



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 21 June 2022

Session 6



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DELEGATED POWERS AND LAW REFORM COMMITTEE

20th Meeting 2022, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

Jeremy Balfour (Lothian) (Con)

*Graham Simpson (Central Scotland) (Con)

*Paul Sweeney (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

George Adam (Minister for Parliamentary Business)

Karen Auchincloss (Scottish Government)

Colin Beattie (Midlothian North and Musselburgh) (SNP) (Committee Substitute)

Gordon Johnstone (Scottish Government)

Stephen Kerr (Central Scotland) (Con) (Committee Substitute)

Rachel Rayner (Scottish Government)

CLERK TO THE COMMITTEE

Andrew Proudfoot

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament
Delegated Powers and Law Reform Committee

Tuesday 21 June 2022

[The Convener opened the meeting at 09:34]

Interests

The Convener (Stuart McMillan): Good morning and welcome to the 20th meeting in 2022 of the Delegated Powers and Law Reform Committee. We have received apologies from Bill Kidd MSP and Jeremy Balfour MSP.

I remind everyone to switch their mobile phones to silent.

Item 1 is declarations of interests. In accordance with section 3 of the "Code of Conduct for Members of the Scottish Parliament", I invite Colin Beattie MSP and Stephen Kerr MSP to declare any interests that are relevant to the remit of the committee.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I have no interests to declare other than those that are declared in my entry in the register of members' interests.

Stephen Kerr (Central Scotland) (Con): I have no relevant interests to declare in relation to the work of the committee.

Decision on Taking Business in Private

09:35

The Convener: Item 2 is a decision on whether to take items 7, 8 and 9 in private. Is the committee content to do that?

Members indicated agreement.

Minister for Parliamentary Business

09:35

The Convener: Under agenda item 3, we are taking evidence from George Adam MSP, the Minister for Parliamentary Business. This is one of our regular sessions with the minister on the Scottish Government's work that is relevant to the committee.

The minister is accompanied by three Scottish Government officials: Karen Auchincloss, head of the Parliament and legislation unit; Gordon Johnstone, Brexit legislation manager in the Parliament and legislation unit; and Rachel Rayner, deputy legislation co-ordinator in the Scottish Government legal directorate. I welcome them all to the meeting.

I remind all attendees not to worry about switching their microphones on and off because that is done for them.

I invite the minister to make some opening remarks.

The Minister for Parliamentary Business (George Adam): Good morning. I thank you, convener, and the committee members for asking me along.

My speaking note says to welcome Jeremy Balfour back to the committee but Mr Kerr is here as a suitable substitute. He and I seem to follow each other around the building regularly. Some more Stephen Kerr-George Adam time is never a bad thing.

On more serious matters, as we all know, the committee plays a hugely important role in scrutinising all legislation. I welcome the close working relationship that we have built since I became Minister for Parliamentary Business and hope that it continues.

I do not have to remind committee members that the first year of this session of the Parliament has been very challenging. It began with the pandemic still being a major focus and ended with the situation in Ukraine. I record my thanks to the committee, its officials and, indeed, the Parliament for the constructive way that they have worked with Government over that extremely busy and challenging time. Despite the challenges, a significant amount of legislation has been introduced: 16 bills, 328 Scottish statutory instruments, 21 legislative consent motions and 32 United Kingdom statutory instruments.

The Government recognises the concern arising from the use of the made affirmative procedure during the pandemic and acknowledges the

committee's inquiry into its use. We have a good record of ministers working with the Parliament to establish administrative processes to enhance scrutiny even when urgent action is required. I am pleased that, further to the committee's recommendations on the made affirmative procedure and enabling powers in the Coronavirus (Recovery and Reform) (Scotland) Bill, the Covid-19 Recovery Committee has endorsed significant amendments to the bill that strengthen parliamentary safeguards. I know that this committee is considering a supplementary delegated powers memorandum on the bill at this meeting.

Since becoming Minister for Parliamentary Business, I have come to appreciate the volume and breadth of information that we share with not only the committee but the Parliament as a whole. For example, every week, we provide a forward look of SSIs that are to be laid in the following two weeks. We also provide weekly updates on UK SIs, monthly updates on LCMs and monthly updates on bills.

It may be that there is still further information that we could helpfully share. Therefore, I have asked my officials to undertake a strategic review of the data and information that we already provide to the Parliament. I want the exchange of information to be as useful and efficient as possible and, of course, my officials will engage with parliamentary officials to progress that.

As always, convener, I look forward to the committee's questions.

The Convener: Thank you, minister. You mentioned the strategic review. Will you provide a timeline for that, please?

George Adam: I cannot give you the timeline off the top of my head but I ask Karen Auchincloss to give you more detail.

Karen Auchincloss (Scottish Government): As Mr Adam said, such a lot of information has flowed between the Government and the Parliament in the past couple of years because of Brexit and the pandemic, for instance, so the minister wants us to take stock, pause and start work with parliamentary officials to ensure that the information that we provide is helpful, that it adds value and that there is no duplication. That work is at an early stage, but we hope to pick it up over the summer recess.

George Adam: The review is intended to ensure that the information that we give you is of value, as I said in my opening statement. There is no point in us giving you data for data's sake; we need to ensure that it will aid your work.

The Convener: Thank you for that. It would be useful if there were some regular dialogue

between your officials and the committee's clerking team.

George Adam: That goes without saying. As I said earlier, they already have a good working relationship, which we want to ensure continues. That is important for both sides, because the committee has a heavy and detailed workload.

The Convener: Indeed. Thank you for that.

You touched on the Coronavirus (Recovery and Reform) (Scotland) Bill, which we will discuss later in the meeting. Does the Scottish Government have any proposals or plans for further Covid-related legislation, either primary or secondary, later in the session?

George Adam: The bill is going through the Parliament and there may be an SSI in September, but it is about as and when we need legislation—if we need it. At this stage, nothing has been written in tablets of stone.

The Convener: The committee has previously called for an impact assessment of those affected by a made affirmative SSI, and ministers' plans to publicise its content and implications, to be included with the explanation of the reasons for the urgency of the SSI. The Scottish Government has since said that it considers that

"current scrutiny frameworks ... are fit for purpose."

Will you provide an update on the steps that the Government will take to ensure that it provides the Parliament with a clear assessment of the impact of any instruments made using the made affirmative procedure?

George Adam: There are a number of ways that we ensure that we do that. We already give reasons for using the made affirmative process. That was also introduced at stage 2 of the Coronavirus (Recovery and Reform) (Scotland) Bill that is going through the Parliament, and we will ensure that that consideration is on-going.

It is the usual process, but because of our relationship with the committee we can make it work, which is important. All in all, I think that we are already doing what you mentioned. We just need to ensure that we retain the relationship and keep working in that way.

The Convener: On the same area, in March, the Government provided a response to the committee's made affirmative inquiry, in which it mentioned that it was still considering a number of items. Will you provide a written update on the various strands of that work over the summer?

George Adam: That is on-going work for the Parliament—it never stops. We will always have to consider better ways of ensuring that we can work with the committee to make things happen. I would say that there is never an end to such work.

However, the short answer is yes—we will write to the committee over the summer period to provide an update on where we are with everything.

Stephen Kerr: At one time, the made affirmative procedure was a rare occurrence in the Parliament. Obviously, during the pandemic, it has been used much more frequently to bring regulations into being. What is the Government's position on the use of that procedure? What is the current thinking on when and how it should be used, if ever?

George Adam: In very simplistic terms, the made affirmative procedure should be used when it is needed—when we need to get emergency legislation through. As you have rightly said, at times over the past two years, it has been used more than it had been used previously, because of the situation that we found ourselves in.

On the whole, our approach is pretty flexible. I do not expect that I will be coming to the committee all the time, having used the made affirmative procedure. As I said to Mr Simpson when he asked a similar question last year, it would not be my number 1 choice in progressing legislation. However, sometimes, needs must and we must go down that route if we are to deliver what we want to deliver. Overall, I am happy to work within our normal procedures, but when I have to use the made affirmative procedure I have to do so.

Stephen Kerr: It is just that when a certain practice becomes common, it can be an easy, go-to way of working. I am looking for an assurance that the Government still regards the made affirmative procedure as a rare way of bringing regulations into being.

George Adam: It is a rare way of bringing in legislation. It would not be my go-to way of doing that.

09:45

The Convener: Mr Kerr, I am sure that you are aware of the inquiry that the committee undertook and the debate that we had in the chamber. Since then, the number of made affirmative instruments that this committee and the Parliament have had to deal with has reduced—which has been useful, I hasten to add.

Graham Simpson (Central Scotland) (Con): You are right, convener: the number of made affirmatives has tailed off. Minister, you know this committee's view: we think that the procedure should be used as a last resort and that you should use the affirmative procedure.

On that note, you will know that there are discussions about developing a protocol for using the affirmative procedure more speedily, so that

the Parliament can consider instruments in a truncated timescale. Where are we with that?

George Adam: Those are on-going discussions between ministers and the parliamentary authorities to try to find the best way to work together. Karen Auchincloss can give us an update.

Karen Auchincloss: We have been sharing a draft of the protocol with the clerks to this committee. We are likely to have a meeting in the next couple of weeks and we aim to finalise the protocol as soon as we can. We do not want to hold it up.

Graham Simpson: The committee has not seen that yet.

George Adam: You will be the first to see it, Mr Simpson.

Graham Simpson: Lovely, thank you.

Karen Auchincloss: It is very much a working draft, on which we are engaging early.

Paul Sweeney (Glasgow) (Lab): I thank the minister and his colleagues for coming along today.

I want to ask about the quality of drafting. The errors that the committee highlights tend to be low in number and fairly minor in nature. However, the committee regularly identifies drafting issues. Minister, what are you doing to ensure that the quality of Scottish statutory instruments remains high?

George Adam: We want to continue our good work to ensure that there are fewer mistakes and problems. You have been a member of this committee for the past year or so, Mr Sweeney, so you will be perfectly aware that sometimes the subject areas are so complex that mistakes are inevitable. However, we have tried to ensure that we do not have that problem, and when we see errors, we correct them as soon as possible.

I think that this committee has highlighted errors a couple of times—that suggests to me that the system is working—and we have managed to correct them within the necessary timescale. On the whole, I want us to get to a place in which there are as few errors as possible. We are making law, after all.

Paul Sweeney: That is helpful.

In its response to a recommendation in our inquiry report, the Government committed to adding more explanatory notes to SSIs. The Government said that it always provides such notes, but we highlighted a major concern about the rationales for instruments not being in plain English. How will you put more effort into making

sure that explanatory notes are intelligible to non-legally trained people?

George Adam: The Government always tries to use plain English and to produce explanatory notes that are understandable. I used to be a member of this committee, so I get that sometimes when you are looking at an SSI and someone points out what it means, you go, “Oh, right. I have read it twice and I never saw that.” I am aware of the issues. As always, the Government will do what it can to ensure that SSIs are correctly drafted and understandable. Karen Auchincloss might want to add something.

Karen Auchincloss: Most SSIs are accompanied by a policy note. That is the opportunity for us to explain the policy in plain English, and we try our best to do that. For some complex SSIs, we cannot avoid using legalese—for want of a better word—but in the policy note we try as much as we can to set out the rationale for the instrument and to explain what it does.

George Adam: When I first got involved in Government, all the acronyms and so on that are used came as a bit of a shock, so I am aware that we need to ensure that things are in plain English. I do not want to get to a place where I understand Government lingo but we are not getting our point of view across.

Paul Sweeney: It can be difficult to anticipate what people will not understand, particularly when you are used to dealing with the issues. Perhaps this committee could make an effort to feed back difficulties with interpretation more regularly.

George Adam: That would be helpful, Mr Sweeney, and would give us the opportunity to see where there are problems—because if you do not tell us that there is a problem, we will not know, and we will continue to do the same things.

Paul Sweeney: Thank you.

Stephen Kerr: Yes, we are all for plain English, that is for sure.

Of course, I was not a member during the last parliamentary session but, in session 5, your predecessor habitually and rather helpfully wrote to subject committees to indicate the volume of SSIs that they could anticipate heading in that committee’s direction. However, that practice appears to have ended. What was the reason for the discontinuation of that practice? Is it something that could be revived?

George Adam: I came in and said, “I am not having any of that.” No, I am only joking. [Laughter.]

As I said earlier on, as part of the strategic review, we are taking the opportunity to look at a better way of working with committees and

ensuring that information gets to them. We will look at our practice within the strategic review and we will come back to this committee and others once we have done so. As I said earlier, we are going to take a step back and look at everything to see what is and is not working. Working alongside the committee, if we think that there is another way forward, we will look at that as well.

Stephen Kerr: Some months ago, perhaps at the beginning of the parliamentary session, you produced a very colourful table, which indicated the number of SSIs. I remember it vividly.

George Adam: That might have been a Parliamentary Bureau paper right at the beginning of the session.

Stephen Kerr: Ah, right. People would probably find that very useful. What does the volume of SSIs look like between now and the end of the year?

George Adam: If I give you an actual figure, I will paint myself into a corner, but we are probably looking at 40-ish between now and the end of the year. That could be 41, 42 or 39. We are there or thereabouts, depending on how things go and what happens. “Events, dear boy, events” can take over and cause us to change things. We are looking at about 40-ish SSIs, with the emphasis on “ish”.

Stephen Kerr: Of course, we would allow for the margin of human error that you describe, and I applaud you for quoting Harold Macmillan.

However, for the benefit of the subject committees, would it be possible to provide greater detail on where those SSIs fall?

George Adam: I will bring in Karen Auchincloss.

Karen Auchincloss: I am happy to take that away and consider it, to see what would work best for the committee. We will give you as much indication as we can about what is coming and when it is coming.

Stephen Kerr: Thank you.

Colin Beattie: I will ask a couple of questions about the secondary legislation that stems from the UK’s withdrawal from the EU.

We would normally ask you about how many instruments would be considered under the SSI protocol, but the committee welcomes the fact that that practice has been discontinued. Can you give an update on how many SI notifications the Parliament is likely to receive between now and the end of the year? You answered Mr Kerr about the number that you anticipate being laid. Do you have a figure?

George Adam: The figure would probably be about 15. With some UK Government situations, one of the challenges is how long it takes for information to get to us, which slows up the process. However, on the whole, we are probably looking at 15 SI notifications.

Colin Beattie: On other committees, I have noticed that there tends to be a very short time for them and the Parliament to look at SI notifications from the UK Government. Is there any way that that can be made better? Are we entirely in the hands of the UK Government in terms of how quickly it notifies us?

George Adam: We are. I have tried to be my usual charming self and to work constructively with the UK Government in order for business to flow, but that can be quite challenging. The UK retained EU law bill will be introduced at some point, but we do not know what it will do. That is quite concerning, because that bill will be a massive piece of work. It might or might not affect the number of SIs that we have to consider, which relates to the question that you asked. That could be quite challenging for us.

Gordon Johnstone will give you more detail, given that this is his area of expertise.

Gordon Johnstone (Scottish Government): We anticipate that we will have 15 SI notifications between now and Christmas. That information comes from two sources: a forward look that we get from the Cabinet Office and a forward look from the Department for Environment, Food and Rural Affairs. Given that most of the EU exit SIs that have been notified recently have been from DEFRA, we are pretty sure that the figure is fairly accurate. However, every time we get a new iteration, the figure varies slightly—it goes up and down—but it is sitting at 15 at the moment.

Colin Beattie: It might be the same figure, but given that the power to correct deficiencies in retained EU law is due to end—or to sunset; whatever you want to call it—at the end of this year, can you say how many deficiencies-related SSIs or SI notifications under SI protocol 2 the Parliament is likely to receive before that time?

George Adam: That is a very technical question, so I will bring in Gordon Johnstone again.

Gordon Johnstone: The figure is the same.

Colin Beattie: I suspected that it might be, but it is good to have that clarification.

Rachel Rayner (Scottish Government): I just want to make it clear that the SI protocol covers wider issues—it does not cover only deficiency fixes. It now covers a lot more post-Brexit legislation, so the protocol will continue to have a use even when the deficiency-fixing power has

gone. A lot of the SIs that are being notified now are not just about deficiency fixes; we are moving on to deal with the post-Brexit world.

Colin Beattie: You anticipate that the protocol will continue after the end of the year.

Rachel Rayner: Yes. The protocol applies to various powers that were within EU competence before our exit and relates to how they are used now that they have transferred into domestic legislation. The protocol is much broader; it does not just cover deficiency fixes.

Colin Beattie: Do you have any understanding of the volume, or will such instruments come from the UK Government on a more ad hoc basis?

Rachel Rayner: Yes. There can be discussions about whether we think it would be more appropriate to use a UK SI or an SSI. A lot of discussion is involved in bringing forward an SI notification.

Colin Beattie: That leads me to my final question. What work is on-going or planned by the Scottish Government to simplify some of the complexity in EU law? I presume that discussions are taking place with the UK Government on that.

George Adam: As always, there is on-going discussion with the UK Government. An example that I provided earlier is the proposed UK retained EU law bill—in whatever form it takes—which could be a major issue for us. It could have an effect on us and give us problems; we do not know what the bill will do.

Colin Beattie: Do we have no idea what the bill will do? Are any discussions taking place, or is there any co-operation, on development of the bill?

George Adam: During my time as the Minister for Parliamentary Business, there has not been much in the way of co-operation on such issues. It is probably more likely that we will receive information either just before the bill is published or when it is published.

Colin Beattie: It does not sound as though there will be a great deal of time for the Parliament or the committee to scrutinise the bill.

George Adam: That would make it challenging.

Stephen Kerr: You said that you are not directly involved in discussions with the UK Government on the contents of, or the methodology that will be applied in, the proposed EU retained law bill. Does that exclude the possibility that other parts of the Scottish Government might be talking to their UK Government counterparts in order to assess what the bill would mean?

10:00

George Adam: Officials from the UK and Scottish Governments will always be in dialogue with each other. There will be official-level dialogue all the time and dialogue at ministerial level. The difficulty is when it comes to publication of a bill, and we get it at the very last minute. We then end up in a process in which this committee, for example, is rightly waiting for us to give it information. This committee will not be scrutinising the bill in question, but if it were, it would want us to get information to it as quickly as possible so that it could scrutinise it.

At the time same, my officials will need to sit back with the bill. Rachael Rayner will need to make sure that it is legal from our perspective and that it works with Scots law. Gordon Johnstone also needs to go through absolutely everything, and Karen Auchincloss, as head of the Parliament and legislation unit, needs to make sure that we have a spot in the parliamentary chamber to do that.

That all works perfectly when there is respect and we get bills early. I do not know whether it is a new thing, but recently, in my time, we have been getting everything at the last minute. I do not know whether Karen or anyone else can tell us whether there was a “before” time when we might have got things sooner.

Karen Auchincloss: I probably cannot answer on the “before” time, because I have only recently taken up my post, but I am happy to go away and look into that.

Mr Adam is right that we always seek to have early engagement with the UK Government at official level. That can sometimes be tricky when we do not see things until the very last minute, but where we can engage and influence, we always do.

The Convener: I would like clarification. When you said that you sometimes do not see things until the last minute, do you mean at official and ministerial levels?

Karen Auchincloss: Gordon Johnstone might be able to help, but I would say that what we see would depend on the area; there might be better engagement and freer flow of information in some parts of Government. However, Gordon has been doing this longer than I have.

Gordon Johnstone: There is a particular issue with the bills that were introduced right after the Queen’s speech, when colleagues were often seeing provisions on the day of a bill’s introduction or on the day before its introduction. If the bill is big and complicated, that makes it difficult to meet standing orders’ two-week target for lodging an LCM.

Paul Sweeney: I will turn to historical commitments that have been pursued by predecessor committees. Our predecessor committee welcomed the Scottish Government's work in meeting almost all of its historical commitments by the end of the previous parliamentary session. The longest-standing commitment is now on the Education (Listed Bodies) (Scotland) Order 2018 (SSI 2018/7). What is the Government doing to ensure that it meets that and other outstanding commitments?

George Adam: I am glad that Mr Sweeney said that we have managed to deal with a lot of the historical commitments that were pursued by predecessor committees. The simple answer is that we are still committed to making sure that we get the work done. Some things have been on-going.

I had thought that I might be asked about that, so I asked what we have on the decks and what is still there that we can get done and clear out. That is one of the things that I would like to do, but, as with all things in life, sometimes it is a wee bit complicated.

Paul Sweeney: What procedures do you follow in order to keep pace and to have positive tension in the team to ensure that it is constantly being challenged about how rapidly that work is being progressed?

George Adam: I hate to say it in front of them, but I have a very good team. I do not want their heads to get too big, but I have been supported and they are focused on making sure that they do their job and that we do all the work that we need to get done.

As the committee will understand, the Parliament and legislation unit has a remit much like that of this committee, in that its work is quite detailed and there is a lot going on. It is almost like a Saturday night variety show plate spinning, where you have to get all the plates going. The historical cases are in the list of priorities that we have to try and get done. Will it be done tomorrow or the next day? It will probably take a wee bit longer than that. There are reasons why the issue that Mr Sweeney mentioned has been taking so long.

Paul Sweeney: There is a reservoir of Scottish Law Commission bills waiting to be introduced and made into legislation. I often think that Government time could be used more efficiently to drive those forward rather than the Parliament debating motions that will have no legislative effect. It would be good to try to use those fantastic pieces of potential legislation in the interests of the country, rather than being a model United Nations.

To that end, the committee is looking forward to scrutinising the Moveable Transactions (Scotland) Bill. As was highlighted in the most recent programme for government, a number of other Scottish Law Commission reports are being considered for legislation in session 6. Can you update the committee on what legislation is in the pipeline and the timescale for its introduction, and can you give an indication of how many legacy reports will be put into statute in the current parliamentary session?

George Adam: This time last year, when I first came to the committee, Karen Auchincloss's predecessor told me that the Moveable Transactions (Scotland) Bill was a perfect example of the Government working with the SLC to ensure that things are brought forward. That bill then became quite difficult and complex. It is such a complex and technical bill that I said to Karen's predecessor that I thought of it as the unmovable objects bill because it did not seem to move. I sat here and told the committee that we would go forward with that, but then we hit difficulties and quite a lot of issues had to be solved. Rachel Rayner may be able to say more about that.

Rachel Rayner: The issues have been resolved and we are pleased to be able to introduce the bill.

George Adam: That is an example of the difficulties and complexities of some SLC bills.

Rachel Rayner: There can be a lot of challenges, as members will have seen. It is a very technical area and we must ensure that everything is right before the bill is presented to the Parliament.

George Adam: I want to be able to tell you exactly how many bills I am planning to work with, but the answer to whether I can do that is no. However, we are happy to have an on-going look at that to see where we can get to. The Moveable Transactions (Scotland) Bill might have made me a bit nervous because it seems to have taken forever, after I told everyone here a year ago that it was a bill that the committee was going to deal with. From the committee's perspective, the bill is so technical that my hell will now be your hell when you are dealing with it. You should, as a committee, be careful what you wish for. The bill is coming to you and will be challenging for you to deal with. I do not for a moment doubt that you will deal with it, but it will be a challenge.

The Convener: You are selling it well, minister. *[Laughter.]*

George Adam: You never lose it, when you have been a salesperson.

Paul Sweeney: I am sure that we are up for getting stuck into it. I have a supplementary question about that. So that we can keep an eye

on progress, would it be possible to have a table of the outstanding bills and reports and the Government's position on each one so that we have some indication of when bills might reach the Parliament? That would give us oversight. A lot of public money has gone into developing reports, so it seems to be inefficient to have them sitting gathering dust. It might be good to have that oversight so that we could see, for example, that something has taken two years and we could ask what is happening and could revisit it from time to time.

George Adam: I thought that we shared that information.

Paul Sweeney: Forgive me if I am wrong.

George Adam: If we do not share that part of the process, we can take note of that and make sure that it is included.

Paul Sweeney: Thank you.

The Convener: That is helpful.

Before I bring in Graham Simpson, I will return to the issue of historical commitments. At one point in the previous parliamentary session, there was a plethora of historical commitments and the committee pressed the Government to improve that situation, which it did. The one that Paul Sweeney mentioned is the last outstanding commitment. It has been there for a number of years while Brexit and the Covid pandemic have happened. Can you provide an indication of when the Government will complete that commitment?

George Adam: It would be best for me to get back to you in writing about that, so that I have time to take a proper look at the matter. I got the information about the order only this morning. Give me time to write to you about that.

Graham Simpson: I have a comment about the Scottish Law Commission. You will know that the committee works closely with it, as we do with you. Mr Sweeney highlighted that the Law Commission has felt some frustration for a number of years about the amount of work that it puts into developing proposals, a lot of which sit gathering dust. From the committee's point of view, it would be useful to have some kind of timetable from you, even if it is just to say whether there is a chance of progressing each proposal.

George Adam: I am happy to look at that, Mr Simpson.

Graham Simpson: That is good. That would be useful.

You are right about the Moveable Transactions (Scotland) Bill. I had a quick look at it. It is quite daunting, but we will get stuck in and do a proper job on it.

My area of questioning is on something that you mentioned earlier: the frustration that you and your officials feel about having very little time to scrutinise UK bills. We have found the same thing with Scottish bills. We had a case of that last week, with the Good Food Nation (Scotland) Bill. The day before the stage 3 debate, the committee received a letter telling us about possible new powers relating to the establishment of a food commissioner. We had no time to consider that.

As you said earlier, today the committee will look at the Coronavirus (Recovery and Reform) (Scotland) Bill following stage 2. Stage 3 amendments have to be laid by noon today, but we are discussing the bill only at this meeting. If the committee decided that there should be an amendment, we would, by the end of the meeting, have less than an hour in which to produce one. That is not acceptable, is it?

George Adam: On the whole, Mr Simpson, if there is a hard way and an easy way, my preferred option is to take the easier way, which is to make sure that everything goes as per normal. Sometimes, because of circumstances—as in the Good Food Nation (Scotland) Bill example, where something came out during the stage 2 debate—changes are made. However, I take on board your point of view on wanting more time and scrutiny.

I do not want you to say that I am not giving enough time for scrutiny, because, as I said to the committee last year, my job is in effect about process, including making sure that that process goes through smoothly. I would prefer such a situation but, as I have said in my other answers, there is always circumstance.

For example, it becomes difficult with LCMs. We end up in that process whereby the UK Government gives them to me at the last minute; my officials try to find out whether they are good and proper and can fit into Scots law and whether everything is right with them; and then we have to make sure that the Parliament can scrutinise. It is about trying to get all that at one time. There is a domino effect: once it starts, all the dominoes fall. However, sometimes we need a few packs of dominoes—to kill my metaphor even further—so that we can do the job properly. That would mean the UK Government giving us a lot more time.

Graham Simpson: I was talking about not the UK Government, but you, Mr Adam.

George Adam: I know. I am aware of the food commissioner issue that came up in the stage 3 debate, and I am aware of the situation. On the whole, I would have preferred to have more time at that stage, but sometimes things change at stages 2 and 3. On the whole, I try not to truncate the legislative process, although there have been examples of that happening in the past year.

Graham Simpson: Why are we considering the Coronavirus (Recovery and Reform) (Scotland) Bill only today, given that today is the deadline for stage 3 amendments? Frankly, that does not give the committee enough time to properly do its work.

George Adam: Mr Simpson, with the greatest respect, I can talk only about process in parliamentary business. Policy and other such things are not in my remit.

Graham Simpson: I am talking about not policy, but planning and timescale.

George Adam: But the development of the policy—how it gets to that position—is what takes the time.

Graham Simpson: My question is not about policy but about giving the committee enough time to deal with whatever is in front of it. I have not mentioned the policy behind the bill.

10:15

George Adam: On the whole, we do, although there is the odd occasion when such situations arise and we just need to move forward. It is entirely up to the committee to decide one way or the other when it discusses the matter after I have left.

Graham Simpson: We do not set the timescale—you do. Things need to improve; we should not be in this position.

George Adam: I am suitably chastised.

Stephen Kerr: As you know, the committee has a long-standing interest in the scrutiny of bills that confer powers in devolved areas on UK ministers, and in the scrutiny of the exercise of those powers, so it would be informative to understand what considerations inform decisions by the Scottish ministers to recommend consent for UK bills that confer delegated powers in devolved areas on UK ministers.

George Adam: On the whole, that is mostly done on an LCM by LCM basis. We have to look at how Scotland and devolution would be affected.

I go back to the fact that part of the difficulty that we have had has been to do with the fact that, on some occasions—regardless of how good our officials' relationships have been with UK officials—the first time that we have seen an LCM has been on publication, or perhaps a day beforehand. That does not give us the time and scope to do the scrutiny work that we need to do.

The process is done on an LCM by LCM basis. The decision will be made on the basis of how Scotland would be affected from a legal or a policy perspective over the period in question.

Stephen Kerr: I presume that the Scottish ministers have a template for the sort of questions that you have alluded to. Can you give us more detail on what such considerations are about? When a bill is introduced in the UK Parliament that confers delegated powers in devolved areas on UK ministers, is there a checklist—a set of criteria or questions—to which you refer in looking to see whether, ultimately, you can recommend a legislative consent motion to the Scottish Parliament for that piece of legislation? Could you talk us through that in a bit more detail?

George Adam: I feel that I have already explained the Government's position in that regard, but I always like to give good value, so I will ask Rachel Rayner to talk about what she would look at in going through that process.

Rachel Rayner: As the minister said, we would look at lots of different factors, such as whether we think that such a power would be appropriate in the circumstances, given the type of area involved and how the law works. We would also consider whether we would retain an option for the Scottish ministers to make an SSI as an alternative. We would look at what was most appropriate in the particular circumstances of the bill.

George Adam: Gordon, could you say something from the perspective of the work that you do?

Gordon Johnstone: I cannot add much to what Rachel Rayner said. If a bill gives powers to UK ministers to legislate in devolved areas, our ask would always be to have a consent lock, so that the consent of the Scottish ministers would be required, or to have concurrent powers, so that we could do our own SSI in that area. However, it would be fair to say that, of late, those requests have fallen on deaf ears. We have asked for those things, but we have not been getting them.

Stephen Kerr: There are UK bills that give UK ministers delegated powers that they can use without reference to the Scottish ministers or that fall outwith the scope of SI protocol 2. There are a couple of issues on which I would be very interested to hear the minister's views. How might the Scottish Parliament scrutinise proposals by UK ministers to exercise those powers, as well as the Scottish ministers' position on those proposals?

George Adam: As I said earlier, when the LCM comes in, a decision has to be made about how it affects us—the Scottish Government—and how we deal with the legislation. When we go through the whole process, we have to ensure that we have covered everything. I think that what you are asking about, Mr Kerr—indeed, you said it yourself—is whether there is a template that we can use to cut and paste every LCM, but what I and my officials have been trying to say is that

there is no such template, because everything is different. Some things can be more complex than others, and sometimes the process is quite simple and there is no issue. Recently, though, issues have arisen more often than not, and we then have had to lay an SSI before the Scottish Parliament.

Stephen Kerr: I am not asking you to copy and paste anything, but I am—

George Adam: You did ask for a template.

Stephen Kerr: I am actually looking for a ruler against which you can measure a bill and its provisions that allow UK ministers to exercise legal rights in devolved areas.

George Adam: The rule, Mr Kerr, would be legislative competence in Scotland.

Stephen Kerr: Right. Can I come back to my question? Your answer comes from a Government perspective, but you are the Minister for Parliamentary Business, and I was asking how the Scottish Parliament might scrutinise these things. Do you have a view on that? How might we scrutinise UK ministers' proposals to exercise powers conferred on them by UK bills that have had the consent of the Scottish Government and the Scottish Parliament?

George Adam: From my experience as a back bencher and as a member of committees such as this one, I would say that we have the option of looking at the information as it comes through from the Government. You will be made aware of an LCM coming through—and, indeed, if an SSI comes through. The checks and balances to do that sort of thing are available in the Parliament as it is.

I think that you are trying to hint at the possibility of there being a better way of looking at these things. If so, I am quite open to a more transparent process for the committees and the Parliament, and I am quite happy to look at such a suggestion. Indeed, any other suggestions could be part of our consideration of the process whereby information goes backwards and forwards between us and the committee.

Stephen Kerr: Something that you have touched on and which I—and, I am sure, other committee members—would agree with is having an adequate opportunity for advance scrutiny. Indeed, the theme has come up time and again this morning in relation to matters general and across the board, not just specifically on UK ministers having powers to legislate in devolved areas.

I will just leave it at that, convener.

George Adam: It is always a good thing to agree with each other.

Stephen Kerr: It actually happens more often than you might credit.

George Adam: That is now on the *Official Report*.

The Convener: You will both be quoted.

Stephen Kerr: It is being written down by my colleague, too.

George Adam: That is me killed in Paisley now.

The Convener: I think that I will have to have a discussion with the Presiding Officer, just to make her aware.

Mr Kerr, I should say that, on your point about the scrutiny of LCMs, the committee has been very much active on the matter and has had dialogue on it. It is a valid question, and we know that it is an issue.

As there are no more questions, I thank the minister and his colleagues for attending the committee this morning. These regular sessions are very helpful not only to the committee's own work but to our work with the Scottish Government.

George Adam: My door is always open to members of the committee or whoever, and we can discuss offline any matter that you might want to raise. What I often say—and people have said that this will come back to bite me—is that I do not have a monopoly on good ideas. If anyone has any, I am quite happy to steal them—I am sorry; I mean, I am happy to work with them on it.

The Convener: Thank you very much, minister. I briefly suspend the meeting.

10:24

Meeting suspended.

10:26

On resuming—

Instruments subject to Affirmative Procedure

The Convener: Under agenda item 4, we are considering two instruments, on which no points have been raised.

Health (Tobacco, Nicotine etc and Care) (Scotland) Act 2016 (Supplementary Provision) Regulations 2022 [Draft]

Age of Criminal Responsibility (Reports on Use of Places of Safety) (Scotland) Regulations 2022 [Draft]

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:27

The Convener: Under agenda item 5, we are considering three instruments, on which no points have been raised.

Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Amendment Regulations 2022 (SSI 2022/201)

Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Amendment Order 2022 (SSI 2022/202)

Vegetable Plant Material and Fruit Plant and Propagating Material (EU Exit) (Scotland) (Amendment) Regulations 2022 (SSI 2022/203)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

10:27

Meeting continued in private until 11:08.

10:27

The Convener: Under agenda item 6, we are considering one instrument, on which no points have been raised.

Transport (Scotland) Act 2019 (Commencement No 5) Regulations 2022 (SSI 2022/204 (C 11))

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

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