



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Delegated Powers and Law Reform Committee

Tuesday 1 October 2024

Session 6



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DELEGATED POWERS AND LAW REFORM COMMITTEE

27th Meeting 2024, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
*Tim Eagle (Highlands and Islands) (Con)
*Daniel Johnson (Edinburgh Southern) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jamie Hepburn (Minister for Parliamentary Business)
Douglas Kerr (Scottish Government)
Steven MacGregor (Scottish Government)
Nicola Wisdahl (Scottish Government)

CLERK TO THE COMMITTEE

Greg Black

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 1 October 2024

[The Convener opened the meeting at 10:03]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the 27th meeting in 2024 of the Delegated Powers and Law Reform Committee. I invite everyone to please switch off, or put to silent, mobile phones and other electronic devices.

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

Members *indicated agreement.*

Instruments subject to Affirmative Procedure

10:03

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

Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Extension of Temporary Justice Measures) Regulations 2024 [Draft]

Upper Tribunal for Scotland Bus Registration Appeals (Composition) Regulations 2024 [Draft]

Upper Tribunal for Scotland (Transfer of Functions of the Transport Tribunal) Regulations 2024 [Draft]

Town and Country Planning (Amendment of National Planning Framework) (Scotland) Regulations 2024 [Draft]

Masterplan Consent Area Scheme (Environmental Impact Assessment) (Scotland) Regulations 2024 [Draft]

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:04

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

Coronavirus (Recovery and Reform) (Scotland) Act 2022 (Early Expiry of Provisions) Regulations 2024 (SSI 2024/246)

Building (Scotland) Amendment Regulations 2024 (SSI 2024/247)

Public Service Vehicles (Registration of Local Services) (Bus Services Improvement Partnerships Service Standards Decisions) (Appeals) (Scotland) Regulations 2024 (SSI 2024/248)

Town and Country Planning (Amendment of Local Development Plan) (Scotland) Regulations 2024 (SSI 2024/250)

Town and Country Planning (Masterplan Consent Areas) (Scotland) Regulations 2024 (SSI 2024/253)

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

The Convener: In relation to Scottish statutory instrument 2024/250, does the committee wish to welcome the fact that the SSI fulfils a commitment by the Scottish Government to correct a cross-referencing error in regulation 25 of the Town and Country Planning (Development Planning) (Scotland) Regulations 2023 (SSI 2023/101)?

Members *indicated agreement.*

Instrument not subject to Parliamentary Procedure

10:05

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

Planning (Scotland) Act 2019 (Commencement No 14) Regulations 2024 (SSI 2024/252 (C 21))

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

Minister for Parliamentary Business

10:05

The Convener: Under agenda item 5, we are taking evidence from Jamie Hepburn MSP, who is the Minister for Parliamentary Business. This is one of our regular sessions with the minister on Scottish Government work that is relevant to the committee.

The minister is accompanied by three Scottish Government officials—Nicola Wisdahl, who is the legislative consent memorandum and subordinate legislation programme team leader; Steven MacGregor, who is the head of the Parliament and legislation unit; and Douglas Kerr, who is the deputy legislation co-ordinator in the Scottish Government legal directorate. I welcome you all to the meeting.

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

I invite the minister to make some opening remarks.

The Minister for Parliamentary Business (Jamie Hepburn): Good morning, convener, and thank you for inviting me to be with you this morning. I am pleased to be able to join you for what is my first public appearance before the committee and to be able to discuss matters in your committee's remit.

My predecessor joined you in March. Since then, there has been limited parliamentary time due to summer recess, but I am grateful to you, convener, and to colleagues on the committee for your work in considering a number of instruments since I took on the role as Minister for Parliamentary Business.

In addition to secondary legislation, I highlight that we have introduced the long-awaited Judicial Factors (Scotland) Bill, which I know that you, in particular, convener, were keen to see progressed.

I welcome the steady progress that we continue to make with implementing Scottish Law Commission reports.

We continue to strive to introduce the best-quality legislation that we can, and we always seek to maintain high standards in drafting. I know that my officials and your committee clerks continue to work closely together, and I remain committed to listening carefully to the views of the committee and doing my best to resolve any issues that arise.

I look forward to engaging with you today, and I am happy to take any questions and to answer them to the best of my ability, with the assistance of Steven MacGregor, Nicola Wisdahl and Douglas Kerr.

The Convener: Thank you very much, minister. As you said, this is your first public appearance in front of the committee. We look forward to working with you in the months ahead.

Although the vast majority of SSIs are not reported under any reporting grounds by the committee, we continue to identify some drafting issues, including a rise in minor points. What are you doing to ensure that the quality of SSIs remains high?

Jamie Hepburn: I go back to the point that I made in my opening remarks, which is that that would always be our ambition. We want to try to get it right the first time, but I recognise that, on occasion, that will not be the case. If that is identified, we will put it right in the specific case but also seek to learn from that experience.

The quality of any instrument that we take forward is the responsibility of all those who are involved in doing so, from either a policy perspective or that of those involved in the legal drafting.

The SSI programme provides training to specific teams, which we believe bolsters the central provision of information and guidance. The Parliament and legislation unit is always there to try to ensure that any team that is taking forward an SSI is of as high a quality as it can be, and training should assist that process. Various officials are available to support policy leads in introducing secondary legislation.

Government lawyers are also provided with the support, training and guidance that they would require in considering any proposals for an SSI, any of the legal issues that might arise and, of course, the drafting issues that they should be aware of. That includes a monthly session for lawyers to share knowledge about SSIs.

Once any specific SSI has been drafted, the drafting team must review it to make sure that it is correct. So that there is outside assessment, a further check will be done by another lawyer who has not been directly involved in the instrument's drafting. That provides a chance for there to be another source of input in order to identify any issues. I hope that that is an indication that we take the issue seriously. We will always seek to get it right in the first place, and we will continue to try to ensure that those who are involved are upskilled and are aware of what they need to do, and that wider support is available for them.

The Convener: In the last evidence session with the previous minister in March, the committee highlighted that four instruments had been reported on reporting grounds that it considers to be more serious. Since that evidence session, the committee has also reported another two instruments on one of the more serious reporting grounds, ground (i), which is that

“drafting appears to be defective”.

The minister indicated the various processes that are in place for instruments during the process that they go through, including a review of the instruments by someone who is external to the process. Could the Government take any other steps to try to ensure that the quality of SSIs remains high and that the number of more serious issues reduces?

Jamie Hepburn: I refer to the answer that I have just given about the general process. That some errors have been identified speaks to the fact that we will not always get it right. Where errors are identified, we seek to try to put in place any remedial action that is necessary to deal with specific instruments. The convener can correct me if I am wrong, but I think that the two instruments that you are referring to are the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2024 and the Valuation (Proposals Procedure) (Scotland) Amendment Regulations 2024. I will speak to them specifically.

In relation to the former instrument, we plan to rectify the defective drafting by including an amendment provision in the next Scottish immunities and privileges order. Of course, the timing of that depends on the progress of two United Kingdom orders, which is not entirely in our hands. It would also require equivalent Scottish orders, which are in our hands, but are still reliant on the UK process. We will keep the committee updated on that.

On the latter instrument, although the issues that have been identified have no bearing on the validity of the instrument that we intend to bring forward, we would seek to amend regulations at the next suitable opportunity, taking into consideration any other amendments that might be required. We would seek to do that in advance of the intended cut-off date for making a proposal in reliance on the relevant section of the Local Government (Scotland) Act 1975. In effect, that date is at the end of the parliamentary year—I beg your pardon, it would be at the end of the parliamentary session, which will be the end of March 2026.

I hope that that is an indication that we are aware of the concerns about the respective orders that you have identified and that we are cognisant

of the need to rectify them. In relation to the general process, I go back to my initial answer. Of course, we are always open to hearing about other things that we could do. If the committee’s experience is such that you feel that there are additional steps or measures that we could take to quality assure our process, we would be more than happy to hear your suggestions on that.

Tim Eagle (Highlands and Islands) (Con): I thank the minister for attending the meeting. For clarity, I will pick up on the point about the SSIs, because six have been reported under the most serious reporting grounds. I have a slight concern about that, as more secondary legislation, particularly relating to framework bills, is being lodged. Are you confident that you are reviewing the process and that you can say, “Moving forward, we’ve got the processes in place that ensure that that number will drop over subsequent months”?

10:15

I read the *Official Report* of the 19 March committee meeting. Stuart McMillan asked the same question—about what the Government is doing to ensure that the quality of SSIs remains strong. The answer that you have given today is almost identical to the one that the minister gave on that day. There is no point in having the same answer every six months. Given the fact that there might be more secondary legislation—more SSIs—will you have some sort of review to check that the number will not increase further?

Jamie Hepburn: I am sure that I must have answered with more panache and élan than the previous incumbent of my office.

Tim Eagle: I am sure that you did.

Jamie Hepburn: You ask what assurance I can give about there not being more SSIs. In the programme, that is determined by what is required. Your fundamental point, I suppose, is about what we can do to ensure that the number of SSIs in which you identify serious issues is reduced. I can only go back to the point that I have made before—a process is in place. I recognise that it will not always suffice. It will not always work. Things go wrong. To err is to be human, and humans are involved in the process.

I would make the point that that is why we have parliamentary scrutiny. If this committee identifies anything that is defective or needs improvement, it is incumbent on us to take that away and make those improvements. All I can stress is that I understand the necessity of making sure that SSIs are of as high a quality as possible. If I get any sense that there is slippage in that, I will use the power of my office to make sure that, across Government, we emphasise the requirement for

SSIs to be of a high quality. I recognise—I think that we all recognise—that a problem will on occasion happen, but I do not want that to be a regular occurrence or a feature of the system. I want to hear from the committee that the numbers are greatly reduced. That is where I want to land.

I go back to the point that I made: I am more than willing to hear about things that the committee thinks could further improve and refine the process.

Jeremy Balfour (Lothian) (Con): Good morning, minister, and good morning to your team. Your officials helpfully provide the committee and subject committees with weekly updates of the instruments that are expected to be laid in the following two weeks. I wonder whether you can provide an indication of the anticipated volume of any SSIs that are likely to be laid between now and Christmas, and the lead committees that they are expected to go to.

Jamie Hepburn: Yes, I think that I have that information. First, I say that we will always make sure to continue the process that you have referred to, Mr Balfour. My expectation is that we provide that regularity of update about the instruments that are to be laid, because I appreciate that there is limited time for committees, so they need to be able to factor that in.

Right now, volumes look fairly steady. From this week until Christmas, there should be around 50 instruments. It may not surprise you that this committee is uppermost among those that will have more to consider than others. However, the Net Zero, Energy and Transport Committee, the Local Government, Housing and Planning Committee and the Health, Social Care and Sport Committee will have around eight instruments each. The others are split fairly evenly—five each for the Rural Affairs and Islands Committee, the Social Justice and Social Security Committee and the Education, Children and Young People Committee, and maybe fewer than five for the others.

Of course, we will continue to look at that and make sure that we are in the right place, and we will keep this committee and all the other committees updated as to their expected case load, for want of a better term.

Jeremy Balfour: Given that some SSIs are much longer and more complex than others, it is particularly useful for this committee, as well as the subject committees, to be given as much advance notice as possible when there will be instruments that are large and complex. Do you know whether any such instruments or sets of instruments are in the pipeline? If not, will you commit to keeping the subject committees and our

committee up to date on the progress of any such instruments?

Jamie Hepburn: On the latter point, you can be assured that that is a given. As I have laid out, I will always request that my officials make sure that we do that.

I talked about the case load. I recognise that pressure is brought to bear on committees by not just the number of instruments but their complexity and length. Some instruments, by nature of what they seek to do, will be longer than others. I can say on that basis that some will not be long and that one will be particularly long. We will seek to make sure that, as far as is humanly possible, committees have advance notice of that.

I go back to the point that I made in my initial answer. All those SSIs are subject to refinement, so what might be particularly long at the outset might not be quite as long by the end of the process. We will go through that internal process and the finalised instrument will come out at the other end. Although I cannot give specific details right now, I can give an early indication that it is likely that some instruments will be fairly substantial.

Jeremy Balfour: I will push you slightly, minister. Are those likely to come to this committee or to go to other committees?

Jamie Hepburn: I think that it will be across the range; some may come to this committee.

Bill Kidd (Glasgow Anniesland) (SNP): Thank you for your answers so far, minister. This question is wordy and complex, so I will read most of it. Moving on to the Scottish Government's historic commitments in relation to Scottish statutory instruments, you will be aware that, on a number of occasions, the committee has requested an update on the amendment to the Scotland Act 1998 (Specification of Functions and Transfer of Property etc) Order 2019. At the previous session, the then minister said:

“The work is really complicated and quite difficult for the officials to get sorted. We are in the process of fixing it and getting it sorted”—[*Official Report, Delegated Powers and Law Reform Committee*, 19 March 2024; c 6.]

Can you give us an update on the progress on the commitment to resolve those issues?

Jamie Hepburn: Without doing what was suggested before, I re-emphasise the point that my predecessor made. The issue is complicated, and there are complexities involved, but I am conscious that it needs to be resolved.

Official level engagement continues to take place to progress an amendment to correct the drafting errors that were identified in the Scotland Act 1998 (Specification of Functions and Transfer of Property etc) Order 2019. We are continuing

work to address those issues and we think that it should be complete by next year. I reckon that that is still a very long time, but I again make the point that I expect us to complete that work as soon as possible.

Bill Kidd: So, work towards that commitment is being continued. I hope that we can look forward to seeing that next year.

Jamie Hepburn: I certainly hope it will be complete by then.

Bill Kidd: That would be great, because we will be seeing you again.

Jamie Hepburn: I do not know when in 2025 the committee will invite me, but depending on when it is, I hope that I will be able to say that we are further down the line.

Bill Kidd: That is good to hear. In addition to that on-going commitment, the Scottish Government has made seven other commitments that are outstanding—five dating from 2023 and two from 2024. What is being done to ensure that all those seven commitments are met?

Jamie Hepburn: I am aware that more issues had been identified. We have worked our way through them. Many of the five commitments that you referred to relate to a similar area in the provision of pensions. I hope that we can work through them simultaneously as much as possible. If we are able to deal with those timeously, the overall number will be reduced significantly.

One of the outstanding commitments related to the Budget (Scotland) Act 2023. The 2023 act has now been superseded by the Budget (Scotland) Act 2024, so we do not intend to deal with the issue that was identified in relation to that legislation. Nevertheless, I concede that the issue with the drafting error remains. We are due to publish next week the Budget (Scotland) Act 2024 Amendment Regulations 2024, which will be the equivalent SSI for the current financial year and will resolve the issue of the pluralisation of the word “programme”.

Bill Kidd: Lessons will have been learned from the 2023 legislation and brought to bear on the 2024 legislation, so presumably the issue will have been resolved in its own way.

Jamie Hepburn: It should be resolved by the order. The key thing is that when we come to the next budget, we do not revert to making the same error.

The Convener: I call Daniel Johnson, who is online.

Daniel Johnson (Edinburgh Southern) (Lab): Thank you for unmuting me, convener. The minister will be relieved to hear that the committee

requires me to ask my questions from a cupboard in an undisclosed location.

My first question relates to reports from the Scottish Law Commission, to which the minister referred in his opening remarks with regard to the introduction of the Judicial Factors (Scotland) Bill. As he will be aware, the Government set out in the programme for government its intention to introduce a new leases (automatic continuation etc) (Scotland) bill. What is the timescale for the introduction of that bill? What was the basis for choosing to bring forward that bill from among those issues covered in the SLC’s reports?

Jamie Hepburn: First, I am sure that we would all be delighted to know Mr Johnson’s undisclosed location, but it is up to him whether he discloses that information to us.

With regard to the new leases (automatic continuation etc) (Scotland) bill that we have committed to introduce, I do not have a specific date for the committee just now—as ever, that is contingent on the progression of the rest of our legislative programme. I can say that I hope that it will be a nice festive gift for the committee, but I make no promises as to whether that will come to pass. I expect that the bill should come to the committee under the agreement that was made when standing orders were changed to enable the committee to consider Scottish Law Commission bills.

On the question of why that particular bill is being brought forward, it is partly—to be candid—on the basis that the bill is more ready than others are. That being the case, why wait? Let us introduce it and get it done. In addition, we have identified that the aims of the bill are in line with the Government’s wider ambitions, hopes and aspirations for the economy, so it neatly ties in with that. As with all such matters, there is a backlog that we need to work through, and if some bills are more ready to go than others, we will bring those forward.

Daniel Johnson: I thank the minister for that answer; we have all the more reason to look forward to Christmas now.

Can the minister elaborate on the degree to which the proposed bill meets the criteria and objectives that are set out in the relevant Scottish Law Commission report?

Jamie Hepburn: I should say, of course, that there are many festivals across the year, and I did not pledge by which one the bill would be introduced, so that gives me—I hope—some leeway and discretion.

With regard to the bill meeting the criteria that have been identified, I go back to the answer that I gave just a few moments ago: the bill takes

forward the Scottish Law Commission's recommendations to improve, simplify and update aspects of the law on commercial leases. We think that that makes the necessary contribution to ensure that we have a modern and effective statute book, and it fulfils the broad criteria that we have for introducing Scottish Law Commission bills for this committee to consider.

10:30

Daniel Johnson: The Scottish Law Commission has been looking at other legislation, including the proposed reform of legislation around tenement maintenance, in which I take a great deal of interest. Does the Government have a view on when it might look to introduce a bill in that area?

Jamie Hepburn: We have a clear commitment to introduce one SLC bill a year. That is the process that we have agreed just now. It would be disingenuous of me to say that I can give a timescale with regard to that specific piece of legislation. I return to the answer that I gave Mr Johnson about the state of a bill's readiness to be introduced, as well as ensuring that the Parliament has the capacity to consider it.

What I can say is that, in line with the agreement, there will be another SLC bill in the next parliamentary year. I cannot say in earnest that it will definitely be a bill on the issue that Mr Johnson has identified. However, I recognise that all SLC reports are important, and we should ensure that we work our way through them as quickly as possible. The Government is committed to doing that. If there are other ways of expediting the process further, I am all ears and open to considering what they might be.

Tim Eagle: A few weeks ago, we looked at the new Climate Change (Emissions Reduction Targets) (Scotland) Bill. There was quite a lot of debate around the table. One of the issues was that we wanted to ask a number of questions, but we could not get a reply to those questions because of the fast-tracked nature of the bill. When you are looking at bills that are being fast-tracked, what consideration do you give to secondary committees such as the Delegated Powers and Law Reform Committee and the Finance and Public Administration Committee and how they can effectively scrutinise and debate what is coming through?

Jamie Hepburn: I recognise that that is important, so we should seek to accommodate it as much as possible. I want to minimise the circumstances under which we would seek to expedite a bill. I do not want us to have to do that regularly; it should happen only when the circumstances merit it.

We had a robust debate last week on the timetabling of the bill, and I hope that we can conclude the process of determining the full timescale this week. When we are expediting a bill, we should factor in as much as possible the capacity for committees other than the primary committee, including the DPLRC, to be able to undertake and exercise their scrutiny function. I know that there has been engagement with Gillian Martin as the responsible cabinet secretary and I believe that she has responded. If the committee has further questions, I know that she will be happy to respond to them.

We have tried to draft the bill fairly narrowly. It has a narrow purpose. It deals with a very important issue, but it is not a wide-ranging bill. The delegated powers in it are, by our estimation, necessary, because Climate Change Committee advice is needed to ensure that any new targets that are set are achievable, and that advice will not be available until spring next year.

We are trying to grapple with two challenges: we want to ensure that we are not in breach of legal requirements as set out in the existing legislation, but we are cognisant of the fact that we cannot look at what the targets should be until next year. By our estimation, it makes sense to do that by secondary legislation rather than going through the whole primary legislation process. At that point, of course, it will be incumbent on the various committees in Parliament—including this one, if it so determines—to consider any secondary legislation that emanates from the bill, once it is passed.

Tim Eagle: You are right to point out that we have had the debate in the chamber, and I think that it is also the case that the expedited bill procedure is not used very often—I have not been here long enough to know, to be honest—but, as far as this committee is concerned, the issue is ensuring that we can effectively scrutinise things. The concern is that we might be introducing risk if we cannot look at the legal nature of this secondary legislation effectively by getting responses back and being able to consider matters with our legal advisers. In hindsight, do you think that you could have had further discussions with clerks and the committee on this matter, and do you think that there could be discussions to ensure that we are a part of the process in any future sped-up or rapid bill procedure?

Jamie Hepburn: I know that a few colleagues around the table are long in the tooth when it comes to this, but the first thing that I should emphasise is that expedited bills are very unusual, and I do not think that they should become a feature of our legislation-making processes. I just want to give you that reassurance, Mr Eagle.

I guess that this brings me back to my earlier point that I am always willing for us to learn, to improve and to refine the process. If the committee feels that, when it comes to taking forward expedited bills—as much as I do not want us to have to do that very often—there is something that we can do to improve the process to better involve this committee, or indeed the Finance and Public Administration Committee, which you have also mentioned, I am more than willing to hear what that might be.

Tim Eagle: Thank you.

The Convener: Moving on, minister, can you provide the committee with the latest position on upcoming LCMs, particularly any that are likely to engage the committee's remit?

Jamie Hepburn: Yes, this is primarily going to emanate from the King's speech, but right now four legislative consent memoranda have been lodged, one for the Passenger Railway Services (Public Ownership) Bill, one for the Great British Energy Bill, one for the Renters' Rights Bill and one for the Product Regulation and Metrology Bill. I should say that the last one was lodged slightly late, but of course these things are driven by how much time and notice we, as a Government, get from the UK Government.

There are other LCMs that we expect to bring forward. At this stage, we do not have any confirmed introduction dates from the UK Government for the Tobacco and Vapes Bill, the digital information and smart data bill, the planning and infrastructure Bill, the railways bill, the employment bill and the artificial intelligence bill, but that will give you an indication of what is likely to come before us. We would go through the usual process and identify the relevant committees and, where this committee was involved, we would seek to engage with it as soon as possible.

The Convener: That was helpful.

Jeremy Balfour: Following on from that, minister, what updates can you provide on the discussions that your Government has had with the UK Government on proposals to grant UK ministers delegated powers in devolved areas and the use of consent requirements for such powers? Have those discussions taken into account our position in relation to the scrutiny of powers within devolved competence?

Jamie Hepburn: I take very seriously the purpose of parliamentary scrutiny in this place, and we will always seek to communicate that to the UK Government. Primarily, it comes down to an issue of timing. I want to make sure that this Parliament has as much time as possible to consider and properly scrutinise these matters. We would always seek to achieve that as much as we can, but given that these things, by their very

nature, emanate from UK Government legislation, some of the timing is outwith our hands. My answer to your question, then, is yes, we would always seek to press the point that—and I suspect that this applies not just to this committee but to all committees of the Parliament and, indeed, Parliament more generally—there should be adequate time to scrutinise powers within devolved competence.

Jeremy Balfour: How are discussions regarding that going with the UK Government? I know that we try to rise above party politics when dealing with those issues, but I am wondering what discussions you have had with the new UK Government and how those are going.

Jamie Hepburn: It is early days. The relationship seems to be productive thus far, but that will ultimately be determined by practical experience. It is a little early to say. To be fair—and I can, on occasion, be fair—the UK Government was elected near the start of our summer recess. It wants to hit the ground running and to bring legislation forward fairly quickly, but that comes up against our own timescale, which is not ideal. There is certainly some indication of an understanding of our perspective, but the proof will be in the pudding.

Jeremy Balfour: Can you say anything about the Scottish Government's in-principle position on extending statutory instrument protocol 2 to non-former EU areas?

Jamie Hepburn: The Constitution, Europe, External Affairs and Culture Committee has looked at that in some detail. It published a report on the impact of the post-EU, post-Brexit environment on devolution and we responded to that. To go back to the point that I just made, we will press that with the UK Government, but we have acknowledged that Parliament should have the opportunity for effective scrutiny of all legislative powers within our devolved competence, so we share that committee's perspective.

Some practical issues arise from the need for the UK Government to agree to co-operate with any arrangement that has a wider scope than the existing protocol which, we must remind ourselves, is between this Government and the Scottish Parliament and to which the UK Government is not a direct party. However, the effectiveness of that protocol relies on how the UK Government works in practice. As the Cabinet Secretary for the Constitution, External Affairs and Culture, Angus Robertson is leading on that and is considering how we can best advance that with the UK Government. I know that he will be happy to update the committee about how that goes, just as he will update the Constitution, Europe, External Affairs and Culture Committee.

Tim Eagle: I am quite excited because we have recently launched our inquiry into framework bills and Henry VIII legislation. I will not labour this, because I am looking forward to extended debate with you in the months to come, but do you believe that any of the bills that were announced in the recent programme for government could be considered to be framework bills?

Jamie Hepburn: Whatever floats your boat, Mr Eagle.

Tim Eagle: I am very excited.

Jamie Hepburn: I welcome the inquiry. We had a private meeting to discuss that a few months ago and I think that it will be helpful for the committee to undertake that inquiry because there is a narrative about framework bills. There is no definition of what a framework bill is, although we have some sense of what one might look like. I welcome the committee dedicating some of its time to look into that in more detail and I will be happy to participate willingly and just as excitedly in that process of deliberation.

In relation to the current programme for government, bills are still being finalised, so it is difficult for me to answer that question in specific detail. As soon as we are able to, we will provide that detail to Parliament, notwithstanding the point that there is no definition of a framework bill. I am therefore unlikely to come forward at this stage and say, "This is a framework bill for you," but we recognise that there is legislation where a fair bit of the detail has still to be worked out through secondary legislation.

There is, of course, nothing wrong with us determining the law through secondary legislation. It is a well-established part of our process of making law. The question is—and it is a legitimate question—about the circumstances in which it is appropriate to do so. We will always be happy and open to discussing that with Parliament, either on an in-principle basis, as your inquiry might lend itself to, or, when push comes to shove, when a specific bill is debated. It will be for Parliament to decide whether it considers that to be an appropriate approach.

Tim Eagle: Thank you. I guess that you are right. What is a framework bill, and to what extent does the Parliament need to have the ability to scrutinise something effectively? What about the Land Reform (Scotland) Bill or the National Care Service (Scotland) Bill? Those bills are both out. Do you not consider those to be framework bills?

Jamie Hepburn: I recognise that there has been a very public debate around the National Care Service (Scotland) Bill in particular. Substantial parts of it have to be determined by secondary legislation. Whether I would consider it to be a framework bill without any standardised,

recognised and agreed definition of a framework bill is another thing.

Tim Eagle: And the Land Reform (Scotland) Bill?

Jamie Hepburn: I refer you to my last answer.

Tim Eagle: Okay, fair enough. I have one more question on this. What does the Government consider might be a framework bill? When you are talking about these things, to what extent do you say that this is something that you want to co-design—to use the political phrasing—post, using a lot of secondary legislation? Can the Government be very specific about that? Is that talked about quite a lot behind the scenes?

Jamie Hepburn: Yes, there will be consideration. You have talked about the co-design process, and that is quite specific to the approach that was taken with the National Care Service (Scotland) Bill. Under other circumstances, that will not be the rationale. Let us take the example of social security. I think that we would all agree that, if we were to uprate benefits or make slight alterations to qualifying criteria, it would be ludicrous to have to introduce primary legislation in every instance when such matters can be dealt with through secondary legislation that is usually brought forward annually. The circumstances under which we would consider that the utilisation of secondary legislation is the appropriate way forward to make the law will differ, depending on the rationale.

The rationale that you have cited is specific to the circumstances of the National Care Service (Scotland) Bill, which contrasts with other circumstances in which using secondary legislation is a well-established part of our process for uprating benefits, altering registration fees and so on.

Tim Eagle: I look forward to our future discussions on that.

Jamie Hepburn: As do I.

The Convener: As there are no more questions for the minister and his team, I thank the minister and his officials for their evidence this morning. The committee might follow up by letter with any additional questions stemming from the meeting.

That concludes the public part of today's meeting.

10:49

Meeting continued in private until 11:04.

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