



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 10 January 2023

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 or by contacting Public Information on 0131 348 5000

Tuesday 10 January 2023

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
NATIONAL CARE SERVICE (SCOTLAND) BILL: STAGE 1	2
INSTRUMENT SUBJECT TO MADE AFFIRMATIVE PROCEDURE	19
Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc) (Scotland) Amendment Order 2022 (SSI 2022/375)	19
INSTRUMENT SUBJECT TO AFFIRMATIVE PROCEDURE	20
First-tier Tribunal for Scotland (Transfer of Functions of the Council Tax Reduction Review Panel) Regulations 2023 [Draft]	20
INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE	21
First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 (SSI 2022/364)	21
Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022 (SSI 2022/365)	22
Official Controls and Import Conditions (Transitional Periods) (Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/371)	23
Red Rocks and Longay Marine Conservation Order 2022 (SSI 2022/372)	24
Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/373)	24
St Mary's Music School (Aided Places) (Scotland) Amendment (No 2) Regulations 2022 (SSI 2022/377)	24
INSTRUMENT NOT SUBJECT TO PARLIAMENTARY PROCEDURE	25
Heat Networks (Scotland) Act 2021 (Commencement) (No 1) Regulations 2022 (SSI 2022/376 (C 20))	25

DELEGATED POWERS AND LAW REFORM COMMITTEE

1st Meeting 2023, Session 6

CONVENER

Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)

*Oliver Mundell (Dumfriesshire) (Con)

*Paul Sweeney (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jenni Minto (Argyll and Bute) (SNP) (Committee Substitute)

Mark Richards (Scottish Government)

Kevin Stewart (Minister for Mental Wellbeing and Social Care)

CLERK TO THE COMMITTEE

Lucy Scharbert

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 10 January 2023

[The Deputy Convener opened the meeting at 10:03]

Decision on Taking Business in Private

The Deputy Convener (Bill Kidd): Welcome to the first meeting in 2023 of the Delegated Powers and Law Reform Committee. It is good to see you all. We have received apologies from our convener, Stuart McMillan. In his place, I welcome Jenni Minto—thank you, Jenni.

Before we move to the first item on the agenda, I remind everyone to switch their mobile phones to silent.

The first item of business is a decision on whether to take agenda items 7, 8, 9 and 10 in private. Is the committee content to do that?

Members indicated agreement.

National Care Service (Scotland) Bill: Stage 1

The Deputy Convener: Under item 2, we will take evidence from Kevin Stewart, the Minister for Mental Wellbeing and Social Care, on the National Care Service (Scotland) Bill at stage 1. The minister is accompanied by two Scottish Government officials: Anna Kynaston is deputy director, national care service, and Mark Richards is head of social care, legal services unit. I welcome you all.

I remind everyone that they should not worry about turning on their microphones during the session as those are controlled by broadcasting. I invite the minister to make some opening remarks.

The Minister for Mental Wellbeing and Social Care (Kevin Stewart): Thank you, convener, and thanks to the committee for asking me to give evidence today. Happy new year to all.

It is fair to say that the national care service represents one of the most ambitious reforms of public services. It will end the postcode lottery of care provision across Scotland and ensure that people who need it have access to consistent, high-quality care and support to enable them to live full lives wherever they are.

People who have experience of receiving and providing social care are clear that significant reform is needed, despite the changes that have been made over the past 20 years. We have excellent legislation and policies, but when it comes to putting them into practice, there is a gap.

The NCS bill sets out a framework for the changes that we want to make and allows scope for further decisions to be made in collaboration with the people who will be most affected by them. That flexibility will enable the NCS to develop, to adapt and to respond to new circumstances over time.

It is important that we start by establishing the principle of transferring accountability for social care to the Scottish ministers. The new system will be person centred, to ensure that the NCS is delivered in a way that respects, protects and fulfils the human rights of people who access care and support, as well as associated people such as carers.

We are fully committed to improving the experience of staff in the social care sector, too, because we recognise and value the work that they do.

Our co-design process will ensure that the national care service is built with the people whom it serves and those who deliver it at its very heart.

The Deputy Convener: Thank you for those opening remarks. I will kick off the questions before I invite members to come in.

In your response to the committee, minister, you acknowledged that much of the detail of the bill will be set out in secondary legislation. You also said:

“It is important that we obtain Parliamentary agreement to the principle of creating the NCS”.

Why does the Scottish Government consider that it is important to obtain parliamentary agreement at this point? Why is it considered necessary to obtain such endorsement through the passage of a bill?

Kevin Stewart: As we have said all along, we want to ensure that the national care service is the best that it can be. To do that, we need people to be involved in the co-design of the service. In my opening remarks, I talked about the implementation gap that exists. We have done a lot of good work in recent years, and we have been on a journey over the past two decades, when it comes to social care integration. There has been a lot of good legislation and a lot of good policy, but we have always been left with an implementation gap. To fill that gap, we need co-design, to ensure that folks who are in receipt of care, folks who work in care and folks who are carers are at the heart of helping us to design the future national care service.

To ensure that there is effective co-design, we have to ensure that the principles of the bill are in place, so that the folks who co-design with us know that their work will lead to actions.

The Deputy Convener: Okay, that is fine. Did you consider alternative approaches? Was this always the direction of travel?

Kevin Stewart: Some committees have suggested that we could have done it the other way round, by having the co-design process first. My response is that that would have impinged on the folk who would have been involved in the co-design. The co-design work might have gone to waste, in people’s eyes, if Parliament then changed far too much of what the folks who helped us with the design wanted in place.

Therefore, I think that it is right to have the framework bill and its principles in place before we move it on through collaboration and co-operation with people in order to co-design that extremely important change to our public service delivery.

The Deputy Convener: That seems like a reasonable outline.

Paul Sweeney (Glasgow) (Lab): Mr Stewart, you said that Parliament might interfere with what people with lived experience want, but surely it is the role, not of ministers, but of Parliament, as the

ultimate democratic body in the land, to be the arbiter of that matter.

Kevin Stewart: Absolutely—I do not disagree with that and I am sure that Parliament will make changes to the bill along the way. Stakeholders feel that they have not been listened to enough. By doing the work this way, they feel that they are being listened to. They recognise that the principles of the bill will be in place and that we will then move into the co-design process. As we move forward and come to secondary legislation, they recognise that there will be further consultation and that changes might take place. However, I think that we needed to set out the general framework in order to gain people’s confidence and get them to take part in the co-design process.

I do not want to speak for others, but I think that it would be fair to say that many of the disabled people’s organisations, for example, feel that they have not been listened to enough over that journey period of social care integration. We need to take those folks with us. That is why co-design is so important and that is why we need to have the framework in place before we start the co-design process.

Jeremy Balfour (Lothian) (Con): Good morning, minister, and happy new year to you and your team.

Kevin Stewart: Thank you.

Jeremy Balfour: I will pick up on a point that has been made by my colleagues. As you know, this is the Delegated Powers and Law Reform Committee, so we consider delegated powers. As you know, regulations cannot be altered—we can only vote for or against them. Therefore, if Parliament likes three quarters of what you have done but does not like the rest of it, we are left with the option of saying no completely or voting for something that we do not have confidence in. If MSPs cannot amend regulations, how does that give them democratic accountability?

Kevin Stewart: Mr Balfour has heard me being questioned about such issues at other committees as well. As always, in any legislation in which I have been involved, I want to ensure that there is full collaboration, co-operation and communication at every stage. I will have an open door in terms of listening to what MSPs have to say and, of course, listening to what stakeholders and other people have to say about the bill.

I will outline the co-design stages, which I think are extremely important. There is understanding co-design, sense making, agreeing, drafting the regulations and consultation on those regulations. We have said that we want folk to be involved at every stage, and they will be. I am very sincere

about all of that and, as I said, my door is always open in that regard.

Jeremy Balfour: I absolutely accept that you have an open-door policy, but you have not fundamentally answered the question. When it comes to that final decision, Parliament has no option to amend those regulations. We either have to accept or reject them. Why could that work not be done with primary legislation? Along with ministers, MSPs could listen to stakeholders and come to a view. Do you not accept that you are keeping MSPs away from the process of being able to amend things that will affect all of our constituents across Scotland?

10:15

Kevin Stewart: I should say that the national health service was dealt with in exactly the same way at its inception—there was a framework bill with regulations.

As Mr Balfour is aware—I will probably bore him by repeating myself from other committees here—the reason for doing it that way and using secondary legislation for a number of areas is so that we have the ability to change legislation much more quickly. One thing that we have found over the years in relation to our social care integration journey is that although—as I have said previously—we have put in place good legislation, we have been unable to amend that legislation when we have found out that there are flaws or loopholes that have not been right for service delivery. This approach will give us the ability to be much more flexible in making those amendments when we require to.

The use of secondary legislation is not quite as black and white as Mr Balfour said. As members of this committee well know, there are other alternatives when it comes to secondary legislation. As I have said to others, I am more than willing to consider how we approach that secondary legislation.

The Deputy Convener: Thank you for that, minister.

Oliver Mundell (Dumfriesshire) (Con): I have heard the point that the minister has made regarding an open-door policy. During my time in Parliament I have always found the minister easy to work with on issues. However, with the best will in the world, part of the problem here is that you cannot guarantee that you will be the minister making the decisions. We face that issue time and again when we are considering other powers and legislation. The promises that you make as a minister today are only as good as the time that you spend in this particular office. My worry is that we are handing over to ministers quite wide-ranging powers on a very significant piece of

legislation. Ordinarily, we would expect this kind of bill to have much more detail. Do you not think that that is a problem?

Kevin Stewart: No, I do not. I am not so chuffed that Mr Mundell is trying to get me out the door at the very start of the new year.

Oliver Mundell: It could be a promotion.

Kevin Stewart: We will not go there, convener.

The national care service is all about people. We will be guided by people and by stakeholders through that co-design. I am sure that all of us around the table, regardless of whether we are supportive of the national care service proposal, recognise that people need to be at the very heart of it. We need to do something a little bit different here and put our trust and faith in people themselves.

One of the reasons why social care integration has not been the best that it possibly can be thus far is implementation gaps. Through co-design and with people's help, I am absolutely convinced that we can get those implementation gaps filled, and do it right.

Beyond that, as I said earlier, it is much better to put some things into secondary rather than primary legislation so that we can be flexible and put things right at a far greater pace. Even so, as I have said at previous committees, I am more than willing to listen to others from across the parliamentary chamber on stage 2 amendments that might work. However, I appeal to members of the committee—as I have appealed to members of other committees—to listen to the voices of lived experience and hear what they have to say about where things have worked for them and where they have not. That might change the views of some folk about using secondary legislation in order to be much more adaptable in meeting the needs of folk out there.

Oliver Mundell: I hear what you are saying, and I have trust and faith in people, but the question that I ask myself is whether I have trust and faith in Government ministers to listen. You are asking us to put a huge amount of trust and faith in Government ministers—rather than the Parliament itself—to do that listening. A number of organisations, including the Equality and Human Rights Commission and the Faculty of Advocates, question whether that approach is appropriate. The Care Inspectorate has questioned whether there is enough information to know how it will work in practice. That is not getting off to a good start in building confidence, is it?

Kevin Stewart: A number of organisations have been sceptical about aspects of the bill. That surprises me not. As I have said in other

committees, some organisations have a vested interest.

Let me spell it out: the principles made clear how the Scottish Government and Scottish ministers must act—it could not be clearer. We will put human rights at the very heart of all that we do. We want to embed fair work practices, and we want to ensure that ethical commissioning is in place. All that is about improving people's health and wellbeing. That is what the bill is about.

Oliver Mundell: Why does it surprise you that organisations would be concerned, not about the substance of the bill but about the process? Why does it surprise you that organisations would be concerned about the appropriateness of the bill that you are presenting to Parliament?

Kevin Stewart: Some folk want to see everything in the bill—they see that as the way forward. However, people out there do not see that as the best way because, as I explained earlier, when everything is in the bill—in primary legislation—it is not so easy to change it. One of the examples that I have given to other committees is about the Social Care (Self-directed Support) (Scotland) Act 2013. The legislation was supported by all, but the implementation has not been so easy in some regards. I recently changed the guidance on self-directed support, again, to provide more clarity on people's rights and the responsibilities of public services. However, loopholes have been used to ensure that folk have not been able to access all the rights that the act was intended to give them, in terms of freedom over and responsibility for their own care.

If many pieces of that act had been in secondary legislation, it would have been much easier to change them and to put it right, but that is not the case. Therefore, we want to use secondary legislation with regard to the delivery aspects of the National Care Service (Scotland) Bill, to allow that flexibility as we move forward if we find flaws or that things are not working appropriately for people. That is a good way to go, although it is different to the approach for many other bills that have been passed here in recent years. However, I come back to the point that the framework bill method was used to form the national health service, and I think that we can all agree that that has been a bit of a success.

Oliver Mundell: On your previous comments, what vested interests do you think that the Faculty of Advocates and the Equality and Human Rights Commission have in raising concerns about the appropriateness of a framework bill?

Kevin Stewart: I have not made any comments about the Faculty of Advocates.

Oliver Mundell: I suggested to you in my previous question that the faculty has concerns

about the appropriateness of the bill as the mechanism for bringing matters forward and you replied that some of the organisations that have been critical of the bill have vested interests. Are you saying that you were not referring to the evidence of the faculty or the Equality and Human Rights Commission?

Kevin Stewart: I have not named them and I am not saying that they necessarily have vested interests. However we know that there are vested interests—

Oliver Mundell: Why do the Faculty of Advocates and the Equality and Human Rights Commission have concerns about a framework bill?

Kevin Stewart: That is a matter that you will have to bring up with them. I cannot answer for the Faculty of Advocates or anyone else.

Oliver Mundell: Have you read those organisations' submissions?

Kevin Stewart: I have read submissions from all organisations, Mr Mundell, but if you want me to reflect on those submissions at the moment, I cannot do so, because I do not have them in front of me. In all fairness, I think that you will understand that I cannot remember every single submission that I have seen.

Oliver Mundell: I accept that. However, it is a concern that organisations that most people would accept as having no direct vested interest in the bill, which are experienced in how legislation works and have interacted regularly with the Parliament's legislative process over the past two decades, are questioning the appropriateness of the Government's chosen method in a major piece of legislation. This committee has a role to play in reporting on secondary legislation and it is worrying that major organisations are questioning not the substance of the bill but the Government's approach. There is a big risk attached to asking the Parliament to go forward with what you described as a novel approach, which seems to be based entirely on trusting ministers to listen—something that I do not think is the experience of people across the country.

Kevin Stewart: This is not about trusting ministers; it is about trusting people. That is why we are doing things differently. It is about putting our faith in the people to help us to get it absolutely right and fill the implementation gaps. It is different from how we normally do things, but it is the right thing to do when it comes to major public service reform, because, as I explained, during our integration journey we have not done well when it comes to filling the implementation gaps.

To get that right, end the postcode lottery and ensure that we get service delivery right for folks, we need people's help.

The Deputy Convener: Thanks for your questions, Oliver, and thanks for your responses, minister. I will bring in Jenni Minto.

Jenni Minto (Argyll and Bute) (SNP): Minister, I have been listening to you, and what you have said takes me back to my constituency, Argyll and Bute, and the differences that exist across Scotland. As you said, this is all about people. We need a consistent approach to social care throughout Scotland, with health and wellbeing at the centre of the approach.

We have talked a lot about how the bill is structured. Legislation has to be clear and accessible. I am interested in hearing your comments, for the record, on the approach of introducing a bill before you create the policy in direct consultation with the people whom it will serve. Do you consider the bill to be clear and accessible?

Kevin Stewart: The bill is clear and accessible. It was introduced into the Parliament alongside a suite of accompanying documents, including the policy memorandum, which gives a huge amount of detail about our ambitions and vision. It is unfortunate that not everyone reads the policy memorandum; I urge folks out there to do so. I urge all members to do so, as well.

On how we got to this place, which I think is what you are driving at, we wanted to hear from as many folks as possible during the consultation period. We especially wanted to hear from folks who are in receipt of care and who access care, their carers and front-line staff.

We have had a huge number of events connected to the national care service consultation. We have had over 100 engagement events and meetings, speaking to—and, more importantly, listening to—around 3,000 folks from right across the country, including our remote rural and island communities, which I know are of interest to Ms Minto.

10:30

We published the independent consultation on all those findings in February of last year. Along with other discussions, that all helped us to build to the bill, the policy memorandum documents and the other suite of documents.

At every single stage, we have listened to folks. We have built on the recommendations in Derek Feeley's independent review of adult social care and I think that we have done all that we can to engage with as many folk as possible. We will

continue to do that right the way through the process.

Jenni Minto: Thank you for that response. It brings me on to my next question, which is about how well equipped the public are to understand how the legislation will change social care for them. It would be interesting to get your thoughts on how engaged the wider public have been. Also, how can we ensure that parliamentarians know exactly what the changes will be?

Kevin Stewart: As I have said all along, we will be open and transparent all through this process. We are putting together lived experience experts panels. Prior to the Christmas break, I think that over 400 people had applied to join those panels—I am looking at Ms Kynaston, and she is nodding—along with stakeholder groups.

We are making the lived experience experts panels as accessible as we possibly can. We know that some folk will be able to be involved in great work in putting forward their views but we also know that some folk will prefer one-to-one discussions.

We know that we have to ensure that the panels are accessible for all, including folks with sensory impairments and folks with learning disabilities—the list goes on. We are committed to doing that as we move forward. We will continue to promote our vision for the national care service to the wider public as we carry on with this process.

Over the summer, we ran five public engagement sessions to explain what the bill would mean for people. We have published questions and answers, and we ran three introduction to co-design events at the end of last year, setting out how co-design will work and what co-design is.

If any member feels that there is more that we can do on that front, I am more than happy to listen—as Ms Minto knows, because she and others have approached me about what this all means for communities in Argyll and Bute. I am more than willing to have such conversations with any member, or with anyone, really.

Jenni Minto: Thank you.

The Deputy Convener: Thank you for those questions and responses. Paul Sweeney has the next question.

Paul Sweeney: Thank you, minister, for your responses so far and thanks to your team for their support. It has certainly been an interesting discussion.

A point that has been raised consistently is that it is quite difficult for Parliament as a democratic body to adequately scrutinise a piece of proposed legislation when there is a lack of detail in it.

The minister referred to the National Health Service (Scotland) Act 1947, which had 81 sections and was 90 pages in length. The current bill has 38 pages and 48 sections, so there is quite a significant difference. What safeguards exist in the bill to ensure adequate parliamentary scrutiny of the Scottish Government's policy proposals?

Kevin Stewart: As I have said at the meetings of numerous committees, I want to be open and transparent. I want and welcome scrutiny of the bill, and I will also welcome scrutiny of the secondary legislation. Mr Sweeney, and many others, want the answers to all the questions now, but if I start answering all the questions now, it makes a mockery of the co-design process. I recognise that parliamentarians want to know everything in the here and now, as I have asked such questions myself, from the other side of the table.

We have to have faith in people and in the co-design process. I know that the approach is different, but it is the right thing to do with this public service reform. It is important that we give people and stakeholders the ability to help us shape the national care service, which has to be fit for the future. We have a future with changing demographics, so we have to take that into account.

I ask Paul Sweeney not to ask me for all the answers now, and instead to wait and see what comes out of the co-design process and what answers people come up with to shape the national care service.

Paul Sweeney: We are all keen to hear what stakeholders have to say. The question is what role Parliament has in the discussion. That is the concern that we have; it is not about the qualitative aspects of what we want to do, it is about Parliament's role in that exercise.

I am interested in the point that you made about gathering information. Last year, Mary Alexander, the deputy regional secretary of Unite trade union, suggested to the Health, Social Care and Sport Committee that the Government had already collected enough evidence of the changes that are needed in the care sector. What is your response to that suggestion and to evidence to other committees that the co-design approach may well present a risk to robust parliamentary scrutiny and that it is potentially a duplication of work that has already been undertaken by the Government?

Kevin Stewart: Let me cover Mr Sweeney's points about parliamentary functions. Those functions are already set out in legislation in schedule 3, so the bill does not need to set out that detail, as it is already in legislation.

I recognise that some folk think that co-design is a risk, but it is also a huge opportunity that has not

been taken before. In hindsight, it is probably wrong that that opportunity was not taken before, because—as I have said before—during our 20-year journey of legislation, the Parliament has done a lot of good in making changes in health and social care integration, but we still have implementation gaps and postcode lotteries, and many folk out there perceive that we have an unfairness in service delivery. We need to get rid of those implementation gaps, the postcode lotteries and the unfairness. The best people to help us do that are the folk who receive daily care, their carers and staff on the front line. I see co-design as an opportunity, because those folk will be at the heart of it.

Paul Sweeney: What assurance can you provide to workers that the co-design process will begin promptly, what assurances can you give them that their recommendations will be listened to by ministers and what role can Parliament have in ensuring that that is done?

Kevin Stewart: As I said, we are already at the beginning of the process. We have already done the workshops that I spoke about, and we will move forward and bring folk with us to get that right.

What guarantees do folk have that they will be listened to? They will be listened to. However, the committee will understand that not every single person will get what they want. We have to weigh up what is brought forward. That said, we must listen to stakeholders and to the voices of lived experience, and we must listen to staff.

Over the past year and a half or so since I have been in this job, I have spent a lot of time listening to front-line staff. I do not think that anybody on the committee would say that we do not value, or have not valued, front-line social work and social care staff in the way that we should over the piece. That is why fair work is at the very heart of this bill, which is about not only pay but conditions.

Another aspect is the things that we do not necessarily think about unless we listen to those on the front line. For example, we do not attract enough young people to work in social care; they do not see it as an attractive opportunity. That is not necessarily only about pay and conditions. A number of them have told me that it is also because they do not see career pathways. We therefore have work going on looking at what career pathways we can put in place to ensure that we attract folk for the future, and make it easier for folk to move from social care to social work or from social care to the NHS or the other way round, which is often quite an arduous process. As I said, by listening, we are coming up with new ways forward in order to get this right.

In order to have the social care system that we need for the future, there is absolutely no doubt that we have to make changes. We have to make changes on pay and conditions, career pathways and ethical procurement, and we have to value front-line staff more than we have done over the past few decades.

Paul Sweeney: A lot of the detail that the minister alluded to is critical to the strategic plan for the national care service and local care boards' plans for delivery. However, at a macro level, Parliament will be able to address much of the bill's provisions only in secondary legislation. As was alluded to by my colleague, it will therefore have the opportunity only to approve or reject in a binary fashion any significant policy proposals, rather than having the chance to debate and propose amendments in a more nuanced fashion to any of those policy provisions. That is a real concern around Parliament's opportunity to engage with the process constructively. Will the minister offer a view on how that might be improved?

Kevin Stewart: As I have said at previous committees, and as I said in my earlier answer to Jeremy Balfour, my door is open. As I have also said to other committees, I will consider the views of committees on how we can be as open and transparent as we possibly can.

Paul Sweeney: I will briefly raise one specific point in relation to the opportunity for Parliament to engage. The main area where it is mentioned in the bill is, as I see it, in section 12, which is on further provision about a national care service charter. The charter is to be reviewed at, at least, a five-yearly interval. Would there be an opportunity for Parliament at those junctures to have a role in ratification of the charter and perhaps to propose amendments to it? That would be the fundamental and overarching document that would create the fundamental principles.

The bill currently states only that

"The Scottish Ministers must lay before the Scottish Parliament a copy"

of the charter and any subsequent changes. It does not provide a mechanism for the Parliament to have any role in engaging with it; it is merely a presentation exercise. Might there be an opportunity for Parliament to have more on-going engagement with the charter through amendments?

Kevin Stewart: As I have said to the committee, I want everybody to be engaged in these processes. I hear what Mr Sweeney has said, and I will reflect on that and consider how we might be able to improve the scrutiny of that as we move forward.

10:45

Paul Sweeney: I appreciate that, minister.

The Deputy Convener: Thank you, Paul, and thank you, minister, for your responses and commitments.

Jeremy Balfour: I do not want to labour the point, but I think that you hit the nail on the head in your previous answer. No one here is at all critical of stakeholder engagement, consultation and co-design. I think that we all welcome it, and everyone thinks that that is a great way forward. However, as you said, the issue is that, ultimately, decisions will have to be made. You cannot let everybody have exactly what they want, because those things will conflict. The issue for the committee is why you think that, once you have done all that consultation, once you have had that open door and once you have all discussed the subject, it is appropriate for the Scottish Government to decide which view to take on board, rather than the Scottish Parliament doing the same listening exercise and then coming to a view.

Kevin Stewart: I refer Mr Balfour to my earlier response about co-design. It is not a case of ministers just making the decision because, of the five co-design stages, the third stage is agreeing with people on how we move forward.

We know that there will be polarised views and we know that not everything that every single person wants is possible, but stage 3 of the co-design is agreement. I say again that the co-design stages are understanding, sense making, agreeing, drafting of regulations and then consultations on those regulations. There is a huge amount of opportunity in that process.

Jeremy Balfour: I will move on to a couple of specifics in the bill. Section 15 is about the complaints process. Why is it considered appropriate for the Scottish ministers to rely on, as described in your response, a veto for the Scottish Parliamentary Corporate Body and not the Parliament? Why are we again taking away the power of the Parliament?

Kevin Stewart: We will co-design a complaints and redress service for the NCS that ensures accountability. Co-design will take place with people with lived experience, in order to hear their experiences of accessing and providing social care support, and with partners and stakeholders, who will be involved in the implementation. That will include the Scottish Parliamentary Corporate Body and the Scottish Public Services Ombudsman.

No decisions on implementation have been taken, because co-design will inform that. However, section 14 places an obligation on the

Scottish ministers to establish a service for receiving and allocating complaints about services that the NCS provides.

Ministers will have regulation-making powers to provide for the handling of relevant complaints, including improving and strengthening how complaints about the NCS and wider social care services are handled and the associated redress processes that will have to be put in place. Under section 15(4), the regulation-making power requires the Scottish ministers to secure the Scottish Parliamentary Corporate Body's consent before laying any draft regulations that would modify or remove functions of an SPCB-sponsored body. That is similar, although not identical, to a provision under section 19 of the Public Services Reform (Scotland) Act 2010. The key difference is that, under that act, the provision must first be requested by the SPCB.

It is considered an appropriate balance for the control and scrutiny of the NCS complaints system that the Scottish ministers should be able to propose appropriate provisions following co-design. If it wishes to, the SPCB will have the power to veto those through withholding consent. Subject to consent, detailed provision would be set out in subordinate legislation, which would be subject to parliamentary scrutiny through the affirmative procedure. I hope that that lays out the processes for Mr Balfour.

I hope that the Scottish Parliamentary Corporate Body would take cognisance of the views of the people who are in the co-design process so that we get the complaints and redress process right for all. As for the views of the public, I have been struck by how, at points, folk have felt that they were not able to complain or seek redress because of a fear that services might be withdrawn. We must ensure that that fear goes, whether or not it is only a perception.

We must ensure that there is a complaints and redress system that works for all. I hope that we all—the people, the SPCB, ministers, the Parliament, the ombudsmen and others—co-operate so that we get it right as we move forward and we do not have folks fearing to seek redress or even to make complaints.

Jeremy Balfour: I absolutely accept that, but the trouble is that we do not know what the complaints system will look like—we have no idea, because you have not had your co-design meetings. I do not understand why you could not have had them already or even have them now, come up with a scheme that has consensus among the stakeholders and put that in the bill.

As you pointed out, even with all your consultation, there will be people who are not happy with your final recommendation. I am still

struggling to work out why that recommendation should not be in the bill so that MSPs can decide whether it will work. You seem to be asking us to accept that you will get it absolutely right.

I have a second question on that. In one of your previous answers to me, you mentioned that there are other ways in which the Parliament can deal with secondary legislation rather than just saying yes or no to it. I am not aware of them. Will you explain them further to me, please?

Kevin Stewart: Your clerks could explain them much better than I can. There are processes other than those for affirmative and negative instruments, but I am no expert in them.

Jeremy Balfour: I appreciate that you might not want to give the answer today, but will you write to the committee? I appreciate that I have been on the committee a fairly short time in comparison with other members, but I am genuinely confused about what other processes you are talking about. If you cannot outline them today, will you write to the committee so that we have the information?

Kevin Stewart: Those questions are for your clerks rather than for me. I see the clerk nodding her head.

The Deputy Convener: You are absolutely right. The clerks put things together when we receive them but, if it is possible, we would appreciate a written response to cover Mr Balfour's question.

Kevin Stewart: In relation to what, convener?

Jeremy Balfour: I said that we deal with regulations only by voting for or against them; they cannot be amended. You said that there were other processes that committees can use to deal with them, and I was looking for clarification of the other methods that this committee and other committees can use, apart from voting for or against regulations.

Kevin Stewart: There are other processes beyond affirmative and negative instruments. The clerks are in a better position to explain those than I am.

The Deputy Convener: The clerks are willing and able to put all this together, so could your officials put together some pointers and send them to us? You mentioned that it is not just this committee but other committees that are also considering such issues. If we could have some direction to satisfy the concerns of the members of this committee, that would be helpful.

Kevin Stewart: My officials will speak to the clerks about that offline—that is probably the best way to deal with the issue in the first instance. I do not really know what you are asking of me, but if you are asking me to write to the committee about

parliamentary processes, I do not see that as my job.

The Deputy Convener: We are looking for information in relation to this particular bill. Let us try to be helpful to everyone here. If your officials and the clerks can work to pull those issues together, we can bring them back to the committee at the next meeting or the one thereafter, and I hope that that will satisfy members. If any new questions come out of that process, we can take them forward.

Kevin Stewart: Convener, I am more than willing to outline in writing all the processes that we are introducing. However, the issue about parliamentary processes is probably best dealt with by your clerks. I would be happy for my officials to talk to the clerks about the issue.

The Deputy Convener: That would be helpful—thank you.

Oliver Mundell: I have a specific point for the minister. Is it possible for Parliament to amend Government regulations?

Kevin Stewart: I will turn to Mr Richards to answer that.

Mark Richards (Scottish Government): No, Parliament does not have the power to amend regulations that are laid—it can either accept or reject them. Under the affirmative procedure, there is an opportunity for Parliament to scrutinise regulations in a more detailed way than under the negative procedure. Most of the powers in the bill are subject to the affirmative procedure.

Oliver Mundell: That is helpful. It has always been my understanding that, although parliamentarians can speak to ministers, raise points and do other things to impact the wording of regulations, they have no power to change what regulations say. That is a fundamental concern. That differs from primary legislation, where any member of the Parliament can propose changes to the wording of a bill.

That leads me to a final question. MSPs can only amend what is in the bill. If we have less information in the bill, there is less opportunity to amend the wording, which dictates the meaning of the legislation. Is that correct, minister?

Kevin Stewart: What I have said all the way through is that we will continue to listen to parliamentarians when it comes to the secondary legislation. Mr Mundell and others are used to the processes of primary legislation and making amendments at stages 2 and 3. I recognise that many folks are comfortable with all of that. That would not work with co-design—it would blow co-design out of the water.

We want to ensure that people are at the very heart of the shaping of the national care service. We want to ensure that we have the flexibility to make changes when they are necessary in what is an ever-moving world when it comes to the delivery of social care. As we move forward, I will look at any stage 2 amendments that are lodged and are within the scope of the bill and will, again, have an open-door policy so that I can discuss issues with members.

11:00

Oliver Mundell: You have deliberately limited the scope of the bill by using this method. Members will have limited opportunities to amend the legislation when it comes to the detail, because you have put it all to one side for later. That is not proper parliamentary process and it does not allow the Parliament to do its job of holding you to account properly, which creates a real risk and danger for people who will rely on the legislation.

I do not think that we can say that the Parliament or the Government has a very good record when it comes to delivering for many of the people who will be impacted by the legislation. It seems wrong that you are asking us to put so much confidence and trust in a process that means that there will be no scrutiny. Even if people disagree with what you are doing, you will be able to go ahead anyway. The Parliament will not be allowed to do its job. I do not see how you, as a member of the Parliament and a minister in the Government, can think that that will lead to effective co-design or robust legislation. It is just wrong.

Kevin Stewart: I disagree with Mr Mundell. This is the seventh committee that I have been at with the bill, so it has already had a fair amount of scrutiny. One of the things about this is the co-design process; what I have and want others to have is faith in the people and in the voices of lived experience of the carers and those who work on the front line, because they will help us to shape a service that is fit for the future.

The Deputy Convener: There are one or two areas that we might need to look into more widely. I thank the minister and his officials for attending. We will be in touch again, no doubt. I wish you all a happy new year and we will see you back here in the future.

I suspend the meeting to allow our guests to leave.

11:02

Meeting suspended.

11:03

On resuming—

Instrument subject to Made Affirmative Procedure

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

Land and Buildings Transaction Tax (additional amount: transactions relating to second homes etc) (Scotland) Amendment Order 2022 (SSI 2022/375)

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

Members *indicated agreement.*

Instrument subject to Affirmative Procedure

11:04

The Deputy Convener: Under agenda item 4, we are considering one instrument, on which an issue has been raised.

First-tier Tribunal for Scotland (Transfer of Functions of the Council Tax Reduction Review Panel) Regulations 2023 [Draft]

The Deputy Convener: The instrument transfers the functions of the council tax reduction review panel to the First-tier Tribunal and makes consequential amendments. The committee identified an incorrect cross-reference in regulation 94(3) of the Council Tax Reduction (Scotland) Regulations 2021, as substituted by paragraph 2(5) of schedule 2 to the instrument. The Scottish Government confirmed that the cross-reference is an error and proposes to rectify it in the instrument when made, as an error that could be corrected by correction slip. Full details of the error can be found in paper 3 on the committee's web page.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground, in respect of a cross-referencing error?

Members *indicated agreement.*

The Deputy Convener: At the same time, does the committee wish to note the Scottish Government's proposal for rectifying the error?

Members *indicated agreement.*

Instruments subject to Negative Procedure

11:05

The Deputy Convener: Under agenda item 5, we will consider six instruments. Issues have been raised on three of these instruments. Again, full details of the issues can be found in paper 3 on the committee's web page.

First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 (SSI 2022/364)

The Deputy Convener: The instrument lays down the rules of procedure that are to apply in the local taxation chamber, which is a new chamber of the First-tier Tribunal for Scotland. The committee identified various errors with the regulations. First, that the preamble cites an enabling power that is not, in fact, relied on for making the instrument and that, if it had been relied on, would have required the instrument to be laid under a different procedure. The Scottish Government proposes to rectify this error by way of a correction slip.

Secondly, the committee also identified a number of cross-referencing errors in rules 20(4), 26(2)(i) and (j), 26(5), 27(1)(b) and 27(2)(a)(iii); a drafting error in regulation 26(2)(i); that the definition in rule 1 of "respondent" could be clearer as to the types of appeal to which it relates; and that rule 20 could be clearer as regards what expenses the tribunal can award. The Scottish Government has committed to addressing those points in an amending instrument before the regulations come into force.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground, in that the preamble cites an enabling power that is not, in fact, relied on for making the instrument and that, if it had been relied on, would have required the instrument to be laid under a different procedure?

Members indicated agreement.

The Deputy Convener: Does the committee wish to note that the Scottish Government proposes to rectify the error by correction slip?

Members indicated agreement.

The Deputy Convener: Does the committee wish to welcome that the Scottish Government undertakes to review this point for the future to make sure that a consistent approach is taken to these instruments?

Members indicated agreement.

The Deputy Convener: We are not finished yet.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground, in respect of cross-referencing errors in rules 20(4), 26(2)(i) and (j), 26(5), 27(1)(b), and 27(2)(a)(iii); and an error in regulation 26(2)(i)?

Members indicated agreement.

The Deputy Convener: Does the committee wish to welcome the Scottish Government's intention to correct those points in an amending instrument before the regulations come into force?

Members indicated agreement.

The Deputy Convener: Does the committee also wish to draw the instrument to the attention of the Parliament on reporting ground (h)—"meaning could be clearer"—in that the definition in rule 1 of "respondent" could be clearer as to the types of appeal to which it relates, and that rule 20 could be clearer as regards whether the tribunal may make an order awarding expenses as taxed or whether it can award only a specified sum, and as regards what expenses the award may cover, given the different provision in this regard made in subparagraphs (3) and (5)?

Members indicated agreement.

The Deputy Convener: Does the committee wish to welcome the fact that the Scottish Government intends to clarify the meaning of the points in rules 1 and 20 by amending instrument before the regulations come into force?

Members indicated agreement.

Upper Tribunal for Scotland (Local Taxation Rules of Procedure) Regulations 2022 (SSI 2022/365)

The Deputy Convener: This instrument makes the Upper Tribunal for Scotland local taxation rules of procedure 2022. The committee identified some minor drafting errors in schedules 1 and 3. The Scottish Government has committed to correcting those errors by way of an amending instrument before the regulations come into force on 1 April 2023.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (h), on account of the fact that the meaning of rules 31 and 32 could be clearer?

Members indicated agreement.

The Deputy Convener: Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground, in respect of the three referencing errors in schedule 3?

Members indicated agreement.

The Deputy Convener: Does the committee wish to welcome the fact that the Scottish Government intends to lay an amending instrument before the regulations come into force on 1 April 2023?

Members indicated agreement.

Official Controls and Import Conditions (Transitional Periods) (Miscellaneous Amendment) (Scotland) Regulations 2022 (SSI 2022/371)

The Deputy Convener: This instrument amends the Official Controls (Extension of Transitional Periods) Regulations 2021 and European Commission decision 2000/572/EC to extend the transitional staging periods that apply in relation to the import of animals and goods that originate from certain third countries and territories from 31 December 2022 to 31 January 2024.

Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, instruments subject to the negative procedure must be laid at least 28 days before they come into force, not counting recess periods of more than four days. The instrument breaches that requirement, as it was laid on 14 December 2022 and came into force on 1 January 2023. In correspondence with the Presiding Officer, the Scottish Government stated that the breach had occurred due to United Kingdom Government delays in agreeing policy, which resulted in the Scottish Government pursuing separate Scottish legislation.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (j), for failure to comply with laying requirements? The instrument was not laid at least 28 days before it came into force as required by section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.

Members indicated agreement.

The Deputy Convener: Does the committee wish to note the reasons for the breach and refer them to the lead committee?

Members indicated agreement.

The Deputy Convener: Also under this agenda item, no points have been raised on the following instruments.

Red Rocks and Longay Marine Conservation Order 2022 (SSI 2022/372)

Food and Feed (Miscellaneous Amendments) (Scotland) Regulations 2022 (SSI 2022/373)

St Mary's Music School (Aided Places) (Scotland) Amendment (No 2) Regulations 2022 (SSI 2022/377)

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

Members indicated agreement.

Instrument not subject to Parliamentary Procedure

11:13

The Deputy Convener: Under agenda item 6, we are considering one instrument, on which no points have been raised.

Heat Networks (Scotland) Act 2021 (Commencement) (No 1) Regulations 2022 (SSI 2022/376 (C 20))

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

Members *indicated agreement.*

The Deputy Convener: We now move into private.

11:14

Meeting continued in private until 12:23.

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

Information on non-endorsed print suppliers
is available here:

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

