



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 30 November 2021

Session 6



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DELEGATED POWERS AND LAW REFORM COMMITTEE

12th 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 30 November 2021

[The Convener opened the meeting at 10:16]

Instrument subject to Affirmative Procedure

The Convener (Stuart McMillan): Good morning, and welcome to the Delegated Powers and Law Reform Committee's 12th meeting in session 6. Before we move to the first item on the agenda, I remind everyone present to switch mobile phones to silent.

The first item of business is consideration of the following instrument, which is subject to the affirmative procedure.

Health Protection (Coronavirus) (Requirements) (Scotland) Amendment (No 4) Regulations 2021 [Draft]

The Convener: The regulations were laid yesterday and amend the Covid certification scheme so that it will be possible to access venues or events that are covered by the scheme by showing either proof of vaccination or exemption from the scheme—as happens now—or a recent negative test result. The Scottish Government considers it necessary to implement the change from next Monday, which is 6 December.

The Government has chosen to use the affirmative procedure rather than the made affirmative procedure on this occasion. However, the timescale does not allow for the normal scrutiny timescale for affirmative instruments. Although the committee has in the past called for the affirmative procedure to be used instead of the made affirmative procedure, that should not be at the cost of proper parliamentary scrutiny. I am minded to agree to the timetable that the Scottish Government has set out on this occasion, but I am clear that that does not set a precedent for future regulations.

Although, in the very limited time available, no points have been raised on the instrument, I reserve the committee's right to look at it again next week, should any issues subsequently be found. We could then write to the Scottish Government to highlight anything that may emerge as a consequence.

Do colleagues have any comments on the instrument?

Graham Simpson (Central Scotland) (Con): Obviously, it is good that the instrument is being dealt with under the affirmative procedure, as that allows the Parliament some time—although not much, it has to be said—to scrutinise it. We probably need more time, but something is better than nothing, which is the alternative that we could have been faced with.

As you said, convener, the instrument adds an alternative to the existing vaccination passport regulations, which we all know about and which we have debated in this committee and in other committees. The instrument adds an alternative for people who want to get into certain events, which is that they would have to take

“a lateral flow test, the results of which have been submitted through the NHS public reporting system.”

Most people who take such tests will do so with a kit at home. My problem with the instrument is that, if it is to meet the policy intent, as set out in the draft policy note, of reducing

“the risk of transmission of coronavirus”,

it relies entirely on people being honest about that. If people are absolutely desperate to get into events such as football matches or concerts, all that they need to do is open their kit and report that they have a negative test result, whether or not they have such a result, or have actually done the test. It is really easy for people just to say that they have done a test and had a negative result and then, 24 hours later, to go to an event. The system relies completely on people being honest. To be fair, the First Minister has admitted that.

I am not convinced that the instrument meets the policy intent as stated in the note. However, there is no basis on which the committee could report the instrument. I do not think that it is badly drafted; I just do not think that it will achieve what it sets out to achieve.

Craig Hoy (South Scotland) (Con): I echo what Mr Simpson has said. I welcome the use of the affirmative procedure, albeit that it is expedited—some scrutiny is better than no scrutiny at all.

It is worth saying for the record that, even though the instrument is sound, it will give effect to a policy that does not in my view meet the principal policy objective, which is

“to reduce the risk of transmission of coronavirus by ensuring”

—that is the word that it uses—

“that specified indoor public spaces where transmission risks are higher are used only by those who are vaccinated or can prove a record of a negative test.”

I stress the word “only”. We know that the vaccination passport scheme is flawed in that it does not prove that a person who presents the passport is the person who has been double vaccinated. Now, simultaneously, the scheme will not necessarily prove that a person has recorded a negative test.

The underlying problem with the scheme to which the instrument gives further effect is that it relies on good will and honesty rather than science or proof. I do not think that the instrument is defective on reporting ground (i), which is why we are not calling for it to be reported. However, the policy to which it gives effect and the scheme that is being applied are defective. I would very much welcome our drawing that to the attention of the lead committee and hearing what it has to say on that before we consider the instrument again next week.

Paul Sweeney (Glasgow) (Lab): The established protocols to have proof of double vaccination are to be combined with an option to show proof of a negative test. That has been demonstrated to be a reasonable procedure in practice, as most countries across Europe are operating similar protocols. However, I understand that there is potential for deception in the process. It is perhaps for the lead committee to consider how the aims of the legislation can be better achieved through the procedure. There might be opportunities to improve it, such as by introducing liability for those who are found, in the course of random inspection, to have cheated the system. That might introduce a greater incentive to comply with the requirement for honesty from the community as a whole in order to protect one another.

Bill Kidd (Glasgow Anniesland) (SNP): I actually agree with what has been said. I understand that, if you are to introduce legislation, particularly if members of the public are going to comply with it on a daily basis, you have to try to make it straightforward and avoid the possibility of the rules being broken. It is important that we raise the issue with the COVID-19 Recovery Committee and ask it to consider the matter. After it has done so and we have heard what it has said, we can consider the instrument again next week.

The Convener: Thank you, colleagues.

There are a couple of points. First, on the drafting of the instrument, as has been discussed, it is not considered to be technically deficient—that is the advice that we have received from our legal team. Taking that into account, is the committee content with the instrument?

Members indicated agreement.

The Convener: On the other issues that colleagues have raised, it would be sensible to

write to the COVID-19 Recovery Committee to raise those points. As I said, we reserve the right to bring the instrument back to the committee next week if that is required. Is the committee content with that approach?

Members indicated agreement.

Instruments subject to Negative Procedure

10:25

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

Age of Criminal Responsibility (Scotland) Act 2019 (Supplementary Provision) (Jurisdiction) Regulations 2021 (SSI 2021/420)

Age of Criminal Responsibility (Scotland) Act 2019 (Places of Safety) Regulations 2021 (SSI 2021/421)

Public Procurement (Agreement on Government Procurement) (Thresholds etc) (Amendment) (Scotland) Regulations 2021 (SSI 2021/424)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

The Convener: Also, does the committee wish to welcome the fact that SSI 2021/424 rectifies errors in the Public Procurement (Agreement on Government Procurement) (Thresholds etc) (Amendment) (Scotland) Regulations 2021 that were highlighted by the committee at its meeting on 16 November?

Members *indicated agreement.*

Instrument not subject to Parliamentary Procedure

10:26

The Convener: Under the final agenda item, we are considering an instrument that is not subject to parliamentary procedure and on which no points have been raised.

Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (Commencement No 2) Regulations 2021 (SSI 2021/419)

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

The Convener: The committee's next meeting will take place on Tuesday 7 December.

Meeting closed at 10:26.

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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