



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Delegated Powers and Law Reform Committee

Tuesday 19 March 2024

Session 6



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DELEGATED POWERS AND LAW REFORM COMMITTEE
10th Meeting 2024, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)

*Foyso Choudhury (Lothian) (Lab)

*Oliver Mundell (Dumfriesshire) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

George Adam (Minister for Parliamentary Business)

Steven MacGregor (Scottish Government)

Rachel Rayner (Scottish Government)

Nicola Wisdahl (Scottish Government)

CLERK TO THE COMMITTEE

Greg Black

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 19 March 2024

[The Convener opened the meeting at 10:02]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Good morning, and welcome to the 10th meeting in 2024 of the Delegated Powers and Law Reform Committee. I remind everyone to switch off or put to silent their mobile phones and other electronic devices.

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.

Minister for Parliamentary Business

10:03

The Convener: Under agenda item 2, 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 three Scottish Government officials: Nicola Wisdahl, the LCM and subordinate legislation programme team leader; Stephen MacGregor, the head of the Parliament and legislation unit; and Rachel Rayner, the deputy legislation co-ordinator in the legal directorate. I welcome you all to the meeting.

I remind all attendees not to worry about turning on their microphones during the session, as that will be dealt with by broadcasting colleagues.

I invite the minister to make some opening remarks.

The Minister for Parliamentary Business (George Adam): Good morning, convener and committee members. It is good to see you all again. I note that Foysol Choudhury has joined the committee since my last visit. As a former member of the committee, I am only too well aware of the important work on legislation that all committee members do. I am pleased to be back with you to discuss matters within the committee's remit.

From the Scottish Government's perspective, the past six months have been broadly positive. We continue to strive to introduce the best-quality legislation that we can, and we have maintained high standards in the past quarter.

We continue to require to carefully consider the impact of the United Kingdom Government's Retained EU Law (Revocation and Reform) Act 2023 on the devolved statute book, but the volume of legislation arising continues to be manageable. We have introduced the long-awaited Judicial Factors (Scotland) Bill—which I know the convener is particularly keen to see progressed—and I welcome the steady progress that we continue to make in implementing recommendations from Scottish Law Commission reports.

I know that our respective officials continue to work closely together, and I remain committed to listening carefully to the views of the committee and doing my best to resolve any issues that arise. I look forward to hearing from committee members today, and I am happy to answer any of your questions.

The Convener: Thank you very much for that.

Although the committee does not report the vast majority of Scottish statutory instruments under any reporting ground, we continue to regularly identify drafting issues. What are you doing to ensure that the quality of SSIs remains high?

George Adam: There has been improvement in that regard since I first started attending the committee as a minister. The committee has been raising fewer drafting mistakes. The Scottish Government continues to strive to ensure that the legislation that we introduce is robust and fit for purpose. A significant amount of in-house guidance and training is in place. My officials can talk about that if that would be helpful.

Steven MacGregor (Scottish Government): We have extensive written guidance for all our different legislative programmes, particularly in relation to SSIs. The guidance is designed to ensure that officials go through the necessary processes to understand what the Parliament wants to see and the type of scrutiny that instruments will be subject to.

We also do quite a lot of outreach. We go out and speak to a wide range of Scottish Government directorates, either because they do not have experience of legislation, so we explain what the legislation will look like for them and where to get further advice, or because they deal with a lot of legislation and want to drive up standards. For example, Social Security Scotland has done a lot of work in-house, and we have worked closely with it to help with legislation.

That is what we do at a policy level. Rachel Rayner might want to say a bit about quality assurance by the Scottish Government's legal directorate.

Rachel Rayner (Scottish Government): Checking the quality of SSIs is just part of our work. We start by providing support, coaching and training to people in relation to policy and legal issues and drafting. We have a system in which the team that has drafted the SSI checks it and then a lawyer from a different team who has not had any involvement provides a further check.

We also have other sessions. For example, we have a monthly session where lawyers involved in drafting SSIs get together to share experience, learn from one another and feed back on issues that have been raised by the DPLRC.

We see it very much as a whole package, with lawyers and our policy colleagues working together to produce high-quality SSIs.

George Adam: As you know, convener, it is important that we have a relationship with the committee's clerks so that we can work together and talk over any issues in order to move things forward.

The Convener: That is helpful.

Rachel Rayner mentioned the check by the lawyer who has not been involved in the process. Would that be a different lawyer, depending on their specialism and the SSI?

Rachel Rayner: The idea is that a lawyer who has not been involved in the process will have a fresh pair of eyes when checking the SSI. As with many things, someone with a fresh pair of eyes will pick up things that someone who has been very involved in the drafting might not have picked up.

The Convener: Does that lawyer need to be a specialist in the particular subject area?

Rachel Rayner: No, but they will have had training in providing support for and checking SSIs. Experienced drafters with a fresh pair of eyes can often spot small things at the late stages.

The Convener: Is there a high turnover of staff in the legal directorate, or does it have a fairly stable set of staff?

Rachel Rayner: The SGLD has grown in recent years. We ensure that we provide support and training to new staff, to people who are drafting a lot of the time and to people who come back to drafting after having done other types of work. Different support will be needed for different people. The team that provides the check at the last stage has been stable, and it has increased recently, so we are not concerned about high turnover in it.

The Convener: Since September 2023, the committee has reported four instruments under reporting grounds that it considers to be more serious. One was under ground (e), which is "there appears to be a doubt whether it is *intra vires*", and three were under ground (i), which is "drafting appears to be defective".

Are you concerned about that trend, minister, and have you taken any specific action in response?

George Adam: How many did you say it was, convener?

The Convener: It was four.

George Adam: Personally, I would not call that a trend. There have been perhaps a couple of issues that we have had to deal with and, as always, we will work with the committee to fix them, but I would not say that it is a trend.

The Convener: Okay. We will move on.

Bill Kidd (Glasgow Anniesland) (SNP): Minister, your officials provide our committee and the subject committees with helpful weekly updates on the instruments that are expected to

be laid in the following two weeks. I mean it when I say that they are helpful because otherwise we would not know what we are doing. Can you provide an indication of the anticipated volume of the SSIs that are likely to be laid between now and the summer, and of the expected lead committees?

George Adam: There is a significant SSI coming up for your committee, which you are already aware of, but we have no major packages on the immediate horizon. For the past two years, the volumes of SSIs laid have remained lower than they have been historically, even pre-pandemic. There is no particular reason for that—it is just the way that things have been.

Bill Kidd: Thank you for that. You say that you are not seeing much coming forward between now and the summer. Is that right?

George Adam: I am not seeing any major packages coming along in the not-too-distant future, but perhaps Steven MacGregor can give you some detail on that.

Steven MacGregor: We are looking at laying up to 40 instruments before summer recess, which is well within the norms. I do not have a breakdown by individual committee, but we can certainly take that away and get back to you.

Bill Kidd: That would be very helpful, thank you. The committee appreciates the forward looks that you provide, which help us a lot. Given that some of the SSIs are much longer and more complex than others, it is particularly useful to this committee, as well as to subject committees, to be given as much advance notice as possible of large and complex instruments or large packages of instruments. Do you know whether there are any such instruments—other than the one that we know of—or sets of instruments in the pipeline, and are you able to keep us updated on their progress?

George Adam: As always, we will try to be as flexible with the committee—or committees—as we can with regard to anything, and with the SSIs in particular. You say that they are complex from your point of view as a committee member and for the committee's process, but it is equally as complex for us to make sure that we get them into a state where they are suitable to come to committee. We have to make sure that we do not have any drafting errors. It is about getting that balance so that we can get the information to you in a way that is acceptable.

Bill Kidd: Thank you. I know—I speak on behalf of everyone in saying this—that the drafting errors that we see tend to be relatively minor, but they can have an influence if they are not corrected, so it is useful that you go back and correct them for us.

George Adam: One of the good things about the relationship between my officials and the committees is that, when your clerks or the committee members point out something, we go out of our way to make sure that we try to fix the problem. We need to continue to do that. Our job—mine, as the Minister for Parliamentary Business and yours as members of the DPLR Committee—is to make this place function, and it is important that we get it right.

Bill Kidd: Thank you very much.

Oliver Mundell (Dumfriesshire) (Con): I welcome those comments on trying to get things right. I want to ask about some of the historical commitments that the Scottish Government has made. One is in relation to an amendment to the Scotland Act 1998 (Specification of Functions and Transfer of Property etc) Order 2019 (SSI 2019/183). Has there been any progress on that that you can share with the committee?

George Adam: I am not going to kid you on, Mr Mundell—I knew that you were probably going to ask that question, not because I am hyper-efficient at what I do, but because it was the only instrument that has taken that length of time.

Oliver Mundell: I think that there are a few others that are outstanding.

10:15

George Adam: There are actually 10, five of which are all part of one programme of stuff that we are doing. The 2019 one that you have referred to is older than my two youngest grandkids. The work is really complicated and quite difficult for the officials to get sorted. We are in the process of fixing it and getting it sorted and we will update the committee as we progress down that route.

I usually come here and do not give you the exact number of instruments that are outstanding. You said eight, there are actually 10, and five of those are all part of one package. The number sounds more than it actually is, because five of them are for one process.

Oliver Mundell: You are acknowledging that there is quite a long delay. I will push you on the timescale, so that we have a reference point for getting back to you. I am not asking for an exact date.

George Adam: I get that.

Oliver Mundell: When can we expect to see further progress? When would be reasonable?

George Adam: I am quite happy to be helpful, Mr Mundell. I will ask Nicola Wisdahl if she wants to give you any detail about that.

Nicola Wisdahl (Scottish Government): I am happy to do that. As the minister said, we are tracking 10 outstanding commitments in detail. I investigated the history of the Scotland Act order. The process has been kickstarted with the Scotland Office. The policy position paper has been submitted and we can anticipate that the timescale with the UK Government for the Scotland Act order from that point will be between 12 and 18 months. It is a long process. The challenge was to get to that point, but we have got there. That process was kickstarted last October, so 12 to 18 months would take us either to this October or next March.

It is helpful for us, as officials, that the committee is interested in that, because we can use that as a reference point as part of our follow-up with the Scotland Office. Your interest in that is very helpful in ensuring that that process stays on track.

As the minister said, of the other nine remaining commitments, five relate to a package of pensions SSIs. I will not list them all, but they are different types of pension for different types of people and all relate to that package. That deals with six instruments. The remaining four commitments out of the 10 will be addressed in further identified SSIs that we anticipate laying within the next 12 months. I hope that gives you a timescale.

Oliver Mundell: That is really clear and helpful. We will enjoy seeing the minister back here next March so that we can ask him about that.

George Adam: I look forward to that, Mr Mundell, and I will keep the note that my policy officials got saying, "Do not pick a fight with Mr Mundell."

The Convener: Regarding the longest-outstanding issue, would you find it helpful if the committee were to write to the Scotland Office about the fact that that document has now been sent to it? We have had engagement with that office in the past.

George Adam: I do not see that as being unhelpful. It would be helpful for us, because it would make the argument that we all have to work together to make this deliverable.

Foyso Choudhury (Lothian) (Lab): I will not pick a fight with my first question. The committee does not regularly comment on the explanatory notes that accompany instruments, but we are interested in knowing more about the process for drafting and checking those notes. Can you or your officials set that out in detail for us?

George Adam: Are you asking about how we go about writing explanatory notes? Is that what you mean?

Foyso Choudhury: Yes.

George Adam: Rather than having me waffle on for a couple of minutes, I will go straight to Steven MacGregor, who will probably go straight to Rachel Rayner.

Rachel Rayner: Explanatory notes are part of the SSI, so they are drafted along with that and go through the same checking process as the SSI. They are not done separately. The purpose of an explanatory note is to enable somebody who does not know what an instrument is about to understand it: they can pick up the explanatory note and understand what the instrument is about so that they know whether they are interested in it and want to find out more.

Explanatory notes should be concise. They do not explain every small part of the drafting. Obviously, an element of judgment is involved: one person will find something concise and helpful, while another person may prefer a little more information—some people might even prefer a little less. However, on the whole, I think that we get that judgment right. On occasion, views differ, and we are happy to consider that and to take action if we think that we did not get the judgment quite right.

George Adam: Ironically, on my annual visit to the Conveners Group—as you may remember, convener—two conveners believed that the explanatory notes were too detailed, and one convener believed that there was not enough detail. In many cases, it is in the eye of the beholder—in what people actually want. Again, my officials try to get a balance in order to make sure that we give you enough detail. That applies to all our publications that accompany bills, not just the explanatory notes.

Foyso Choudhury: When delegated powers that are exercisable within devolved competence are not mentioned in an LCM, does that mean that the Scottish Government is content with the UK Government's proposal to take those powers? We ask that question in the context of recently considering the LCM for the UK Parliament's Criminal Justice Bill, which did not mention ancillary or commencement powers that conferred powers on UK ministers in the devolved areas.

George Adam: It is becoming increasingly challenging for us to manage the LCM situation in particular. Partly, that is because of the political situation—let us not kid ourselves on—but it is also partly the result of amendments and everything else that we get from the Westminster Government.

Last time, when we went we were going through the process of LCMs, I mentioned the fact that I try to look at it from the UK Government's perspective, as opposed to ours. When it drafts legislation, it does not go out of its way to take into

account how provisions will affect Scotland. The problem for us is that we have to make sure that we take that into account.

I do not know whether this will answer your question, but, recently, we have been working with the Parliament on a way to deal with that issue. For example, there was all kinds of fall-out from the Automated Vehicles Bill in relation to the Road Traffic Act 1988 and legislative consent. To try to balance that out at the time, we came up with an LCM although we did not yet have a Government position—we did it so that we could get it out within our timescales and still have time as a Government to see what the impact was. On the one hand, this committee, rightly, asks me about the quality of the drafting, the answers and everything else that we do; on the other hand, there is a timescale for everything. That was an example of a way in which we have tried to make it easier for us to manage.

I do not know whether that answer is helpful to Mr Choudhury. I bring in Steven MacGregor again, to sum up some other bits and pieces.

Steven MacGregor: I wonder whether we can take the specific question on the Criminal Justice Bill away. Generally speaking, if there are powers for UK ministers to act in devolved areas, that triggers the requirement for an LCM. A legislative consent memorandum should describe those powers and the Scottish Government's position on them. I would need to take that one away and have a look at it, if that is okay.

George Adam: We are happy to do that. As I said, the LCM landscape is quite difficult, but I try to dispassionately go through it all and make sure that we just do our jobs.

Foysoyl Choudhury: If our committee writes to Westminster and is ignored, what do we have to do?

George Adam: I am not telling Mr Choudhury to go down and chain himself to Downing Street or anything like that, but it is helpful when the committee makes a written appeal on our behalf. Although we work in a political environment, it is important that we are adults about trying to make things function and get the business done. It is always helpful when the committee makes any intervention in such matters, so I encourage you to continue doing so.

Oliver Mundell: I come back to the issue of explanatory notes. I note that you said that some of it is down to the eye of the beholder, but a lot of different ministers across Government introduce a lot of different bills. I want to push you a wee bit on what is being done to ensure that there is a common understanding of what is needed in explanatory notes. We have heard that some conveners think that there is too much in

explanatory notes and some too little, and the Parliament has the opportunity to say that, but there has recently been a degree of variation. I know that there is a balance to be struck, but is someone working across the Government to ensure that all bills—

George Adam: There is a standardised template. You will be glad to know that the ministers do not decide on what is in the accompanying documents.

Oliver Mundell: They look at those documents and sign them off before they introduce the bill, do they not?

George Adam: Yes, that is part of the process.

Oliver Mundell: What happens to make sure that everyone knows what the minimum standard is? I am less worried about there being too much information; it is harder when there is not as much information as we would expect.

George Adam: I was going to answer your question, but Rachel Rayner is champing at the bit, so I will let her in.

Rachel Rayner: That sort of issue would obviously be covered in guidance, but that is something that we would feed back. I am aware that a question was recently raised and a response given on an explanatory note that was amended by way of a correction slip. That would be fed back, and we remind people of the purpose of an explanatory note and what information needs to be included in it. When points are raised, we feed them back.

Oliver Mundell: That is helpful. I had a question on the LCMs, but Jeremy Balfour wants to come in.

Jeremy Balfour (Lothian) (Con): Good morning, minister. I think that you were just about to say that there is a template that people follow. Before a minister signs off the document, does someone in your team, whether that is Steven MacGregor or Rachel Rayner, cast an eye over it to make sure that it follows the template, or is it left to each ministerial department?

George Adam: The parliamentary liaison unit that Steven MacGregor runs is party to all the legislation that goes through the Parliament; it has oversight of just about everything. Steven, do you want to add anything to that?

Steven MacGregor: We do not check every instrument. There are too many of them for us to do that, but in the past we have done a sampling exercise, particularly when this committee has raised concerns, which it did previously about policy notes. We can look at that again if the committee has concerns about the quality of the information.

There is a template and guidance about what is expected in the explanatory notes. The examples that you have given us will help us to say, along with the slightly abstract guidance, “Here is a practical example of what the committee was not happy with, so let’s avoid that in future.”

As Rachel Rayner said, a second pair of eyes in SGLD looks at that, so a high degree of guidance and quality assurance is in place.

The Convener: Before I bring Oliver Mundell back in, I will give a wee bit of balance. This is the first time for quite some time that the committee has raised the issue of explanatory notes. In fairness, they have been fine for the instruments, but it was quite obvious that there was a lack of detail in this one. It is not a recurring issue—it is certainly not a trend—but it was quite stark, just to make you aware.

George Adam: As Steven says, we will take that on board. We try to use these evidence sessions as a way for us to see how we can do things better.

Oliver Mundell: I will follow up the question around LCMs. Part of the challenge is whether, when the Scottish Government says nothing or is silent on the powers, the committee should assume that that means that you are content or whether it comes back to the issue of running out of capacity or time to query everything. Are you prioritising or is it the case that, when the Government says nothing about a power, the committee can take it that you are content and happy with it?

10:30

George Adam: With every LCM, the Government’s position is not available until it has made its position clear. Most of the time, if you are hearing nothing, that is why. I will use the example of the Automated Vehicles Bill, which was complex and detailed. It took quite a while for us to go through that in order to get the detail. If you made the assumption that we were happy with it, that was not the case; it was just a case of getting our ducks in a row so that we could make the arguments. There were certain knock-ons that the UK Government had assumed would not be a problem for the Scottish Government.

Oliver Mundell: I am talking about the situation once the Government has commented. Once the Government has commented, is that a complete comment and are you finished in relation to that LCM?

George Adam: No, the position can be pretty flexible, as you will be aware. There could be negotiations between officials and between ministers over that period, and the position could

change. Although I cannot think of any examples off the top of my head, I think that our position has changed with regard to a couple of LCMs because we have negotiated, the UK Government has accepted our position and we have moved on. There have been other times when the UK Government has not accepted our position and we have had to say that we are not happy with the LCM.

Oliver Mundell: Therefore, in the future, would you make a more conscious effort, where previously you might have been silent, to say where you are happy with things, so that the committee knows that it does not need to look at those things? At the moment, your stuff tends to provide a commentary on the things that you are most concerned about but says nothing about the other bits, and then the committee has to make a—

George Adam: I think that you are being a wee bit unfair. I do not think that that is the case. That might be the political narrative, if we started to go down the route of a political argument but, within the process itself, there have been plenty of times when the Government has made its position clear to say that we are supportive of the LCM and want to make the changes.

Oliver Mundell: Are you saying that, for example, with regard to commencement powers or even things that you do not agree with, there can be powers within the LCM that are not a cause for concern? We are trying to work out which bits to focus on.

George Adam: There have been a number of examples of LCMs recently where we were not happy with some parts—and we have made everybody aware of those parts—but were quite happy with other parts. I read everything that comes in with regard to LCMs but I cannot think of an example off the top of my head. Steven MacGregor, perhaps you could give some examples to back me up.

Steven MacGregor: I was not aware that that was an issue, but we are happy to take that away. As I said previously, if there are devolved powers in a UK bill, we would expect to set out the Scottish Government’s position on those. I do not know whether that is an issue with regard to supplementary LCMs where we might have said what our position was on the original LCM with regard to parts of the bill and then the updated LCM does not re-cover those because they have been addressed already or whether it is that nothing is said about some aspects because the powers do not actually touch on devolved areas. We can take that away and look into it. We would be happy to come back with more information.

Oliver Mundell: Thank you.

Jeremy Balfour: Recently, the Scottish Government has made commitments to amend at stage 2 delegated powers in a number of bills that have been going through Parliament, including the Regulation of Legal Services (Scotland) Bill, which the committee has scrutinised and reported on at stage 1, since your most recent appearance at committee.

Given the potential significance of the amendment of delegated powers at stage 2, will the minister commit to allowing more than the minimum time that is permitted by standing orders between the submission of a supplementary delegated powers memorandum after stage 2 and the scheduling of stage 3, to allow the committee sufficient time to consider it and report to Parliament on any new or amended delegated powers?

George Adam: Mr Balfour, there is a hard way and an easy way to do business, and if I could find an easy way to do that and get it to you beforehand, I would. However, unfortunately, we do not live in that perfect world and it is not simple for us to achieve that. Wherever possible, we will try to get the information to you as quickly as we can, but—as we have heard today—it can be quite complex. Steven MacGregor might want to add something to that.

Steven MacGregor: Improvements have been made to that aspect over the years. In previous parliamentary inquiries into the legislative process, it has come up that the Delegated Powers and Law Reform Committee does not always have as much time for consideration as it would like between stage 2 and stage 3. We have given a commitment, which we try to meet, to write to the committee if there will be any significant powers in amendments at stage 3, with as much information about that as possible. In scheduling, we try to ensure that there is at least one DPLRC session before stage 3 takes place.

Jeremy Balfour: We are also looking at what happens between the stage 1 debate and stage 2. During the debate on the Regulation of Legal Services (Scotland) Bill, for example, the minister committed to lodging a number of amendments, some of which related to delegated powers. As a committee, we do not normally take evidence after stage 1, but on that occasion, both I and the convener made the point that we might need to do so in order to see how the professional bodies felt about those amendments. That takes time, but we had just a week in which to write to the Law Society of Scotland and the Lord President and to weigh their evidence and report on it appropriately.

What discussions do you have with your colleagues, as minister, particularly when fairly major amendments are proposed to legislation?

George Adam: You have brought up another classic example of why these committee sessions are good, as that is something that we have not really discussed. If you give me the opportunity, I will have a look at that and get back to you at a later date.

Jeremy Balfour: Not too late a date.

George Adam: Not too late.

Jeremy Balfour: Thank you.

Moving on, has the Scottish Government reflected on some of the concerns that have been raised in relation to delegated powers? You have heard—from not just this committee but others—that bills are moving quite far with a lot of delegated powers. Is that a concern to you? Is it discussed in the Scottish Government?

George Adam: There is not a trend—to use today's buzzword again—towards our having more delegated powers in legislation. What tends to happen with various bills that involve co-design, for example, is that we need to ensure that the bill actually does what we want it to do.

In the previous session of Parliament, both you and I were on the Social Security Committee, which considered the bill that became the Social Security (Scotland) Act 2018—I do not know whether you were on the committee at that point. That bill process was a perfect example of how to make it work in such a way that we could deliver what we said that we would.

We can sit here and talk about legislation all day, for hours, but the public believe in delivery. How we went about the bill process for the 2018 act is a good example. In fact, our former colleague on that committee, Professor Tomkins, has said that the work that we did on that bill was a perfect example of how the committee was involved. He used that as an example recently, although he was on the Social Security Committee at that time, so I do not know whether he had to declare an interest, given that he had done some of that work.

There are certain times when we do that, when the bill delivers what we want it to do and the process is flexible for us all.

Jeremy Balfour: So is it your position that we are not seeing more framework bills coming through? My impression—I am happy to be corrected on this—is that in the current session of Parliament, over the past three years, we have seen a lot more framework bills than we saw in previous sessions.

George Adam: I had a fair idea that that question would come up, because the political narrative has been going down that route. We checked, however, and we have not had any more

such bills than normal; we have discussed that in relation to UK Government bills as well. I know that everybody gets a bit upset when we start doing like-for-like comparisons with another Parliament and its processes, but, on the whole, we are not doing what you describe. If people listened to the discussion in Parliament, they would think that the position was entirely different, but that is not the case.

The Convener: Oliver Mundell has a supplementary on that.

Oliver Mundell: To me, it is not a political issue; the concern is about Parliament having its say. You made the case for that in your comments. Politicians can spend all day talking about legislation, but most of my constituents, although they want to see delivery and want to see things work, do not have the time to go through legislation letter by letter and word by word to ensure that it works. Ultimately, if the legislation does not work, you do not get the delivery.

My big concern is that, although there might not be more framework bills, the bills that are coming down the line are on more substantive topics. Things such as agricultural funding and the national care service are complicated—the national care service exceptionally so—and a lot of secondary legislation will be needed to make those bills work. I am concerned about whether Parliament as a whole has the capacity to deal with that level of secondary legislation on what I think will be controversial topics. We have seen that issue with the regulation of legal services, too.

People have strong views on some things that are being left to secondary legislation. Will the committee have people in every week to talk about every one of those bills, which are contentious in relation to policy? Has the Government thought about how that will work?

George Adam: In answer to your final question, we will work with the committee to do whatever we have to do to do the work of Parliament, as we always do. I do not agree with your point, but I take on board what you are saying. I argue that, in the example of the Social Security (Scotland) Bill, the secondary legislation and the work with stakeholder groups is what made the difference.

When a broad church of stakeholder groups is put in one room, there will always be those who feel that they are not getting their point across. On the whole, that process happens in order to give us flexibility. I argue that it gives flexibility for those who are involved in, or on the receiving end of, the delivery of the process, because they are the ones who are consulted with.

I take on board the workload issue. We will consider it for a future chat with the committee and see how that might look further down the line. It is

a difficult issue to deal with, but we will try to ensure that the committee feels that we are taking on board what you are saying. I am happy to have a look at the issue.

Oliver Mundell: It is possible that two or three of those bills could arrive together, and we talked about how many SSIs are expected before the summer. There could be periods when there are real peaks in what is coming through Parliament. It is not just in this committee, but other subject committees that are looking at new legislation, as well.

George Adam: I get it.

Oliver Mundell: I hear what you are saying about flexibility and that some people will always be unhappy, but do you recognise that there is a challenge when such discussions are taking place away from the Parliament? Some stakeholders worry that the people who have louder voices, who are able to lobby harder, who have more professional support, or who might be perceived to be closer to the Government politically, might have a better chance of getting what they want through that process than those stakeholders would if it went to Parliament as a whole and were subjected to the full scrutiny of primary legislation.

George Adam: In those processes, the Scottish Government tends to ensure that it listens. We say that we will ensure that everybody's voice is listened to and that we will co-design, and everybody is then listened to. The argument is about whether the conclusions are always what every individual wants. The important thing is to ensure that we deliver on what we have promised in that legislation.

Oliver Mundell: Do you recognise that there is a tension there? Whether or not you think that the process works well, there is a tension.

George Adam: I do not think that there is a process tension; I think it is a political tension.

10:45

Oliver Mundell: I take the Agriculture and Rural Communities (Scotland) Bill as an example. We have a Government-initiated question that sets out that 70 per cent of funding for that would go into tier 1 and 2 as direct payments. That decision has been taken by the Government before the stakeholder consultation formally begins. That is possible to do while the bill is going through, but it is not possible to get some of the other information on details that you would normally expect to see in a bill. The Government is picking and choosing which—

George Adam: I know, but it is never a great idea to write everything on the face of the bill. If we take that argument to the next level—

Oliver Mundell: There is a balance and there is a tension. What I am asking is, do you accept that there is a tension?

George Adam: There is a balance and a tension; I believe that it is a political tension. However, we have to be careful, because once something is included in a bill it becomes law. If we find at a later date that something does not work as well as we thought it would work, perhaps not because of drafting issues or something similar but because it is a clumsy piece of law, we do not have the flexibility to change that.

Oliver Mundell: The last thing I will say on this is that you can put it in the bill while the bill is going through Parliament and retain the flexibility to change it later. That is different from not including it in the bill at all and leaving it to secondary legislation.

George Adam: I think that you and I are playing out the political pressure on—

Oliver Mundell: It is not political. I do not think that framework bills are good in any Parliament. There are times when they can be used, but there has to be enough information included in the bill for parliamentarians and the public to know what their national Parliament is passing before people cast their vote, instead of us just saying that the rest will come later, once the bill has passed. I do not think that that is a good way to work.

George Adam: That is your opinion. My opinion is that it gives us the flexibility to be able to deliver to the public and engage with the public through the process.

Jeremy Balfour: There is a political argument that you could hold the consultation before the bill is introduced and still have the flexibility. Like my colleague Mr Mundell, I think that, purely on a philosophical level, there is a tension; I do not think that it is a political one. I have the same concerns about what sometimes happens at Westminster. You could hold the consultation before the bill comes to Parliament, so that Parliament still gets the final say.

George Adam: I still believe that it is more of a political tension, but that is my personal view. Mr Balfour, you and Mr Mundell have expressed your view on that point. I think that we are going to have difficulty agreeing on it.

Jeremy Balfour: Let us move on to something that I am sure we can all agree on. The committee was contacted by the Lord President during its consideration of the delegated powers in the Regulation of Legal Services (Scotland) Bill. He had misgivings about some of its proposals to delegate powers to his office. What procedures are followed when a bill is being drafted and a decision is made to delegate power, particularly

when a power is being delegated to a body that is not within the Scottish Government?

George Adam: I ask Steven MacGregor to answer that.

Steven MacGregor: Generally, we would expect there to be engagement with the relevant bodies about the approach that is being taken. I would have to take that specific case away to find out what happened on it.

Jeremy Balfour: That would be helpful. It is not often that the Lord President, the Law Society and the Faculty of Advocates seem almost to be taken by surprise by what is in a bill. Two out of those three came to the committee to give evidence on it. It would be helpful if you would come back to us on that one.

The Convener: As colleagues have no other questions, I thank the minister and his officials for their evidence. The committee might follow up later with any additional questions stemming from the session.

10:49

Meeting suspended.

10:50

*On resuming—***Instrument subject to Affirmative Procedure**

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

Registration of Social Workers and Social Service Workers in Care Services (Scotland) Amendment Regulations 2024 [Draft]

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

Instrument subject to Negative Procedure

10:50

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

Scottish Social Services Council (Appointments, Procedure and Access to the Register) Amendment Regulations 2024 (SSI 2024/74)

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

Instrument not subject to Parliamentary Procedure

10:50

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

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Payment and Electronic Money Institution Special Administration) 2024 (SSI 2024/75)

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

The Convener: With that, I move the meeting into private session.

10:51

Meeting continued in private until 11:19.

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