following advice from NatureScot, the extended marine protected area has been redesignated urgently and section 28(2) has been breached to remove the risk of further impacts on the flapper skate nursery area as soon as possible.

Does the committee agree to report the instrument on reporting ground (j), on the basis that there has been a failure to lay the instrument in accordance with laying requirements under the Interpretation and Legislative Reform (Scotland) Act 2010? Also, is the committee content with the Scottish Government's explanation provided for the failure 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 points have been raised on the following instruments.

**Abortion (Scotland) Amendment Regulations 2021 (SSI 2021/457)**

**Civil Partnership (Supplementary Provisions relating to the Recognition of Overseas Dissolutions, Annulments or Separations) (Scotland) Amendment Regulations 2021 (SSI 2021/461)**

**Education (Miscellaneous Amendments) (Coronavirus) (Scotland) (No 2) Regulations 2021 (SSI 2021/462)**

**Conservation of Salmon (Scotland) Amendment Regulations 2021 (SSI 2021/466)**

**Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2021 (SSI 2021/467)**

**Social Security (Period for Re-determination Requests) (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/469)**

**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 not subject to Parliamentary Procedure**

10:08

**The Convener:** Finally, under agenda item 4, we are considering instruments not subject to parliamentary procedure. An issue has been raised on the following instrument.

**Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules 1999 and Sheriff Appeal Court Rules Amendment) (Age of Criminal Responsibility (Scotland) Act 2019) 2021 (SSI 2021/452)**

**The Convener:** The instrument amends the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc Rules) 1999 and the Act of Sederunt (Sheriff Appeal Court Rules) 2015. Paragraphs 3(2) and 3(3) insert new rules into the sheriff appeal court rules referring to an appeal under section 38(3), 44(3) and 67(3) of the Age of Criminal Responsibility (Scotland) Act 2019.

The committee identified an error due to an inconsistency in the cross-referencing in paragraphs 3(2) and 3(3) of the instrument. In correspondence, the Lord President's private office explained that the reference to section 44(3) of the 2019 act should instead be to section 46(3) of that act, and it has committed to rectifying the error at the earliest appropriate opportunity.

Does the committee agree to draw the instrument to the attention of the Parliament on the general reporting ground in respect of the incorrect cross-reference? Also, does the committee welcome that the Lord President's private office has committed to rectifying the error at the earliest appropriate opportunity?

I have one other point that I would like to highlight. In the information that we have received, the Lord President's office has suggested that it is acting urgently in relation to the instrument that the Scottish Government brought in to change the age of criminal responsibility. Bearing in mind that the act was passed in 2019, clearly, there will have been communications between the Scottish Government and the Lord President's private office in the period since then. I suggest that the committee writes to the Scottish Government and the Lord President's private office to seek clarity on the communications that took place before the introduction of the instrument that the Scottish Government brought forward and on the situation that we have today. Is the committee agreed?

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

*Meeting closed at 10:13.*

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

**Animal Health (Notification and Control Measures) (Miscellaneous Amendments) (Scotland) (No 2) Order 2021 (SSI 2021/456)**

**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.

The committee's next meeting will take place on Tuesday 11 January 2022. It will include an evidence session with the Deputy First Minister and Cabinet Secretary for Covid Recovery, John Swinney MSP, as part of the committee's inquiry into the use of the made affirmative procedure during the pandemic.

Before I close the meeting, I would like to wish all colleagues on the committee, all our committee staff and anyone who is watching a very merry Christmas and a happy new year. I hope that you all stay safe over the festive period. I look forward to working with colleagues again in 2022. It has certainly been a pleasure working with you since I became the convener after the election this year. Thank you for all of our work together.



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](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://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](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba