



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 17 September 2024

Session 6



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DELEGATED POWERS AND LAW REFORM COMMITTEE

25th Meeting 2024, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

Jeremy Balfour (Lothian) (Con)

*Tim Eagle (Highlands and Islands) (Con)

*Daniel Johnson (Edinburgh Southern) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Andy Crawley (Scottish Government)

Mairi Gougeon (Cabinet Secretary for Rural Affairs, Land Reform and Islands)

Fiona Leslie (Scottish Government)

Andy Proudfoot (Scottish Government)

CLERK TO THE COMMITTEE

Greg Black

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 17 September 2024

[The Convener opened the meeting at 10:06]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Good morning, and welcome to the 25th meeting in 2024 of the Delegated Powers and Law Reform Committee. We have received apologies from Jeremy Balfour. I remind everyone to switch off or turn to silent their mobile phones and other electronic devices.

The first item of business is a decision on taking item 6 in private. Is the committee content to take that item in private?

Members indicated agreement.

Instruments subject to Affirmative Procedure

10:07

The Convener: Under item 2, we are considering two instruments, on which no points have been raised.

Rural Development (Continuation of Operation) (Miscellaneous Amendment) (Scotland) Regulations 2024 [Draft]

Scotland Act 1998 (Specification of Devolved Tax) (Building Safety) Order 2024 [Draft]

The Convener: Is the committee content with the instruments?

Members indicated agreement.

Instruments subject to Negative Procedure

10:07

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

Local Services Franchises (Traffic Commissioner Notices and Panels) (Scotland) Regulations 2024 (SSI 2024/229)

Council Tax Reduction (Scotland) Amendment (No 2) Regulations 2024 (SSI 2024/230)

National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2024 (SSI 2024/233)

Sheriff Appeal Court Fees Order 2024 (SSI 2024/236)

High Court of Justiciary Fees Order 2024 (SSI 2024/237)

Court of Session etc Fees Order 2024 (SSI 2024/238)

Justice of the Peace Court Fees (Scotland) Order 2024 (SSI 2024/239)

Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2024 (SSI 2024/240)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

10:07

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

Visitor Levy (Scotland) Act 2024 (Commencement) Regulations 2024 (SSI 2024/231 (C 18))

Abortion Services (Safe Access Zones) (Scotland) Act 2024 (Commencement) Regulations 2024 (SSI 2024/232 (C 19))

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Land Reform (Scotland) Bill: Stage 1

10:08

The Convener: Under item 5, we are taking evidence from Mairi Gougeon, the Cabinet Secretary for Rural Affairs, Land Reform and Islands, on the Land Reform (Scotland) Bill. The cabinet secretary is accompanied by three Scottish Government officials: Fiona Leslie, who is the head of the agricultural holdings and women in agriculture team; Andy Crawley, who is from the Scottish Government legal directorate; and Andy Proudfoot, who is the Land Reform (Scotland) Bill team leader. I welcome you all to the meeting. In particular, I welcome back to the committee Andy Proudfoot, who previously was a clerk to the committee. It is very nice to see you again, Andy, albeit that you are very much on the other side of the table this time round.

I invite Tim Eagle to speak.

Tim Eagle (Highlands and Islands) (Con): I remind members that I am a small farmer and that I previously worked for Scottish Land & Estates. That is in my entry in the register of members' interests, but I wanted to ensure that everyone is aware of that this morning.

The Convener: Thank you. I remind all attendees not to worry about switching on their microphones, as that will be done for you.

I invite the cabinet secretary to make her opening remarks.

The Cabinet Secretary for Rural Affairs, Land Reform and Islands (Mairi Gougeon): Thank you, convener and committee members, for the opportunity to speak to you on the delegated powers in the Land Reform (Scotland) Bill. I am committed to working with members to ensure that we deliver good law. I know that members will have a range of questions on the powers, but I want to make a couple of opening comments to give some background to the overall approach to the bill.

As set out in the delegated powers memorandum, the overarching policy objectives of the bill are to help to realise our vision for land reform and sustainable and regenerative agriculture. The bill covers the on-going management and transfer of large landholdings. It will also help to secure the viability of tenant farming and enable tenant farmers and small landholders to participate in delivering our vision for agriculture. Specifically, the bill covers four principal policy areas: land reform, a new land management tenancy, agricultural holdings legislation and small landholding legislation.

As I outlined in my response to the committee's initial questions, I want to ensure that the bill provides the correct balance between primary and secondary legislation so that the key measures are in the bill and proper scrutiny of the measures that are made under the bill takes place. With that, I welcome the committee's views, as well as those of stakeholders more widely, to ensure that the bill strikes the correct balance.

The Convener: Thank you, cabinet secretary. We have divided the questions up into various themes, so the questions will come in blocks. The first theme that the committee will ask about is policy development. We will, in particular, discuss the powers to be found in paragraphs 40(4), 49(5), 50(7) and 59 of the schedule as well as sections 10, 11 and 12.

In relation to a number of the delegated powers, as confirmed in your response to the committee's letter, very few policy development discussions have taken place on issues such as the assessment of compensation and the right to buy. Can you provide some context as to why those discussions have not yet taken place and why they were not carried out at an earlier stage in the planning of the bill?

Mairi Gougeon: In relation to a number of the measures that you mentioned, we have set out our overall approach and rationale in the policy memorandum. However, we recognise that work needs to be on-going in a number of areas in which we have picked up particular issues. There are areas that we are hearing about in evidence, which we still want to work through with our stakeholders.

I do not know whether it would be valuable to touch on some of the work that has been undertaken so far. I will pass to Fiona Leslie, who has been working on the small landholdings proposals and agricultural tenancies in particular.

Fiona Leslie (Scottish Government): Good morning. We have been exploring the range of issues at play in how compensation will be calculated. Given the fluctuations around global forces, some of the elements around compensation are quite subjective at the point of valuation. Things such as steel, which goes on a monthly global price fluctuation, and the activities for which the Government is willing to pay support—for example, peatland management and restoration—will be factored into the calculation of compensation values for small landholders. We are working with stakeholders and have already started exploring the range of options around that.

We have had initial discussions with the Scottish Agricultural Arbiters & Valuers Association and the Central Association of Agricultural Valuers about the tenant farming assessment and compensation,

and we will have more detailed conversations with them.

It is important that there be flexibility in the secondary legislation to enable the framework to be developed in a way that is adaptive enough, so that we do not have to revert to primary legislation every time a new development activity takes place. That is why we made some of the other changes in relation to tenant farming in part 2 of the bill. We have put a lot in primary legislation around tenant farming that has hamstrung tenant farmers, so we want to ensure that we do not inadvertently do the same with small landholders and their landlords.

The other important point about the valuation assessment for the landlord's interests, particularly in relation to small landholders, is that if the small landholder has done something that requires a compensation payment to be made to the landlord, we develop a process that is fair for both sides and—this is key—equitable. The intention is to create a framework, followed up with guidance from the tenant farming commissioner, which will provide a more comprehensive way of undertaking valuations.

We attended the SAAVA and CAAV field day, which was exceptionally helpful. They ran through compensation assessments and their methodologies with a group of about 40 people. It was incredibly helpful to us to see how things would be valued on the ground and to see the practical approach that they had taken.

Some of that is built on the Royal Institution of Chartered Surveyors' valuation methodology and the valuation process that it sets out in its professional guidance. Some of it also comes down to regional and local fluctuations. When we are building the Scottish statutory instrument around that, we need to take account of all those factors in order to be fair and proportionate to both sides.

10:15

On the right to buy, we have been engaging with Registers of Scotland on its assessment of the level of data that is required to make the process more transparent. We have had a range of stakeholder views on the amount of information that is required in relation to the right to buy. That varies from a sheet of paper with no map to something that looks like a line on a map. If you look at the register of community interests, you can see some of the older documents, and you will see everything from a piece of A4 paper showing a couple of squiggly lines and a tree to a detailed Ordnance Survey map at different scales. We need an in-depth discussion with ROS about what is proportionate for it and a discussion with our

stakeholders to try to encapsulate all interests. At the same time, in developing what is required, we need to make the process proportionate and not overly bureaucratic—the minimum requirements versus the maximum.

I hope that that answers your questions.

The Convener: Thank you. That answer was quite detailed on both points. On the conversation aspect, you mentioned the range of individuals and organisations that you have spoken to so far. Are they content with the approach that has been taken in the bill or have they raised concerns?

Fiona Leslie: Obviously, there is a range of views from a range of stakeholders, including those acting on behalf of a range of interested member bodies. Those views have not always been supportive of the bill, depending on the organisation. The key players have to be RICS, SAAVA and CAAV, because they are the organisations that will do the technical valuations on the ground and they are the experts in the field. We plan to lean heavily on them, because they will be the practitioners on the ground.

Our intention is to have a working group with those organisations and to then test the methodologies through the tenant farming advisory forum, which is our main route for testing such methodologies to ensure that all stakeholders have a fair voice at the table—and that it is an open voice. In that way, we can try to reach a consensus, where that is possible, but we also acknowledge that there will be occasions when, because of their members' interests, some organisations will not be able to fully agree to something that other member bodies might want to agree to.

The Convener: There are obvious risks associated with legislating before policy is fully developed. Has consideration been given to the challenges that that creates for proper parliamentary scrutiny? What, if anything, has been put in place to reduce those risks and to support scrutiny, despite the lack of policy development?

Mairi Gougeon: A number of the delegated powers that we are proposing involve affirmative instruments, which allows for the appropriate level of parliamentary scrutiny. However, we will not be developing policy in a vacuum. Fiona Leslie touched on some of the extensive engagement that has taken place with some stakeholders so far. There is no doubt that, in some cases, we are dealing with really antiquated and complex pieces of legislation, as I think that we can gather just from the extent of the legislation that we are bringing forward and some of the areas that we are dealing with.

With regard to how we formulate policy, it is critical that we undertake wide engagement and consult the people who are going to be affected by the instruments that we will bring forward to ensure that we are making informed decisions. As we bring forward secondary legislation, how we have undertaken that work will be set out clearly in the various accompanying documents to the legislation, including the impact assessments that we have to produce. It is in our best interests to be working with a wide variety of stakeholders as we bring forward legislation, notwithstanding Fiona Leslie's point that there are different views on some of the policy approaches that we are taking.

The Convener: Have you ruled out adding to the number of instruments that are subject to the affirmative procedure? Do you think that you have struck the right balance between the amount of affirmative instruments and other instruments?

Mairi Gougeon: I certainly believe that the balance that we have at the moment is correct, as I set out in my response to the committee. However, I am more than happy to hear the committee's views in relation to different instruments, and I am open to considering members' feedback.

The Convener: What are the plans and timescales for the on-going policy development discussions with stakeholders?

Mairi Gougeon: A lot of that work is going on at the moment. We have already set out to the Net Zero, Energy and Transport Committee that we are working on the small landholding provisions and intend to lodge amendments in that respect. Of course, if there are going to be any impacts on this committee and its scrutiny work, we will keep members informed of that.

Tim Eagle: Good morning, cabinet secretary. I want to ask about consultation. Concerns have been expressed that there is no statutory consultation requirement in the bill, but you have suggested that it comes under your general obligations as a Government. Why have you chosen that approach? After all, previous bills have contained an explicit statutory need to consult. Will you talk us through that?

Mairi Gougeon: We cannot take a one-size-fits-all approach to consultation. Some of our proposals could be technical in nature, and we could be talking about certain administrative changes, too, and it would not be proportionate to carry out a full statutory public consultation on some of those measures. That is why there is variety with regard to the different instruments that we are using in the bill.

In some areas, we have set out whom specifically we would be intending to consult. For example, in section 10, we have included a duty to

consult the keeper of the registers of Scotland and those

"likely to have an interest in"

registration, and, under section 23, we would consult such persons as considered "appropriate". There is a variety of other instruments in the bill, too.

I want to set out and make it clear to the committee more broadly that we have a general duty to consult. I might have set this out in my letter already, but we have published "Right First Time: A practical guide for public authorities in Scotland to decision-making and the law", step 2 of which sets out the process that we have to undertake. It also sets out that a decision might be unlawful if failure to consult means that we are not in possession of the information that we need to make a rational decision. Therefore, it could be unlawful for us not to have consulted throughout the process.

As I have said, when we introduce secondary legislation, we will set out in the various impact assessments whom we have engaged with and what the outcome was, as well as look at the various impacts. It is hugely important that we undertake that engagement with stakeholders—after all, it is key to any policy that we bring forward—but I think that our tailored approach, with the variety of instruments that we have introduced, is quite important, too. We need to ensure that our approach is proportionate to each instrument that is introduced.

Tim Eagle: Scottish Land & Estates has written to the committee with concerns about the consultation, saying that the bill contains aspects that could significantly affect not just some of its clients but the agricultural sector more broadly. I guess that this brings us back to your earlier point: you are absolutely right that we do not need full public consultation, but the bill should at least contain a guarantee to anybody who is going to be affected by any secondary legislation that the interested parties will be consulted. Are you averse to bringing forward such a provision at a later stage of the bill?

Mairi Gougeon: Again, I am more than happy to consider that. When I have taken other pieces of legislation through the Scottish Parliament, that issue has been part of the discussion that we have had, as has been the appropriate level of consultation for each of the powers. Again, I am more than happy to consider the committee's views on the instruments that we have set out and what we have set out in relation to consultation. However, I think it important to highlight to you—and to other stakeholders, too—that we have a general duty to consult, whether or not it is specified in the legislation.

Tim Eagle: Yes, but in previous bills, that aspect has been made explicit, whereas in this bill, we are talking about a general duty. Does this represent a change in approach in bills as we move forward?

Mairi Gougeon: No, it is not a change. It has been the case previously.

Tim Eagle: Okay—that is fine. I think that that covers all my questions.

Bill Kidd (Glasgow Anniesland) (SNP): You might have just covered a bit of this next question, minister. In respect of a number of the powers in the bill, the committee asked why they were not more narrowly drafted—I think that that was just addressed—and greater detail provided. You responded that doing so has not been possible and that the circumstances in which those powers might be used are not yet clear and will depend on the operation of the bill once it is enacted.

The committee understands the need for some in-built flexibility, but, if you are unable to identify the circumstances in which those powers might be used, why do you consider that it is appropriate to have those powers at all?

Mairi Gougeon: Obviously, there is a variety of powers in the bill as introduced. I hope that I have been clear in setting out, in the delegated powers memorandum and in my response to the committee, why we have proposed taking the powers that we have, the extent to which they will apply and the rationale for that.

Some of the powers that we have introduced in the bill mirror other powers that exist in previous pieces of legislation. In some cases, it is a read-across to make sure that we have the same powers in place and that we have the same rules applying, for example, to smallholders as to some other tenancies. It is important that those powers are in the bill.

Some of those powers could have unintended or knock-on consequences elsewhere. I believe that we have drafted the bill in the correct way to have the powers that we seek to have. I am happy to look at any concerns that the committee might have about particular powers having such consequences.

Bill Kidd: Thanks. You have stated that land reform is

“a process, rather than an event”.

What is your response to the view that it might be better to make any future changes only as the picture becomes clearer and to introduce them in a future bill, allowing for further parliamentary scrutiny at that point?

Mairi Gougeon: It is important that we learn the lessons of pieces of legislation that have come

before the bill. I think that it is absolutely correct to say that land reform is a journey, and there will, no doubt, be further land reform bills after this one. We are looking at a number of areas for new policy that have been informed by previous pieces of legislation and by engagement with stakeholders, as I have already outlined.

However, with the powers that we are introducing in the bill, we want to deliver on our vision for land reform in Scotland by trying to tackle some of the issues with the scale and concentration of land ownership. The proposals that we have introduced are based on the work of the Scottish Land Commission, and it is important that we deliver on those ambitions and take that other step forward.

There are new areas of policy in the bill. The monitoring work in it that we have proposed to undertake will, if it is agreed to by the Parliament, be critical. It will help to inform any proposed regulations that stem from the bill and any future legislation.

I do not think that we can hold off on introducing new policy or new legislation. Introducing the bill is a really important step forward, and it is vital that some of the changes in it happen now. I mentioned earlier how antiquated some of the small landholding legislation is, and we really need to update some of the areas around agricultural tenancies, as well, so that we can deliver on our agriculture ambitions, as I outlined in my opening comments. We can do that only through the introduction of the measures that we have in the bill.

Bill Kidd: Okay. I hope that you do not mind a wee bit of specificity on how that will affect some people. Scottish Land & Estates stated in its correspondence with the committee that

“These powers create unnecessary uncertainty that would have a detrimental impact on land markets”

and that

“Making law but reserving the right to change it at any time is unsettling for businesses and unhelpful when businesses want to plan for the long term.”

Do you have a response to that view? Do you accept that the lack of specificity in the bill leaves unclear the future operation of the law to those who will be affected by it?

Mairi Gougeon: I would disagree with some elements of that, because it is important, as I have just outlined, to be able to monitor and respond to changes. We intend to bring forward instruments that can help us to move with agricultural policy as it develops, by looking to add measures at various points in the future. We need to be able to react and respond to the monitoring as it goes forward. I understand the concerns that have been raised by

SLE, but we have tried to set out as much detail as we can in the bill.

Of course, it is also important, just as I have outlined, that we need to be able to be flexible and respond to any potential changes in the future. That is why the powers that we have are so important.

10:30

Bill Kidd: It is quite early days, in some ways, for some of the elements that are going into the bill, but they are quite wide powers and policy development has a long way to go yet. What is the Scottish Government doing to ensure that the legislation is clear, and how are you allowing for proper parliamentary scrutiny of the bill?

Mairi Gougeon: That is really important. The vast majority of the instruments that we have set out are affirmative measures, because we want to make sure that there is appropriate parliamentary scrutiny. I believe that we have got the balance right.

We want to make sure that people have their say as we develop the proposals, and I have already set out how we intend to do that in relation to the consultation, but parliamentary scrutiny is also important. Again, in terms of the instruments that we have set out and the powers that we propose, I believe that we have got the balance right.

Bill Kidd: Thank you very much for that.

Daniel Johnson (Edinburgh Southern) (Lab): We have identified three particular areas in relation to powers to change the fundamental concepts of the bill, but this theme probably extends to some other areas that colleagues have already mentioned. In particular, sections 1(4), 2(4) and 4(2) essentially give the Government powers to alter quite fundamental concepts, such as who would be in scope to exercise the right to buy and the requirements around consultation, which could impact the timelines and even who could exercise those powers.

Will you explain why it is necessary to leave such fundamental concepts open in the primary legislation and to leave those powers to secondary legislation?

Mairi Gougeon: You have outlined quite a number of powers that do various things to various degrees.

Daniel Johnson: I am not asking you to explain each one. It is about the broad principle of leaving the scope and process so open in the primary legislation. Will you explain why that is necessary?

Mairi Gougeon: You have outlined a number of instruments that will do various things to various

degrees. I hope that I have been able to outline in some of my previous responses why the powers are proposed in the way that they are, and potentially why some of them cannot really be drafted more narrowly; it is because of their possible impacts on other parts of the bill and the potential unintended consequences. Some of the powers that you have listed are about looking at the land threshold and reporting breaches—and, in relation to that, who can report those breaches. We need to be able to monitor and update all of those as we progress.

There would be parliamentary scrutiny of the use of the powers that could modify the land threshold, but again—touching on my previous response—we need the ability to be flexible in the future in order to monitor that. Some of these areas are new areas of policy, and we need to look at how they are working and how they are being embedded.

There could be possible issues with some areas further down the line, such as routes being used for avoidance, which we would want to address later. In relation to some of the exemptions that apply, it would be beneficial to be able to consider whether we need to add to the exemptions or whether we need to limit them through secondary legislation. The power to consider and respond to that is hugely important. That is why we have set out and proposed the powers in the way that we have.

Daniel Johnson: I will ask a very narrow question and then I have some questions that follow on from it. Presumably, the Government thinks that this will be a substantial and permanent change and one that will take land reform on a particular direction of travel. Would that be a fair thing to surmise?

Mairi Gougeon: Yes, I certainly hope so.

Daniel Johnson: Given that, and given the wide flexibility—in your own words, it is flexible—is there not a risk that it almost lays open the possibility for the reverse to happen? Obviously, this is a democracy, and Administrations change. What if, hypothetically, the monopolist and large landowners party were to come to power in 10 years' time? What would prevent it from using these provisions to bring about effects that were entirely contrary to the intent of the legislation as you have presented it?

Mairi Gougeon: You raise an important point, because that is the thing with the powers that we propose through legislation: it is about how not just this Government but Governments in years to come intend to use them.

Again, though, I come back to the point that we need to be able to respond to changes in the future and to tackle some issues that might arise

but which we have perhaps not foreseen at the moment. We need to ensure that we have that flexibility. Alongside that, though, we must ensure that the Parliament has the appropriate scrutiny powers.

I believe that we have struck the right balance in what we are proposing. As you have said, what might be our policy intentions at the moment could change with any potential future Government. I come back to my view that I think that we have struck the right balance, but I am keen to hear the views of committee members on that.

Daniel Johnson: Potentially, this legislation would make things easier for a future Government, as it would not need primary legislation to do something that was almost the 180-degree opposite of the intent that you are setting out here.

Mairi Gougeon: I do not necessarily agree with that, because of the thresholds and the transfer test that we are introducing. Of course, that would not fundamentally alter what land could form part of that or change how breaches are reported in various other areas that we have talked about.

Daniel Johnson: You set out the need for consultation and flexibility. Can you explain why primary legislation would frustrate that? The process might take longer, but fundamentally it would still enable you to make changes. You have said that there is a general obligation on the Government to consult, but the degree to which we have an open and transparent consultation process is enhanced by Parliament. Indeed, it is Parliament's primary function. Why do you think that Parliament is not the right place for considering future changes or undertaking the consultation that might be required on such changes?

Mairi Gougeon: I do not agree with that assessment. It is entirely appropriate for the Parliament to have powers of scrutiny over the process, and the instruments would enable and allow for that to happen.

What we have set out and proposed in terms of the powers for secondary legislation are proportionate. I have already touched on some examples with regard to exemptions. If a certain route were being used to avoid specific measures, we would want to address that quickly instead of potentially having to wait for another opportunity to introduce primary legislation, which we know can take a long time to bring in and to effect any change.

Again, we believe that we have struck the right balance with regard to where we need flexibility in what we need to do, but the fact is that it is not always proportionate or appropriate to wait for primary legislation. The areas and instruments that we have proposed are where we need that

flexibility and where we anticipate that we might have to make changes and be responsive in the future.

Daniel Johnson: I just ask you to acknowledge that, although many of the instruments would be introduced under the affirmative procedure, that is not the same as introducing primary legislation, primarily because it is less likely that evidence will be taken. More important, the ability for Parliament to amend is obviously not there at all. Do you acknowledge that that is a pretty big difference between primary legislation and the affirmative procedure?

Mairi Gougeon: Obviously, there are differences between primary and secondary legislation, but it does not necessarily mean that committees cannot take evidence. Indeed, I have appeared before committees and given evidence on negative instruments, and I know that committees can invite people to give evidence, too. They have those scrutiny powers, and it is important to emphasise those points.

Daniel Johnson: Obviously, though, they cannot amend.

In your previous answers, you said that, in some areas, you are just bringing powers into line with other bits of legislation. Other than for reasons of consistency with older pieces of legislation, can you set out the rationale for bringing those powers into line and tell us whether there has been any impact assessment or analysis of whether they were appropriate to begin with? After all, the previous legislation could have got the balance wrong.

Mairi Gougeon: You are absolutely right. We have to consider each one on its merits; it has not just been a case of transfer for transfer's sake.

One area in which it is important to highlight those measures is in relation to the small landholdings legislation, which we discussed previously. Our approach mirrors some of the legislation that we have in place for agricultural holdings, which will ensure that people in different tenancies are treated in the same way. That reflects why it is important to mirror some of the approaches already in legislation.

I do not know whether officials could touch on other specific examples that would help to illustrate the point.

Andy Proudfoot (Scottish Government): I might add that you will have seen that some powers point, or add, to the Land Reform (Scotland) Act 2003. There is crossover. The procedure used in this bill is taken from or added to the 2003 act, because that is where we felt it was appropriate to slot it in—so, yes, it has been done on a case-by-case basis.

Andy Crawley (Scottish Government): We have tried to take the same approach with lease reform, in relation to both processes and powers, because it is important, apart from anything else, that the law be understandable and foreseeable and that we are not making change for its own sake. Although I completely agree that, in itself, that is not a reason to do something, it is nonetheless something that we have regard to when we are framing powers and thinking about what will be fair to all the parties involved.

Daniel Johnson: I have one final question. We are seeing a significant number of framework bills that have a broadly stated intention but in which the detail is largely left to secondary legislation. The rationale of co-design is often given.

It is absolutely right that the Government seeks to design legislation with as broad a range of stakeholders as possible—that makes sense. I have one simple question: why is it necessary to do that co-design following or in conjunction with legislation, rather than doing it beforehand and baking it into the legislation? In that way, the Parliament could consider the full suite and the finished article, rather than hope that the Government does the right kind of consultation and introduces the right kind of secondary legislation.

Mairi Gougeon: First, I disagree with your assessment that this is a framework bill; I certainly would not—

Daniel Johnson: It is in our briefing notes. I am just noting that.

Mairi Gougeon: I took through the Agriculture and Rural Communities (Scotland) Act 2024 earlier this year. It was more of a broad framework, which was an approach that the Parliament—and, I believe, the committee—had agreed with, because we are going through a period of agricultural transition, adapting and implementing our new framework over the next few years. That flexibility is needed not only to develop and design the future framework with our stakeholders, but because, as we know with agriculture, a variety of changes and crises that we need to be able to respond to can happen over time. Having the flexibility to do so and design that response through secondary legislation is hugely important.

This bill is completely different. Yes, we are proposing to take a number of powers as part of it, but I would not say that it is a framework bill. We have talked about the appropriate levels of scrutiny throughout this meeting; it is always important to remember that there will be parliamentary scrutiny through each of the instruments that we have introduced. We have

only taken the powers that we believe are proportionate and appropriate.

I understand that work is under way in relation to the legislation that the Government introduces, but I need to be clear on this bill and how it differs from some other pieces of legislation.

Daniel Johnson: I will leave it there.

The Convener: I have one final question, which is about the affirmative and super-affirmative procedures. Would you consider them if the committee made some recommendations with regard to some of the powers?

Mairi Gougeon: I believe that what we have set out here strikes the appropriate balance with the powers that we are proposing to take, but I am happy to consider any recommendations that the committee might make in relation to the instruments that we have introduced as part of the bill. I touched on some of the legislation that I have previously taken through the Parliament, for which the feedback of the committee was very much considered and taken on board. I am more than happy to hear the recommendations.

10:45

Tim Eagle: I have a quick question. I am still trying to get my head around a lot of this, because the problem, in relation to both the agriculture bill that you mentioned and this one, is that significant changes could happen—there is uncertainty around prohibition, modification of land, right to buy and so on. What happens in the background? Is there a set of requirements that you must consider for you to say, “Yes, that is balanced and we can take that power”? Do you have to follow a set of rules in order to come up with something that is balanced?

You have mentioned balance a lot but, from my point of view, I am not sure that the bill is balanced, because too much is left to secondary legislation that will not be appropriately scrutinised. Is there a flow chart that you must follow that can give you the assurance that, in your own minds, what you are proposing is balanced?

Mairi Gougeon: I touched earlier on the steps that we must follow. We have guidance that sets out the consultation and the steps that we should take.

I believe that the balance that we have is correct. I understand that some stakeholders disagree, as I have seen in the correspondence that the committee has received. I hope that I have been able to outline the rationale for the approach that we have taken. We have set out some of it in the policy memorandum and the delegated powers memorandum, which cover how we have come to our conclusion: the various other options that we

considered and the reasons why we have taken the approach that we have.

I hope that, when you consider all that information in the round, you can see why we have taken forward the position that we have with the overall policy as well as the specific instruments.

The Convener: There are no other questions, so, with that, cabinet secretary, I thank you and your officials very much for your evidence this morning. The committee may follow up by letter with any additional questions stemming from the session.

10:47

Meeting continued in private until 11:15.

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