



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 26 September 2023

Session 6



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DELEGATED POWERS AND LAW REFORM COMMITTEE

26th Meeting 2023, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)

*Oliver Mundell (Dumfriesshire) (Con)

*Mercedes Villalba (North East Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

George Adam (Minister for Parliamentary Business)

Steven MacGregor (Scottish Government)

Rachel Rayner (Scottish Government)

Greig Walker (Scottish Government)

CLERK TO THE COMMITTEE

Greg Black

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 26 September 2023

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the 26th meeting in 2023 of the Delegated Powers and Law Reform Committee. I remind everyone present to switch their mobile phones to silent.

The first item of business is to decide whether to take items 6 to 9 in private. Is the committee content to take those items in private?

Members indicated agreement.

Minister for Parliamentary Business

10:00

The Convener: Under agenda item 2, we will take evidence from the Minister for Parliamentary Business, George Adam MSP. This is one of our regular sessions with the minister on the work of the Scottish Government that is relevant to the committee. The minister is accompanied by three Scottish Government officials: Steven MacGregor, head of the Parliament and legislation unit; Rachel Rayner, deputy legislation co-ordinator in the legal directorate; and Greig Walker, retained EU law act management lead.

I welcome you all to the meeting and remind you not to worry about turning on your microphones, because that will be done by broadcasting.

I invite the minister to make some opening remarks.

The Minister for Parliamentary Business (George Adam): Thank you, convener, and good morning to everyone.

As a former member of the committee, I am only too aware of its importance in scrutinising legislation.

When we met in February, we were preparing ourselves, both in the Scottish Government and in the Parliament, to deal with the measures in the United Kingdom Government's Retained EU Law (Revocation and Reform) Bill. We anticipated that they would give rise to a high volume of subordinate legislation. The final version of the legislation in the Retained EU Law (Revocation and Reform) Act 2023 means that the volumes will not reach the scale that we expected. Nonetheless, ministers need to be assured that devolved provisions are appropriate, and officials will continue to apprise the committee of expected future volumes in order to assist you in managing your business.

Although retained European Union law implementation has not been as expected, the Parliament continues to process a significant amount of legislation. I record my thanks to the committee and its officials for the constructive manner in which we continue to work with each other in what is an extremely busy and challenging legislative programme.

The Government continues to deliver on its commitment to deliver more Scottish Law Commission bills. I am pleased to note that the committee has been able to lead scrutiny of two bills so far in the current session, including the Trusts and Succession (Scotland) Bill, the stage 1

debate on which will be held this week. I hope that that will continue. As you know, our programme for government confirms that the next Scottish Law Commission bill for introduction will be the judicial factors bill, and the Government expects that it will be suitable for allocation to this committee.

We remain committed to continuing to reduce the backlog of published reports. By the next parliamentary session, we should have addressed the backlog and be focused on recently published reports.

As the committee knows, I take the quality of the instruments that we lay very seriously. It is important that there are as few errors as possible. I am therefore pleased to note that, in the past quarter, no instruments have been reported on serious grounds.

I continue to value the close working relationship that I have sought to build with the committee, and I hope that it continues in the future. I look forward to hearing from everyone on the committee today, and I am happy to take any questions. Otherwise, I will go now.

The Convener: Thank you very much, minister. Nice try.

You will be aware that the committee does a very good job—I say that on behalf of all colleagues—with regard to scrutiny of Scottish statutory instruments. The Scottish Government has certainly improved the quality of the drafting of SSIs. As you are aware, we do not identify many issues with them. It is clear that a lot of hard work has been undertaken there. However, we still find some errors in the drafting of SSIs. What work are you and your colleagues doing to ensure that drafting errors are reduced?

George Adam: As you rightly say, convener, we are in a good place in that there have not been that many errors. However, we do not sit back and rest on our laurels. We need to continue to have that level of excellence and make sure that everything that you get is accurate.

On how it works, we tend to make sure that everybody is involved in the process and that everything is in the correct position before an instrument goes to the committee. That is important to us. I would much rather be in a position where everything that you get is accurate from the beginning, rather than there being an idea that there has been some kind of mistake. Now and again, because some things are so technical, there will be issues but, on the whole, we strive to ensure that that does not happen.

At this stage, I will bring in Rachel Rayner to put your mind at ease and tell you about the exact process that we go through.

Rachel Rayner (Scottish Government): From a Scottish Government legal directorate perspective, we take quality assurance very seriously. That is built into two stages. First, it is part of the drafting process whereby we consider and discuss points and raise issues as they arise and deal with them then. Secondly, once an instrument is prepared, the team that is working on it checks it, and then a lawyer who has not been involved makes a further check, as they can bring a fresh pair of eyes and maybe see things that other people would not.

We think that that provides a robust quality assurance process, but we are always looking at DPLR Committee reports and considering whether there are things that we can learn, whether there is anything that we need to put in place, and whether we need to update guidance to make sure that points are addressed.

As you have seen, where issues arise, we act. There was a particular issue regarding a couple of social security instruments. A thorough lessons-learned exercise has been carried out by policy colleagues and the SGLD to look at the quality assurance process across the piece and ensure that there is suitable guidance for staff who are developing policy as well as on the drafting side.

Another outcome of that issue is that secondary legislation awareness sessions will be delivered for social security staff on a regular basis. The training will not just be a one-off; it will be a continuing process.

The Convener: Do you have training every two or three years? New people will come in and others will move on.

Rachel Rayner: We have a learning and development programme for SSIs. That provides training for new people, with coaching and support in drafting. It also provides refresher and on-going training for lawyers.

As you have seen this year, the REUL act has come in. That will make changes, so we need to ensure that everybody is aware of it. It is a continuous process.

The Convener: Okay. Thank you.

Mercedes Villalba (North East Scotland) (Lab): Good morning, minister. Following on the theme of scrutiny of instruments, I want to ask a question about information sharing. The committee has recently considered and reported instruments that have been linked to UK-wide changes, such as instruments relating to public sector pension schemes following the McCloud judgment and council tax reductions following UK-wide changes to universal credit. What processes are in place to monitor changes in the UK Parliament, and what processes are there to work

with the UK Government to share information in those sorts of examples?

George Adam: I welcome you to the committee, Ms Villalba, as I think that this is the first time that I have seen you in it.

Officials from the Scottish Government and the UK Government meet each other regularly, and they have the opportunity to share information and ensure that we try to make things work. However, one of the things to be aware of is the fact that we are dealing with UK legislation a lot of the time or, because it comes from the UK Parliament, it is theirs to deal with.

We need to find a way—I am trying to make this point in a non-political way, because my job is basically about process and making everything work—for the UK Government to remember that we are here and that we have our processes that we need to deal with. We also need to ensure that there is communication between officials and between me and my ministerial counterparts.

We try to make that work, but it does not always work. If I were sitting here speaking from the UK Government's perspective, I would say that we have a Parliament in Westminster and that we have to go through its processes. At the same time, the Scottish Government would say in response to that, "Well, yes, but, equally, this affects us, so we need to actually have the opportunity to have the time to go through our own processes as well."

On the whole, we tend to work very well together, but there can be some hiccups along the way. There might be a situation in which the UK Government does not think that there is a Scottish element or something that affects the Scottish Government. It will be our officials who will say that we need to look at that, and there might be a bit of debate on the issue. Steven MacGregor can give some further detail on that.

Steven MacGregor (Scottish Government): I agree with everything that the minister has said. We spend quite a lot of time at the official level engaging with our counterparts in the UK Government to make sure that they understand our needs in terms of the legislation that is being brought forward and the Scottish Parliament's timescales for scrutiny, whether that is in relation to retained EU law, legislative consent motions or Scottish statutory instruments.

In the specific case of the council tax regulations over the summer, UK local authorities have the ability to make changes midway through the year without legislation, but we do not have that provision in Scotland. Some follow-up work is taking place now to ensure that the UK Government understands that so that, when it is making changes in the future, it lets us know early

enough to enable us to prepare our legislation and give the Scottish Parliament time to scrutinise it.

George Adam: Greig Walker might have something to add from his experience of retained EU law.

Greig Walker (Scottish Government): As the minister said in his opening statement, we are no longer looking at volumes of REUL act instruments. Nonetheless, of the smaller number that we are dealing with, five notifications have gone in for statutory instruments, and the ones that our intelligence tells us are to come are potentially challenging.

We rely very much on what we are told about the UK legislative programme. I assure the committee that there is probing, interrogation and checking of what we are told to make sure that we get the full details. We do whatever we can to try to pre-empt whatever is coming.

I will give an example of that. The whole concept of retained EU law is being renamed "assimilated law" under the REUL act. We are working on a Scottish statutory instrument that will be laid in the coming weeks—or potentially two, depending on how the drafting firms up and the quality assurance process that Rachel Rayner referred to—to make sure that the devolved statute book is timeously updated for that change, which is coming as the result of a UK act.

Other work along those lines is on the go, but the REUL act is certainly up there as an on-going UK implementation programme that we have to tune into and handle as best we can. Among the early notifications, a number were in on time, but we were not able to submit others on time for reasons that were explained in the notification. It is challenging to get full and timely information, and we have to make sure that the updates that we give to committees are credible.

Mercedes Villalba: Thank you for those answers. I would be interested to hear a little more about your specific monitoring processes. Do you have to wait for the UK Government to notify you of when things are being laid, or do you have channels through which you can monitor and follow the progress of work before you receive the formal notification? Is there anything that you feel can be done to improve those processes so that we can avoid the rushed changes that we have seen in the past?

George Adam: To be perfectly honest with you, it is a bit of both. We have officials working together all the time, as I have already said, but there is also the fact that, when the UK Government makes an announcement and goes forward with legislation, it is its legislation. We just need to make sure that we make the UK Government aware of the Scottish element.

Could things be better? There is always room for improvement in absolutely everything in life so, yes, we probably could find a way to work that would make things run more smoothly. However, because of the technical aspects of a lot of this, that can be quite difficult. From the number of notes that I have seen flying back and forward between the two Governments, I can see that people end up having to deal daily with things that had not been thought of and which could cause a problem.

Obviously, if someone is drafting something in the UK Government, they think purely from their perspective about how they are going to push things forward, and they may perceive that there is no kick-on to us in Scotland. We see officials in the Scottish Government saying that that is not the case, and there might be a wee bit of debate—a wee bit of to-ing and fro-ing on who is correct in that scenario.

That brings us back to accuracy and how we can provide information to the committee and the Parliament to the best of our ability. I will bring in Steven MacGregor again to add to that.

10:15

Steven MacGregor: There are two main channels of communication. We operate in the centre of the Scottish Government, and we talk to counterparts who work at the centre of the UK Government at a programme level. Retained EU law is a good example of where we have requested that our counterparts give us a programme overview of what they think is coming over the next three to six months. Within that overall programme, people with individual portfolios are also in touch with UK departments to understand instruments that are of specific interest to them. There is quite a lot of information sharing back and forth at official level.

We occasionally run into issues; council tax is an example of that. There is probably a little bit more work that we could do to avoid that happening again in the future. As I said, engagement is taking place to try to make sure that the UK Government understands that we do not have the same in-year flexibility that it has.

Mercedes Villalba: When you say that there is a little bit more work to be done to avoid that taking place again, what kind of work are you envisioning? What kind of improvements or changes do you see as necessary?

Steven MacGregor: Part of what is needed is educational—Scottish Government officials engaging with their UK counterparts so that the UK Government understands the legislative framework up here and the time that is required for us to process any changes that it makes, so that

we can make consequential changes to the Scottish Parliament's scrutiny role. In most cases, that will be enough to help us to avoid mistakes happening again. If we did not think that it was, we would escalate the matter to ministerial level, so that discussion would take place between ministers.

Jeremy Balfour (Lothian) (Con): Good morning, minister. I thank you and your team for coming along.

I will move us on. Your officials provide the committee and subject committees with a helpful weekly update of instruments that are expected to be laid in the following two weeks. Can you or your officials indicate the anticipated volume of SSIs that are likely to be laid between now and Christmas, and which committees are likely to be the lead committees? If you cannot provide that to us today, perhaps you could drop a note to us.

George Adam: I know that Mr Balfour will be in mourning after the mighty St Mirren beat his team on Saturday, but I am happy to answer the question.

Last week, I sent an outline of our expected legislative programme to the Parliamentary Bureau. That is caveated with the fact that anything can happen between what we are programming at the moment and what ends up being reality. We will use that outline at the bureau, and we have a strategic bureau meeting this week at which we will discuss how to go forward with the business programme.

On committees, as the convener will be aware, I tend to have one-to-ones with conveners to discuss the upcoming programme, what business there will be over the year and how we can deal with that. That includes discussing members' bills—although that is not so much with your committee—and things such as that.

On whether I could get you further detail a lot sooner, the information is already out there with business managers in the bureau. However, the caveat is that that information is available for them only on a need-to-know basis, because, as we know, things can change in Parliament.

That happens even when I talk to your convener about Scottish Law Commission bills. A perfect example is the Moveable Transactions (Scotland) Bill. At my first appearance before the committee, I said that that would be the first SLC bill, that it would be very good and that it would be coming imminently. The bill became known to me as the unmoveable transactions bill, because it was about six months or so before it came before you. There was difficulty before we could it bring it to the committee for you to deal with it properly.

I do not want to go down the rabbit hole of SLC bills at this stage, but I use that as an example of a time when, in all honesty, I sat here and said, “I can do that within that timescale,” but it did not turn out that way.

When we can get you further information, we will. My officials engage regularly with the committee’s clerks, and we are happy to continue that flexibility and keep that door open. However, I do not like to promise things that I cannot deliver, and in some cases I might find myself in that position if I were to give you a longer-term view.

Jeremy Balfour: Thank you, minister, that is helpful. Although the answer might be “no”, I want to push you a wee bit harder on that. Committees need as much notice as possible for larger, or more complex, SSIs, especially large packages of instruments that need more scrutiny. Do you know whether any such instruments are in the pipeline in the next few months?

George Adam: If that were likely to happen, I would probably say so in my one-to-one conversation with the committee convener. From memory, I do not think that there is anything of significance coming up for the Delegated Powers and Law Reform Committee, although I always use the line—kidding on—that the committee is going to get all the legislation that is coming through and the full number of SSIs. On the whole, I do not see anything for this committee. I think that I can guarantee that at this stage, but I will confirm with Steven MacGregor that that is indeed the case.

Steven MacGregor: The volumes are reasonable at the moment. There are no significant pieces or packages of legislation coming through the pipeline. If there were to be any, we would engage early on with the clerks. Over the years, we have got better at understanding that the committee wants to understand packages of legislation and to know which instruments are linked together. We understand that, if the instruments are large, the committee’s legal advisers will need time to scrutinise them properly. We take all that into account.

Rachel Rayner: There might be one large UK SI that needs to be laid in the Scottish Parliament in the next few weeks—from memory, it is 90 pages. It is a UK SI, but it needs to be laid in the Scottish Parliament, rather than just being an SI notification. That is the only one that I can think of.

The Convener: Is that the instrument that Mr Walker was talking about earlier?

Rachel Rayner: No, it is a different one.

Jeremy Balfour: Thank you. I will leave it there, convener.

Bill Kidd (Glasgow Anniesland) (SNP): Minister, our predecessor committee welcomed the Scottish Government’s work in meeting almost all its historic commitments by the end of the parliamentary session. The longest standing commitment is now the Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019. Following your last appearance at the committee, and in your opening statement today, you confirmed that discussions between the Scottish and UK Governments about that order are on-going. Can you provide an update on what the Government is doing to ensure that it meets its commitment?

George Adam: Rather than ramble on, I will pass that over to Steven MacGregor.

Steven MacGregor: We have got better at dealing with historical commitments. I remember appearing before the committee several years ago when there was quite a large volume of outstanding commitments. We have now managed to drive that down to four or five. The order that you mentioned is the longest commitment. We are reliant on the UK Government to help us to identify an appropriate Scotland Act 1988 order vehicle. We have not managed to do that yet. However, we are continuing to discuss that. Once we have identified a vehicle, I would be happy to update the committee.

Bill Kidd: Why is that? Without getting too deep into the reasons, is there a specific issue with that order?

Steven MacGregor: There is an option to deal with it using a standalone instrument or as part of a wider instrument. Everyone’s preference would be to try to sweep it up in a wider instrument, so we are looking for a suitable one. If we cannot do that, we are in the territory of having to use a standalone instrument.

Bill Kidd: Fair enough.

Oliver Mundell (Dumfriesshire) (Con): I want to ask about primary legislation. As the minister will be aware, the recent programme for government committed to introducing a bill on judicial factors, which would be based on a Scottish Law Commission report. Given that part of the committee’s remit is to look at certain bills that are based on reports from the SLC, can you give the committee an indication of current thinking on timescales for the bill and whether it meets the criteria for an SLC bill?

George Adam: I have no further detail on that. I can come back to the committee with further detail as soon as we have it.

Oliver Mundell: That would be great. I appreciate what you say but, given some of the previous issues, we would also appreciate any

background that you can provide on the work that the Scottish Government has done, as it is some time since the consultation on the proposal took place. It would be good to hear what has been going on in the background.

George Adam: You will appreciate that the SLC bill that I gave as an example, the Moveable Transactions (Scotland) Bill, was another example of a proposal that had been around for some time. We have to ensure that we get ourselves into a suitable place when I come to the committee. I am wary of SLC bills, because the case of the Moveable Transactions (Scotland) Bill was a perfect example of that need. This is not to say anything about my official, Mr MacGregor, but he told me that the bill was imminent and I took him at his word and said so in front of the committee.

You will understand, Mr Mundell, that I no longer want to commit myself to a particular date, having been through the process in that example. The reasons that you have given are among those why I want to get 100 per cent of the detail before I get back to you with how the proposed legislation on judicial factors looks.

Oliver Mundell: That is helpful. I will push back and say that you might have anticipated that the committee might ask about the proposed bill today. The SLC bills are not particularly controversial when you look at the headline subject but, although they are not politically controversial, there are a lot of considerations in them, as there are with any legislation. We want to be satisfied that the Government has done the work behind the scenes to ensure that the consultation on the original proposal is still relevant and up to date, because that will allow us to move much more quickly once the bill arrives.

George Adam: Part of the reason why I do not want to say something when I do not have the full detail for the committee is because that would set hares running. As you say, it is not a highly political bill, but I want to ensure that the it is right because my job is about process and I have to ensure that I am not the one who gets the process wrong.

Oliver Mundell: Looking beyond the proposed bill on judicial factors, you will be aware that the Minister for Victims and Community Safety recently wrote to Lady Paton, the chair of the SLC, committing Scottish Government officials to undertake “detailed work” on the SLC’s report on an approved scheme for financial provision and cohabitation breakdown, its “Report on Aspects of Leases: Termination” and its “Report on Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses”. I understand what you have said to my colleague Jeremy Balfour about not being able to look too far into the future, but I would be interested to hear your view

on whether those bills might come to the committee through the rest of the parliamentary session.

George Adam: Rather than repeat myself, I will get Steven MacGregor to add to that.

Steven MacGregor: A number of years ago, the Scottish Government gave a commitment to try to introduce in each of its legislative programmes one bill that would be suitable for referral to the committee. As the minister said, we think that the bill on judicial factors will fit into that category this year. The Scottish Government has not yet agreed the content of its year 4 or year 5 legislative programmes, but, certainly, the bills that you mentioned are candidates for them and we think that at least two of those bills would be suitable for referral to the committee.

Oliver Mundell: Is there still a firm commitment to introduce one bill in year 4 and one in year 5?

George Adam: Yes, the fact that we still intend to do that was part of the one-to-one conversation that I had with the convener earlier. More likely than not, some of those SLC bills will come to the committee. That is a broad-brush comment.

Oliver Mundell: That is positive to hear because, although no one ever wants to create more work for themselves, those proposals cover important areas that are often overlooked by the Parliament.

George Adam: You bring up an important point. In my time on the committee, we never had any legislation to do, which was always strange coming from other committees that had legislative programmes to deal with.

Because of its remit, it is good for the committee to get its teeth into such bills, which are technical. Who better to do it than the members of the DPLR Committee? Everything that you deal with, day in and day, out is highly technical.

The Convener: Minister, you will be aware that I have, in the past, raised the issue of section 104 orders. I raised it at a Conveners Group meeting and with the First Minister. We are well aware of the situation regarding the Moveable Transactions (Scotland) Bill and the Trusts and Succession (Scotland) Bill, which has its stage 1 debate on Thursday. Will you set out to the committee the current processes between the Scottish and UK Governments for obtaining and implementing a section 104 order?

10:30

George Adam: As I have said previously, the situation is that we have to work with the UK Government. We have to consider its side of things and I have to work around its processes.

When I come along to the committee, I am often told that I must respect Parliament and give Parliament time to process the detail. It is quite funny that I have been trying to say something similar in some of my earlier answers today. It is a difficult balancing act for us to press the UK Government enough in saying that we need to know the detail, so that we can do what we need to do up here. It is the UK Government's process, so it controls that.

The approach tends to be that officials talk to officials, and the discussions move up to ministerial level at times. I have not had such a meeting for a wee while, but I used to have meetings about various sections of the Scotland Act 1998 that we were dealing with.

In the first such meeting that I had with my UK counterpart, we said, "Listen—can we leave the politics at the door?" We were just talking about how both Parliaments can work together and deal with the issues. My counterpart agreed, because we needed to do that to make things happen.

The intention is to give my officials and UK Government officials the opportunity to have such conversations and move things forward. I do not know who is best to give more detail on that—is it Steven MacGregor?

Steven MacGregor: At official level, we engage weekly to discuss Scotland Act 1998 orders that are in the programme or which might be coming up. The UK Government has its own rules of thumb for how long such things take to develop. We know what they are, so we take them into account when we develop our programme.

When we have a particular timing need to get legislation implemented, we make that clear to the UK Government, so that it can take that into account. Occasionally, when it has been absolutely essential to speed up the process, the UK Government has been willing to do that. That engagement will continue, to make sure that we let the UK Government know what we need as quickly as possible.

The Convener: I have suggested in the past that some type of protocol could be put in place between the Scottish and UK Governments to assist with section 104 orders. Under the Moveable Transactions (Scotland) Act 2023, we now have up-to-date legislation, apart from one section, in respect of which practitioners are still using the old legislation on that area. The feedback from practitioners whom I have spoken to is that they speak highly of the 2023 act and are using it daily, which shows that the SLC's work benefits the legal process in Scotland.

Have you had any dialogue with the UK Government on formulating a mechanism or process so that the time to obtain a section 104

order is a lot shorter than it is under the long drawn-out process that we have? Ultimately, this is about making better law that practitioners can utilise to the country's benefit.

George Adam: Convener, I had a fair idea that you would ask that question, because of everything that you have described. The problem is that you have to be careful what you wish for. That approach might complicate matters even more and make things more difficult for us. I might be proved wrong, but my opinion is that a protocol might make things a lot more difficult than they currently are—although that would depend on the protocol.

I go back to the fact that we are dealing with the UK Government's perspective; this Government and Parliament are, equally, quite defensive about our stuff—our legislation and the work that we are doing. I try to consider how things work for people in that other place, because no matter how much I might think it does, the world does not revolve around me and I am not that important, in the scheme of things.

It is important to give the UK Government space to do what it has to do. At times, that can be challenging for us all, but we have to be careful about the idea of having a protocol.

The Convener: Perhaps a protocol is not the right avenue to go down, but even guidelines of some type might help to speed the process up. From memory, I think that it was put to the committee that it can potentially take well over a year—perhaps a year and a half—for a section 104 order to be dealt with. That does not have a negative impact on practitioners as such, but it is still the case that older legislation is used for specific elements, rather than the new legislation that people very much welcome.

George Adam: I take on board everything that you are saying. Listen—as I have said to the committee on numerous occasions, I do not have a monopoly of good ideas. If someone turns up with an idea that will make something better and will make it work in the way that it should work, that is fair enough—my officials and I will look at it.

However, the idea of a protocol makes me a bit nervous, because we are currently managing to make the process work, to a degree. It takes time; the UK Government would say to me, "Well, that's the time it takes, so work around it."

The Convener: Thank you for that, minister. I call Jeremy Balfour.

Jeremy Balfour: I will move on slightly. What considerations does the Scottish Government take into account in deciding whether or not to delegate a power in a bill, in order to satisfy itself that that is appropriate? How do you work that one out?

George Adam: Are you talking about the likes of framework bills and how we go about deciding on them?

Jeremy Balfour: Yes.

George Adam: First and foremost—just so that the committee is aware—I am not power mad, and I am not making every bill that comes to Parliament a framework bill. You heard it here, exclusively—first, from myself.

The situation that we have is that there are certain times when flexibility helps the bill and gives us the option to deal with things further down the line—for example, to co-design bills with stakeholders. On the whole, however, we are not routinely going down the route of deciding that we are going to have a framework bill; the option is there mainly to offer us flexibility.

I do not know whether Steven MacGregor wants to add anything to that.

Steven MacGregor: I will pass that one over to Rachel Rayner.

Rachel Rayner: With each bill, we consider the powers case by case and ask whether we can justify use of the power. We know that we need to be able to justify it to Parliament, as well as being able to justify it internally. The decision will be scrutinised by the Parliament, including by this committee, and there will need to be a good reason for it. There will be different reasons for different powers, so we consider each bill case by case, rather than having a particular preference for taking powers.

Jeremy Balfour: Without becoming too philosophical, do you think that there has been a change, both in the Scottish Government and at Westminster, with regard to using framework bills more often than was the case 20 or 30 years ago? If so, is that a deliberate policy decision or just something that has evolved over time?

George Adam: I cannot really talk about the situation 20 or 30 years ago, because I was in primary school—at least I was 30 years ago, anyway. No—I am lying, actually. I forget that I am getting older.

I cannot speak to the past, but the situation now is exactly as Rachel Rayner has said. Decisions are made case by case, so that we can justify the reasons why we take an approach and why we see it as being important. In many cases, that might be because stakeholders need to play an important part in the bill; in other cases, it might give us the added flexibility that we need in order to deliver what we want to deliver.

On the whole, however, using a framework bill is not our go-to place; our idea in creating a bill is not automatically to make it a framework bill.

Jeremy Balfour: In looking to the future and the programme for government that was announced just a few weeks ago, what balance has been struck with regard to what we just talked about, in respect of bills that are about to come forward?

George Adam: I will bring in Rachel Rayner or Steven MacGregor.

Steven MacGregor: The programme for government that has been announced does not include a significant number of bills that we would class as framework bills. The proposed agriculture bill is potentially one in which flexibility will be required to enable its powers to be used, so justification will be given for why we think that that should be the case.

On the previous question, I agree with the minister that, over the past 10 to 20 years, there has not been a trend towards there being more framework bills. We look at all such legislation internally before it comes to the Scottish Parliament. Perhaps a topic such as social security, which has included new powers, lends itself more to the requirement for a framework bill. However, where that has been needed, the Scottish Government has understood that it has been required to justify and explain why that was appropriate.

George Adam: Ironically, Jeremy, you and I were on the Social Security Committee when the Social Security (Scotland) Bill went through Parliament. I do not remember the framework part of the bill being the biggest issue that we dealt with at that stage; it was more the policy part that we discussed. For me, the most important thing is not how a bill is presented, but how Parliament scrutinises the policy.

Rachel Rayner: Social security legislation in the UK Parliament has been framework based for 30 years, so that is not a new trend. That is how social security legislation has developed in order to allow flexibility to meet changing circumstances and to deal with issues as they arise.

Oliver Mundell: I want to push a bit more on framework bills. They give ministers and the Government increased flexibility, but Parliament loses something in the process. I know that there is always a trade-off between Parliament and Government—I accept that—but as an individual member of the Parliament I worry about my ability to influence the likes of the proposed agriculture bill on behalf of my constituents. If everything is in secondary legislation, the chance to lodge amendments, to have them voted on and to have a transparent debate and process is limited. That changes the nature of the debate and negotiation on a policy. One example is that the committee's members—or a majority of the members of the committee—had the same view on the National

Care Service (Scotland) Bill. What is your reflection on that, as a parliamentarian?

George Adam: Having worked with you since 2016, I know that you are not exactly quiet when it comes to stating your opinion. The whole point of Parliament is that members can express opinions such as the one that you just expressed. I go back to the fact that there is always the same debate with framework bills: some people see them as a power grab by the Government and some people see them as a way to create, with stakeholders, flexibility in the design of a service—social security being an example—to ensure that we deliver what we set out to do in the policy.

I assume that we would work with stakeholders on the proposed agriculture bill. There is no point in an agriculture bill without there having been full stakeholder engagement or an element of co-design. We will need to create flexibility to ensure that the bill works, because—you will know this better than I do, Mr Mundell—it will affect people's livelihoods and how they go about their business. It will still give us the framework, and I understand—

Oliver Mundell: Do you accept that the approach means that committee members cannot amend the legislation? When the detail is held back, the scope for amending legislation is limited.

George Adam: I recognise and understand the debate that is happening in Parliament. What I am trying to say is that we need to be able to deliver what we want to deliver, through the bill. It is not a case of taking anything away from the Parliament.

Oliver Mundell: That process clearly takes something away from my constituents. I do not want to get into the politics of it, but that will be the case for members from other parties, including Scottish National Party MPs in the UK Parliament.

There are parts of the country where people did not put their trust in the Government and, because of the decision to go down the framework bill route, their elected representatives in Parliament do not have the option of lodging amendments to show what the alternatives were, and to see the Parliament vote on them.

George Adam: At the end of the day, Mr Mundell, you have given your point of view. I do not necessarily agree with it and I have already stated how I believe the bill should go forward.

This is an on-going debate. The good news is that, as I said when I answered Mr Balfour's question, we are not doing the same thing all the time. It is not our go-to to say, "There's a framework bill; let's just hang everything on that." We do not do that; we work bill by bill. If I can assure you on any point, it would be that that is how we look at it.

I take on board your opinion and I might discuss it with my officials but, on the whole, we try to make sure that Parliament has as much scope as possible to scrutinise legislation.

10:45

Bill Kidd: There has been an increase in the frequency of LCMs and supplementary LCMs coming to the committee. There is often a fairly tight turnaround, which affects time for consideration. The committee notes that the timings for LCMs are influenced by a number of factors, including some that lie outwith the power of the Scottish Government. What could the Scottish Government do to allow greater parliamentary scrutiny of LCMs? For example, could we push for supplementary LCMs to be lodged sooner after amendments are lodged so that we have more time to scrutinise them?

George Adam: We have been having the same debate since the first time I sat in front of the committee, and the same was probably happening before I became Minister for Parliamentary Business.

Again, we come back to situations in which the UK Government believes that a piece of legislation that it has made has no Scottish element, but my officials say that there is, so there will be a bit of to-ing and fro-ing. The other problem is that we receive the information an hour—if we are lucky—before the press release on the bill is sent out. That is quite challenging for us, because we have to get officials to say whether there is going to be an LCM and, if there is, whether we are going to be for it or against it. We have to make a case for the decision and we have to justify it.

It takes time for us to do that. If we got information a wee bit more quickly, things would be a lot easier for the Government, and we could give Parliament more time to scrutinise legislation. I remind everyone that the King's speech is just around the corner; we do not know what will be in it, so there could be more such situations.

UK Government and Scottish Government officials talk to each other all the time and try to make things work. I have asked officials about this; I have heard members' arguments and what you all say about LCMs, so I have been asking whether things have been like this since devolution began. I have been told that it has always been an issue, but that it happened less in the past. It seems to have become more prevalent now.

Why are we not being told the information sooner? Why are things being left until the last minute? Why, with some of the legislation that is being scrutinised, is there a belief that there is no Scottish element to it? Sometimes our officials

have discussions with UK officials who tell us that legislation will not affect us in any way, shape or form; that argument can go on for quite a while.

I am not sure whether there might be a political element creeping in from Westminster, but we are trying to do all that we can at official level and at ministerial level. I assure members that, when I talk to my counterparts, I am trying to make sure that we make the process work a lot more easily. However, for some reason we seem still to be getting things an hour before the press release goes out.

Bill Kidd: It is helpful for us to know that. Thank you.

The Convener: As members have no more questions, I thank the minister and his colleagues for coming to the committee this morning. The committee will have a further discussion later on, and if we have any more points to raise, we might write to you.

With that, I suspend the meeting to allow the minister and his team to leave.

10:49

Meeting suspended.

10:53

On resuming—

Instruments subject to Affirmative Procedure

The Convener: Under agenda item 3, we are considering six instruments, on which no points have been raised.

Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) (No 4) Regulations 2023 [Draft]

Transport (Scotland) Act 2019 Amendment Regulations 2023 [Draft]

Carer's Assistance (Carer Support Payment) (Scotland) Regulations 2023 [Draft]

International Organisations (Immunities and Privileges) (Scotland) Amendment (No 2) Order 2023 [Draft]

Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension and Expiry of Temporary Justice Measures) Regulations 2023 [Draft]

Greenhouse Gas Emissions Trading Scheme (Amendment) (No 2) Order 2023 [Draft]

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:54

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

Road Traffic (Permitted Parking Area and Special Parking Area) (North Ayrshire Council) Designation Order 2023 (SSI 2023/249)

Carer's Assistance (Carer Support Payment) (Consequential and Miscellaneous Amendments and Transitional Provision) (Scotland) Regulations 2023 (SSI 2023/258)

Health and Care Professions Council (Miscellaneous Amendment) Rules Order of Council 2023 (SI 2023/995)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instrument not subject to Parliamentary Procedure

10:54

The Convener: Under agenda item 5, we are considering one instrument, on which no points have been raised

Hunting with Dogs (Scotland) Act 2023 (Commencement) Regulations 2023 (SSI 2023/262 (C 21))

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

10:55

Meeting continued in private until 11:35.

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