



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 26 April 2022

Session 6



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DELEGATED POWERS AND LAW REFORM COMMITTEE

13th 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

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 26 April 2022

[The Convener opened the meeting at 10:03]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the Delegated Powers and Law Reform Committee's 13th meeting in 2022. Before we move to the first item on the agenda, I remind everyone present to switch their mobile phones to silent.

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.*

Instrument subject to Affirmative Procedure

10:03

The Convener: Under agenda item 2, we are considering an instrument subject to the affirmative procedure, on which no points have been raised.

Animal Health and Welfare (Scotland) Act 2006 (Consequential Provisions) Order 2022 [Draft]

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:04

The Convener: Under agenda item 3, we are considering five instruments subject to the negative procedure. Issues have been raised on three of the instruments.

Rural Support (Controls) (Coronavirus) (Scotland) Regulations 2022 (SSI 2022/107)

The Convener: The instrument is made in an area formerly governed by European Union law. The purpose of the instrument is to remove certain provisions of the common agricultural policy in retained EU law that are considered no longer appropriate or workable for Scotland, and to make changes to the inspection requirements for rural support schemes, including in light of the impacts of the coronavirus pandemic.

In correspondence with the Scottish Government, the committee identified difficulties that arise from there being parallel texts, or parallel versions, of some of the legislation that is being amended. The situation has arisen because the legislation that is being amended was brought over from EU law into domestic law early, on 31 January 2020, as it applies to direct payment support, and the same legislation was then brought over later, on 31 December 2020, as it applies to agricultural support.

Between those two dates, the legislation was amended as it applies to direct payments, which has resulted in some of the provisions saying different things in relation to direct payments and to agricultural support respectively. In particular, the committee identified that it could be clearer what the effect is of the substitution that is made by regulation 3(2) on the version of article 24(4) of Commission Implementing Regulation (EU) No 809/2014 as it applies to direct payment support, and the version as it applies to agricultural support. The Scottish Government acknowledged in its response, which can be read online in paper 2, that the background to the legislation that is currently being amended creates an extremely complex position for the user of the legislation.

In its correspondence with the Scottish Government, the committee also asked whether the title of the Commission implementing regulation that is being amended is missing in regulation 3(1), which gives the number but not the name. The Scottish Government agreed that the full title is missing and proposes to include a provision in a future Scottish statutory instrument to insert the missing part of the title.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (h), in that the meaning could be clearer, in so far as the effect of the substitution made by regulation 3(2) could be clearer?

Members indicated agreement.

The Convener: Does the committee wish to write to the Scottish Government to invite it to consider legislating to make it easier for the user to understand the provisions of Commission Implementing Regulation (EU) No 809/2014, which apply differently in relation to direct payment support and to agricultural support?

Members indicated agreement.

The Convener: At the same time, does the committee wish to note the Scottish Government's proposal to include a provision in a future SSI to insert the missing part of the title of Commission Implementing Regulation (EU) No 809/2014 into regulation 3(1)?

Members indicated agreement.

National Health Service Superannuation and Pension Schemes (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/117)

The Convener: The instrument makes temporary modifications, until 31 October, to existing regulations to ensure that healthcare professionals who have recently retired can return to work, and that those who have already returned can increase their hours without there being a negative impact on their pension entitlements. The instrument also amends existing pensions regulations to insert new tables reflecting revised employee contribution rates from 1 April 2022.

In correspondence with the Scottish Government, the committee highlighted that regulation 1(3) provides that regulations 2 to 5 come into force immediately after the expiry of section 46 of the Coronavirus Act 2020. Section 46 expired at the end of 24 March 2022, which is before the instrument was made at 10.13 am the following day.

In response, the Scottish Government explained that it was intended that regulations 2 to 5 would have retrospective effect, and it was regrettable that the provision could be read instead as coming into force at the relevant date. In line with proper drafting practice, the instrument should have been made and then come into force, with separate provision made regarding retrospective effect.

Does the committee wish to draw the instrument to the Parliament's attention on the general reporting ground, for a failure to follow proper drafting practice, as provision should have been

made for regulations 2 to 5 to have retrospective effect rather than coming into force prior to the instrument being made?

Members indicated agreement.

The Convener: Also in relation to this instrument, there has been a failure to comply with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, which requires that instruments subject to the negative procedure are laid at least 28 days before they come into force, not counting recess periods of more than four days. The instrument was laid on 25 March 2022 and came into force on 1 April 2022, except for regulations 2 to 5, as I have mentioned.

In correspondence with the Presiding Officer, the Scottish Government explained that it had consulted on regulations reforming the member contribution structure, which were due to come into force on 1 April 2022. The Government highlighted that Her Majesty's Treasury was involved in the consultation process on the instrument. However, towards the end of the consultation process, HM Treasury changed its position and, on 18 February 2022, advised the Scottish Government that certain reforms that had been proposed should be delayed until 1 October 2022, because of the impact that they were set to have on lower and middle-earning NHS staff in the current economic climate. Alternative provision was required to extend the current member contribution rates in lieu of the member contribution reform that has been postponed by HM Treasury.

Does the committee also wish to draw the instrument to the attention of the Parliament on reporting ground (j), for failure to comply with laying requirements?

Members indicated agreement.

Non-Commercial Movement of Pet Animals (Scotland) Amendment Regulations 2022 (SSI 2022/131)

The Convener: The instrument temporarily permits the use of an alternative and quicker rabies antibody titration test. The instrument was made on 8 April 2022 and came into force the following day. It therefore breaches the 28-day rule in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

In correspondence with the Presiding Officer, the Scottish Government explained that a breach of the laying requirements was necessary, as urgent action was needed to relieve the current pressures on quarantine facilities as a result of the high volume of pets entering the United Kingdom from Ukraine.

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?

Members indicated agreement.

The Convener: At the same time, is the committee content with the explanation that the Scottish Government has provided for the breach of the laying requirements?

Members indicated agreement.

The Convener: I believe that Mr Simpson wants to highlight something.

Graham Simpson (Central Scotland) (Con): I am content with all that, but it strikes me that the very fact that the instrument breaches the 28-day rule suggests strongly that it has been rushed through, for the reasons that have been outlined. The instrument involves the use of a new test for rabies, which gives quicker results than the one that has been used traditionally, from which people get the results in two weeks—with the new test, the results come back in two to three days.

I am not sure which committee will be the lead committee but, whichever one it is, it should look at the issue and satisfy itself that the new test is up to the job. I am sure that it is—I have no reason to think otherwise—but the lead committee ought to look at that because, no matter where an animal has come from, we need to ensure that we are safe.

The Convener: That is a fair point, Mr Simpson. We can certainly contact the lead committee with the points that you raise.

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

Traffic Signs Amendment (Scotland) Regulations and General Directions 2022 (SSI 2022/111)

National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2022 (SSI 2022/130)

The Convener: Is the committee content with the instruments?

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

10:14

Meeting continued in private until 10:33.

10:13

The Convener: Under agenda item 4, we are considering two instruments that are not subject to parliamentary procedure and on which no points have been raised.

Health Protection (Coronavirus) (Requirements) (Scotland) Revocation (No 2) Regulations 2022 (SSI 2022/133)

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Appeal Court Rules Amendment) (Miscellaneous) 2022 (SSI 2022/135)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

The Convener: Does the committee wish to welcome the fact that SSI 2022/135 fulfils a commitment that was given by the Lord President's private office to rectify referencing errors in SSI 2021/452 and SSI 2021/468 in respect of the sheriff appeal court rules 2015 and 2021?

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.

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