



OFFICIAL REPORT
AITHISG OIFIGEIL

Local Government and Communities Committee

Wednesday 1 May 2019

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 1 May 2019

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
UNITED KINGDOM WITHDRAWAL FROM THE EUROPEAN UNION (NEW POWERS).....	2
SUBORDINATE LEGISLATION.....	25
Non-Domestic Rates (Relief for New and Improved Properties) (Scotland)	
Amendment Regulations 2019 (SSI 2019/116).....	25

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

12th Meeting 2019, Session 5

CONVENER

*James Dornan (Glasgow Cathcart) (SNP)

DEPUTY CONVENER

*Alex Rowley (Mid Scotland and Fife) (Lab)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)

*Kenneth Gibson (Cunninghame North) (SNP)

*Graham Simpson (Central Scotland) (Con)

*Alexander Stewart (Mid Scotland and Fife) (Con)

*Andy Wightman (Lothian) (Green)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Councillor Alison Evison (Convention of Scottish Local Authorities)

Malcolm Leitch (Scottish Local Authorities Economic Development Group)

Gordon McLaren (ESEP Ltd)

Julie Welsh (Scotland Excel)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Local Government and Communities Committee

Wednesday 1 May 2019

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (James Dornan): Good morning, and welcome to the 12th meeting of the Local Government and Communities Committee in 2019. I remind everyone who is present to turn off their mobile phones.

Agenda item 1 is to decide whether to take agenda item 4 in private. Do we agree to do so?

Members indicated agreement.

United Kingdom Withdrawal from the European Union (New Powers)

10:00

The Convener: Agenda item 2 is an evidence session on new powers arising from the withdrawal of the United Kingdom from the European Union.

As is outlined in our meeting papers, revised analysis that was published by the UK Government in April lists 111 areas in which EU law and devolved competence intersect. Within those policy areas, many areas have been identified where common frameworks between devolved and UK Administrations might be required, including public procurement, which is an area that is of interest to the local government sector.

Our papers also mention structural funding. Although it is not identified as an issue involving a common framework in the UK Government's analysis, it is an area in which the UK Government has proposed a UK-wide shared prosperity fund to replace the EU funds that local government currently plays a role in distributing.

Today's evidence session will cover those two issues in more detail. I welcome Councillor Alison Evison, who is the president of the Convention of Scottish Local Authorities; Julie Welsh, who is the director of Scotland Excel; Gordon McLaren, who is the former chief executive of ESEP Ltd; and Malcolm Leitch, who is the chair of the European funding sub-group of the Scottish local authorities economic development group.

I will start off by asking everyone to answer two questions. First, can you talk about the areas that are of most concern to local government, where common frameworks will need to be established? When you respond to that question, can you all—with the obvious exception of Alison Evison—explain what your organisation does and what its role will be in the process?

Julie Welsh (Scotland Excel): I am the director of Scotland Excel, which is a shared service across 32 local authorities. We do all the shared procurement in care services, food and books in schools, bins and any number of other things. At the moment, our contract portfolio sits at about £1 billion. Over and above that, we provide learning and development to our council members to help them to get better at procurement and improve their commercial skills.

With regard to the areas of most concern, what is proposed will not make a massive change to what we currently do, although there is a degree of

renaming of things. For example, the European single procurement document will change to the single procurement document. Further, at the moment, we advertise everything via the public contracts Scotland portal, so it all automatically goes to the *Official Journal of the European Union*. Under the new process, we will still use PCS, but it will send everything to a new online tool that the UK Government has set up.

In terms of the legislation, there will not be a huge change in what we will be doing, certainly in the short term, whether or not there is a deal. Our bigger concerns are around issues such as currency fluctuation, supply chain risk and so on. We have been spending a lot of time, over the past years, working with our supply chain to mitigate those issues. On the whole, because of the work that we and our member councils have done with them, people in the supply chain are reasonably well prepared, but I add the caveat that that will depend on what we end up doing.

Councillor Alison Evison (Convention of Scottish Local Authorities): Our major concern is to keep our influence and involvement in the development of policies at the same level as it is at now. At the moment, COSLA has a strong voice in Europe and in the development of policy there. A lot of our work is very much involved in the issues that are decided in Europe, such as consumer protection, food safety and environmental policies, and we want that to continue in any common frameworks that are set up. Our major concern is whether we will still have that voice for our communities to say what is going on in our local areas. The principle of subsidiarity is important to us, and we need to make sure that it continues.

COSLA has assessed that 64 of the powers that are being returned from the EU to the UK concern local government—for example, with regard to the environment. We have a key role in those powers at the moment, and we want a framework to be developed in which the Scottish Government and local government have key roles in the future—again, based on the principle of subsidiarity.

Procurement is now devolved in many ways, but that is while we are in the EU. When it comes back to the UK, we will need to allow councils to buy local and to pay the living wage. We will need to have a voice at the table, so that things like that can happen for the benefit of local government.

A lot of council work involves trade deals—for example, in procuring to buy in services—but the system that is proposed would not allow local government to have a say in trade deals, as neither the UK Government nor the Scottish Government has involved local government in that kind of work. We want to have a key role in that work, again following the principle of subsidiarity.

This issue relates very strongly, in many ways, to our work with the Scottish Government. We hope that we will see the European Charter of Local Self-Government, which will enshrine the principles of subsidiarity, come into law very soon. We are working closely on the empowerment of local communities, and that would be a way of developing systems to allow it to happen.

A “team Scotland” approach would give local government a key role in trade, environmental work and procurement, and we need a system of common frameworks that will allow that to happen. Mike Russell has used the phrase “no detriment”, which is key to what we are doing—we want no detriment to the current position of local government.

Malcolm Leitch (Scottish Local Authorities Economic Development Group): The Scottish local authorities economic development group—SLAED for short, but it is not the 1970s heavy rock band that the more mature members of the committee might remember—consists of all 32 local authorities in Scotland. It is an officer network that comprises officers from all councils’ economic development services. It works very closely with COSLA on matters of mutual interest and is the repository of technical expertise for local authority economic development.

With regard to this morning’s subject matter, two areas in which the issue of potential common frameworks following Brexit would be of direct relevance to local authority economic development services are the state-aid framework, which would depend on the style of Brexit that might happen, should there be a Brexit, and European funding, particularly European structural funds, which was alluded to in the convener’s introductory remarks. Scottish local authorities have made extensive and good use of such funds over many years.

Gordon McLaren (ESEP Ltd): I may be the odd one out here, as I used to be the chief executive of ESEP Ltd, which was an independent programme management executive that managed the administration and disbursement of European structural funds until 2012. My feeling is huge dismay about the whole issue of Brexit and the impact that it will have.

I want to see continuity of structural funds, because they have been a force for good, certainly in Scotland. Indeed, Scotland has a huge reputation across Europe for the delivery of structural funds at operational level and at policy level—I worked in the European Commission for a time, in addition to managing structural funds in Scotland.

My comments are perhaps more about the importance of delivery and of partnership working in delivery. As Malcolm Leitch and my other

colleagues have said, local authorities have played a huge role in successfully delivering projects on the ground and have always been a key partner. From the early days of structural funds, they were a key player.

As partnership evolved in the structural funds context—particularly at the all-Scotland level—it represented an equitable dimension. In our job of managing structural funds, it was important to ensure that the partnership was genuinely equitable and that everyone had a say in the development of programme priorities, the delivery and the processes that were required for adjudicating on the projects that would go forward. Partnership is key.

Another aspect is accountability—that is mentioned in the committee's papers, which I have read. Over time, people have forgotten about accountability, but it needs to be acknowledged that the funds are public—they are from the taxpayer—so it is incumbent on all of us who are involved in managing the funds to ensure that projects are delivered effectively, successfully and in a compliant way.

The committee will have read innumerable complaints about the administrative burden that goes along with structural funds, which bring a huge contingent responsibility. The audit regime is perhaps extreme and I will not defend it for a minute, but a balancing act must be performed to ensure that bodies are accountable for how the funds—whatever they are called—are disbursed in the future. People need to understand that they must behave responsibly, account for how the money is spent and spend the money in a way that complies with procurement, state-aid rules and other rules.

Post-Brexit, the UK will establish the state-aid regime, but it will still be important not to support something at a regional or sub-regional level that distorts local competition. We must remember the fundamental importance of that.

I will speak quickly about capacity building. Over the years, structural funds programmes have had a budget line in the financial envelope for technical assistance, which refers to capacity building in the administrative arrangements for delivering structural funds and includes evaluation, monitoring and information technology systems. Such work was largely what we did—we were funded under technical assistance in managing the programmes.

A proactive approach must be taken to supporting bodies that draw down structural funds. If there is any delay in spend or commitment, a proactive approach must be taken. It is slightly concerning that we have had to return significant sums of money to the Commission, which does

not want the money back—it wants the money to be invested. Money has been lost, so capacity building in lead bodies and in the administration arrangements that are put in place will be key.

Technical assistance represented a maximum of 2 per cent of the total financial envelope, although we never used the full 2 per cent. I suggest consideration of such an approach in the future.

Annabelle Ewing (Cowdenbeath) (SNP): I will pick up a few points that have been made. I know that my colleagues will ask more detailed questions, and the witnesses have covered with a broad brush many areas that we will look at in more detail.

Councillor Evison said that COSLA works with the Scottish Government as team Scotland on such matters, as part of its normal work with the Scottish Government. She rightly made the point that local government's role, including its important role in relation to structural funds and social funds, should be respected. Thus far, we know very little about what the UK Government is planning to do, but the UK Government's Ministry of Housing, Communities and Local Government could be responsible for administering those funds. How would that fit with respecting local government's role as regards structural funds and social funds, which will form part of the shared prosperity fund?

10:15

Alison Evison: It is clear that the role of local government will change. The common frameworks will involve our having more of a relationship with the UK Government than we have at the moment. At the moment, we work very closely with the Scottish Government and with Europe, but we have very few connections with the UK Government. Given the way in which things are moving, I suspect that that will change and that we will have to have greater involvement on all levels with the UK Government.

Last year, we welcomed the UK Government's announcement that it would create a consultative mechanism between it and local government, including our partner local government organisations in England, Wales and Northern Ireland, whereby we would be able to discuss areas of mutual concern to all of us and to develop policies before the Queen's speech stage. Unfortunately, although that was promised, there have been no developments. There has been no movement following the initial promise that was made last year.

Such involvement will become crucial, and we would argue strongly that a similar arrangement needs to be made formally at the Scottish level. We have a developing partnership relationship with ministers in the Scottish Government, but

there will need to be a more formalised arrangement as part of the common frameworks. At the moment, the UK Government has not delivered on its promise, and we are still talking about the issue with the Scottish Government. Improvement is required at both levels and across all spheres of government.

You are right to say that we will need a closer relationship with the UK Government, as well as with the Scottish Government.

Annabelle Ewing: Other members of the panel might want to chip in on my next question. The Scottish Government will be keen to be as open, transparent and collaborative as possible, but if there is no clarity about what on earth the policy is, that will present a few challenges. I was disappointed to hear that the UK Government is still not able to provide any information and that it does not appear that it is working with anybody to move the agenda forward.

The Queen's speech has been delayed until the autumn. In the meantime, what is the way forward? Time is marching on, and we still have no clarity whatever on any of the key issues to do with the successor to the structural funds and the social funds.

Malcolm Leitch: You raise some concerns that many of us in local government share, especially those of us in the field of economic development.

One of the defects of the UK Government's shared prosperity fund, aside from the lack of detail on it, is the fact that there are no guarantees that it will be an enduring part of the landscape beyond a certain spending round. We in local government are aware that, within the UK and Scotland, there are big disparities in regional economic development and regional economic labour markets. As long as those disparities exist in the UK, there will be a need for a regional policy that is not just part of a three or four-year spending package, but is underpinned at a somewhat higher level. Many respondents to your sister committees' inquiries into aspects of the subject over the past year or so have called for a long-term perspective that is not contingent on a particular spending round, but has a degree of permanence to it.

It is important to note that the European structural fund regulations are regulations, so they apply directly in UK law. As I understand the situation, there is no proposal to replace that legal framework. That is a weakness. From the 1930s onwards, UK regional policy has been underpinned by primary legislation, beginning with the Special Areas (Development and Improvement) Act 1934, of which there were various iterations in the following 50 years or so. However, that has been increasingly subsumed by EU legislation on structural funds and regional

state aid. In a sense, the UK's approach to regional development is ultimately predicated on direct legislation that originates from the European Union and which has given a degree of certainty.

My old friend Gordon McLaren has alluded to certain technical difficulties. EU policy might have changed, and we might all have complained about it, but at least we have always had the certainty of its being there. We might have complained about, say, one area getting priority while another did not, what we were allowed to spend the money on and what the grant rates were, but at least we knew that with each successive seven-year cycle, the policy would be there in some shape or form. Those of us in the economic development sphere of local government see risks in not having that framework for that sort of activity.

Gordon McLaren: I will echo some of Malcolm Leitch's comments, although, if you will indulge me, I want to go back a little bit in history.

Malcolm Leitch is right to say that the EU sets the regulations, and the Commission services then set the high-level policy priorities. However, we should remember that member states have discussed these issues ad infinitum in different committees in Brussels, and as a result, every member state, including the UK, has signed up to those high-level development priorities.

At sub-national level—say, in Scotland—we had fair latitude to develop within the overarching framework of development themes the issues that we wanted to pursue and prioritise. Yes, there was a huge debate over how the money would be disbursed at territorial level, but we worked that out at an all-Scotland level. We did not necessarily have Whitehall breathing down our neck, as was the case in the early days, and we had a very good and constructive relationship with the European Commission services, which we dealt with directly.

The negotiations that we had in the past in the run-up to a new programming period generally went pretty smoothly. We were talking to people very early on, and we were learning lessons from the current programme about what worked or did not work and which way we wanted to go. I am sad to say that, for a variety of reasons, that approach has been lost, but we always had very good and supportive relations at Commission level.

I guess that I am saying that, if Brexit takes place and we suddenly do not have the safety net of the EU regulations allowing us to move forward with a reasonable policy—and we should remember that the EU brought in the whole concept of regional development and regional policy—we should still continue with that approach. This is easy for me to say, now that I

am retired, but I think that it is within Scotland's gift to take the initiative and ask, "We have this headline shared prosperity fund, but what do we want to do with it? We had a level of continuity with the €800 million or €900 million that we received—what should we do with that money?"

I realise that that is something of a local government perspective, but it is the bigger player in structural funds, has the greatest knowledge base and works closely with other economic actors, including the third sector. We need to bring people together and get them to come up with a joint vision of what their priorities would be and where we would want to direct that funding. It might be about big-ticket initiatives such as the roll-out of broadband or support for renewables—I am slightly behind the times in all this—but we should not just wait and see. In the past, we in Scotland were generally always well prepared, because there was always a political push from local government, Scottish Enterprise, universities and so on with regard to what was going to come up next and what needed to be done.

Annabelle Ewing: The point is that there has not yet been any commitment about funding, albeit that that does not preclude a conversation taking place and I take Mr McLaren's point. There are, however, key steers that would facilitate having a useful conversation, but we do not have any because Westminster is not engaging. There is also no plan for a Queen's speech until the autumn.

Malcolm Leitch mentioned state aid. It is not reserved, because it is not in schedule 5 to the Scotland Act 1998; it is devolved. That is the legal perspective.

The Convener: Does Graham Simpson want to come in, briefly?

Graham Simpson (Central Scotland) (Con): My question is on funds, which seems to be what Annabelle Ewing has been asking about, so it might follow on from her questions. It is up to you, convener.

The Convener: We will come to your question later. Annabelle Ewing's questions were more general.

Andy Wightman (Lothian) (Green): I want to talk about procurement and, to an extent, state aid. I did not hear Annabelle Ewing's previous comment, so I am not sure whether she said that state aid is devolved.

Annabelle Ewing: I did. State aid does not appear as a reserved issue in schedule 5. Everything that is not reserved is devolved; that is the rule in the 1998 act.

Andy Wightman: I understand that the position of the UK and Scottish Governments is that state aid is reserved.

Annabelle Ewing: That is not the Scottish Government's position. The Scottish Government's position is that state aid is devolved, and it has contacted the UK Government on many occasions to make that point.

The Convener: Okay. Let us get on with the question.

Andy Wightman: I do not want to have an argument about the matter.

Kenneth Gibson (Cunninghame North) (SNP): Then accept that Annabelle Ewing is right.

Andy Wightman: That is not what I am reading in the Scottish Government's guidance. The point is that there is a dispute about whether state aid is devolved, and the UK Government takes a different view.

Councillor Evison talked about procurement possibilities. Procurement is an area in which a non-legislative common framework has been identified. From Derek Mackay's letter to the Economy, Energy and Fair Work Committee, I understand that all parties have now agreed that legislation is not needed, but there will be a non-legislative common framework. That will have potentially significant implications in relation to any trade deals that are agreed.

In her opening remarks, Julie Welsh said that much of the immediate administration of the process will stay the same, but Councillor Evison talked about the possibilities of taking into account factors such as the living wage and local supply chains. Will Councillor Evison say a little bit more about the extent to which procurement policy will be able to develop differently in Scotland from how it is developed in the rest of the UK? Following your remarks about subsidiarity, do you feel that councils should be able to adopt different procurement rules, to an extent?

Councillor Evison: Our position is very much that things should be decided at the lowest possible level that will allow the most effective decisions to be made, and that they should be discussed at the most appropriate place. Councils have a strong role in their local areas and are able to take those decisions. I argue strongly that local government should have a role within the common frameworks. We need to have a seat at the table and our views to be put forward. We need to work closely with the Scottish Government—and the UK Government, when appropriate—to push our views forward.

At the moment, we follow EU public procurement legislation and there is a framework

for doing so. Perhaps not many opportunities will come from the situation that we are in, but one opportunity that exists is being able to put into practice the policies and procedures that we want, but which we are not currently able to put in place.

Lots of local authorities support economic development in their areas. Inclusive economic growth is a key aspect of their work, and we want to do all that we can to support it. A key way in which we could do so is through being able to buy more locally, which it not always possible at the moment, given the current EU legislation. It is also difficult to pay the living wage because of the wording of community benefit clauses on procurement and other procurement policies. If we work under a common framework that involves our having a greater voice, we will be able to develop something that is more appropriate to Scotland's wishes and to what we are trying to develop.

Last year, jointly with the Scottish Government, we launched the national performance framework, of which fair work and the living wage are key aspects in relation to what we want to happen in Scotland. Post-Brexit, we will have the opportunity to develop procurement policies that benefit all our communities and to promote inclusive economic growth, which is a key aspect of our work.

10:30

Julie Welsh: I believe that Scotland is further forward in developing what I would call social procurement than the rest of the UK because of the laws that we have in place. That belief is based on discussions that I have had with peers from elsewhere in the UK when they have come to ask how they can do things better. We have come a long way in using the power of public procurement for social betterment and community benefits.

Although we have not been able to make the living wage mandatory, we have seen a huge increase in the number of suppliers that are willing to try to pay all their staff the living wage and become accredited. All the things that we have done to date have made a difference.

The changes ahead create an opportunity to make even more of a difference. I am in councils every day because they are my customers, and elected members will often ask why they cannot just spend all the money in their council area. We show them how much economic benefit comes from their surrounding councils. Although I am wholly in favour of getting the maximum local economic growth for those council areas, we need to be careful about building barriers around our own areas because that can be detrimental. In lots of situations, the spend data supports that, so we need to be careful about that. However, there is an

opportunity for us to forge ahead on the path that we are already on, which is about using public money for social good.

Andy Wightman: To be clear, Councillor Evison, you would like there to be a procurement regime developed in which different councils could have the flexibility to apply different rules.

Councillor Evison: The key word in what you said is "flexibility". It is about what is appropriate, helpful and inspires economic growth, and that will mean different things in different areas. Different councils working together in one area will come up with different solutions from councils in other areas. That is, I suppose, the point of local decision making and subsidiarity. Getting what is right for a particular area does not preclude working with other authorities or selling services to other authorities. It is about having the flexibility to allow it to happen to a greater extent than it can happen at the moment.

Andy Wightman: Is it your position that that flexibility is constrained by the existing procurement rules?

Councillor Evison: At the moment, there is an opportunity to take the rules further, as Julie Welsh said. We have done as much as we can within the existing framework and rules. We need to take this opportunity to fly and go much further for the basic economic growth of the whole of Scotland. If we support inclusive economic growth in local areas, we support Scottish economic growth. It is important to do that for everyone's benefit.

Andy Wightman: This is a good microcosm of the wider discussion about how to take forward these common frameworks. You are clear that you want local government to have a role in the development of such a common framework. Beyond COSLA's usual consultative role and sitting on working groups, are you talking about it having an enhanced role in decision making so that any future common framework will be subject to the sign-off of local government? I just want to be clear about what you mean by that.

Councillor Evison: We have a strong role through the European Committee of the Regions. We have a key role in developing policy and we can input from the beginning of an idea for a policy through the Committee of the Regions at that stage. It might be five years before it becomes policy, but we are there, putting ideas forward right at the beginning. Many of our ideas have been taken forward through that mechanism. For example, things like Erasmus and horizon 2020 are supported by the EU, and it was COSLA in Europe's argument that enabled us to get to where we are with that kind of policy. We have that influence on policy as it develops in Europe.

I will mention again Mike Russell talking about there being no detriment, because we need to see that as we move forward. We should not lose out because of this process. We have got a key role. We have shown that we are responsible, that we have a wider understanding, that we have elected members and officers who can work on this process and take it forward for the greater good. The common framework system should also involve that. We already have a good and developing partnership with many levels of the Scottish Government and that is to everybody's benefit. We saw that benefit last year with local issues, such as the development of the 1,140 hours of free early learning and childcare. Local government's involvement in that meant that the policy could work.

We need to make sure that we still have that role. We need a strong role in the development, agreement and carrying out of policy.

Andy Wightman: I will pursue that a bit. Other panellists are welcome to come in.

The Finance and Constitution Committee is asking other parliamentary committees for their views on the role of Parliament in the development of common frameworks. We will obviously have a role in the legislative common frameworks, but our role in non-legislative common frameworks is less clear. The danger is that, because procurement will be a non-legislative common framework, it will be decided by ministers behind closed doors.

Parliament finds it difficult at the best of times to scrutinise the Government's discussions with other Governments. That is difficult because there are issues of confidence and all the rest of it. Do you have any proposals or ideas for how non-legislative common frameworks should be developed to ensure that you have an effective voice in them? In addition, how could Parliament also have an effective voice? That is what we are grappling with.

Councillor Evison: We have no specific ideas at this stage, but what is required is a joint discussion. We need to be at that table formulating ideas. Many constitutional changes will be proposed and there will be a lot of rethinking about how we do business and work together. We need what the UK Government has promised us but not yet delivered, which is the consultative committee. We can sit down and work together in that and evolve policies from the beginning. That has been proposed and agreed for the UK level, but we need that kind of work to be done in Scotland as well, and that kind of structure to be set up. It does not exist at the moment, so we need to work with officials and elected members on what it can be. At the moment, therefore, there are no firm proposals and we simply need that discussion.

Andy Wightman: Okay. Moving on to state aid, as I said, there are differences—

The Convener: Andy, keep it short.

Andy Wightman: I will be brief. There is a difference of views about who has competence on state aid. However, putting that to one side, there will have to be some rules to replace the existing ones. How important is state aid to local economic development and the way in which you do business?

Malcolm Leitch: State-aid rules are important because all economic development activity in local authorities has to be state-aid compliant. In some cases, the aid that we give is not considered state aid within the legal definition; where it is, we have to comply with the rules.

There are two principal instruments through which we comply with EU state-aid legislation. There is the general block exemption regulation, which covers a fairly wide range of activities. It was reformed in 2014 to simplify the process from the European Commission's point of view, so that if particular assistance complied with GBER, a proposal to award aid would not need to be notified up front. That would allow DG competition to focus its capacity on looking at the big cases. It was anticipated that most state aid would be dealt with under the provisions of the GBER.

Local government uses the GBER. We have eight or nine schemes through SLAED that have been registered with the European Commission and that allow us to do a range of things, such as pay wage subsidies, award training grants, give support to small and medium-sized enterprises, invest in local infrastructure and preserve the historic environment and culture. Other agencies, such as Scottish Enterprise, have rafts of registered schemes under GBER; it is very important legislation.

The other legislation that local government in particular uses frequently is the so-called de minimis regulation, which allows a public authority to award up to €200,000 over a rolling three-year period to any undertaking that is engaged in economic activity for any purpose, subject to a few safeguards.

Those are the two legal instruments that local government has to use in terms of the current legislative framework within which we operate.

Another important aspect of the family of EU state-aid policy is the regional aid guidelines, which determine how and what can be done in the so-called assisted areas. Members may recall that in every policy cycle in the recent past there has been a review of the so-called assisted areas. That has an impact on Scottish Enterprise's regional selective assistance scheme, in

particular. The policy designates areas where such assistance can be awarded, the types of firms that can be supported and specifies the state-aid intensities—that is the jargon.

Local government is not directly involved in that as such, but it helps to support inward investment activities, for example. When we are trying to attract inward investment to an area, part of the package is often the support that can be made available through schemes such as Scottish Enterprise's regional selective assistance grant. Such schemes are usually part of a much broader package, of which the RSA grant is one—albeit important—component.

I hope that that gives Mr Wightman a flavour of state-aid considerations.

Alex Rowley (Mid Scotland and Fife) (Lab): I want to pick up on Andy Wightman's point about procurement. We do not know what the outcome of Brexit will be, and many people hope that we will remain in the EU. That being the case, are you saying that, currently, as a result of European legislation, there are restrictions on local authorities' ability to include clauses on local employment, employability, the living wage and so on? Are there such restrictions, or is the problem a lack of political will or knowledge in local authorities? Why are we not seeing more such clauses?

Councillor Evison: There is political will to do what we can to support economic growth in local areas right across Scotland's 32 local authorities. That is key.

At the moment, the community benefit clauses are framed in such a way that local authorities cannot always do what they want with them. As Julie Welsh said, many companies want to deliver the living wage and to support such initiatives, but it depends on those companies wanting to do those things and using their support to do them. We do not have the legislative ability to follow through on everything that we want to do. The current context should allow us to improve the situation and allow that political will to become reality.

Alex Rowley: Are you saying that, if we leave the EU, that opportunity is there, but that right now it is not? Have Scotland Excel and COSLA done any work on that? Have you produced papers that set out the barriers to putting in place procurement policy that is much more socially and economically geared to local communities?

Julie Welsh: I can answer from a Scotland Excel perspective; member councils might have a different perspective. The main restriction is the fact that we cannot mandate the living wage. As I said, the work that we have done has definitely led to an increase, so the restriction has not prevented

us from improving the situation, but if we wanted to change it completely, we might want to mandate the living wage. That is the one big change.

On the other social aspects, the application of community benefit clauses is a mixed bag—in some cases they are applied to their full extent and work brilliantly, but they work less well in other cases. The legislation is reasonably flexible in allowing the types of things that we are talking about, but there is always room to improve and do more. The current situation might create that opportunity.

From a national perspective, the changes in the law over the past few years have allowed us to do a lot more on community benefit around sustainability, the living wage and supported business—you name it. We are quite far along on that journey of including all the things that we want to see and getting the outcomes that we want.

The openness, transparency and fairness that we currently have across Europe inevitably mean that we cannot say that we will always buy local. That is just not something that we are allowed to do. That said, there are lots of mechanisms that member councils use every day to try to buy locally. I do not want to get too technical, but we have a process called "quick quote" for spend of under £50,000. The law allows us to ask only local suppliers to bid for that work. There is no rule against that, and lots of councils currently use that process.

10:45

At the moment, there are plenty of mechanisms, and they are being used to varying degrees. We can do more with what we have. Indeed, we would welcome the opportunity to see whether the change will allow us to do even more. However, from a Scotland Excel perspective, we still have a way to go.

Alex Rowley: I recently read a paper on Preston Council and the work that it has done both as a local authority and in bringing together a range of organisations to come up with a joint procurement policy. The paper claimed that that approach had brought in hundreds of millions of pounds of investment and had kept it within the local economy.

My question was about whether there are any papers that set out the barriers.

Julie Welsh: There are not, to my knowledge. We have not been asked to do that.

Alex Rowley: Do you believe that local authorities have the capacity to take on more work? COSLA argues that it should have a far greater say and act almost like a second tier of government or a second chamber for the Scottish

Parliament, but is the capacity there? When I look round Scotland, I see major projects that have been procured that cost the taxpayer an absolute fortune—the trams here in Edinburgh and the Carnegie centre in Fife, for example. I could probably go into many local authorities and see procurement projects that have got completely out of control. Is the capacity there for COSLA to take on even more work than it is doing at present, particularly given the financial restraints?

Councillor Evison: First, I will correct your use of “tier” and change it to “sphere” of government. We would like to be thought of as a sphere—not a tier—of government in the important aspects of what we do. At the moment, we have that capacity in Europe; we have the ability to develop policy and to get involved in aspects of work in Europe, and we have officers working on such areas in Brussels and Strasbourg. The capacity is there already; we are talking about redirecting it, because if the situation develops in a certain way, we will have to do things more locally within Scotland and the UK. That is a difference.

We know the budget constraints that local government is under—the core budget has been reduced and we have less money. As a result, we have fewer officers working at the local government level, so there is also that background to the work. However, we are talking about something that would bring things within Scotland in particular, and services that would benefit our local communities.

If we are serious about empowerment and the idea of local governance that has been developed jointly with Aileen Campbell through the local governance review—if we are serious about all of that—we need to put it into practice. If that means having different conversations with Derek Mackay when it comes to setting the budget next year, those conversations will have to take place. We need to do that work for the benefit of all our communities.

Alex Rowley: The danger is that people will wonder whether councils are doing what they do now well enough before they start to take on more and more, but there you go.

Alexander Stewart (Mid Scotland and Fife) (Con): The witnesses have outlined some of the challenges and the priorities across the local government sphere in preparation for what might happen in the future. What are the opportunities and implications in relation to the potential for further devolution to local government to take place across common frameworks? Where do the witnesses think that the opportunities will arise, and how ready are councils and local government for that process?

Councillor Evison: We have been working towards that process since the commission on strengthening local democracy, when all the work was done and the arguments about subsidiarity, transparency and local democracy were put forward—I think that the report was produced in 2014. That background work on what we needed was done on a cross-party basis, through discussion with local communities. Preparation has been going on since then.

We have done a lot of work recently to think about the European Charter of Local Self-Government and how that would be implemented in our local communities. We have considered what that would mean in practice for our communities when—I said “when”—that becomes law in Scotland.

Preparation work is therefore being done. Obviously, we are talking about adjustments having to be made and changes in practices. We are up for that, because we are talking about the key ideas of subsidiarity, local democracy, local empowerment and local economic growth. Those are the key goals that we want to achieve, and they are really important to us—they are the bread and butter of the work of COSLA and local government. We are up for that, and we are willing to be flexible to deliver change.

Alexander Stewart: You rightly see an exciting opportunity for local government to develop and expand.

Capacity and the budgetary implications have been touched on once again. Obviously, those things have an effect on how progressive a council can be, and not all councils are at the same level or the same stage. Will there be opportunities for certain councils to do things faster and in a more progressive way, or should councils work together to support one another to achieve those goals for the communities that they represent?

Councillor Evison: There are 32 different local authorities, and there are even differences within individual authorities. We need to be aware that that is the background we have to work with.

Councils already work together—and not only through COSLA—and there is also support from the Improvement Service. We already have that structure to encourage us to work together. Councils have shared services where appropriate, and they are seeking to develop shared services in more areas. That work is already going on—that is the nature of local government work.

All 32 councils are members of COSLA, and we have the opportunity to work together, communicate and share good ideas. Through the Improvement Service, we have the local benchmarking framework, which helps people to share good ideas, see where things are working

and reflect on their own practice. That basic work is happening.

The budget is an issue, but that takes us back to what we want to achieve across Scotland. We want a team Scotland approach, but what do we want to deliver for our communities and all areas of Scotland? When we look at the budget, we need to think far more about outcomes. If those outcomes are important for all of us, and if the national performance framework, which we all signed up to, really matters to us, we must ensure that money is made available so that we deliver the outcomes. It is a matter of putting your money where your mouth is. Delivering those things matters, and we have to be seen to do that. If there are priorities and the outcomes matter, the finance needs to be there to support them.

Julie Welsh: Capability and capacity seem to be concerns for the panel. Purely from a procurement perspective, councils' procurement performance has been assessed for the past 10 years, and they have rapidly improved. It is true that councils develop and improve at different rates—that is clear from the work that we do in carrying out the assessments. However, when we compare where local government was on procurement across the sphere of what we do on construction, care commissioning and general supplies and services, for example, we see that capability has increased quite dramatically over the past 10 years. That is not to say that there is not room for improvement or that everybody is at the same level. Generally, we find that the bigger councils that have invested tend to do better and are better, but I hope that it gives members some comfort to know that councils are doing a heck of a lot better on procurement than they did previously.

Kenneth Gibson: Is there any contradiction between the common frameworks issue that Alexander Stewart raised and subsidiarity? I wonder where the clashes might occur. I know that the Scottish Government has said that it is committed

“not to create divergent policy”,

but it is hard to see how that will not happen over time as a natural evolutionary process. Where do the boundaries lie and how can we ensure smooth working without that happening?

Councillor Evison: I think that that will depend on who is at the table developing the common frameworks in the first place. We need to be at the table. That is key.

Kenneth Gibson: I agree.

Councillor Evison: If we have the right people at the table and the right voices being heard at the beginning, and we continue to have the right

voices being heard from everywhere throughout the development of the policy, I do not think that there will be a conflict. If something is imposed on local authorities from the Scottish or UK Government level, I agree that there will be a conflict with subsidiarity.

Kenneth Gibson: Is there a commitment to fully involve COSLA in the development of the common frameworks? Do you envisage that that will happen or are you concerned about it? You said that your connections with the UK Government are not as extensive as they could be, or as you would like them to be. Do you have underlying concerns about that?

Councillor Evison: At the moment, yes—it must be a concern, because we have had the promise, yet we have seen nothing delivered in practice. We have been working closely with the Local Government Association in England, the Welsh Local Government Association and the Northern Ireland Local Government Association. It is meant to be something for all of us to get involved in, but we have not had anything delivered yet.

This is a case where people need to work together as team Scotland to raise the matter as a key issue. We need to develop this together. We need to have an arrangement at the UK level, but we also need that at the Scottish level, and there is an opportunity here for Scotland to set an example—to show what can and should be done. We need to get it right here in Scotland and then go back to the UK Government about the promise that it made but has not yet delivered on.

Kenneth Gibson: Has a timescale been laid down? I understand that the UK Government said that it would outline details of the shared prosperity fund and how it would work before Christmas, and it is now May. There seems to be a real drag on that. Have you had any indication of when there is likely to be progress, first on that and secondly on the development of frameworks?

Councillor Evison: I do not know anything about progress because we are not involved. Perhaps Malcolm Leitch can comment on that.

Malcolm Leitch: Kenneth Gibson is quite right. We were expecting and were all geared up to have a formal UK Government consultation on the UK shared prosperity fund before Christmas, but it did not happen. It will not happen in the next few weeks because there is a purdah period that will prevent the launch of any major initiative such as the UK shared prosperity fund. There are English local elections tomorrow and there is the prospect of European elections at the end of the month, so we do not expect anything to come out on that over the next three or four weeks.

Based on some contacts that I have had with colleagues down south and with some of our sister organisations with which I work, I think that the UK Government is probably waiting until there is some clarity on the overall Brexit package before it commits to launching the formal consultation.

Based on some workshops that the Scotland Office and the Ministry of Housing, Communities and Local Government conducted towards the end of last year, we understood that the thing was more or less ready to go once there was some clarity on some of the broader issues. However, we do not know what the scope will be or how deeply the consultation will go into governance arrangements or decision making. Those are really important issues, of course, but at present it is a bit of a big, black box.

Kenneth Gibson: It is more like a black hole. *[Laughter.]* Thank you.

Graham Simpson: In my questions, I will mop up on some of the areas that we have covered.

On the spending restrictions and procurement, you might not be able to give us this today, but it would be useful for us to have some examples of where individual councils have wanted to do things but have been unable to do them because of the rules. I am not expecting you to give us a long list today. Julie Welsh talked about the ability to use smaller contracts to spend locally, which implied that you cannot do that if you have bigger contracts. With a school meals contract, for example, you might want to buy locally but cannot do so.

Councillor Evison mentioned that 64 powers are coming back to the UK that will affect local government. It would be useful and interesting to have a list of those—do not give them to us now. That is just some work to go away with.

On EU structural funds, do you happen—*[Interruption.]* Sorry—I am being heckled from the side. Do you happen to know how much EU structural funding is spent in local government in Scotland?

Councillor Evison: That is a question on the detail for Malcolm Leitch.

11:00

Malcolm Leitch: Just a few weeks ago during Easter recess, your colleagues in the Scottish Parliament information centre very helpfully produced a report on the deployment of European structural funds in Scotland.

The figures change weekly as new operations are approved or existing ones are—to use the jargon—reprofiled, but between about 25 and 30 per cent of the current structural fund programmes

in Scotland are awarded to local government as lead partners. That is not to say that all that money goes to local government—a lot of it is recycled out to the third sector for poverty and social inclusion activities, for example, and it also goes to employability activities through a local challenge fund mechanism or a secondary procurement exercise.

In terms of the leadership and design of interventions, the local government share of the current programme is in the 25 and 30 per cent bracket. Is that clear enough for you?

Graham Simpson: That gives me a percentage, but it does not give me an amount.

Malcolm Leitch: The commitments to date—I think that that is what you want to know about rather than the overall size of the budget—are contained in one of the tables in the SPICe briefing. The committed funding is just under €600 million, which is about two thirds of the programme value. That is a little bit behind where we would like to be at this stage in the programme, although it is not disastrous. The local government share would be between about 25 and 30 per cent of that figure, although I again emphasise that that relates to interventions that are led by local government but the money does not all go straight into local government coffers, as a lot of it is recycled out to the third and voluntary sectors in our communities.

Graham Simpson: If and when the UK shared prosperity fund is set up, and we get the rules about it, a clear risk could be getting less money. However, if local government does not get less money, will there be opportunities for spending it differently?

Councillor Evison: The key is spending locally. The regional element is crucial, and spending the fund in local areas in a way that is sensitive to what is needed there is important.

The important thing about the current funds is not just the financial amount but the triggers that they allow. Structural funds exist beyond a parliamentary session, which is a real benefit, because we are able to carry out long-term planning and work with other organisations locally to a longer timescale. We must not lose that—we should not link any future fund to a short period so that someone might get money for a bit but not know what will happen in the future. The structural funds transcend that. The longer-term timeframe encourages the partnership working with the third sector and local partners that Malcolm Leitch mentioned.

We need to make sure that the shared prosperity fund—or whatever we have in the future—allows that longer-term work to carry on. What it is used for will depend on what is needed

in a local area, whether that be on social, environmental or employability initiatives. The national performance framework gives us a framework from which we can work up plans together to get somewhere and look at what is missing from an area. We have already commented that the 32 local authorities are doing 32 different things and working at different levels. Some are progressing one area and not progressing so much in a different area. That local funding and that geographical sense is crucial. To address whatever issues are important in a locality, we need to ensure that that approach carries on.

Malcolm Leitch: One of the opportunities that come with the UK shared prosperity fund is perhaps to spend the money on something slightly different from what the European funds have been spending it on. We are very constrained thematically in Scotland and indeed in many other parts of the UK and the EU as a whole on what we can spend EU structural funds on, particularly the European regional development fund.

For a more developed region, which is what most of Scotland is—everywhere that is not in the Highlands and Islands—80 per cent of ERDF funding has to be spent on just four of the thematic priorities: innovation, information and communications technology, small and medium-sized enterprises development and the low-carbon economy. Anything else that we might want to do on climate change, transport or social inclusion has to come from the 20 per cent of funding that is left. That has been a constraint.

Although at a high level, those four priorities look like attractive areas to spend money on, they do not cover the totality of what we want to do in local authorities in terms of economic development. Colleagues keep on reminding me that there is still a lot of stuff that we need to do on the physical regeneration agenda, which has been starved of resources. European money made a big contribution in the 1990s and the early years of this century, but it has become increasingly difficult to access funds to complement the people-based activities, which we need to do if we are serious about the inclusive economic growth agenda.

Graham Simpson: The plea seems to be that local government should be involved in setting the rules for the shared prosperity fund, so that there is a bottom-up rather than a top-down approach, whether that is at UK or EU level. You want it to be local and you want to be involved in setting those parameters.

Malcolm Leitch: Yes.

Councillor Evison: Yes. At the moment, we get involved at European level. We have a voice in the

EU through the European Committee of the Regions and through councillors and members of the Scottish Parliament. Councillor Tony Buchanan, in particular, is very much involved in the work that is going on in Europe. Andy Wightman and Mairi Gougeon are also very much involved in that work through the Committee of the Regions.

It is about making sure that we do not lose that strong voice for local government. We currently have that strong voice in Europe—I met Michel Barnier about 18 months ago and he argued strongly for the importance of local government; he sees it as a key aspect of what happens in Europe. He comes from a local government background himself and is fully committed to the importance of local government. We need to make sure that we still have that role.

The Convener: Thank you very much. I thank you all for attending today's session and remind you to do the homework that Mr Simpson has given you. The committee will consider the evidence that we have just heard in private at the end of the meeting. I will suspend briefly to allow witnesses to leave.

11:07

Meeting suspended.

11:10

On resuming—

Subordinate Legislation

Non-Domestic Rates (Relief for New and Improved Properties) (Scotland) Amendment Regulations 2019 (SSI 2019/116)

The Convener: Item 3 is consideration of Scottish statutory instrument 2019/116. I refer members to committee paper 3. The instrument amends SSI 2019/40, which we considered on 20 March. That SSI miscounted by one the number of days in the current financial year, meaning that the formula that it brought into law was slightly wrong. The sole purpose of this instrument is to correct that. The instrument is laid under the negative procedure, which means that its provisions will come into force unless the Parliament agrees to a motion to annul it. No motions to annul have been lodged.

The Delegated Powers and Law Reform Committee considered the amended instrument at its meeting on 23 April and noted that it did not respect the usual requirement to be laid at least 28 days before coming into force. However, the committee considered the reasons for this that were given by the Scottish Government to be acceptable under the circumstances. The committee made no other recommendations on the instrument. Do members have any comments?

Andy Wightman: We should note for the record that both the DPLR Committee and this committee overlooked the fact that the number was wrong. There should be a mild rebuke for both committees.

The Convener: Could we strike that from the record, please? [*Laughter.*]

If there are no other significant comments, I invite the committee to agree that it does not wish to make any recommendations in relation to this instrument. Are we agreed?

Members indicated agreement.

The Convener: That concludes the public part of today's meeting; I move the meeting into private session.

11:11

Meeting continued in private until 11:26.

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

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba