



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

**Wednesday 5 September 2018**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**25<sup>th</sup> Meeting 2018, Session 5**

**CONVENER**

Graham Simpson (Central Scotland) (Con)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

\*Tom Arthur (Renfrewshire South) (SNP)

\*Neil Findlay (Lothian) (Lab)

\*Alison Harris (Central Scotland) (Con)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Bill Bowman (North East Scotland) (Con) (Committee Substitute)

Suzanne Greaves (Department for International Trade)

Rebecca Hackett (Scotland Office)

George Hollingbery MP (Minister of State for Trade Policy)

Eleanor Weavis (Department for International Trade)

**CLERK TO THE COMMITTEE**

Andrew Proudfoot

**LOCATION**

The Adam Smith Room (CR5)



## Scottish Parliament

### Delegated Powers and Law Reform Committee

Wednesday 5 September 2018

*[The Deputy Convener opened the meeting at 11:48]*

### Decision on Taking Business in Private

**The Deputy Convener (Stuart McMillan):** Good morning, colleagues, and welcome to the 25th meeting in 2018 of the Delegated Powers and Law Reform Committee. Graham Simpson, the committee's convener, is attending to other parliamentary business this morning and is therefore unable to be with us. He sends his apologies. Bill Bowman, who is substituting for Graham Simpson, will join us very soon when the committee that he is attending finishes.

Under agenda item 1, it is proposed that the committee takes in private item 3, which is consideration of the evidence that we are about to hear on the United Kingdom Trade Bill. Does the committee agree to take item 3 in private?

**Members** *indicated agreement.*

## Trade Bill

11:49

**The Deputy Convener:** We are scrutinising the legislative consent memorandum for the UK Trade Bill. We have before us George Hollingbery MP, the Minister of State for Trade Policy in the UK Government. Mr Hollingbery is accompanied by Suzanne Greaves OBE, trade bill manager, Department for International Trade; Eleanor Weavis, head of domestic portfolio, trade strategy, Department for International Trade; and Rebecca Hackett, deputy director of policy, Scotland Office. I welcome you all to the meeting and thank you for taking the time to come to the Scottish Parliament. I know that you have already had a busy morning giving evidence to the Finance and Constitution Committee.

As you know, one of this committee's roles is to look at all legislative consent memorandums that contain delegated powers and to report to the relevant lead committee. Our questions are therefore focused on the delegated powers in the Trade Bill. I will allow some latitude for some questioning on policy areas from time to time, but that is not the purpose of the committee, so if we stray too far I will ask my colleagues to stop. I invite the minister to make an opening statement.

**George Hollingbery MP (Minister of State for Trade Policy):** Thank you very much, convener, and thanks for inviting us all to address the committee. This is possibly the most titanic table that I have ever sat at—it is pretty extraordinary.

Although I was somewhat tense about my appearance at the previous committee, this meeting scares me rigid because it covers a very technical area.

As you have already outlined, the committee looks at aspects of the Trade Bill and it will feed back its opinions to the Finance and Constitution Committee, from which I have just arrived. As I explained to that committee, the UK Government wants all parts of the UK to support the bill, and we will continue our comprehensive engagement with the Scottish Government to ensure that we secure its recommendation for a legislative consent motion.

With that in mind, I note the Scottish Government's legislative consent memorandum from December 2017. Since then, the UK Government has taken significant strides by tabling amendments that have improved the bill and answering many of the concerns that were expressed in the memorandum. I am conscious that members have specific and technical questions, particularly on clauses 1 and 2, and I, along with colleagues, look forward to providing

responses as an important step to help to deliver the bill for the whole of the UK.

As I mentioned to the deputy convener in our private conversation, this is a technical area and there will undoubtedly be times when officials are better placed than I am to give full answers. I hope that members of the committee will allow that, because they will get better answers.

**The Deputy Convener:** Thank you for your opening comments. We certainly have no issues with your colleagues answering questions in particular areas.

It appears that the general intention behind the powers in clause 1 of the bill to implement the Agreement on Government Procurement, or GPA, is that the UK would continue to be an independent member of that agreement. The delegated powers memorandum for the Trade Bill explains that the power is required

“to reflect any changes needed as a result of the process whereby the UK becomes an independent member of the GPA.”

Can you explain the scope of the powers that would be available to the Scottish ministers to make potential amendments to the terms of the GPA? Could the powers be used to implement further substantive changes to the GPA, given that procurement is a devolved matter?

**George Hollingbery:** I will talk across the top of that question and then I will ask Eleanor Weavis to fill in the details underneath. The point of having the powers as they are set out in the bill is to allow for a rapid response to any changes in the schedules that adhere to the GPA. In principle, the powers are there simply to slide across what we have already agreed into UK schedules with the minimum of fuss. The delegated powers are there to take any bits that need changing in particular areas, particularly regarding accession to and withdrawal from the GPA, so that the current reality on the ground is reflected. Is it possible that the powers could be used more widely? Yes. However, the Government is not going to use the powers for that purpose; it is our intention to move the agreement across, so that it can be used in its current form in the UK on a legal basis.

**Eleanor Weavis (Department for International Trade):** I will run through the scope of the clause 1 powers now, if that is helpful.

Clause 1 allows for changes to our domestic regulation to reflect the United Kingdom's independent accession to the GPA as we leave the European Union. As the minister said, there will be no substantive changes, as we accede to the GPA on the same terms and with the same coverage as we have now. The power also allows us to update our measures as new countries accede to or withdraw from the agreement. It

allows us to update annex 1 of the GPA, which is a list that covers what entities are covered by the agreement. For example, when the agreement was made, the Department for International Trade did not exist, so we will need to do some technical updates to ensure that that list of entities is factually accurate.

**The Deputy Convener:** In this morning's meeting of the Finance and Constitution Committee, there was quite a wide discussion around clauses 1 and 2. One aspect that was raised and that has an impact on this line of questioning concerned the Scottish ministers having any type of input to or engagement with that area. There seemed to be some dubiety in that discussion. The minister's officials mentioned that there have been regular and wide discussions at the level of officials, but not at the level of ministers. Will the Scottish ministers and this Parliament have an opportunity to shape that area of discussion?

**George Hollingbery:** Are you talking specifically about the GPA?

**The Deputy Convener:** Yes.

**George Hollingbery:** I invite officials to jump in and save me at any stage. We are transitioning across the agreement that we currently carry, on which basis any changes that are made are simply to ensure that the powers that now exist through the European Union will be available to British institutions through the UK. Therefore, any decisions that the Scottish ministers have already taken in using that power are already made and are already there, and the powers that they had before will still be there. I think that that is correct.

Given that that is the case, my steer from the beginning has been that the Scottish Government was content with us transitioning across the GPA, so I do not anticipate any need for ministerial-level contact on this matter. We are simply enabling the Scottish ministers to continue taking the powers that they have previously had. I believe that to be the case.

**Neil Findlay (Lothian) (Lab):** I am interested in the idea that your officials can jump in and save you. Perhaps you could get some officials to jump in and save the Prime Minister—that might be a stretch too far, though.

**George Hollingbery:** It would depend on whether they could dance or not.

**Neil Findlay:** Let's not go there.

Many of us across the parties believe that the Government's approach to the handling of devolved powers has been pretty disastrous and we are now heading for the Supreme Court. Consent is vital so that we can provide some

certainly for workers and people who feel that their position is precarious.

As regulations and devolved powers come forward, what mechanisms will there be for consultation and for dispute resolution?

**George Hollingbery:** What particular areas are you focusing on?

**Neil Findlay:** All of them. Development frameworks, new regulations coming forward and so on. How will discussions with the devolved Administrations take place? How will disputes involving differences of opinion be resolved?

**George Hollingbery:** I will restrict my comments to the bill, which is what I am here to talk about. However, I take the convener's point that wider questions will arise, and I will refer to Rebecca Hackett—

**Neil Findlay:** Some of those wider questions will relate to trade.

**George Hollingbery:** Of course they will; I understand that.

We are continuing to work on how we discuss trade issues. As we know, that is a matter that is reserved to the UK. Officials regularly meet officials to talk about the existing memorandums of understanding, concordats and so on and to see where we are in relation to the process of the development of those. Rebecca Hackett talked a little earlier about roughly where we are in that process.

A lot of work is going on with regard to how those frameworks are created, the mechanisms by which we talk to each other, the various commitments that the UK Government makes to the Scottish Government about trade and international relations, and how we deal with those.

12:00

The next part of the issue concerns free trade agreements. It is clear that there is going to be a lot of interaction with the Scottish Parliament, the Scottish Government and officials as we move forward with developing our ideas about how we should negotiate the free trade agreements with the four partners that we have identified. We are absolutely clear that there should be deep and meaningful consultation with the Scottish Government and that we should be open to modifying our proposals on the basis of the information that we receive. I am absolutely committed to that.

It seems to me that we will get much improved and much more deliverable free trade agreements if we can all agree on exactly what they should end up proposing and on how we should negotiate

them. The fine detail of what form that mechanism will take is yet to be resolved, but I give the committee a political commitment that I believe that it is absolutely right that the devolved Administrations should have a real input into the process. Many meetings are already taking place—I am having a meeting with a Government minister on free trade agreements later on today. Contact is happening at every level. A degree of certainty needs to be provided, which we will provide in due course.

As far as the wider issue of frameworks, dispute mechanisms and so forth is concerned, that is strictly outwith my portfolio, but I think that Rebecca Hackett can declaim on that a little further.

**Rebecca Hackett (Scotland Office):** Detailed work on frameworks has been going on at official and ministerial level for many months. We have the joint ministerial committee, which is chaired by the Chancellor of the Duchy of Lancaster. It brings together ministers from the different devolved nations to look at European Union exit issues more generally and to manage the work on frameworks. Beneath that, at official level, extensive discussions are taking place to work through all the different areas in which it has been identified that common UK frameworks might be needed. That involves working through the detail of such frameworks and getting into the nitty-gritty of the policy areas. It is a case of looking at how those frameworks can be applied and whether we can find non-legislative frameworks—I am thinking of co-operative approaches, such as the use of memoranda of understanding. We want to limit the number of areas in which legislative frameworks might be needed.

A detailed series of discussions took place earlier this year, and the second round of discussions is taking place at the moment. A lot of activity is under way in that area, but it is complex and technical work that takes time. It is right that we give that work the time that is needed. Ministers are updated regularly, and they will review that later in the year.

**Neil Findlay:** It is two years since the vote to leave the EU, and when we hear phrases such as “in due course” being used, it does not provide a lot of certainty.

To follow up on the question that the convener asked, I would like to put some of the technical elements of the issue into more practical terms. Could the GPA do things such as allow the Scottish Government to have a publicly owned railway or to not put the contract for ferry services to the islands out to tender? Would it allow us to insist in public procurements that contractors should pay the living wage? EU procurement policy is often highlighted as the barrier to allowing

those three things to happen. Would the new procurement arrangements allow such things to happen?

**George Hollingbery:** The best that I can do is repeat myself: our objective is to transition the arrangements that we have at the moment, technically changed such that they are operable in UK law. The rules that govern the Scottish ministers and UK ministers will in large part be the same as they were previously, but they will be in UK law.

**Neil Findlay:** Was that a no?

**George Hollingbery:** The arrangements will be the same.

**Neil Findlay:** Would any of your officials like to rescue you?

**Suzanne Greaves (Department for International Trade):** I have something to add on the objective of the GPA, which is to allow businesses across the UK to pitch for contracts in other countries that are signed up to the agreement, so that they can get the monetary benefit of the work to which that will give rise and bring that back to the UK. We also want to allow organisations across the UK to be able to procure public services from a wider market and thereby get better value for the public money that is invested in them. That is the purpose of the agreement—that is why we want to transition the current arrangements and ensure that the UK is still a member of the GPA in its own right after exit.

**Neil Findlay:** We procured our rail franchisee from a wide EU market. That company is owned by the Dutch Government, but we cannot get a public bidder here. In effect, the railway is in public ownership by a foreign country. Could we stop that in the future?

**George Hollingbery:** We need to return to the reality that we are transitioning the agreement as it sits. Anything that is not currently possible will not be possible thereafter. Suzanne Greaves's point about allowing access to the \$1.3 trillion marketplace that is out there is germane. The answer to the question whether we could change things in our own right is yes, as we will no longer be a member of the EU, but that is an argument for a different day.

On Brexit, we need companies to be absolutely certain that the rules will be the same as they were before, so that they can understand the rules and get on with them. If, after being petitioned by the Scottish Parliament and others, the UK Government decides that it is the right time and place for us to change how the agreement works, that will be well and fine. However, we want certainty and continuity and to ensure that everyone understands the ground rules.

There might be problems with the EU procurement rules, which we might wish to change, but we will deal with that in due course as we can, without disrupting everyone's expectations as we leave the EU. That is the whole point of clause 1. I think that the Scottish Parliament has agreed to it—whether that is formal agreement is another matter, but Scottish officials have indicated to us that they are content for us to take the view that I have set out and to work in the proposed way.

**The Deputy Convener:** For the implementation of international trade agreements, clause 2(7) provides that the power will end—or have its sunset—three years after exit day, unless that period is extended by regulations. Why was it considered appropriate that no sunset period should apply to the powers to implement the GPA?

**George Hollingbery:** Straightforwardly, I have given the commitment publicly that we wish to have a mechanism to reflect accessions and resignations—or whatever the technical term is for leaving the GPA. It would be perverse not to have available to us the power to deal with that for a continuing period; that provides an efficient way to proceed, so there is no need to sunset it.

If we wished to change the GPA arrangements, we would do that by other mechanisms, which would involve much wider consultation. I suspect that we would use a different mechanism for applying changes. The powers will sit there for a period to allow us to reflect the reality of membership of the body.

Clause 2, which relates to international trade agreements, is time limited because we will transition only agreements between the EU and the UK that existed on exit day. It is right to have a period in which to do that—but a cut-off point beyond that would probably be too far away. As I am sure that you know, the bill started by specifying five years; members of Parliament and others made representations that that was too long, so we agreed to modify the period to three years, which probably provides the right balance.

**Tom Arthur (Renfrewshire South) (SNP):** Am I correct in understanding that the sunset period of three years in clause 2 can be extended? Will you give examples that show why you believe that that is justified?

**George Hollingbery:** Arguments were made in similar circumstances in other fora—for example, in relation to the European Union (Withdrawal) Bill. If we were on the cusp of finishing a trade bill that we wanted to get on to the books, so that we could finally transition the existing agreements, it would be foolish if we had an absolutely hard sunset—a hard cliff-edge limit—although such an approach



helps in negotiations, so there are two sides to the argument.

If, for example, it was pretty clear that an error had been made in scheduling timetables for ratification in a different Parliament, we would be able to extend the period to deal with that. The provision is to deal with circumstances as they arise.

**Tom Arthur:** I understand that the power to extend the period by another three years will be available to UK Government ministers but not to devolved Administration ministers. What is the reasoning behind that decision?

**George Hollingbery:** It was simply because this is an area of reserved competence. It is about free-trade deals and international trade, which are reserved matters under the Scotland Act. That is probably it, although it is worth noting that, if I am right—and officials will confirm that—as and when we extend that power the matter will not be in the hands of ministers directly. The statutory instrument or delegated power has to be put in front of both houses and passed.

**Tom Arthur:** Can you envisage circumstances in which it would be necessary for that power to be extended by another three years for specifically devolved matters?

**George Hollingbery:** For specifically devolved matters?

**Tom Arthur:** Or for matters that impinge upon devolved competences.

**George Hollingbery:** As I sit here now, I cannot think of any particular circumstance. I am sure that it is possible to write out something where that would be the case, but this is more about certainty, cliff edge and dealing with circumstance as it arises than it is about anything substantive to do with what the UK might or might not want to do with continuity of trade agreements.

**Tom Arthur:** If a scenario were to arise in which it was deemed that devolved ministers required an extension, would there be any barriers to that?

**George Hollingbery:** If devolved ministers required an extension?

**Tom Arthur:** Yes. For example, supposing the UK Government ministers were successful in passing an SI through the House of Commons and there was an extension of three years and, as a consequence of that, there were some hypothetical scenario in which there was a requirement for the period to be extended for devolved ministers, would there be any barrier to that sunset provision being extended by a further three years for devolved ministers?

**George Hollingbery:** I am struggling to get my head around the question. Let us ask an official

whether they can do better than I—which is almost certain, to be honest.

**Eleanor Weavis:** I think that what Tom Arthur is asking is whether we would extend if a devolved minister needed to use the powers. Is that correct?

**Tom Arthur:** Yes.

**George Hollingbery:** Ah.

**Eleanor Weavis:** The answer is that, as part of the on-going process of engaging with the devolved Administrations in trade-agreement continuity, I imagine we would foresee that and work closely with colleagues to understand whether a sunset extension was appropriate. I imagine that, because all of us care about continuity in our on-going trade relationships, we would be incentivised to be as practical as possible in that situation.

**Tom Arthur:** That is very helpful.

**Suzanne Greaves:** I can add something else about the sunset provision and why it might be extendable. As the minister has explained, this is about continuing the existing trade agreements. The power allows us to implement any changes that we might need to make in domestic UK legislation in order to reflect the fact that we are taking the agreements on as the UK alone, rather than as part of the EU; we might need to make changes that would keep them operable over time. They are small changes and it is still a matter of continuing the effects of those agreements.

**Tom Arthur:** I raise the question because, hypothetically, if the scenario could arise for UK ministers, it may also arise for devolved ministers.

**George Hollingbery:** I totally understand the question now.

**Tom Arthur:** It is the technical nature of this committee.

**George Hollingbery:** Okay, thank you.

**The Deputy Convener:** Clauses 1(1)(e) and (f) provide that UK ministers or the devolved authorities also have a power to make such provision as is considered appropriate in consequence of any modifications to the list of central Government entities in the GPA that is to be used after the UK has acceded to the agreement. It appears that modifications could be needed due to “machinery of government changes”, as it says in paragraph 50 of the delegated powers memorandum. Can you explain further how that power might have effect in respect of Scotland, and how it might conceivably be exercised by the Scottish Government to make regulations in consequence of modifications to the list?

**George Hollingbery:** I will give that straight to Eleanor Weavis.

**Eleanor Weavis:** I am not an expert on Scotland's public entities but I can give you an example in terms of the UK Government, which I referenced earlier. The Department for International Trade and the Department for Exiting the European Union are newly established departments and, at the moment, they are not included in our list of the entities that are covered. Those are the sorts of "machinery of government changes" that we would need to make. Assuming that public entities change in Scotland as well, the same logic would apply.

**The Deputy Convener:** I accept that you are not an expert on Scottish public bodies, but I come back to the point that Tom Arthur raised a few minutes ago that there could conceivably be points at which it might be beneficial if there were some type of differential position, which the Scottish ministers and Scottish agencies might see as being better for those particular bodies. Does the UK Government hold a position that is against that scenario?

12:15

**George Hollingbery:** Just to be sure that I understand, are you suggesting that, where a name is incorrect or something has to be changed, there might be a desire among Scottish ministers to use those powers to insert or substitute a name for a body in Scotland? Am I correct in my assessment of your question?

**The Deputy Convener:** Yes.

**George Hollingbery:** I do not know this for a fact but I suspect that quite a lot of it is probably a matter of negotiations with partners in the agreement about who can and cannot be included, and whether it is right for them to be included in that particular circumstance—officials might have more to add. I suspect that that is the complication.

**Eleanor Weavis:** On top of that, as we mentioned earlier, we are approaching our accession to the GPA and, from a consistency point of view, we are looking to have the same coverage and to accede in a way that replicates our membership at the moment as closely as possible, which is as part of the EU.

**Alison Harris (Central Scotland) (Con):** On the clause 2 powers to implement international trade agreements, the UK Government acknowledged, in the delegated powers memorandum:

"The power is broad enough to allow implementation of substantial amendments, including new obligations."

What scope is there for existing trade agreements between the EU and third countries to be subject to those changes in the course of their being adopted as UK-third country agreements?

**George Hollingbery:** It is similar to the GPA. We start out with a position of wanting to create continuity. In each case in which we negotiate with partners to roll over agreements, we will look for just that—as few changes as possible, to provide certainty.

Over time, it might be that we have room and capacity, and there is desire on both sides, to enter into substantially different arrangements. However, I suggest that all our focus should be on trying to create continuity such that nothing in the appearance, feel and look of an agreement changes substantively. That means that there is an impetus on and stimulus for the UK Government to design the rollovers so that there is very little change. Therefore, in the vast majority of cases, I do not expect that we will find any substantive difference.

One of the changes that was made in the bill was that, when there is a substantive difference, an explanatory document will be placed before the House of Commons before ratification that tells members exactly how and where an agreement has changed. It will not necessarily go into all the language, but it will give the purposes of all the changes.

Further, on the new clause 6 and the issue of scrutiny, we agreed with Jonathan Djanogly that the best way of laying statutory instruments would be to have an affirmative procedure, such that Parliament has a genuine amount of time to deal with and vote on a matter, and that the explanatory memorandum for each of the instruments would point back to the report on the changes in the agreement and say which of the changes the instrument affected. That would give Parliament an ability to scrutinise in the full understanding of what it was being asked to agree to.

Finally, at the end of all that, the Constitutional Reform and Governance Act 2010 has been amended such that the Parliament is capable—if it can hold itself together in one cohesive block—to delay the ratification of an agreement indefinitely.

There are all sorts of checks and balances at every stage. That gives Parliament certainty, understanding and the right to scrutinise at considerable depth, which should allow everyone to understand what changes are being made and whether they agree with them.

**Alison Harris:** Following on from that, what scope is there for those regulations to be made by the Scottish Government under clause 2, to make significant changes in our domestic law? Could

you think of some examples of how those could be implemented in Scotland?

**George Hollingbery:** I cannot give a particular example; perhaps others can illustrate it a little more colourfully. Where there are requirements to implement something in domestic law that plainly will be the province of the Scottish Government, that law will be subject to the difficulties that we have all encountered thus far about section 12 powers and so on, but that is how the Scottish Government will be involved and it will implement the required changes to make it work as it sees fit in its own Parliament. Perhaps Eleanor Weavis can talk about that.

**Alison Harris:** Did you want to add something?

**Eleanor Weavis:** No, sorry.

**George Hollingbery:** I asked for a bit of colour, but in these conversations that is not always possible.

**Alison Harris:** In that case, I will move on. Why has it been considered appropriate that the trade agreements to which clause 2 applies should be implemented by regulations rather than by primary legislation, especially when it appears that, at the point of the proposed implementation, agreements in place before exit day might not have been ratified by the EU and substantive changes to existing agreements might not have been made?

**George Hollingbery:** I think that I am right in saying that, if it has not been ratified by the EU, it is not an agreement that we can transition. That probably deals with that point. I am sorry, but I forget what your first question was.

**Alison Harris:** I will start again.

**George Hollingbery:** I apologise.

**Alison Harris:** No, you are getting a lot thrown at you. Why is it considered appropriate that the trade agreements should be implemented by regulations—

**George Hollingbery:** Rather than by primary legislation. There are 40 agreements that we would like to transition. There is a little bit of legislation going through Parliament at the moment. For purely practical purposes, we need to remember two things. First of all, those are all agreements that have been operable in the EU for some time. Some are quite recent, but a lot have been operable for quite a long time. They have been fully scrutinised before and they are effectively on the books in UK law. There may be some changes, but I have outlined the scrutiny that can be involved in that. They are well understood agreements, they work and our partners want them. If they did not, they would not be coming forward and we would not be able to agree them.

There is therefore no great impetus to have fresh primary legislation, simply because the agreements already exist, they are used and they are on the statute book, and capacity would be a very serious issue. We believe that this is by far and away the best way to transition those agreements, and both Parliaments can have confidence that they will understand the agreements when they come forward, because they will, on the whole, be agreements that they have used before.

**Suzanne Greaves:** Perhaps I could add one more thing to what the minister said about the limitation of the power. It can be used to implement only agreements that have been signed by the EU before the day of exit.

**Alison Harris:** I understand. Thank you.

**Neil Findlay:** You mentioned that it would be done via the affirmative procedure.

**George Hollingbery:** That is correct.

**Neil Findlay:** We have been advised that clause 1 would be done via the negative procedure. Why is it not affirmative?

**George Hollingbery:** Because there is no issue of policy to discuss; this is simply about accession and changing words. The whole purpose is to bring into UK law what everybody already uses in UK law, which is well known and well understood. It is about words and lists that need to be changed to reflect accessions. The SI can sit under the negative procedure, and any member of Parliament who feels that there is some problem—I am not sure that I understand what the problems might be—can pray against it, and there can be a vote in Parliament, in a deferred division. We do not feel that this needs a great deal of scrutiny; it is simply about trying to legalise a fact, rather than putting policy in place. The policy is adopting the GPA. This is simply a matter of practicality.

**Neil Findlay:** We are pretty precious about our scrutiny in this committee.

**George Hollingbery:** That is fine. I can see how certain accessions might be controversial and why there might be some interest in that.

**Neil Findlay:** Given that nobody knows how this is all going to unfurl or unravel, enhanced scrutiny would be more welcome.

**George Hollingbery:** Your point is noted, sir.

**Bill Bowman (North East Scotland) (Con):** I would like some explanation of terminology and perhaps you can help.

First, although this was some time ago, the academic experts who appeared before the Finance and Constitution Committee on 21 February raised concerns about the clarity and

potential width of clause 2, as it applies not only to international trade agreements, which are free trade agreements, but also to

“an international agreement that mainly relates to trade”.

That expression is not further defined in clause 8(1). Can you explain why it is considered that that is sufficiently clear, and what in relation to Scotland an

“agreement that mainly relates to trade”

would cover?

**George Hollingbery:** I will leave it to officials to answer that. I have a note on that, but you have already been through the elements of it.

**Eleanor Weavis:** Quite simply,

“an agreement that mainly relates to trade”

is one that has trade as the majority of its content. It is fairly simple. An example of the type of agreement that that would cover would be an association agreement, should the majority of the agreement cover trade-related items.

**Bill Bowman:** Can we expect any more guidance as to what percentage of the agreement would have to concern trade?

**George Hollingbery:** The answer is no, because the guidance is that it is “mainly” about trade.

**Bill Bowman:** Let us see how we get on with another question. Similarly to clause 1, clause 2 enables the Scottish Government to make regulations “as they consider appropriate” to implement the relevant trade agreements—I do not know whether that includes those agreements that “mainly” relate to trade. Why is that subjective formulation justified, rather than a power to make such provision “as is necessary”?

**Eleanor Weavis:** That is probably a drafting question.

**George Hollingbery:** I suspect that we would have to put that to the parliamentary clerks. I have asked to see the parliamentary clerks to thank them for the work that they did on the Trade Bill, so perhaps I will ask them then.

In all seriousness, we will take that question away and provide a technical reply in writing, if that is convenient, convener.

**The Deputy Convener:** That would be helpful.

**Tom Arthur:** It has been agreed that there will be devolved components within statutory instruments. We all want it to be smooth and efficient and to avoid duplication. What information will the UK Government be able to provide ahead of or with the publication of statutory instruments, given that the detailed provisions and explanatory

documents that are accompanying instruments with the EU withdrawal bill are not supplied with the Trade Bill?

**George Hollingbery:** Are we talking about trade agreement continuity?

**Tom Arthur:** Yes.

**George Hollingbery:** Again, Eleanor Weavis has had those detailed discussions with officials. My impression is that, on the whole, the process that I described to the committee, about how we will introduce, describe and reference the changes, and place them against the rubric of the text that says how we have changed it, versus the technical instruments that we say are required to change those particular aspects, should give any observer with access to the Parliamentary website more than sufficient access to that detail.

I would happily make a commitment that officials will point officials at your end to the right documents at the right time and/or find some mechanism to tell Scotland that such issues are arising, but I suspect that Scottish officials already have those sorts of arrangements in place.

**Eleanor Weavis:** I agree with the minister. As he mentioned, the document that will be laid before Parliament will be publicly available and the Scottish Parliament can review it as it wishes. In advance of that, we are working closely on the trade agreement continuity programme with Scottish Government officials.

**Tom Arthur:** Okay.

**The Deputy Convener:** Paragraph 3 of schedule 1 to the bill puts requirements on the Scottish Government to consult with UK ministers in certain circumstances, before making regulations. That applies where the regulations would make provision about quota arrangements, or where they are incompatible with quota arrangements. It also applies where the regulations would be commenced before exit day.

Can you explain why the provision for consultation is considered appropriate, and how it is envisaged that the consultation requirement will operate in relation to quotas in Scotland?

**George Hollingbery:** This is one of the areas where changes were made to the bill and so the provision has changed substantially. Previously it was “seek consent” and it became “to consult”. The UK Government already recognised that it would be sensible to change the language in this part of the bill to allow the Scottish Government to control the issue.

I think it is not unreasonable—frankly, it is just sensible—for the Government of Scotland to want to consult with the UK Government just to make sure that there is not some implication that it had

not thought about. That does not imply consent in any way, shape or form. It is probably just good governance to make sure that there is not something that it has missed or indeed a plan that is coming out of the UK Government that neither side has yet communicated about and which puts in a potential wrinkle or a complication.

As to the quotas, I am not placed to be able to tell you how that would work. I suspect that, in the end, it is the Scottish Government making the quotas so that will be up to it.

12:30

**The Deputy Convener:** Surely consultation applies both ways.

**George Hollingbery:** Depending on the circumstance, yes.

**The Deputy Convener:** Okay. You mentioned amendments to the bill. At report stage in the House of Commons, amendments to the bill aligned the restrictions and limitations on ministers' powers with those in the European Union (Withdrawal) Act 2018. That includes the restriction on using the powers in clauses 1 and 2 to modify retained direct EU legislation or retained EU law, in breach of new sections 30A(1) and 57(4) of the Scotland Act 1998 as inserted by section 12 of the 2018 act. The restriction is in paragraph 2 of schedule 1 to the Trade Bill. Surely that is analogous to clause 11 of the 2018 act, therefore being a power grab.

**George Hollingbery:** I do not believe so. The simple fact is that, as the UK leaves the EU, the Scottish Government will have far more powers than it had previously to control issues that were previously controlled by the EU. The UK Government has a responsibility to look after the interests of the whole of the UK, of course, and there are certain issues that are under considerable negotiation and that have changed considerably over time. The two Governments are having very constructive negotiations about which of the areas should be reserved for the UK to be able to act in exclusively. Those negotiations go on and it is not my job to pre-empt them.

I know that the powers in the EUWA and the schedule 12 restrictions are contentious. It is not within my gift to vary them; a negotiation is happening elsewhere with different officials at different times, and they have been considerably narrowed over time—that much I know—such that there are now very large areas of competence that the Scottish Government will enjoy absolutely without restriction. Those negotiations continue, and hopefully they will continue further.

**The Deputy Convener:** It is important that the negotiations continue. Notwithstanding that,

however, there is a clear difference in positions, and the Scottish Government clearly feels that a power grab is in operation from the UK Government.

**George Hollingbery:** You may call it a power grab. I do not, I am afraid, agree with that term. It seems to me that it is the right and proper responsibility of the United Kingdom Government to, over a period of time, work out how it will deal effectively with the interests of the single market of the United Kingdom as a whole. It has to make those assessments and it has to be careful not to create distortions in the UK market. I do not think that that is a power grab at all. I think it is good and responsible government. In due course, no doubt, the negotiations will continue and the gap will narrow. I wish everyone well in concluding them.

**The Deputy Convener:** I have a final question on consultation and dialogue, which you mentioned a few moments ago and which was also mentioned in the evidence-taking session that you took part in earlier. This is not to do with the Trade Bill, but applies in general. It is extremely helpful that more dialogue has been taking place, but that is against the backdrop of a situation, particularly in the joint ministerial process, that has been extremely poor, to say the least. Mike Russell, in evidence to other Scottish Parliament committees and in our chamber, has clearly indicated his frustration at the level of consultation, or the lack of consultation. The EU withdrawal letter is a good example of that. The Scottish Government did not know about it, or did not see it until it was published. Will you provide a commitment today that that level of dialogue and consultation will be increased, and also that representations made by the Scottish ministers will be taken into account and not just brushed aside?

**George Hollingbery:** I can speak only for my department, and in this instance only about the negotiation of future trade agreements. I am absolutely determined—as is the secretary of state—that the consultations that we hold will be meaningful, wide and deep. We will take into account the interests of all interested parties, which certainly includes the devolved authorities. We are not yet set on exactly how we will involve the devolved authorities—that is a matter that is being negotiated, on the one hand—and I will be quite honest with the committee in saying that I am not entirely at one with the future. I have not yet formulated exactly how I would like that to happen, and I need to consult the secretary of state. However, I can make this commitment. I believe that the more that we consult on, listen to and integrate the needs and desires of devolved authorities—assuming that they do not disrupt other potential partners—and the more that we bring the devolved authorities into agreement with

us, the stronger our free trade agreements will be, the more we will be united in negotiating and the better will be the deal that we will do.

**Neil Findlay:** Since you are here, minister, I have this question. I am sure that you are a clean-living man and do not go into bookmakers' shops, but what odds would you give on the Chequers plan getting through the Westminster Parliament?

**George Hollingbery:** The Government has proposed a credible plan for exiting the EU, which fulfils all the obligations and promises that the Prime Minister made and the directives that we were following, such as those on free and frictionless borders and the end of free movement. I could recite the entire list, but I think that committee members will probably have read it a couple of times already. It is the only credible offer that is out there to try to sort out this negotiation, and I believe that it has a very good chance of succeeding. Across Europe, pragmatists will be saying to themselves, "This seems like a sensible idea, which solves the Northern Irish issue, allows free trade to continue and creates frictionless borders. Can we just get on and create an agreement?" Therefore, I believe that there is a force across Europe that can combine to ensure that this sensible and practical proposal comes to fruition.

**Neil Findlay:** Are those odds of 50-1 or 20-1?

**George Hollingbery:** I believe that it will come to fruition.

**Neil Findlay:** It was worth a try.

**The Deputy Convener:** Minister, I am conscious that we have gone over the time that was allocated, but there are still a few points on which the committee may wish to seek clarification from you. Would you be content to respond to the committee in writing?

**George Hollingbery:** Absolutely, of course. If the committee's clerks wish to list the final questions, we can provide written answers to those and would be delighted to do so.

**The Deputy Convener:** That would be helpful.

Minister, I thank you and your team very much for giving evidence to our committee today.

**George Hollingbery:** Thank you very much for having us here.

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

12:37

*Meeting continued in private until 12:46.*

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.

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