



The Scottish Parliament  
Pàrlamaid na h-Alba

## DELEGATED POWERS AND LAW REFORM COMMITTEE

### AGENDA

16th Meeting, 2020 (Session 5)

Tuesday 12 May 2020

The Committee will meet at 12.30 pm in the Robert Burns Room (CR1).

1. **Decision on taking business in private:** The Committee will decide whether to take items 4, 5, 6 and 7 in private.
2. **Instruments subject to affirmative procedure:** The Committee will consider the following—

[Scottish Animal Welfare Commission Regulations 2020 \(SSI 2020/draft\);](#)  
[Land Reform \(Scotland\) Act 2016 \(Supplementary Provision\)](#)  
[\(Coronavirus\) Regulations 2020 \(SSI 2020/draft\);](#)  
[Representation of the People \(Scotland\) Amendment Regulations 2020](#)  
[\(SSI 2020/draft\);](#)  
[Scottish Parliament \(Elections etc.\) Amendment Order 2020](#)  
[\(SSI 2020/draft\)](#)

3. **Instruments subject to negative procedure:** The Committee will consider the following—

[Town and Country Planning \(General Permitted Development\)](#)  
[\(Coronavirus\) \(Scotland\) Amendment Order 2020 \(SSI 2020/129\)](#)

4. **Social Security Administration and Tribunal Membership (Scotland) Bill:** The Committee will consider the delegated powers provisions in this Bill at Stage 1.
5. **Private International Law (Implementation of Agreements) Bill (UK Parliament legislation):** The Committee will consider the powers to make subordinate legislation conferred on Scottish Ministers in the Private International Law (Implementation of Agreements) Bill (UK Parliament legislation).
6. **Agriculture Bill (UK Parliament legislation):** The Committee will consider a written response from the Scottish Government.

7. **Coronavirus (Scotland) (No.2) Bill:** The Committee will consider the delegated powers provisions in this Bill at Stage 1.

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### Instrument Responses

#### Town and Country Planning (General Permitted Development) (Coronavirus) (Scotland) Amendment Order 2020 (SSI 2020/129)

On 30 April 2020, the Scottish Government was asked:

The instrument amends the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 and inserts Part 25C in schedule 1 to introduce a new (Class 72C) permitted development. The purpose being to allow local authorities and certain health service bodies to carry out development for the purposes of—

- a) preventing an emergency,
- b) reducing, controlling or mitigating the effects of an emergency, or
- c) taking other action in connection with an emergency.

The Policy Note states that the instrument's purpose is to amend the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 to grant planning permission for certain development carried out by, or on behalf of local authorities or health service bodies for the purposes of preventing, reducing, mitigating or controlling the effects of the current emergency caused by the spread of the COVID 19 virus and its impacts on public health. The definition of "emergency" and an "event or situation threatens serious damage to human welfare" within the instrument appears to extend beyond the scope of matters of public health. On this interpretation, the amendments could provide permitted development for or on behalf of, a local authority or health service body in an emergency that would not necessarily have an connection to the spread of the COVID 19 virus.

- Can the Scottish Government confirm whether it is the policy intent for the scope of Class 72C permitted developments to apply beyond the spread of the COVID 19 virus and its impacts on public health?

The Interpretation of Part 25C provides that an "emergency" can be defined as event or situation which threatens serious damage to human welfare in a place in the United Kingdom. This suggests that an emergency - for the purposes of Class 72C permitted developments - would not necessarily require an event or situation (which threatens serious damage to human welfare) occurring in Scotland, and such an event could take place in another area of the United Kingdom.

- Can the Scottish Government confirm whether it is the policy intent to extend the scope of *emergencies*, and thereby Class 72C developments, to include possible events or situations that may take place outside of Scotland, in another place in the United Kingdom?

**On 5 May 2020, the Scottish Government responded as follows:**

Class 72C is intended to permit the use of land and provision of additional facilities by health bodies and local authorities to facilitate a rapid response to an emergency situation. While the immediate driver for the creation of Class 72C is the current COVID 19 pandemic, it is the Scottish Government's view that the range of developments that would be required in response to health emergencies are not unique to COVID 19. There would be no particular benefit in defining or limiting the provisions of such a permitted development right to a single specific strain of virus.

Class 72C is intended for temporary development and is therefore restricted in its duration and will cease to have effect on or before 31 December 2020 with a further defined period of 6 months from the date the provisions cease during which uses must be ceased and any structures etc removed, with the land or buildings reverting to previous use and condition.

The intention is that the scope of emergencies include consideration of possible events or situations in other places in the United Kingdom. While the current COVID 19 emergency affects the whole of the United Kingdom, it is possible that future possible events or situations may, for example, require or otherwise initiate relocation of large numbers of persons. Should such an event arise, the provisions of Class 72C would facilitate the provision of facilities for the accommodation and treatment of the health needs of such persons. In this respect the provisions are essentially the same as those introduced in administrations in the UK by the Town and Country Planning (General Permitted Development) (Coronavirus) (England) (Amendment) Order 2020 and the Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2020. It also reflect the terms of the existing emergency permitted development rights in respect of development by the Crown contained in the Town and Country Planning (Application of Subordinate Legislation to the Crown) (Scotland) Order 2006.

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Fergus Ewing MSP



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11 May 2020

Dear Bill

Thank you for your letter of 6 May following the Delegated Powers and Law Reform Committee's consideration of the Legislative Consent Memorandum for the UK Agriculture Bill.

As you are aware I am attending the Rural Economy and Connectivity Committee on 13 May to give evidence on the memorandum. I offer the following in response to the points raised by the Committee:-

**Clause 32(1): Amendment of the Natural Environment and Rural Communities Act 2006:**

The powers relate to a Board, the Agriculture and Horticulture Development Board (AHDB) that will operate a system for tracing animals in England that will form part of a UK system that will trace and identify animals. AHDB have been granted funding by Defra to develop these systems and both will require Scottish data to operate.

The amendment that we anticipate will be brought forward at a later stage of the Bill will require approval by Scottish Ministers for an Order assigning functions to AHDB Board made under the NERC Act. When such an Order comes forward the Scottish Government will write to the Scottish Parliament.

**Clause 36: Powers to make provision relating to organic certification, the import and export of organic products, and the enforcement of organics regulation**

The UK Government is the competent authority for the entire UK, with the agreement of the devolved administrations. Having a UK-wide approach to organics is in the best interests of the sector and ensures optimum trading conditions. It is therefore appropriate, with UK-wide

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agreement on organics policy, for UK Ministers to exercise these powers, including on organics matters which are devolved.

But equally, we do not wish to diverge from EU regulations and standards in these areas [and note that for Northern Ireland the Protocol limits the extent to which there can be divergence from EU law]. Should the UK Government opt to diverge from EU regulations when implementing new organics regulation 2018/848, Scottish Ministers may opt to exercise clause 36 powers where the Scottish Government wishes to remain aligned with EU organics regulations. We are keen, with UK-wide agreement and co-operation, to not diverge from a UK-wide approach in the interests of domestic and overseas trade in organic products.


The UK Government and devolved administration policy officials work closely to form a UK-wide policy approach, during which Scottish Ministerial agreement to the policy proposals will be obtained.

#### **Clause 40: Power to secure compliance with the WTO Agreement on Agriculture**

The Scottish Government's position, as set out in the Legislative Consent Memorandum, is that clauses 40 to 42 as currently drafted are unacceptable. There is no guarantee that either the Scottish Ministers or the Scottish Parliament would have any meaningful involvement in contributing to and scrutinising regulations made by the Secretary of State. That is why the Scottish Government has proposed to the UK Government a number of amendments. These would introduce a requirement for the consent of the Scottish Ministers to regulations that extend to Scotland, and remove the unnecessary requirement for the Scottish Ministers to provide information to the Secretary of State.

We will continue to press this with the UK Government and, now that the UK Government has changed its position on the need for consent of the Scottish Parliament, we hope that changes will be made to the clauses. Once the clauses are finalised we will be in a better position to comment on the role of the Scottish Ministers and Scottish Parliament in relation to regulations.

I hope you find this information helpful.



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