



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

Tuesday 7 February 2023

Session 6



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**Tuesday 7 February 2023**

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**5<sup>th</sup> Meeting 2023, Session 6**

**CONVENER**

\*Stuart McMillan (Greenock and Inverclyde) (SNP)

**DEPUTY CONVENER**

\*Bill Kidd (Glasgow Anniesland) (SNP)

**COMMITTEE MEMBERS**

\*Jeremy Balfour (Lothian) (Con)

\*Carol Mochan (South Scotland) (Lab)

\*Oliver Mundell (Dumfriesshire) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

George Adam (Minister for Parliamentary Business)

Susan Herbert (Scottish Government)

Rachel Rayner (Scottish Government)

**CLERK TO THE COMMITTEE**

Lucy Scharbert

**LOCATION**

The Adam Smith Room (CR5)



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 7 February 2023*

*[The Convener opened the meeting at 10:02]*

### Decision on Taking Business in Private

**The Convener (Stuart McMillan):** Welcome to the Delegated Powers and Law Reform Committee's fifth meeting in 2023. Before we move to the first item on the agenda, I remind everyone present to switch mobile phones to silent.

The first item of business is to decide whether to take items 6, 7 and 8 in private. Is the committee content to take those items in private?

**Members** *indicated agreement.*

### Instruments subject to Affirmative Procedure

10:03

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

#### Renewables Obligation (Scotland) Amendment Order 2023 [Draft]

#### National Bus Travel Concession Schemes (Miscellaneous Amendments) (Scotland) Order 2023 [Draft]

#### Alcoholic Beverages, Fruit and Vegetables (Miscellaneous Amendment) (Scotland) Regulations 2023 [Draft]

#### Cost of Living (Tenant Protection) (Scotland) Act 2022 (Amendment of Expiry Dates and Rent Cap Modification) Regulations 2023 [Draft]

**The Convener:** Is the committee content with the instruments?

**Members** *indicated agreement.*

**Carol Mochan (South Scotland) (Lab):** I refer to my entry in the register of members' interests, which shows that I am a registered landlord.

**The Convener:** Thank you—that is on the record.

## Instruments subject to Negative Procedure

10:04

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

**Human Trafficking and Exploitation (Independent Child Trafficking Guardians) (Scotland) Regulations 2023 (SSI 2023/18)**

**National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2023 (SSI 2023/19)**

**National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2023 (SSI 2023/20)**

**Local Governance (Scotland) Act 2004 (Remuneration) Amendment Regulations 2023 (SSI 2023/21)**

**The Convener:** Is the committee content with the instruments?

**Members** *indicated agreement.*

## Instrument not subject to Parliamentary Procedure

10:04

**The Convener:** Under agenda item 4, we are considering one instrument, on which no points have been raised.

**Human Trafficking and Exploitation (Scotland) Act 2015 (Commencement No 5) Regulations 2023 (SSI 2023/17)**

**The Convener:** Is the committee content with the instrument?

**Members** *indicated agreement.*

**The Convener:** I suspend the meeting until 10.30.

10:04

*Meeting suspended.*

10:32

*On resuming—*

## Minister for Parliamentary Business

**The Convener:** Under item 5, we will take evidence from George Adam, the Minister for Parliamentary Business, in one of our regular sessions with him on the Scottish Government's work that is relevant to the committee. The minister is accompanied by two Scottish Government officials: Rachel Rayner, deputy legislation co-ordinator in the legal directorate; and Susan Herbert, head of the subordinate legislation team in the Parliament and legislation unit. I welcome you all to the meeting.

I remind the witnesses not to worry about turning on microphones during the session, as they are controlled by broadcasting staff.

I invite the minister to make some opening remarks.

**The Minister for Parliamentary Business (George Adam):** Good morning, convener and committee members. This is the first opportunity that I have had to welcome Oliver Mundell and Carol Mochan to the committee. As a previous member of the committee, I know very well the important part that it plays in scrutinising all legislation.

We have had a close working relationship since I became the Minister for Parliamentary Business, and I hope that that continues to be the case. When we met in June, I reflected on the fact that the first year of this parliamentary session was very challenging, and the challenges have continued with the cost of living crisis and the situation in Ukraine. As I did in June, I record my thanks to the committee, its officials and the Parliament for the constructive way in which they have worked with the Government over an extremely busy and challenging time.

The remainder of year 2—and, indeed, year 3—will be no less challenging, particularly given the measures that are contained in the United Kingdom Government's Retained EU Law (Revocation and Reform) Bill.

We continue to bring a significant amount of legislation to the Parliament. Since September, we have considered six bills, 96 Scottish statutory instruments, eight legislative consent memorandums and 11 UK statutory instruments.

The committee will note that there has been a reduction in the number of SSIs that have been laid by the Government. There is no specific reason for that, but I am delighted to note that, in this quarter, no instruments have been reported on

serious grounds. As the committee knows, I take the quality of the instruments that we lay very seriously, and it is important that there are as few errors as possible.

Government and Parliament officials have been working on a protocol for expedited affirmative instruments following the concerns that arose from the use of the made affirmative procedure during the pandemic and from the committee's inquiry. That work is on-going and is near completion.

When we met in June, I committed to undertake a strategic review of the data and information that the Government currently provides to Parliament. It is worth reminding ourselves of what the Government currently provides; namely, a forward look, every week, of SSIs to be laid in the following two weeks, weekly updates on UK SIs, a fortnightly update on LCMs and a monthly update on bills. That is a substantial amount of data, and it is complemented by regular meetings between officials, and indeed by the meetings that I offer to committee conveners.

My officials have been considering carefully the data and information that we provide to the Parliament and will engage shortly with the committee clerks to seek their input. As ever, it is vital that we work together to ensure that we are providing information and data that is helpful and of value not only to this committee but to the Parliament as a whole.

I look forward to hearing from the committee.

**The Convener:** Thank you for that, minister. You touched on a few areas that you will get questions on.

You are correct regarding the number of errors with instruments; the committee has highlighted that SSI errors are generally low, which we welcome. However, we are still identifying some drafting issues. What are you and your team doing to ensure that the quality of SSIs remains high?

**George Adam:** We are continuing with the work that we have done up until now, which has made sure that a limited number of errors are made in the first place. As I said, however, we are always willing to engage with anyone else. If the committee has anything to offer us or to talk to us about, we can look at that.

On the whole, most of the drafting has been good and has ensured that we have been able to bring legislation forward in the right way. We would be happy to look at anything else that could be added but, on the whole, it is simply a case of ensuring that we continue to provide the committee and the Parliament with the most accurate SSIs and instruments that we can.

**The Convener:** One example of where particular issues arose was the Scottish Child

Payment (Ancillary Provision) Regulations 2022 (SSI 2022/326). On 23 November 2022, the committee asked the Scottish Government why a further breach of the 28-day rule had occurred in relation to those regulations. The committee sought the Scottish Government's assurance that its quality assurance processes were sufficient to ensure that subordinate legislation that is laid before the Parliament was fit for purpose. The Scottish Government responded that a review of its processes for developing and quality assuring social security regulations would be undertaken in order

"to learn lessons and strengthen procedure for the future."

Will you provide an update on that review?

**George Adam:** The review is on-going. We provide the Parliament with a substantial amount of information, and we are committed to ensuring that the Parliament receives information within the timescales that it needs it.

The review is getting to the stage where we need to engage more with the committee; I think that my officials will be doing that in the not-too-distant future, which will give us some ideas as to how we take this forward. It is important that we ensure that we have got ourselves into a place where we can have those discussions with your committee clerks and my officials and take this forward.

**The Convener:** I am sure that our colleagues from the committee would welcome that further engagement.

I also have a question in relation to the Building (Scotland) Amendment (Amendment) (No 2) Regulations 2022 (SSI 2022/340). The regulations amended SSI 2022/136 by amending the date on which new mandatory energy and environmental standards for buildings and building work are introduced from 1 December 2022 to 1 February 2023. The committee asked the Scottish Government for an explanation for the 28-day breach, given that the laying requirements were complied with the last time the deadline was postponed. The Scottish Government advised that the breach had occurred due to delay in the last engagement with providers.

What processes does the Scottish Government have in place to manage the planning and timescales for delaying planned implementation of legislation, and what is done to ensure that reviews of any delayed implementations are regularly carried out?

**George Adam:** As a rule, we obviously do not want to be having problems with delayed implementation of legislation or 28-day breaches. However, it can be challenging out there for a number of reasons, and there may be situations

where we have those problems. All that I can do is assure the committee that I, as the minister, ensure that we try to keep everything within the proper way of doing business. That does not always happen—we are only human and there can be difficulties.

There are also difficulties with regard to information that we might receive from other legislative bodies such as Westminster and from the UK Government, whereby we get to see detail only at the very last minute.

We try to get everything to you in a timeous manner, but it can prove quite challenging.

I will bring in Susan Herbert to see whether she has something to add.

**Susan Herbert (Scottish Government):** There is nothing that I would add to that. I do not know all the detail about the instruments that the convener raised in particular. I do not know whether Rachel Rayner knows a little bit more—she is shaking her head.

**George Adam:** We will come back to the committee about those instruments. On the whole, generally speaking, we try to get these things worked out within the correct time.

**The Convener:** You touched on receiving information from others late. Is that more common now or is it sporadic?

**George Adam:** It is more common. Officials regularly get information 24 hours before a bill is published—and that is if they are lucky; they might get it an hour or so before, including any of the detail that they need. That automatically fires the starting gun and makes it difficult for us to get ourselves into a place where we can have a robust argument or look at the detail and find out how it affects us here.

That is difficult, and it is being made worse because we used to be able to build up relationships outwith the politics—which is a situation in itself—like the relationship that my officials have with your clerks or the one that I have with the committee. When you continue to deal with the same people, it is simple to do that. However, for example, over the past year and a bit, I have had to deal with three different ministers at Westminster on the election side of things.

That means that the chances of being able to break down the political barrier and have a working relationship with someone in Westminster at a political level becomes more difficult. Sometimes it is by having that open working relationship that we can solve some of the issues, as we can say, "We're just gonnae get this job done. We might not agree on the policy issue, but let's try and get the work done." However, we are very rarely able to have those conversations,



because there has been such a turnover of ministers in Westminster.

From the officials' point of view, it becomes extremely difficult for them to get to the stage where they can work up a case for whether the Government is for or against anything that is going on, and do so in the robust manner that your committee would expect to be able to scrutinise.

I will bring in Susan Herbert, who might be able to hit some of the technical aspects.

**Susan Herbert:** Legislative consent has been a particular issue with bills introduced following the Queen's speech last year. Colleagues are often seeing provisions in bills very late in the day, and sometimes not at all. For instance, in the case of the Northern Ireland Protocol Bill, colleagues did not see a final bill print, and nor were they engaged in the drafting of clauses. We did not see anything on that until introduction.

That makes it difficult to undertake our own devolution analysis and policy analysis, and then provide advice to our ministers, and then lodge an LCM within the two-week period that is set in standing orders. We have raised the issue with UK colleagues, and I know that ministers have raised it with their UK counterparts. It has been very difficult and challenging to meet the two-week period that is set in standing orders in the past year.

**The Convener:** Did that happen even during the worst of the Covid period? Not to have any engagement until the bill is published seems remarkable. I generally do not recall that type of thing happening even during the worst of Covid.

10:45

**George Adam:** As the minister—although I was not the minister then—I do not recall it getting to that stage. During the time that I have been in post, it has been like this. I do not know whether that is due to the changes in the Administration or leadership down at Westminster; I have no idea.

I have said this before to you, convener: aspects of my job are very technical, as are aspects of the committee's job, and they relate to going through the rules and regulations of how we go about our day-to-day business. I have spoken to equivalent Westminster ministers and said, "Let's not have a fight unless we have to have one. Our jobs are about process; let's try and make the process work."

On the whole, we have that relationship at a political level, and I can talk to the equivalent minister, but that has proved difficult over the past year or so, because there have been multiple ministers in various portfolios. It becomes difficult for two reasons. First, it becomes difficult for me to

have a working relationship with an individual and say, "We are not here to fight; we are here to get the job done." Secondly, it becomes difficult for officials at UK and Scottish Government levels, because, although they remain in the same posts and have the same working relationships, the person who is in charge—the minister who is making the decisions—may have a different personality and a different idea of how to take things forward. That makes it difficult for officials to engage, because they do not know how the minister will react to certain things. That has become more difficult and a larger problem.

**The Convener:** This is my final question in this area. When the Northern Ireland Protocol Bill was published, you engaged with colleagues from all the devolved Administrations as well as the UK Government—did they have a similar experience in relation to the bill?

**George Adam:** Yes, they did. We worked particularly closely with Welsh colleagues on other things, but yes, they also had those experiences in relation to the Northern Ireland Protocol Bill, and things have been difficult.

**The Convener:** I have a final question before I bring in Bill Kidd. You touched on Ukraine in your opening comments. Any of the instruments that came to the committee will have breached the 28-day rule, which is understandable. Do you anticipate any further instruments coming forward on Ukraine?

**George Adam:** I cannot think of any at the moment, but I will ask my officials whether there is anything that I have forgotten and they can correct me if there is.

**Susan Herbert:** Not at the moment.

**Bill Kidd (Glasgow Anniesland) (SNP):** We are not finished with technicalities, because I am just gonnae ask you a wee bit more about the relationship between the committee and the ministerial side. 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 provide an indication of the anticipated volume of SSIs that are likely to be laid between now and the summer?

**George Adam:** I am trying to think off the top of my head. Susan, do we know that number?

**Susan Herbert:** We can certainly give you a projection with the caveat that, as you know, Mr Kidd, that number can change. We have a projection; at the moment, we think that around 61 SSIs will be laid between now and summer recess, but that is subject to change. We would expect that number to go up a bit, but we can certainly provide you with that information.

**Bill Kidd:** That would be very helpful.

**George Adam:** Just to compare and contrast, there have been 96 SSIs since September, if you think that 61 SSIs is a lot and we are giving you quite a bit of work.

**Bill Kidd:** That is very helpful, because it gives us an indication of the levels of work that we should anticipate over that period. Obviously, it is not something that you can give an exact figure on.

Following your previous session with the committee, minister, in correspondence with us you committed to undertake a strategic review of the process by which the Scottish Government already provides data and information to the committee. We appreciate that the review might be at the early planning stages, but can you provide an update on that work?

**George Adam:** We are undertaking a review of information sharing. We hoped to have progressed it more than we have so far, but we are aiming to engage shortly with parliamentary officials with a view to establishing a short-life working group to seek their input on it. We are at the stage where we will be engaging with parliamentary officials to bring that to the next stage.

We probably hoped to be a lot further on than we are but, unfortunately, for various reasons, we are just a wee bit behind where we should have been.

**Bill Kidd:** Okay, but you are working on that.

**George Adam:** We are indeed.

**Bill Kidd:** It is an important aspect.

The committee considers packages—if I can put it that way—of SSIs that relate to a specific policy area, such as the package of 10 instruments concerning the transfer of functions to the First-tier Tribunal and Upper Tribunal for Scotland, or the package on reform of the non-domestic rates system. As you know, it is useful for this committee as well as the relevant subject committees to be given as much advance notice as possible of packages of instruments. Do you have any idea whether such sets of instruments are in the pipeline, and will you be able to keep us updated on their progress that we can expect on them?

**George Adam:** We try to give you as much information—and to make sure that you get detail as far in advance—as possible. Sometimes that can be difficult, and there can be all kinds of challenges.

On whether there are instruments in the pipeline, nothing comes to mind at the moment, but if there is something, I will make sure that the committee gets detail of what they will get, when

they will get it and how large a package it will turn out to be.

**Bill Kidd:** Great. As you know, that is very useful for this committee in particular, because we are frequently the first stage that instruments go through before they can go forward. That will be extremely useful, and thank you very much for that.

**George Adam:** Thank you.

**The Convener:** Minister, you will be aware that 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 committee certainly wanted to progress that so that there was a clean slate for the current session.

However, there is still one outstanding commitment, and that is—

**George Adam:** Yes—I can tell you that.

**The Convener:** —the Scotland Act 1998 (Specification of Functions and Transfer of Property etc) Order 2019. Will you provide the committee with an update on where things are with that?

**George Adam:** One of my officials will give you a full update. A great amount of work has been done by us, including my predecessor and the officials who have been involved, to get to the stage where we are now. You will remember that we were not in a good place in 2018 with regards to these kinds of issues. Things are a lot better now, and we are sitting here with just this one outstanding commitment.

Susan Herbert will give us an update.

**Susan Herbert:** The instrument is a Scotland Act 1998 order, which means that we would need another Scotland Act order as a vehicle to correct it, and they are not terribly frequent. However, we can ask the lead officials for any updates on whether a vehicle will be forthcoming, and then give the committee an update on that. That is the reason why the commitment has not been met thus far.

**George Adam:** Let us not get caught in negativity, convener. We are in a better position than we were in 2018.

**The Convener:** I absolutely agree. I was on the committee in the previous session, and I remember the long list of outstanding commitments. The committee wanted the situation to be improved greatly, and it certainly is.

On this particular order, I am sure that my colleagues would appreciate it if you were to write to the committee with an update after you have that dialogue with your colleagues.

**George Adam:** No problem. We will do that, convener.

**The Convener:** Thank you.

**Oliver Mundell (Dumfriesshire) (Con):** I am interested in asking, first, about Scottish Law Commission bills. The committee has been scrutinising two of them recently, but there was a suggestion in the 2021 programme for government that the Government wanted to implement a number of other SLC reports in this session. Are you able to enlighten the committee on the pipeline and timescale for the introduction of those bills and how the Government goes about prioritising the different reports?

**George Adam:** As a member of the committee, you will be aware that the Moveable Transactions (Scotland) Bill has been introduced. At one point, I was calling it the unmoveable traction bill because it took us so long. I think that, the first time that I came to the committee, I said that we would be working towards it, but there was then a delay of about six months. However, it is a highly technical bill, and we had to get it into a good place to ensure that it was sorted. The Trusts and Succession (Scotland) Bill is also coming to the committee, so, on the whole, we have managed to keep the committee reasonably busy with Scottish Law Commission stuff.

With regard to how we go about taking on the work, there is a list of stuff—I do not think that “stuff” is a technical term; there is a list of potential bills—on which the Law Commission has produced work. As and when, we will look at what the priority is and what the Government needs to do to take that forward.

Susan, do you have anything to add to that?

**Susan Herbert:** No, I do not have anything to add to it, Mr Adam.

**Oliver Mundell:** To push you a wee bit harder, do you have a target for this session to get through the backlog? The bills are usually highly technical. They come to the committee because, although they are not necessarily easy pieces of legislation, they are not politically contentious.

We have picked up a little bit of frustration from the SLC that there are a number of well-thought-out suggestions for how to improve law. We also heard from stakeholders how the Moveable Transactions (Scotland) Bill would make a big difference to how they go about their daily business. It is easy for SLC bills to fall down the Government’s and Parliament’s priority lists, because there are other things that are politically more exciting. I am trying to get a commitment from you that the SLC’s proposals are being considered seriously and that the committee will be kept busy in future.

**George Adam:** The proposals are being seriously considered and we are reviewing which ones we will implement. You mention the Parliament’s idea and people of Scotland’s idea of what we should do. We are living in a cost of living crisis, and there are only so many bills that I can get in the timetable between now and the end of the session. It is not that we do not see the Scottish Law Commission bills as important; we need to prioritise what we will do, and we are still working towards ensuring that the Government’s programme is delivered.

I will try to put your mind at rest, Mr Mundell. We continually look at what we could introduce, and we engage to ensure that we see what could be relevant to various aspects of life in Scotland and how we can implement SLC bills. They are not being forgotten about. They are not going down a big, dark hole somewhere in the Scottish Government.

We are constantly looking at the matter, but, again, it comes down to the Government’s prioritisation and how we move forward. We have only so many bill spots between now and the end of the session. I know that, in year 2, that almost sounds as though we are wishing away our lives, but, as the Minister for Parliamentary Business, I have to consider that, as well. They are not being forgotten about.

**Oliver Mundell:** I am not asking you to do it today, but are you willing to share with the committee not necessarily specific proposals but, from the reports that are sitting there, a group that you think might be achievable in this session of the Parliament or that you consider to be the top of the priority list?

**George Adam:** I am happy to make a commitment that we look at it and engage with the committee to see where we are with everything.

**Oliver Mundell:** During stage 1 of the Moveable Transactions (Scotland) Bill, we got a bit of kickback from some witnesses and stakeholders, who said that they were concerned about bits of the bill and had not been asked about it. It is all there in the *Official Report* and was covered in the stage 1 debate. My question is not specifically about that bill, but will you give an assurance that, when SLC bills are introduced in future, the Government will do its bit to scope out any political risks associated with a bill generating public interest?

11:00

**George Adam:** Tom Arthur is the minister who will know about the detail of the Moveable Transactions (Scotland) Bill. On the whole, we generally try to engage with as many stakeholders as possible on any bill. The last thing that the

Government needs is a stakeholder coming to us further down the line when we are drafting legislation and telling us that the proposed legislation will make things really difficult for them or that something will not work the way in which we want it to work. It is only right that a Government should engage with all the stakeholders and make sure that it gets the information that it needs. If there is an issue with that, I am happy to talk to Mr Arthur about that detail and take it from there.

**Oliver Mundell:** To be fair to Mr Arthur, he has been very helpful and engaged proactively with the committee on that individual example. I just wanted to get assurance that the Government is doing its bit to ensure that stakeholders are squared off on SLC bills. I am getting that assurance from you.

**George Adam:** The Government always intends to ensure that because, from a practical point of view, it is better for us to know where we stand.

**The Convener:** Mr Mundell touched on some of the issues with the Moveable Transactions (Scotland) Bill. Likewise, during an earlier parliamentary session, some issues were raised with the Prescription (Scotland) Act 2018 because there was such a length of time between the SLC undertaking its work and the bill being introduced. If, in future, an SLC bill has been sitting there for, say, five years, would the Government consider doing some more consultation with stakeholders before the bill is introduced so that it could draw out any issues? I think that it is fair to say—it certainly came up in evidence on the Moveable Transactions (Scotland) Bill and when I was on the committee at the time of the Prescription (Scotland) Bill—that probably not everyone or not many organisations engaged fully with the subject matters and subject areas of those bills because they did not think it was really relevant for them. However, if the Government was to do some further consultation before such a bill was introduced, it might draw out some issues and help the parliamentary process.

**George Adam:** I do not want to make a commitment today, but I am quite happy to take that issue away, have a look at it and write to the committee further down the line about whether we find that to be possible or, if not, why we cannot do it. Just give me some time to have a look at it.

**The Convener:** That is helpful. I go back to Mr Mundell.

**Oliver Mundell:** I am going to move on to touch briefly on the National Care Service (Scotland) Bill, on which the committee has just reported to the lead committee. I do not want to get into the politics of or a spat on the bill itself. I am more

interested in hearing the Government's thinking on the concept of bringing to the Parliament framework bills that contain a large number of delegated powers. In this specific example, and as a former member of the committee, you can understand the challenge that the committee is faced with when a delegated powers memorandum cannot specifically say how the delegated powers would be used. Do you recognise that challenge?

**George Adam:** I can see how certain members of the committee would look at a framework bill and think that, but the National Care Service (Scotland) Bill is about co-design. It is a new way of thinking about how we design policy, a process and a system. The bill gives us the flexibility that the Government needs to do that so that we can get engagement with stakeholders and those who use the systems and processes that you and the convener have been talking about with the Moveable Transactions (Scotland) Bill, and so that we can get their expertise at that level.

I can understand, from the point of view of a member of this committee, how some would cynically think that it is a power grab by the Government to do what it wants when it wants, but that is not what this is about. It is never about that anyway, but this is about ensuring that, on the national care service, all stakeholders have had all kinds of engagement and helped us to co-design the service.

I have not had a chance to look at the committee's report on the bill, but I am sure that the minister, Kevin Stewart, will have a look at it and that he will probably be in touch. He has already spoken to this committee and emphasised again how important it is that he works with the committee. He wants to work with you to ensure that the bill and the national care service are all that they can possibly be.

**Oliver Mundell:** Do you, as the Minister for Parliamentary Business, feel that framework bills that rely heavily on secondary legislation give the Parliament as a whole enough opportunity to be part of a co-design process? Why should that process prevent the inclusion of more detail in primary legislation? We did not really get to the bottom of that.

**George Adam:** On framework bills and the type of bill that we choose, there is no exact science. Nine times out of 10, it will be the traditional method, but on this occasion it is a framework bill because this is a more radical and new way of looking at an issue. It is such an important issue—we are talking about a national care service, which will touch so many people's lives. It is important to ensure that we have that level of engagement.

This is a different way of thinking and a different way to look at how we design something, because scrutiny will come from this committee as the process goes forward. It will come from other committees, as well—the last that I heard was that there are about seven committees feeding into the process for the national care service bill. Once we get to the stage where we are pushing it forward, we will be pretty confident that we have something that is robust enough and that will deliver what people want. That is the most important thing for us.

With regard to the type of bill that we will use in future, it will depend on the circumstances. Do you think that I will be coming forward with hundreds of framework bills as of today? No, I will not; which bill we use will depend on the circumstances and how we can deliver the legislation to ensure that it can do what it needs to do. At the end of the day, it is not about us but delivering for people out there in the real world.

**Oliver Mundell:** That is a point of consensus, and I share that sentiment, but I have one final question on the technical aspect. Some members of the committee were concerned that there is a lower threshold for parliamentary scrutiny of secondary legislation. Do you accept that there is a danger in a busy Parliament that secondary legislation gets less scrutiny than primary legislation?

**George Adam:** I do not believe so, having been a member of this committee. I do not see that anything disappears, Mr Mundell. Everything gets looked at and debated. I really believe that this is the best way forward for this specific process. However, I will look at your committee's report. As I said, I have not had a chance to do that yet. I believe that it was published only on Thursday or Friday last week, so I have not yet had a chance to read it, but I will look at it and take it from there.

**Jeremy Balfour (Lothian) (Con):** Good morning to you and your officials, minister. What factors influence the Scottish Government's approach to delegated powers that are conferred on UK ministers in devolved areas?

**George Adam:** I will bring in Susan Herbert to answer that.

**Susan Herbert:** That question relates to legislative consent. If a bill gives powers to UK ministers to legislate in devolved areas, our ask of the UK Government would always be to have a consent lock so that the consent of Scottish ministers would be required, or to have concurrent powers so that we could do our own SSI in that area. There would be a discussion between policy officials and then a discussion between ministers on that.

I think it is fair to say that, of late, in the majority of cases—but not all—where we have asked for these things, the UK Government has not agreed. That is where we are. We provide advice to ministers and they take a policy view. There is then a discussion between our ministers and UK ministers on that, as well as discussions at official level.

**Jeremy Balfour:** Following on from that answer, what factors influence the Scottish ministers in reaching a view on whether a power in a UK bill for UK ministers to legislate in devolved areas should be subject to a statutory requirement for Scottish ministers' consent? Is there different thinking around that or is it the same thinking?

**Susan Herbert:** It is the same.

**George Adam:** Aye, I would say that it is the same thinking. This goes back to what I said earlier on about being able to have that kind of working relationship with colleagues in Westminster. It becomes difficult when you cannot pick up a phone and say something as simple as, "We are having difficulty with—insert name of bill," or "What are you trying to achieve with—insert name of bill," so that we can understand it. When we cannot do that, we end up with a situation where it is just purely emails and letters going backwards and forwards to one another. That makes things a bit difficult for us.

When we are making a decision, we think about how it affects the Scottish Government and, nine times out of 10, the Scottish Government will want to put an SSI down to say that it is the Scottish Parliament that is legislating on the issue. I think it is only right that we would look to do that because, regardless of which political party is in government in Scotland, we do not want to live in a place where the UK Government is legislating too much on devolved matters.

**Jeremy Balfour:** Again, following through on that, where powers for UK ministers in devolved areas fall outwith the scope of statutory instrument protocol 2, how will the Scottish Government facilitate scrutiny of the exercise of the powers in advance of those powers being exercised?

**George Adam:** I will get Susan Herbert to answer that, if that is okay.

**Susan Herbert:** Rachel Rayner can speak to the protocol.

**Rachel Rayner (Scottish Government):** A review of the protocol is going on between officials, the Scottish Government and Parliament. One of the issues that is being considered is what is appropriate and how best to make things work. That also involves working with the UK Government—which, as the minister has said, can

be challenging. We are trying to find a system that gets appropriate buy-in.

**Jeremy Balfour:** Do we have a date for when those protocol discussions will be finished? Are we at the start of the process, are we half way through, or are we drawing towards the close of it?

**Rachel Rayner:** We are at the start of the process.

**Jeremy Balfour:** How long do you think the discussions will take?

**George Adam:** It really depends on—I am trying not to be political—

**Jeremy Balfour:** No, no—that is why I asked about things from your perspective. Obviously, you have two parties that have to negotiate this—I appreciate that. However, from your previous experience, how long do you think that would take? Are we talking months, weeks or years?

**George Adam:** I would be unable to give you any kind of idea of whether it would be next week, next year or two years down the line because, currently, that is the way things are. It would be a problem to commit myself at this stage. I am quite happy to look at it and try to see how long it might take, but it would be very difficult for me to give you any kind of timescale because of the way things are at the moment with the relationship.

**Jeremy Balfour:** Would it be possible for you to write to committee after the summer recess, perhaps, to give us an update on where we are on that?

**George Adam:** Yes. I could say that I can write to you after the summer recess, which could mean after this summer recess, or it could mean the one following that.

**Jeremy Balfour:** I am always an optimist, Mr Adam—you know me. Thank you.

11:15

**Carol Mochan:** I have a few questions about the Retained EU Law (Revocation and Reform) Bill. What impact do you think the bill will have on the Scottish Government and Scottish Parliament?

**George Adam:** That is a difficult question for us to answer here and now. Trying to unpick EU laws that have been part of our legislative structure since 1972 is quite a difficult task; it is one that officials in both Westminster and the Scottish Government are looking at. We are trying to find a way. We are constantly looking at how that will affect us and at what we can do to deal with it. It is difficult for me to say at this stage what the impact will be. We need a balance between finding a way to make that work so that we can still have full

scrutiny and ending up in a position where everything that we do is about EU retained law.

**Carol Mochan:** Are you taking any specific steps to identify what will be devolved to us?

**George Adam:** Our officials are in constant communication with their counterparts in the UK Government. They are trying to find that out, which is very difficult. I was three years old in 1972. I know I do not look that age, Ms Mochan, but that is not yesterday. We are in a difficult and time-consuming situation. Officials on both sides are aware of the task and are trying to find solutions to ensure that we can retain EU law up here, although the UK Government has other ideas.

**The Convener:** I will come in with a supplementary question. Are you also engaging on that issue with officials and relevant Government ministers in the other devolved Administrations?

**George Adam:** Yes, we are. I am laughing because I had to ask a couple of weeks ago who my counterpart is. We have been ensuring that we do that because we know how serious the situation is. We have been trying to reach a position where everyone is working together. Although there are policy differences, we are trying to make this work.

**Carol Mochan:** I have one last question about dates and times. Do you have any anticipated dates for when subordinate legislation under that bill might come to us? Will there be peak times when there will be a high level of scrutiny?

**George Adam:** It is hard to give you that level of detail. We will try to work with this committee in particular to ensure that you are aware of anything that is coming through. It would be difficult for me to commit myself at this stage. I would be guessing and trying to pin the tail on the donkey if I said that I could work out when that date would be. As soon as we have further information, I will be happy to share that with the convener.

**The Convener:** As no other members have questions for the minister, I thank him and his team for their time today. There are a few action points for him to come back to the committee about. If members want to write to him afterwards about anything, we will certainly do that.

**George Adam:** Thank you.

11:18

*Meeting continued in private until 11:25.*

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