



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 14 January 2020

Session 5



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Pàrlamaid na h-Alba

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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
INSTRUMENT SUBJECT TO AFFIRMATIVE PROCEDURE	2
Fuel Poverty (Additional Amount in respect of Remote Rural Area, Remote Small Town and Island Area) (Scotland) Regulations 2020 [Draft].....	2
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE.....	3
Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2019 (SSI 2019/419).....	3
Restriction of Liberty Order etc (Scotland) Amendment Regulations 2019 (SSI 2019/423)	3
Plant Health (Import Inspection Fees) (Scotland) Amendment (No 2) Regulations 2019 (SSSI 2019/425)	5
Conservation of Salmon (Scotland) Amendment (No 2) Regulations 2019 (SSI 2019/426)	5
Electricity Works (Environmental Impact Assessment) (Scotland) Amendment Regulations 2019 (SSSI 2019/427)	5
INSTRUMENT NOT SUBJECT TO PARLIAMENTARY PROCEDURE	6
Transport (Scotland) Act 2019 (Commencement No 1) Regulations 2019 (SSI 2019/428 (C 25))	6

DELEGATED POWERS AND LAW REFORM COMMITTEE
2nd Meeting 2020, Session 5

CONVENER

*Graham Simpson (Central Scotland) (Con)

DEPUTY CONVENER

Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Jeremy Balfour (Lothian) (Con)

*Mary Fee (West Scotland) (Lab)

*attended

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 14 January 2020

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Graham Simpson): I welcome everyone to the second meeting in 2020 of the Delegated Powers and Law Reform Committee.

Under agenda item 1, it is proposed that the committee takes items 5, 6, 7 and 8 in private, as they involve consideration of future reports, which will be published once they have been agreed.

Does the committee agree to take those items in private?

Members *indicated agreement.*

Instrument subject to Affirmative Procedure

Fuel Poverty (Additional Amount in respect of Remote Rural Area, Remote Small Town and Island Area) (Scotland) Regulations 2020 [Draft]

10:01

The Convener: Agenda item 2 is consideration of an affirmative instrument, on which no points have been raised. Is the committee content with the instrument?

Members *indicated agreement.*

Instruments subject to Negative Procedure

Sea Fish (Prohibited Methods of Fishing) (Firth of Clyde) Order 2019 (SSI 2019/419)

10:01

The Convener: Agenda item 3 is consideration of five negative instruments, the first of which is Scottish statutory instrument 2019/419. The order prohibits—subject to certain exceptions—all methods of fishing within specified areas of the Firth of Clyde by British fishing boats from 14 February until 30 April, during both 2020 and 2021. That is in order to protect cod in the Firth of Clyde during its spawning period.

The order has been laid under the negative procedure under section 20(5) of the Sea Fish (Conservation) Act 1967. A question arises as to the proper interpretation of that provision. The committee acknowledges the Scottish Government's position that, as modified by section 22A(11)(b) of the 1967 act, section 20(5) should be read as providing that any reference to the annulment of an instrument by resolution of each or either House of Parliament shall be construed as a reference to annulment of the instrument by resolution of the Scottish Parliament.

Although the committee agrees that the negative procedure therefore applies to the order, it notes that that could be more clearly expressed. The Scottish Government has committed to identifying an early opportunity to do that.

Does the committee therefore agree to draw the order to the attention of Parliament on the general reporting ground?

Members indicated agreement.

The Convener: Does the committee wish to welcome the Scottish Government's commitment to identify an early opportunity to expressly clarify the parliamentary procedure that applies in the Scottish Parliament to instruments that are laid under section 20(5) of the 1967 act?

Members indicated agreement.

Restriction of Liberty Order etc (Scotland) Amendment Regulations 2019 (SSI 2019/423)

The Convener: SSI 2019/423 updates the list of specified equipment that can be used for the purposes of electronic monitoring in Scotland. It was laid before Parliament on 17 December 2019 and came into force on 20 December 2019. That does not comply with the requirement 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. The committee is therefore required by standing orders to draw the instrument to the attention of Parliament.

Does the committee agree to draw the instrument to the attention of Parliament on reporting ground (j)?

Members indicated agreement.

The Convener: As members will recall, last week the committee wrote to the Cabinet Secretary for Justice to ask for more details on why the Scottish Government brought the instrument into force only three days after it was laid, which represents a significant breach of the 28-day rule.

Members will have seen Mr Yousaf's response, which gives the committee a better understanding of why the new equipment to monitor individuals who are subject to a restriction of liberty order was required over the Christmas period. I am sure that the committee will wish to welcome the cabinet secretary's commitment to consider how any similar risks might be mitigated in future so that laying requirements can be met and appropriate parliamentary scrutiny maintained.

In saying that, it is still unclear when the Government was made aware of the potential shortage of monitoring equipment. Mr Yousaf said that that became apparent only

"a few weeks before Parliamentary recess".

Although it might still have been necessary to breach the 28-day rule, could more than three days' notice have been provided?

With that in mind, does the committee wish to highlight the cabinet secretary's response to the lead committee while making clear the importance that this committee attaches to parliamentary scrutiny and the Scottish Government's statutory obligations? Although breaching the 28-day rule might at times be unavoidable, it should be done only when no alternatives exist. The explanation that the Government provides to Parliament should clearly state the reason for the breach and provide details of when the Government was made aware of the issue, as well as of what other options were explored.

Is the committee content to report in that way?

Members indicated agreement.

The Convener: No points have been raised on the following three negative instruments.

**Plant Health (Import Inspection Fees)
(Scotland) Amendment (No 2) Regulations
2019 (SSI 2019/425)**

**Conservation of Salmon (Scotland)
Amendment (No 2) Regulations 2019
(SSI 2019/426)**

**Electricity Works (Environmental Impact
Assessment) (Scotland) Amendment
Regulations 2019 (SSI 2019/427)**

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

**Instrument not subject to
Parliamentary Procedure**

**Transport (Scotland) Act 2019
(Commencement No 1) Regulations 2019
(SSI 2019/428 (C 25))**

10:07

The Convener: Agenda item 4 is consideration of an instrument that is not subject to any parliamentary procedure and on which no points have been raised. Is the committee content with the instrument?

Members *indicated agreement.*

10:07

Meeting continued in private until 11:00.

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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