



OFFICIAL REPORT  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

Tuesday 28 September 2021

Session 6



The Scottish Parliament  
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot) or by contacting Public Information on 0131 348 5000

---

**Tuesday 28 September 2021**

**CONTENTS**

|  | <b>Col.</b> |
|--|-------------|
| <b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>  | <b>1</b>    |
| <b>SCOTTISH LAW COMMISSION.....</b>  | <b>2</b>    |
| <b>INSTRUMENTS SUBJECT TO MADE AFFIRMATIVE PROCEDURE .....</b>   | <b>15</b>   |
| Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland)<br>Amendment Regulations 2021 (SSI 2021/328).....                           | 15          |
| Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland)<br>Amendment Regulations 2021 (SSI 2021/329).....                         | 15          |
| <b>INSTRUMENT SUBJECT TO AFFIRMATIVE PROCEDURE .....</b>   | <b>15</b>   |
| Redress for Survivors (Historical Child Abuse in Care) (Exceptions to Eligibility) (Scotland)<br>Regulations 2021 [Draft].....                                       | 15          |
| <b>INSTRUMENT SUBJECT TO NEGATIVE PROCEDURE.....</b>   | <b>16</b>   |
| Representation of the People (Absent Voting at Local Government Elections) (Scotland)<br>Amendment Regulations 2021 (SSI 2021/317).....                              | 16          |
| <b>INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE.....</b>   | <b>17</b>   |
| Local Electoral Administration and Registration Services (Scotland) Act 2006<br>(Commencement No 6 and Transitional Provision) Order 2021 (SSI 2021/314 (C 21))..... | 17          |
| Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Extradition) (SSI 2021/316) .....  | 18          |
| Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency<br>Rules Amendment) (Insolvency) 2021 (SSI 2021/324).....                   | 18          |

---

**DELEGATED POWERS AND LAW REFORM COMMITTEE**

**6<sup>th</sup> Meeting 2021, Session 6**

**CONVENER**

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

**DEPUTY CONVENER**

\*Bill Kidd (Glasgow Anniesland) (SNP)

**COMMITTEE MEMBERS**

\*Craig Hoy (South Scotland) (Con)

\*Graham Simpson (Central Scotland) (Con)

Paul Sweeney (Glasgow) (Lab)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Charles Garland (Scottish Law Commission)

The Right Hon Lady Paton (Scottish Law Commission)

**CLERK TO THE COMMITTEE**

Andrew Proudfoot

**LOCATION**

The Adam Smith Room (CR5)



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 28 September 2021*

*[The Convener opened the meeting at 10:01]*

### Decision on Taking Business in Private

**The Convener (Stuart McMillan):** Welcome to the Delegated Powers and Law Reform Committee's sixth meeting in session 6. I have received apologies from Paul Sweeney MSP. Before we move to the first item on the agenda, I remind everyone present to switch their mobile phones to silent.

Agenda item 1 is to decide whether to take business in private. Is the committee content to take items 7 to 10 in private?

**Members** *indicated agreement.*

## Scottish Law Commission

10:01

**The Convener:** Item 2 is evidence on the work of the Scottish Law Commission. I welcome Lady Paton, the chair of the commission, who is accompanied by the commission's interim chief executive, Charles Garland.

The session 5 Delegated Powers and Law Reform Committee built a very positive relationship with the commission. In that committee's handover report, which was published in March, it recommended that its successor committee take the time to learn more about the commission's work in session 6 and to develop similar links. I hope that today might be the start of that work.

I ask Lady Paton whether she wishes to make any opening remarks.

**The Right Hon Lady Paton (Scottish Law Commission):** Thank you, convener. We are delighted to be here in person. It is a wonderful change for us after the past 18 months when we have all been remote and virtual. Having said that, I am pleased to report that the Scottish Law Commission has been faring quite well in the pandemic. That is partly because we focus on research and written reports, and partly because we have quite good information technology, I am glad to say. Therefore, the work of the commission has been carrying on despite Covid-19. We have possibly been finding it slightly easier to contact some stakeholders and other law commissions, such as the Law Commission for England and Wales.

As you know, we are an independent legal think tank that does research and gives advice to the Scottish ministers about possible law reforms that are intended to simplify or modernise Scots law and fill any gaps. As I think the committee heard from Charles Garland at its business planning meeting, our present projects are on cohabitation, heritable securities, homicide, leases, personal injury damages and, we hope, tenement property and common repairs. On the final issue, a Scottish Government reference is being adjusted between the Government and the commission. There are also two projects with England and Wales, which are on automated vehicles and surrogacy.

In our projects, we consult widely and make recommendations, but we also keep an eye on implementation. We really appreciated the committee's discussion with the Minister for Parliamentary Business during your meeting on 14 September. It was heartening to see questions about the 27 outstanding items of draft legislation and about the Prescription (Scotland) Act 2018, so

thank you very much for that interest. We are delighted that the First Minister's programme for government includes a moveable transactions bill, which will be of great assistance to Scotland in recovering from the pandemic.

There are another two optimistic features, one of which is the relaxed criteria for bills to come to the committee. In that regard, we must thank the committee clerk, Andy Proudfoot, and our own former chief executive, Malcolm McMillan, who was last seen abseiling down the Inaccessible Pinnacle, at the top of a mountain in Skye—he has managed to triumph there. Also, I should mention the timetabling for the future. I think that the Minister for Parliamentary Business, Mr George Adam, is going to try to keep spaces for commission bills. We are grateful, and we thank you for all those changes.

Apart from moveable transactions, I will mention again—this will be repetition for people such as Graham Simpson and Stuart McMillan, to whom I have spoken in the past—that trust law reform is a high-priority reform; it is a must in our view.

I wonder whether I may give you a small bit of the evidence that was heard in the Economy, Energy and Fair Work Committee in November 2019. Gordon Lindhurst was the convener, and we thank him for bringing that meeting about, because practitioners and academics made a very powerful plea for trust law reform. One witness spoke about companies asking him where they should set up. He said:

“such companies might be considering whether it will be in Scotland, Berlin, California or London and ... the answer for most of those companies is that it will be easier for them in those other places ... because of the way that the law operates ... It is a bit like somebody saying, ‘You haven't got fibre broadband, so why would I set up there?’”

Another witness said:

“It is difficult to access finance under the current law ... our current law puts off inward investment to Scotland. Finance companies look at Scots law and say, ‘No, we are not touching that.’”—[*Official Report, Economy, Energy and Fair Work Committee*, 26 November 2019, c 6, 3.]

That was powerful evidence from people who really know about it, because they have customers coming to them and saying that they want to start a business. Admittedly, at that time, their focus was on the need to be able to give security over moveable property. These are start-up businesses and small and medium-sized enterprises that just do not have land; they do not have heritable items, which is the way in which securities are generally created in Scotland—that is, until moveable transactions are, we hope, addressed.

The difficulty for start-up businesses is often that they involve a keen, young entrepreneur with good ideas and good presentation but no land or buildings. They have, for example, intellectual

property, software licences, trademarks, registered and unregistered designs and so on. Those committee witnesses were saying that it is heartbreaking to have to say to such people that, because we do not have that facility, they have to go elsewhere. A lot of people do not understand the fact that trust law reform goes hand in hand with moveable transactions. Some people think of trusts as old-fashioned and Dickensian but, in fact, trusts are a modern tool that is crucial for making Scotland an attractive place for business and investment.

A former chair of the Scottish Law Commission identified three crucial areas to make Scotland's economy attractive to outside investors. The first is the Legal Writings (Counterparts and Delivery) (Scotland) Act 2015. That is important because of electronic signatures and so on for remote dealings. We are so grateful that that was passed before the pandemic.

The second vital item is moveable transactions—securities over moveables—which we hope are now being addressed in the legislative programme.

The third item that the chair identified—this was around 2012—is trusts. The commission recommends a complete overhaul of the 100-year-old legislation on trusts, the Trusts (Scotland) Act 1921, which, regrettably, was passed in a time when there were percussive typewriters and no electronic communication and the idea of remote contracts and so on did not cross anybody's mind. It was very much more a case of looking towards deed boxes and private trusts. Now trusts are in everything: the national health service, tenements and common repairs, pension funds and commercial land with snagging work. Partnership properties are held in trusts and church elders hold funds in trusts. Trusts permeate Scottish society and the people who are expert in them are adamant that we need to sharpen up the machinery.

Before I hand back to the convener—I hope that I have not abused my five minutes—I would like to add what we are thinking of doing in the future. We are keen to join England and Wales in their research into digital assets, which are a cutting edge of commercial law—probably—involving electronic trading documents, smart contracts, crypto currency and block chain. We are keen to move forward jointly with the LCEW, again with a view to making Scotland great post-pandemic.

On that note, convener, I thank you again for this opportunity and I hand back to you.

**The Convener:** Thank you very much. You mentioned quite a lot there, and I am quite sure that, when we have our private session,

colleagues will no doubt discuss trust law reform. I suggest that they might have some questions, too.

You touched on the tenement repairs work. Graham Simpson was very much involved with that in the previous parliamentary session, and I was a member of the group that Graham convened. Can you provide a bit of information about where that work is at the moment?

**Lady Paton:** We understand that the Scottish Government has approached the commission, hoping for agreement on what the parameters of the research should be. Professor McCarthy is dealing with that. A revised version of the reference has been sent back to the Scottish Government and I believe that that is where it is just now, but perhaps Charles Garland has some more up-to-date information.

**Charles Garland (Scottish Law Commission):** That is exactly my understanding. As Lady Paton says, we are in a process of revising the reference, to make sure that we know exactly how what we will be asked to do will fit into an undoubtedly wider package.

**The Convener:** The commission is in the second half of its 10th programme of law reform. How is the work progressing and has the pandemic caused you to change any of your plans? Lady Paton, you seemed to indicate that, with the kit that is available to the Scottish Law Commission, there has not been much of a hindrance to your work throughout Covid.

**Lady Paton:** I would say that Covid-19 has not hindered our business as much as it has some others. The entertainment business, leisure and recreation, taxi drivers and so on have been completely stymied by it, but we are all used to working at desks and computers and reaching out to stakeholders electronically.

For example, the cohabitation project managed to put out its discussion paper just before the pandemic, I think. A whole lot of roadshows were lined up, in which the commissioner was going to go round the country, but of course that came to an abrupt end. I am happy to say, though, that the roadshows and seminars were then arranged electronically, so the consultation with stakeholders proceeded appropriately and a policy paper was put together. The project is moving towards a report to the Scottish ministers with a draft bill, which is causing a lot of exchange of views and so on, but that is still being done electronically and by virtual meetings. The cohabitation project is absolutely on target.

The work on heritable securities—that is, mortgages and so on—has been held back not by anything to do with Covid-19 but rather by the discovery of a rich aspect of mortgages called securitisation, which is when you take out a

security on securities. It seems to involve millions of pounds. The net result of finding that area, which most people do not think of when they think of mortgages, has been that a third paper is needed. You could say that there has been a slight hold-up in the work on heritable securities, but not because of Covid.

The homicide project was positively accelerated by Covid, because we had to work continuously at home. I was the lead commissioner on that and I had the benefit of very good legal assistants. I am not sure whether members are aware of this aspect of the commission, but we have legal assistants who come in from university. They are graduates who stay for a year and they are all excellent. In that particular period, one legal assistant defined himself as a criminal law geek. With electronic communication, I would receive an email first thing in the morning—9 o'clock in the morning—saying, “Surely there is something useful that I could be doing?”, and the result of that was an acceleration and productivity in the homicide field.

10:15

David Bartos, who is a member of the bar, came in as a new commissioner, and he took certain views about the termination of leases, irritancy and so on, and whether we should deal with certain aspects of those. I suppose that it could be said that a change of staff held up leases work a little, but we now have a report and a draft bill, which will be discussed on 18 October. Therefore, there has been good progress there.

On personal injury damages, again a change of staff has perhaps caused a slight hiccup. There was a project manager change, but the paper is now virtually complete, and it contains very important points on, for example, whether, if a person has been injured and their next-door neighbour helps them out with bathing, dressing and gardening and generally looks after them, that next-door neighbour is entitled to claim damages. At present, that is restricted to relatives. We think that that is a very important point for 21st century Scotland.

A rather sad point arises from pleural plaques. Members might remember that pleural plaques were made an injury by a Scottish bill. That was excellent because, although pleural plaques do not produce obvious symptoms, nobody wants them. They are a precursor of other things that might be terrible. Unfortunately, however, the time bar problem has arisen. We deal with that in chapter 4 of the paper. Nobody, including Thompsons Solicitors, which deals with a lot of respiratory problems and asbestosis, foresaw what has happened. If a doctor simply mentions to a person that they have pleural plaques but also

says that they have chronic obstructive pulmonary disease, the person could go off thinking, “My goodness. I must do something about my COPD,” but they might not pay too much attention to the pleural plaques. Maybe they may be perfectly fine up to a point in dealing with COPD and bronchitis but, 15 years later, they could get mesothelioma, and they would be time barred, because the period is three years from when a person is told that they have pleural plaques. Everybody agrees that that is unfair. Pursuers and defenders came together on that, which was quite extraordinary.

Progress is being made on the two joint projects with England and Wales. The Law Commission of England and Wales is very strong on automated vehicles. There are a lot of pressure groups there. It is also strong on surrogacy, and it has pressure groups on that. It sweeps Scotland along with it.

We have not been held back too much.

**The Convener:** Do you plan to narrow down any of the work that you are undertaking?

**Lady Paton:** No, not at present. As members know, we have a five-year programme in which everything is set out and agreed with the Government. At present, no narrowing down is being considered.

**Graham Simpson (Central Scotland) (Con):** Lady Paton, you have pretty much covered everything, which is great.

**Lady Paton:** Not the bilberry bee.

**Graham Simpson:** That is a good piece of research. I am still the champion of the bilberry bee.

**Lady Paton:** I know. I am very impressed.

**Graham Simpson:** I have actually seen one now; I had not done so the last time we met. Actually, I saw several over the summer, which is good.

**Lady Paton:** That is good. I will ask you more about that another time.

**Graham Simpson:** You can certainly do so. I spent a very enjoyable day hunting the bilberry bumblebee in Perthshire.

**Lady Paton:** In Perthshire. Right.

**Graham Simpson:** Let us talk about your work. I was going to ask how you have been getting on since you became chair of the commission, but I think that you have answered that already. You have also talked about how you have been dealing with the pandemic, so I do not really need to go into that either.

In the previous parliamentary session, prior to your appointment, our predecessor committee visited your offices with Lord Pentland as our host.

I found the visit really useful, and I think that we got to meet all the commissioners. Would you consider hosting another such visit?

**Lady Paton:** Yes, that is indeed something that we would like to do, but presumably when Covid settles down a bit more. We should warn you about plans to move us from our present premises at 140 Causewayside, but that will not happen until the end of next year. If Covid settles down, we will invite you back to 140 Causewayside, whose brutalist concrete presentation has, I think, a certain idiosyncratic charm. It is not quite as wonderful as this building, but it is interesting nonetheless.

The whole court estate is being reassessed, leases are not being renewed, premises are being closed down and people are being moved about a bit. We will be moving in about a year’s time, but it would be nice if you could come and visit us again at 140 Causewayside. Charles Garland will have noted that down.

**Graham Simpson:** Wherever it happens, such a visit would be useful. Indeed, I found it useful just to hear in more depth about your work and to speak to individual commissioners. After all, they all have their own specialities and different backgrounds. As I have said, I—and I think all the members of the predecessor committee—found the visit really useful.

All my questions have been covered, but I want to go back to my own area of interest that the convener mentioned: tenement repairs. As the convener said, I chaired a working group on the issue, and the recommendations that stemmed from that work have led to your being contacted. Given that this is a personal priority, I wonder whether you can give us any idea of the timescale for such work if you were to take it on. When would it start and how long do you think it would take?

**Lady Paton:** Charles Garland might be better placed to respond to that question, but I can say that the commission is enthusiastic about the issue. The difficulties experienced with common repairs are massive, although the situation is worse in Edinburgh than it is in Glasgow. With the use of factors such as Hacking and Paterson Management Services, Glasgow has managed to grasp the nettle by identifying what common repairs need to be carried out, getting them done and then billing all the individuals involved—and, if necessary, litigating if nobody pays.

I am afraid to say, though, that the situation in Edinburgh is bad, because there are many buildings where nobody is in charge. For example, an owner in one building had to chase up something like 13 people, which is a huge number and requires an awful lot of work. Moreover, as



you know, some people can be very difficult to deal with.

The commission is keen to address the issue, but the matter has gone back to the Scottish Government for final adjustment. After all, it is very important that the parameters, the definitions and the limits of any research are set down, because otherwise everyone will just be talking at cross purposes.

We will undertake to speak to Professor McCarthy and perhaps get in touch with the contact who sent us the reference to see what position we are in. We can then let your clerk know the latest position.

**Graham Simpson:** I would appreciate that.

**Lady Paton:** I can understand that. I would appreciate it, too. I should say that I am in the middle of a common repair myself, and the situation is very tricky. One of the owners is based mainly in Singapore, which does not help.

**Graham Simpson:** That is not uncommon. You have just spelled out the difficulties, and I think that reforming the area would help thousands of people not just in Edinburgh and Glasgow but, frankly, right across Scotland, although the situation mainly affects those two cities. I am pleased to hear what you have said and I would be grateful if you could keep us informed.

**Lady Paton:** Right.

**Graham Simpson:** Convener, I do not really have anything else to ask, although I may jump in later. We will see how it goes.

**Craig Hoy (South Scotland) (Con):** Good morning, Lady Paton, and thank you for your very clear and full opening remarks. I think that they may have dealt with some of my questions as well. However, for the record, I have one question and perhaps a supplementary to it.

Given how outdated the present framework is, you have welcomed the recent Scottish Government announcement that a moveable transactions bill will be brought forward in the coming year. Although the bill has yet to be introduced—and, of course, only at that point will we find out which committee will become the lead committee—will you give us a short summary of why you consider the reforms to be so important? Is there a degree of risk that the benefits of that could perhaps be underachieved if we do not look contemporaneously at trust law, which you also spoke about?

**Lady Paton:** No. To be absolutely frank, if we deal with moveable transactions but not trust law at the same time, it will be fine, because dealing with moveable transactions will give around 50 to

60 per cent more capacity in Scottish business than there is at present.

What was really frustrating to a lot of witnesses who spoke at that evidential hearing was that either they had to tell people not to try in Scotland, because it is too difficult and complex and because all sorts of special arrangements have to be made to work around the problem, or they would say to the customer, “Well, we can do our best for you, but we will have to do these workarounds, because the moveable transactions bill isn’t going forward.”

In a way, if a lawyer does a workaround, they are money making, if you follow me. One of the hurtful accusations at the evidential hearing was a suggestion by one of the committee members that the moveable transactions bill was simply a device—a plot—to earn lawyers more money. The lawyers were very hurt because, in fact, if the bill goes ahead, they will have done themselves out of the workaround fees.

I therefore say that we should focus on moveable transactions. We are hoping that the bill will come to your committee because, given what remains in the relaxed criteria, it should not be controversial. I have not come across anybody who is against the content of the bill.

There was a bit of a delay in meeting the Minister for Community Safety. There was mention of the cost of two registers that have to be set up—£500,000 each, I think—but those will be self-financing once they get going. As I suggested, perhaps rashly, to the minister, £1 million is a drop in the ocean compared with, for example, tram construction or maybe even the child abuse inquiry. Once those registers are set up, admittedly for a budget of roughly £500,000 each, they will be self-financing through various mechanisms such as the fees charged to customers, which will not be high, but just enough to keep things going. Apart from the two registers, the only other opposition seemed to come from a lack of parliamentary time.

The bill is uncontroversial and much needed. It has resulted in a lot of press, which I have here. One headline was:

“Why are Scots firms still awaiting legal reform?”

There were also letters—here is another headline, although I do not want to be boring:

“Holyrood must find time to keep Scots Law relevant by implementing reforms”.

I have seen no word against the proposal, so I think that it will be uncontroversial and probably a bit black-letter lawish. There will be the expertise of Dr Andrew Steven, Hamish Patrick and all those other knowledgeable people.

I will add one more example from the press, which says that more over-50s are working for themselves. That means that they have to go to the bank and say, "I've got a great idea. Here is my business. It's going to be an SME. Let's get going." However, they cannot get going.

We can work well on moveable transactions. It would be good to get trust law sorted out, too, but that is not essential—although the two things dovetail to some extent.

10:30

**Craig Hoy:** You have already covered my next question, which was about controversy. I take it from what you have said that you do not think that the proposal is controversial.

**Lady Paton:** Definitely not.

**Craig Hoy:** It is therefore absolutely fine for this committee to be the lead committee.

**Lady Paton:** That is my view—although that does not matter, really, does it?

**Craig Hoy:** Well, I would take your guidance on that, I am sure.

If this committee were appointed as the lead committee on the moveable transactions bill, we would no doubt be looking to invite the lead on the work at the commission to appear before the committee. I am assuming that you would be happy to do that.

**Lady Paton:** Me? Do you not think that—

**Craig Hoy:** Not you personally.

**Lady Paton:** I would be happy to come along but, for the black-letter expertise, I would think—

**Craig Hoy:** I mean the commission generally.

**Lady Paton:** You would probably want people such as Professor George Gretton, Dr Andrew Steven, Hamish Patrick or Bruce Wood. I mention all those people because they would be delighted to give assistance.

**Craig Hoy:** Excellent. I have one final question, which is perhaps one that Paul Sweeney might have raised if he was here.

You say that one of the obstacles is parliamentary time. One of the things that we discussed with Mr Garland involved capacity and the encouragement that could be given to members to introduce commission bills this session, as that would not put pressure on the Government's parliamentary schedule. Would you be open to examining that?

**Lady Paton:** You are talking about members' bills. Yes, we are definitely open to that, but we feel that there is more authority, drive and clout if

the Scottish Government says, "This must happen."

On member's bills, the Scottish Parliament is to be congratulated because of the accessibility of legislation to average people. It is much more accessible here than it is in Westminster. There have been some wonderful results. For example, wearing seat belts in school buses was a member's bill, I think, and there has been assistance from an MP on the damages front, although I do not think that that proposal emerged as an act. As I say, however, the commission feels that there is more authority and drive and a stamp of approval if the Scottish Government says, "This should go ahead."

I am interested in your suggestion that using member's bills would resolve the matter of parliamentary time. Does it help with parliamentary time?

**Craig Hoy:** No, I would not assume so.

**Graham Simpson:** The suggestion was made by Paul Sweeney, who is not here today, unfortunately.

My view is that much of the stuff that you are working on is quite technical, and when it comes to the process of taking through a member's bill, the aim really needs to involve a simple idea. If the Government does not take it on, the process is very time consuming, and none of us really wants to get bogged down in something that could be extremely technical that only lawyers really understand. For me, the sort of work that you are doing should be taken on by Government, not individual members, unless it is on a really simple matter.

The process is grindingly slow. You get frustrated, and members who try to pursue a member's bill also get frustrated. That is my view: it is better that Government takes on such proposed legislation, rather than members.

**Lady Paton:** That is a very good point about the simplicity of the idea that must be there. Everybody understood the point about seat belts and school buses; not everybody will understand the moveable transactions thing, and it will not have immediate appeal across the Parliament, if I can put it that way. It must be spelled out. I therefore tend to agree with you.

**Bill Kidd (Glasgow Anniesland) (SNP):** I thank Lady Paton and Mr Garland for being here. The discussion is giving us some background on what are very complex ideas—as has just been discussed—while explaining them in a much more understandable way for the benefit of people who are looking for simplicity. Thank you, Mr Simpson. As I say, it is great that you are here, Lady Paton and Mr Garland.

Going back to the list of Scottish Law Commission reports that the Scottish Government is reported to be looking to legislate on during this parliamentary session, do you have any view on the order in which the reports should be pursued?

**Lady Paton:** The trust law reform would, I think, exhaust the Government's goodwill, if you know what I mean. It could say, "Well, we've taken on trusts."

Regarding the other matters, cohabitation is very much a real-life issue, and my personal preference would be for damages for personal injury. That is more than enough to keep us busy.

I see that judicial factors is another topic on the list, is it not?

**Bill Kidd:** Yes.

**Lady Paton:** In my view, that would perhaps be a slightly lower priority. Everybody seems to be managing all right, although the law could do with that improvement, and some rather awkward situations have arisen. The trouble is, looking at the list, that one could vote for just about every topic.

A situation to do with curator bonis has been drawn to my attention, and there is also power of attorney—those all fall under the topic of judicial factors. Someone was granted a power of attorney, I think, and unfortunately then went and cleaned out an 80-year-old lady's bank account and went abroad. That has to be looked at.

As you can see, I am already contradicting myself by saying that judicial factors might also be worth a look. I cannot put the topics in any real order, although I think that trust law reform should be at the top.

**Bill Kidd:** You mentioned cohabitation and damages for personal injury, which are areas that people may feel might affect them more. Although all the matters on the list could affect us all, those may feel more personal. In general, when people hear about what is going through the Scottish Parliament, they may feel that consideration of such issues speaks to them, and that is important. I am glad that you pointed those topics out—that is really worthwhile.

Are there any unimplemented SLC reports that you consider should take priority over those that the Scottish Government has highlighted? Do you have any particular hobby-horses that you would like to be taken forward?

**Lady Paton:** No—I would say exactly what I have just said. Damages for personal injury is perhaps a slight personal hobby-horse, but, apart from that, I do not have a particular preference.

**Bill Kidd:** You think that the topics that are coming forward are strong enough and good enough.

**Lady Paton:** Yes.

**Bill Kidd:** Were you and the SLC involved in the Scottish Government's discussions on its programme for the implementation of your reports?

**Lady Paton:** Do you mean on the progress of implementation, or do you mean when the programme was put together in advance?

**Bill Kidd:** Both, actually.

**Lady Paton:** On making the programme in advance, there is certainly a lot of consultation with the Scottish Government. What happens—we will be doing this next year, for our 11th programme—is that we ask everybody, including members of the public, lawyers, members of Parliament and practitioners, to comment. People send in their contributions on what they would like to be reformed or looked at, and those are then collated and discussed with the Scottish Government, to some extent. That would usually involve our sponsors—it would be Jill Clark and Alison Mason on the civil side, and Philip Lamont on the criminal side.

Soundings are taken about what would be useful, because obviously the Scottish Government does its own research into various topics. Together, a programme is formed and approved by the Scottish ministers, and then it is set down for five years. We will be doing that work next year, in working towards our 11th programme, which will involve a lot of consultation with the Scottish Government.

There is currently a lot of communication because the Scottish Government has been researching intestate succession, for example, which is causing considerable difficulty. The Government is thinking of referring some aspects of that to the SLC, so there is interplay there.

**Bill Kidd:** That is interesting—thank you. It was clear, actually.

**The Convener:** As members have no further questions, I thank Lady Paton and Mr Garland for coming to the committee and taking questions from members. Your evidence has been very helpful. I am sure that, if the committee has any further questions, we will write to you with them.

**Lady Paton:** Thank you. We are very grateful for the opportunity.

**The Convener:** No problem.

10:40

*Meeting suspended.*

10:41

*On resuming—*

### **Instruments subject to Made Affirmative Procedure**

**The Convener:** Under agenda item 3, no issues have been raised on the following instruments.

**Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2021 (SSI 2021/328)**

**Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2021 (SSI 2021/329)**

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

**Members** *indicated agreement.*

### **Instrument subject to Affirmative Procedure**

10:41

**The Convener:** Under agenda item 4, no points have been raised on the following instrument.

**Redress for Survivors (Historical Child Abuse in Care) (Exceptions to Eligibility) (Scotland) Regulations 2021 [Draft]**

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

**Members** *indicated agreement.*

### **Instrument subject to Negative Procedure**

10:42

**The Convener:** Under agenda item 5, no points have been raised on the following instrument.

**Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2021 (SSI 2021/317)**

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

**Members** *indicated agreement.*

## Instruments not subject to Parliamentary Procedure

10:42

**The Convener:** Under agenda item 6, an issue has been raised on the following instrument.

### Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No 6 and Transitional Provision) Order 2021 (SSI 2021/314 (C 21))

**The Convener:** The instrument brings into force section 17 of, and schedule 1 to, the Local Electoral Administration and Registration Services (Scotland) Act 2006. It forms part of a package of Scottish statutory instruments relating to elections that were laid before the Parliament earlier this month.

In correspondence, the committee asked the Scottish Government why section 17 and schedule 1 are only now being commenced, 15 years after the 2006 act was passed. The Scottish Government replied to say that there was an apparent omission in section 17 of the 2006 act at the time that it was enacted, in so far as it did not commence the accounting period for election expenses when an individual becomes a candidate.

That is being corrected by article 3(4) of the Scottish Local Government Elections Amendment Order 2021, which the committee considered last week. That in turn enables section 17 of the 2006 act to be brought into force by the current instrument. A copy of the Scottish Government's full response can be read in paper 3 for the meeting, which is available on the committee's website.

The response also indicates that steps to rectify the omission were not given priority, despite there having been various local government elections since 2006. Given the omission and the delay in resolving it, are members content to report the instrument under reporting ground (g), on the basis that it has been made by what appears to be an unusual or unexpected use of the commencement powers conferred by the parent statute?

**Members indicated agreement.**

**The Convener:** Also, does the committee wish to highlight to the lead committee the Scottish Government's response as to why the delay in rectifying the omission occurred, so that that committee might consider whether the explanation is satisfactory from a policy perspective?

**Members indicated agreement.**

**The Convener:** No points have been raised on the following instruments.

### Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Extradition) (SSI 2021/316)

### Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2021 (SSI 2021/324)

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

**Members indicated agreement.**

**The Convener:** We now move into private session.

10:44

*Meeting continued in private until 11:41.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://www.parliament.scot/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba