OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 19 September 2017

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 19 September 2017

CONTENTS

DELEGATED POWERS AND LAW REFORM COMMITTEE
25th Meeting 2017, Session 5

CONVENER

*Graham Simpson (Central Scotland) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Alison Harris (Central Scotland) (Con)
*Monica Lennon (Central Scotland) (Lab)
David Torrance (Kirkcaldy) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Colin Beattie (Midlothian North and Musselburgh) (SNP) (Committee Substitute)
John Swinney (Deputy First Minister and Cabinet Secretary for Education and Skills)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 19 September 2017

[The Convener opened the meeting at 11:45]

Interests

The Convener (Graham Simpson): Good morning, everyone. I welcome members to the 25th meeting in 2017 of the Delegated Powers and Law Reform Committee. David Torrance has submitted his apologies.

I welcome Colin Beattie to his first meeting of the committee. In accordance with section 3 of the code of conduct, I invite him to declare any interests that are relevant to the committee's remit.

Colin Beattie (Midlothian North and Musselburgh) (SNP): I am delighted to be here, convener. I direct members to the interests that I have declared on the record.

Decision on Taking Business in Private

11:45

The Convener: Agenda item 2 is a decision on taking business in private. It is proposed that the committee take in private item 7, which is consideration of the evidence from the Deputy First Minister and Cabinet Secretary for Education and Skills on the Children and Young People (Information Sharing) (Scotland) Bill. Does the committee agree to take item 7 in private?

Members *indicated agreement.*

Children and Young People (Information Sharing) (Scotland) Bill: Stage 1

11:46

The Convener: Agenda item 3 is the Children and Young People (Information Sharing) (Scotland) Bill. The committee's role in scrutinising the bill is to consider the delegated powers in new sections 26B and 40B, which are to be inserted into the Children and Young People (Scotland) Act 2014. Those new sections impose a duty on the Scottish ministers to issue a code of practice on the sharing of information under the 2014 act.

The bill is the Scottish Government's response to the judgment of the Supreme Court in the case of the Christian Institute and others v the Lord Advocate, which held that the information-sharing provisions of the 2014 act in relation to named persons are incompatible with the rights of children, young people and parents under article 8 of the European convention on human rights: the right to respect for private and family life.

The committee's role is to consider the delegated powers in the bill—specifically, whether the correct balance has been struck between what is set out in the bill and what will be addressed in the code of practice and whether the appropriate level of parliamentary scrutiny is provided for in respect of the code.

I welcome the Deputy First Minister and Cabinet Secretary for Education and Skills. I also welcome his officials: Ellen Birt, the bill team leader, and John Paterson, a divisional solicitor. I do not know whether you have an opening statement to make, cabinet secretary.

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): I do not have an opening statement, convener. I am happy to answer the committee's questions.

The Convener: In that case, we will move straight to questions.

Can you explain why the Scottish Government is confident that the new bill addresses the concerns of the Supreme Court? That view does not appear to be widely shared by the legal witnesses who presented evidence to the Education and Skills Committee.

John Swinney: I hold that view on the basis that we have considered the Supreme Court's judgment in great depth, focusing specifically on the issue that the Supreme Court came to a conclusion about, which you have just narrated to the committee. The Supreme Court's conclusions made it clear that the information-sharing provisions in the Children and Young People (Scotland) Act 2014 are incompatible with article 8 of the ECHR. We had to identify how we could address that directly as well as how we could address the issues that the Supreme Court raised in relation to the provision of clarity around the interaction between the terms of the 2014 act and other legal instruments that are relevant to the area.

We have given the matter careful consideration. I am aware of the views and comments that have been expressed on it by a variety of parties, but my view, which is based on my consideration of the question, is that we fully and adequately address the issues that were raised by the Supreme Court.

The Convener: The Faculty of Advocates said that some of the Supreme Court's criticisms will continue to apply if the bill is passed. Is the Faculty of Advocates wrong?

John Swinney: I disagree with the Faculty of Advocates.

The Convener: I will come back in with other questions later, but we will move on to other members.

Monica Lennon (Central Scotland) (Lab): Good morning, cabinet secretary. I am interested to hear from you how the bill seeks to respond to the Supreme Court's concerns about the lack of clarity surrounding the rules on information sharing under the 2014 act and how they will interact with wider data protection legislation.

John Swinney: There are essentially two critical elements of our response to the Supreme Court judgment. The first is to put into law the duty to consider the arguments and issues relevant to the sharing of information and the circumstances in which that may be permissible. The Supreme Court said that we had not adequately set out in accordance with law, in the 2014 legislation, exactly how that interaction would take place. We have established in the bill the duty to consider the question of information sharing.

We have also addressed the Supreme Court judgment by applying the approach of establishing a binding code of practice to inform individuals who will be in a position to exercise the responsibilities. That code of practice is designed to address the Supreme Court's conclusion that the arrangements that we had made previously were not in accordance with law. The code of practice will be obligatory and binding on any individual who exercises the responsibilities. We give the interaction between the existing legislation and the wider field of legislation that exists in this respect the clarity that the Supreme Court sought in the judgment that it arrived at.

Monica Lennon: Thank you for your answer. I think that it is fair to say that a consistent factor in the complications around the named person legislation has been the uncertainty and the worry over what the duty to share information means in practice for professionals—for health visitors and teachers—who will have to carry out the named person scheme. On that basis, I still do not understand why the Government has chosen not to address in the bill the issue of consent. You said to the convener that you do not agree with the Faculty of Advocates, but the faculty has been clear that a code of practice is not a substitute for legislation and that, if there was any conflict between statute and a code of practice, the statute would prevail. Given the massive concerns that have been expressed, I do not understand why the Government is not addressing the issue of consent in the bill.

John Swinney: There is a really important distinction between the purpose of a bill and the purpose of a code of practice. The purpose of a bill is to make law and the purpose of a code of practice, as envisaged here, is to explain the legal framework and the legal issues. I am not proposing to change the issues in relation to consent, so I have no reason to change the law. I do not propose in the bill to change the law, because I have no desire to change the issue of consent.

I accept that the Supreme Court has placed an obligation on us to explain the interaction between the existing legal framework and the legal framework that will be in place under the bill, with the duty to consider information sharing. That is precisely why I have taken the decisions that I have taken about what will be in primary legislation and what will be in the code of practice.

Monica Lennon: Do you have a view on the comments that have been made about the code of practice needing to be accessible and in clear language? Do you have any sympathy with what the Faculty of Advocates has said about that?

John Swinney: I certainly accept that individuals have to be able to navigate the code of practice. I have provided an illustrative code of practice because I thought that it would be helpful to the parliamentary process to have sight of that while the bill is being considered. We have to get the sequence of events correct. We are considering a bill, and then there will be separate consideration of a code of practice, but I wanted to try to be helpful to Parliament by letting it see an illustration of what a code of practice would look like.

I am not for a moment saying that that is the last word. The accessibility of the code of practice will have to be considered. If we have not got all the detail precisely correct at this stage, I will be very happy to continue to look at that. As I said, should Parliament agree to the bill that is before it, there will then be a separate process to consider the contents of the code of practice, which will involve further dialogue in that respect with Parliament and other stakeholders.

Monica Lennon: Sure. I think that colleagues want to ask about the Parliament's role in scrutiny but, to go back to the concerns of the Supreme Court, can you explain to the committee how the bill seeks to respond to the concerns about the lack of safeguards in terms of the consideration of consent?

John Swinney: That is essentially addressed by the contents of the bill—the duty to consider the question of information sharing and the requirement to follow a code of practice. The purpose of all of that is to ensure that a proportionate approach is taken to the consideration of issues in relation to the question of information sharing that would be faced by any professional or practitioner who is active in the area.

Alison Harris (Central Scotland) (Con): Good morning. I want to continue on the code of practice. Given that the Supreme Court's focus is on clarity about when information may be shared, I still do not understand why the Government chose not to specify in the bill that the code of practice must include an explanation of the relevant law on data sharing with which practitioners must comply when they share information.

John Swinney: That question essentially answers itself. The purpose of a bill is not to explain the law but to specify the law. There is a fundamental difference between specification and explanation of the law. The bill specifies the law, and the code of practice explains the interaction of the law that is proposed in the bill and other legal instruments and statutes.

Because the code of practice is called for by the law, it essentially has the force of statute behind it. It has to be followed and it has to be addressed by those people who take the decisions. What I have put into the bill are the elements of the law that I propose to change, and what has gone into the code of practice is the material to explain the interaction of that law, the Children and Young People (Scotland) Act 2014 and wider legal frameworks that I do not propose to change.

Alison Harris: Given what you have said, am I correct to say that the users will have to look at the code of practice in order to be able to operate the provisions of the bill? I do not understand why it would not have been clearer to have it all included as one. You can correct me if I am wrong in my understanding, but are you basically telling me that teachers now require something of a legal

degree in order to read the code of practice before they implement the bill?

John Swinney: No, that is not what I am saying at all. Monica Lennon's final question to me was about the accessibility of the code. The code has to be accessible to practitioners and professionals, and I am absolutely committed to ensuring that that is the case. That is why I have put before Parliament an illustrative code of practice to give it a sense of what might be there and to gather reaction and feedback about the issues that we need to address to ensure that it is an accessible code. It is vital that individuals find the code of practice to be of use and of value in that respect.

12:00

Alison Harris: Given the Supreme Court's focus on the need for safeguards, specifically in terms of the consideration of consent, why did the Government choose not to include in the bill a specific duty on information holders to consider whether the consent of the child or parent should be sought before information is shared? Why does the Government consider it appropriate to address consent in the code of practice instead of in the bill? Would it not be clearer for people to follow and understand if it was in the bill?

John Swinney: It is not in the bill for the simple reason that I am not proposing to change the arrangements around consent. That brings me back to my fundamental point: the purpose of the law is to specify the law, not to explain it. If I am not changing the law, there is no requirement to specify that in the legislation.

The code of practice will

"provide for safeguards applicable to the provision of information"

under the relevant part of the 2014 act. The requirement of the code of practice to ensure that the necessary safeguards are observed by practitioners in that respect is specified in the bill.

The Convener: Why have you published only an illustrative code of practice, which might bear little resemblance to the real thing, rather than the actual code, which could be properly scrutinised?

John Swinney: It is because we must get events in the right order. I do not have the legal power to issue the final code of practice, because Parliament has not approved the legislation that will empower the process. In preparing the bill, I tried to be as helpful as I could be to Parliament by providing not just the bill and the associated documentation—obviously, I have to provide all of that—but an illustrative code of practice, to give Parliament a sense of what might be in the document.

No formal process is associated with the illustrative code of practice at the moment, because the legal force does not exist to adopt it. When I have heard the views of individuals, stakeholders and committees and members of this Parliament, I will reflect on the illustrative code of practice—which is essentially our first attempt at putting it together—and then, assuming that Parliament approves the bill, I will submit to Parliament the code of practice that will be the subject of the consultation and dialogue that is expected.

Stuart McMillan (Greenock and Inverclyde) (SNP): Why does the Government consider that the process for parliamentary scrutiny of the code that is set out in the bill is akin to the affirmative procedure, given that there will be no formal requirement for the Parliament to approve the final version of the code before it is issued, as there would be if the affirmative procedure were used?

John Swinney: In essence, because the route that I propose provides an opportunity for extensive dialogue with Parliament about the contents and substance of the code of practice. I will have to take account of the views and issues that members of the Parliament raise, as part of the process.

The bill puts a requirement on me to take account of any comments that Parliament expresses on the draft code. That is a greater obligation on ministers than is carried by the affirmative procedure, where Parliament is essentially given the choice either to accept or to reject. The approach that I have taken here is designed to ensure that I can subject the code to detailed parliamentary scrutiny and then consider its contents before finalising the code of practice that will be applied under the bill.

Stuart McMillan: The Government's delegated powers memorandum notes that the code of practice is an important document and goes on to explain that a detailed level of parliamentary scrutiny is appropriate given the binding nature of the code and its significance to the named person service. In that light, and given the importance of the code in responding to the concerns expressed by the Supreme Court, does the Government consider that it would be more appropriate to make the code subject to the affirmative procedure for parliamentary scrutiny?

John Swinney: What would concern me about that is that Parliament's involvement would be only to accept or reject the code of practice. I am trying to create an appropriate mechanism for deeper parliamentary interaction on the terms of the code of practice. I want to produce a mechanism that will enable Parliament to reflect closely and carefully on the contents of the proposed code of practice, so that I am then able to address the

issues—as the bill places a duty on me to do—as part of the process. I am taking this approach because I want Parliament to be more deeply involved in the question, rather than there simply being a "take it or leave it" question, which is the conclusion of the affirmative procedure.

Stuart McMillan: For clarity, then, you are undertaking this process to allow for a greater level of feedback and suggestions from members and committees, which you would then consider when producing the final code to bring to Parliament.

John Swinney: In short, yes. The bill requires me to undertake a public consultation on the code, to consult Parliament and to take account of the comments that Parliament expresses on the code. I think that that represents a greater sense of interaction with Parliament on the detail and substance of the code of practice, which will be reflected in the consideration that I give to its final contents. I am trying to recognise the importance of generating wider confidence in the contents of the code, and I think that the mechanism that I have set out is of assistance in undertaking that task.

The Convener: The issue is that you will merely consider comments on the code of practice, and there appears to be no mechanism whereby the Parliament can make amendments to it. It is all in your hands. Is that correct?

John Swinney: Ultimately, the final design of the code of practice would be my decision, but in getting to that point I will go through exhaustive consultation with the public and Parliament to gain the widest understanding of the issues of concern and to maximise the accessibility of the code, which is the issue that Monica Lennon raised. The measures that I will put in place will be the product of extensive discussion and dialogue with Parliament and the consideration that I give to the issues that are raised.

The Convener: But there is no mechanism for Parliament to change the code of practice.

John Swinney: If we look at the code as a statutory instrument, there would be available to Parliament only the ability to accept or reject it. Parliament cannot amend statutory instruments. What I am trying to do is to find a means of having as engaged a dialogue with Parliament as possible, so that I can arrive at a helpful design of a code of conduct that can deliver on the expectations in the bill.

The Convener: It will be a code of practice—not a code of conduct.

John Swinney: A code of practice.

The Convener: We are still not getting to the point where members of the Scottish Parliament can change that very important code of practice.

John Swinney: As I have explained already, the code of practice is about setting into context existing legal provisions and weaving them together with the contents of the Children and Young People (Scotland) Act 2014 and the Children and Young People (Information Sharing) (Scotland) Bill. It is an explanatory document that is binding in nature, but it does not create any new law; it explains to practitioners the basis of interaction around the content of existing law. For that reason, the route that I have set out is appropriate, because I am trying to maximise the degree of engagement with Parliament, rather than simply saying, "Here is a code of practice that Parliament can either accept or reject and has no meaningful involvement in formulating."

The Convener: In its submission, the Faculty of Advocates said:

> "It should be remembered that a Code of Practice is not a substitute for legislation. A Code is not debated and passed by the Parliament. Where there is any conflict between the statute and the Code of Practice, the statute will prevail."

It went on to say:

> "The issue of informing a child or young person, or parent, that information is to be shared, and the issue of obtaining that person's consent, are discussed within the Code of Practice, but are not mentioned within the Bill itself. In our view, these issues are sufficiently fundamental to be referred to within the legislation itself, rather than simply being dealt with in the Code of Practice."

The Law Society of Scotland said:

> "We support the creation of a Code of Practice, setting out clarifications and guidance on the operation of the information sharing provisions of the Bill. However, the key safeguards and information should be contained within the Bill itself, and subjected to full Parliamentary scrutiny."

Those are the top legal bodies in Scotland, and they say that the code of practice should be subject to full parliamentary scrutiny—in other words, giving MSPs the ability to amend it. Surely that is something that you could consider.

John Swinney: The provisions of the bill and the approach that I am taking provide the opportunity for MSPs to consider the contents of the code of practice and provide a mechanism for ministers to give further consideration to issues that have arisen from Parliament's views being expressed. However, fundamentally, the issue comes back to the material that will be in the code of practice. That material is explanatory information to set out the interaction between different legal instruments; it does not create any new or different legal instruments. That is where I disagree with the views submitted by the Faculty of Advocates and the Law Society of Scotland. I

am surprised by their views, because the purpose of statute is to define the law. I am very clearly taking steps to change the law in certain respects, but I am not taking steps to change the law in relation to consent, which was one of the issues that was raised by one of those bodies. Therefore I consider the code of practice approach to be the most appropriate one to explain that material to practitioners.

I have tried to put in place, through the bill, the means by which we can have extensive dialogue around the contents of the code of practice, more effectively and with deeper engagement than would be possible in the context of a statutory instrument. The Parliament would not have the ability to amend a statutory instrument but would simply have the opportunity to accept or reject it. I am trying to create as interactive an approach as possible to enable me to take account of the views of the Parliament in this important area of activity.

12:15

The Convener: I do not want to hog the discussion, but I must press you on the matter. You used the phrase "extensive dialogue". Can we get to a point at which you agree that MSPs and the Parliament, as part of that "extensive dialogue" as you describe it, have the ability to change the code of practice?

John Swinney: That is not in the proposal that I have placed before the Parliament today.

The Convener: Could it be?

John Swinney: I will reflect on anything that a committee says to me, but that is not my proposal.

The Convener: Do any other committee members have questions?

Colin Beattie: Cabinet secretary, let us continue to look at the scrutiny of the code. The code will not be subject to any formal scrutiny process beyond the 40-day laying requirement and the requirement to take account of any comments that are expressed by the Parliament in that period. Why did the Government choose not to frame the code as subordinate legislation?

John Swinney: For the simple reason that subordinate legislation creates new law and the contents of the code of practice will not create new law.

Colin Beattie: There are examples of subordinate legislation having been used as a vehicle to bring a code of practice into force—for example, the letting agents code of practice. Why do you think that this code different?

John Swinney: For the simple reason that the code of practice that I am proposing will be an explanatory document that sets out the ways in which the bill interacts with other legal instruments. As such, it will not create any new legal provisions.

The Convener: Given the circumstances and background to the bill, as well as the concerns that were expressed by the Supreme Court, does the Government consider that there could be merit in applying an enhanced form of affirmative procedure to the bill? That would allow the Parliament an opportunity both to shape and to approve the code before it was issued.

John Swinney: I was mindful of the Supreme Court's judgment when I came to my conclusions about the code of practice. The Supreme Court said, in paragraph 81 of its judgment, that

"the court can look not only at formal legislation but also at published official guidance and codes of conduct"

in determining the proportionality of any interference with article 8 rights. In paragraph 107, the Supreme Court identified that a number of approaches could be adopted, including the provision of binding guidance, and that is the guidance that I have followed in bringing forward my proposal.

In addition, the Supreme Court referenced a particular case involving the operating procedures of the Metropolitan Police. In the Supreme Court's judgment, those operating procedures provide adequate safeguards in respect of proportionality, and that is the framework that we have used in the bill.

The measures that I have proposed have been designed to create as much opportunity as possible for the Parliament to interact around the formulation of the code of practice, so that the code has the status that is envisaged in the bill as well as the effect that we want it to have in the form of binding guidance.

Monica Lennon: I was struck by your answer to Stuart McMillan and I felt quite reassured when you said that you want Parliament to have a deep involvement in this. I am still unsure why the Government is choosing not to address issues around consent in the bill. If it did, it would give Parliament the fullest possible involvement. Why has that option been dismissed?

John Swinney: It is purely and simply because I am not changing the legislative provisions around consent. If I was changing the arrangements around consent, I would have to put that into primary legislation, but I am not doing that.

Monica Lennon: The issues around consent are fundamental to the operation of the law, so should they not be in the bill?

John Swinney: They are in other legislation. They are specified in instruments of legislation on

data protection and the rules on confidentiality, and I do not propose to change them. I propose to explain in a code of practice the relationship between the bill and those existing parts of the law, which I do not intend to change.

Monica Lennon: In the face of some very serious stakeholders who say that there is a better way of doing this, will you explain why the Government is so confident that the bill is the correct approach?

John Swinney: I do not follow the rationale of some of what has been put to the committee by stakeholders, because I do not intend to change the law on consent. It is for stakeholders to explain their position but, as I do not propose to change the law on consent, I have no reason to put it in the bill.

I have an obligation to address the issues that arise from the Supreme Court's consideration. One of the court's issues was the "logical puzzle", as it described it, that exists between the 2014 act and other legislation. I am directly addressing that with the contents of the code of practice and I am making the code as accessible as possible. Monica Lennon's earlier question about the accessibility of the code of practice is fundamental to this discussion, which is why I want to ensure that we get it right. It is why I have provided an illustrative draft code of practice much earlier in the process than I should have done and why I am committed to extensive dialogue with the Parliament on it, so that we can get it correct. We will undertake the necessary public consultation and get a set of instruments that members of the public can clearly understand.

The Convener: What does "extensive dialogue" mean to you?

John Swinney: It means committees looking at the draft code of practice, having had adequate time to engage with relevant stakeholders on it. It involves the Government undertaking a public consultation and then having the appropriate opportunity to reflect on the issues before finalising the code of practice.

The Convener: It does not mean that Parliament is able to amend the code of practice, although you have said that you will consider comments.

John Swinney: Just so that we are absolutely crystal clear: it is not my proposal to do that.

The Convener: We are clear on that.

Alison Harris: I am still confused, cabinet secretary. You have gone on about the code of practice and said that it is binding and obligatory but that, because you are not changing the law on consent, you will not put it on the face of the bill. I do not see why you do not make the code more clear and open to parliamentary scrutiny by putting it in the bill. Despite hearing what you have said this morning, I still do not understand why you will not go that step further for us.

John Swinney: For the very simple reason that a bill is designed to make the law, not to explain it.

Alison Harris: Are you telling me that the code of practice is binding and obligatory but it is not the law?

John Swinney: It has the force of statute, but the law is defined by what is in primary and secondary legislation, and the bill requires individuals to follow the code of practice. The code of practice explains the interaction of law; it does not create new law.

Alison Harris: I understand what you are trying to say, but I still think that, as it is a code of practice and it is obligatory and binding, although it might not make new law, it could clarify the law that you are looking to make if it were put in the bill.

John Swinney: That would have exactly the opposite effect of the one that Alison Harris seeks, because the law must be crystal clear and it should not be possible to have a wide discussion about its applicability. The purpose of law is to specify what the law is, so that it can be judged by the courts whether it is being pursued. The purpose of guidance and the code of practice is to explain the interaction of different legal instruments and to place an obligation on individuals to follow it.

Alison Harris: So it comes back to my original point that future teachers might need slightly more legal training.

John Swinney: No, because I will address the issue that Monica Lennon raised about the accessibility of the code of practice.

Alison Harris: I am not sure that we can agree on that, but never mind. Thank you for your answer.

The Convener: I thank Mr Swinney, Mr Paterson and Ms Birt for their time.

12:27

Meeting suspended.

12:27

On resuming—

Instruments subject to Affirmative Procedure

International Organisations (Immunities and Privileges) (Scotland) Amendment (No 2) Order 2017 [Draft]

The Convener: We move on to consideration of instruments that are subject to affirmative procedure. No points have been raised by our legal advisers on the draft amendment order. Is the committee content with the instrument?

Members *indicated agreement.*

Instruments subject to Negative Procedure

12:28

The Convener: Item 5 is consideration of instruments that are subject to negative procedure. No points have been raised by our legal advisers on the following five instruments.

Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017 (SSI 2017/282)

Charities Accounts (Scotland) Amendment Regulations 2017 (SSI 2017/284)

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2017 (SSI 2017/285)

Natural Mineral Water, Spring Water and Bottled Drinking Water (Scotland) Amendment Regulations 2017 (SSI 2017/287)

National Health Service (General Dental Services) (Scotland) Amendment Regulations 2017 (SSI 2017/289)

The Convener: Is the committee content with those instruments?

Members *indicated agreement.*

Islands (Scotland) Bill: Stage 1

12:28

The Convener: The purpose of item 6 is for the committee to consider its approach to the scrutiny of the delegated powers in the Islands (Scotland) Bill at stage 1. It is an opportunity to identify matters that the committee might wish to raise with the Scottish Government.

The purposes of the bill are to make provision for a national islands plan, to impose a duty on certain public authorities to have regard to island communities, to make provision about the electoral representation of island communities and to establish a licensing scheme in respect to marine development adjacent to islands.

It is suggested that the committee raises questions on two of the delegated powers in the bill. Section 7(3) provides that the Scottish ministers may, by regulations, amend the schedule that lists the bodies, office-holders and other persons who are subject to the duty to have regard to island communities in carrying out their functions. However, other acts also include a power to modify a list of authorities contained in a schedule by modifying an entry in the list. Section 6 of the British Sign Language (Scotland) Act 2015, for example, does that, and section 8 of the Gender Representation on Public Boards (Scotland) Bill, which is presently before the Parliament, contains powers, by regulations, to modify the list of authorities in schedule 1

"so as to add an entry, vary the description of an entry or remove an entry."

Does the committee agree to ask the Scottish Government why it has been considered appropriate not to extend the power to modifying an entry in the schedule, in addition to the power to add or remove an entry?

Members *indicated agreement.*

The Convener: In regard to the power in section 21 to add supplementary, incidental or consequential provisions to the regulations under section 7(3) or section 18, the delegated powers memorandum provides no explanation of why those powers are necessary or appropriate.

Does the committee agree to ask the Scottish Government for an explanation as to why the ancillary powers in section 21(1)(a) are considered to be necessary or appropriate? In particular, why are the powers appropriate in addition to the powers to make ancillary provisions by regulations in section 22, and why is the power to add supplementary provision appropriate in respect of regulations under either section 7(3) or section 18?

Members *indicated agreement.*

The Convener: I move the meeting into private session.

12:31

Meeting continued in private until 12:52.

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

The Scottish Parliament
Pàrlamaid na h-Alba