



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Delegated Powers and Law Reform Committee

**Tuesday 29 September 2020**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba



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**Tuesday 29 September 2020**

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**DELEGATED POWERS AND LAW REFORM COMMITTEE**  
**30<sup>th</sup> Meeting 2020, Session 5**

**CONVENER**

\*Bill Bowman (North East Scotland) (Con)

**DEPUTY CONVENER**

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

**COMMITTEE MEMBERS**

\*Michelle Ballantyne (South Scotland) (Con)

\*Mary Fee (West Scotland) (Lab)

Gil Paterson (Clydebank and Milngavie) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Graeme Dey (Minister for Parliamentary Business and Veterans)

Steven Macgregor (Scottish Government)

**CLERK TO THE COMMITTEE**

Andrew Proudfoot

**LOCATION**

The Adam Smith Room (CR5)



## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 29 September 2020*

*[The Convener opened the meeting at 10:30]*

### Decision on Taking Business in Private

**The Convener (Bill Bowman):** Good morning. I welcome everyone to the 30th meeting in 2020 of the Delegated Powers and Law Reform Committee. I remind those of us here in the Adam Smith room that social distancing measures are in place in committee rooms and across the Holyrood campus. I ask that you all take care to observe those measures during this morning's business, including when entering and exiting the room. I ask that everyone switches their mobile devices to silent, please.

The first item of business is to propose that the committee takes items 6 and 7 in private. Does the committee agree to that?

**Members** *indicated agreement.*

## Work of the Committee 2019-20

10:31

**The Convener:** For agenda item 2, we have before us Graeme Dey MSP, the Minister for Parliamentary Business and Veterans, who will give evidence relating to the work of the committee during the parliamentary year 2019-20. Mr Dey is accompanied by five Scottish Government officials. Steven Macgregor, who is head of the Parliament and legislation unit, is here with us at the Parliament. Joining us remotely are the other four officials: Susan Herbert, who is the head of the Scottish statutory instruments team in the Parliament and legislation unit; Jenny Brough, who is part of the coronavirus legislation co-ordination team; Rachel Rayner, who is the deputy legislation co-ordinator in the legal directorate; and Brian Peddie, who is head of the European Union exit legislation team in the Parliament and legislation unit.

I welcome everyone to the meeting. Technical difficulties brought our previous session with the minister to an abrupt end and I am grateful for your flexibility in rescheduling. I hope that this meeting proves more successful—I am sure that it will.

As the minister does not want to make an opening statement, I will start the questioning, before moving on to other members. The committee very much welcomes the continued improvement in the overall drafting quality of secondary legislation and the decrease in SSIs reported on the three most significant reporting grounds. The Government has clearly been under pressure in the past few months to introduce legislation quickly to respond to the coronavirus. What is it doing to ensure that, even in the current circumstances, the quality of SSIs remains high?

**The Minister for Parliamentary Business and Veterans (Graeme Dey):** The answer to that is what we have been doing during the period for which I have been the Minister for Parliamentary Business and Veterans: maintaining as strict a regime as possible on quality control.

I am heartened by the content of the committee's report. I approached it with a degree of trepidation because, as you pointed out, everyone has been under enormous pressure during the recent period. I think that it is to the great credit of the Government's officials, particularly those responsible for drafting legislation, that we have had so few problems.

I think that there is a bit of a misunderstanding. Quite often MSPs have been working from home and there have been different ways of working all

round, but it has been the same for officials, which presents its own challenges.

However, we are not complacent at all. As the officials who are on the line today will attest to, my first question when I spot any error is, "How did that happen?" We want to maintain the standards that we have set, and I am optimistic that we will be able to do that.

**The Convener:** We will obviously be monitoring that.

You have previously given an assurance that all historical commitments will be met by the end of this parliamentary session. We welcome the continued decrease in those commitments, but do you still think that you will be able to meet them, particularly given what we are sure will be a busy run-up to dissolution?

**Graeme Dey:** Of the 16 historical commitments, three remain. As you know, we are under considerable pressure because of Brexit and Covid and, as you mentioned, we are in the run-up to the conclusion of the session. I am optimistic about clearing two of the commitments. That would leave one, and we will make every effort possible to completely meet the overall commitment that I gave. I hope that we will clear all three, and I am confident that we will clear two of them.

**The Convener:** Is the commitment that you are not so confident about on the council tax reduction Scotland scheme?

**Graeme Dey:** It would not be one of these evidence sessions without the subject of the council tax reduction coming up. The committee and the Government have a long-running and, to put it accurately, respectful disagreement on the issue. I do not anticipate the matter being addressed in the short term, not least because of the priorities that we are dealing with in other regards.

**The Convener:** My question to our team is about how we resolve the disagreement, rather than taking what you have said as an answer. Can you put something forward so that we might find a way to resolve the issue?

**Graeme Dey:** With respect, we have responded to the committee's concern, to a degree, through the Keeling versions that have been set up. Our view is that we will not make any significant amendments to the CTR scheme because of the pressures that we are under. We are also dealing with the universal credit aspect.

In principle, I agree that it is good to do consolidations. The difficulty is that, when we frequently revisit an issue, as is the case with what we are talking about, consolidation becomes problematic. I am happy to continue to engage

with the committee on the issue. If it has some constructive suggestions, I am happy to look at them. However, I have to be honest that, given the current situation, we do not see the matter as a priority.

**The Convener:** I understand that what we might call a patchwork solution has been applied. When I hear that there is disagreement, I like to know whether there is a legal disagreement that can be resolved, but I can understand why you are saying that the matter is not a priority. Perhaps we will not have an exchange of banter just now, but if you and I take the view that we should try to find a way ahead, we or someone else should try to resolve the issue.

**Graeme Dey:** As ever, I am happy to continue the dialogue.

**Mary Fee (West Scotland) (Lab):** The committee is keenly aware of the significant amount of legislative work that the Government has had to do in response to the coronavirus. During lockdown, the committee has had to balance the need for secondary legislation to be implemented quickly with the need for proper scrutiny. I would like to start with a couple of questions about the coronavirus.

The use of made affirmative instruments during the pandemic has allowed the Government to respond quickly to the many challenges that the pandemic presents. Nevertheless, bringing such substantial changes into force immediately, before any parliamentary scrutiny, should be done only for reasons of genuine urgency. What is the Government doing to ensure that its decision to use the made affirmative procedure is as transparent as possible?

**Graeme Dey:** I offer the reassurance that we always carefully consider the course of action that we follow on all such things. I recognise that there will be times when others might take a different view on the approach that we undertake. There has been no unwillingness on the part of Government ministers to appear before committees, in order to answer for the decisions that have been taken and to explain the approach that we have taken. For example, I think that I am right in saying that my colleague Mike Russell has been in front of the COVID-19 Committee 10 or 11 times, along with multiple other ministers, which is as it should be.

It is about striking a balance. It is sometimes necessary to apply a change very quickly. If Mary Fee has any thoughts on how we could do things differently, I am happy to have a discussion with her.

**Mary Fee:** I thank the minister for that response, which, in some ways, is reassuring. I accept, as does the rest of the committee, that the

Government has had to do a very difficult juggling act over the past few months.

**Graeme Dey:** It has also been challenging for the Parliament. In the midst of the pandemic, we have all too often lost track of the fact that everyone has faced considerable challenges relating to different ways of working. Frankly, the committees of the Parliament deserve enormous credit for the way in which they have risen to those challenges. By holding hybrid and virtual meetings, they have found a way to keep the show on the road. The Government has faced challenges, but so, too, has the Parliament.

**Mary Fee:** I absolutely agree with those points.

The committee wants all instruments to be as clear as possible, so that there is no confusion about what is required of all of us. How does the Scottish Government ensure that what is law and what is public health guidance is made clear? There is a degree of confusion about where different pieces of advice and guidance sit.

**Graeme Dey:** I ask Steven Macgregor to come in on the process that we follow, and then I will answer the general question.

**Steven Macgregor (Scottish Government):** In general terms, it is down to being as clear as possible in communicating what regulations do and do not do. There is now a wide-ranging suite of guidance in relation to Covid activity. Before any change is made, the Government gives a lot of thought and attention to how we communicate the change as clearly as possible, so that people who are affected by it understand it. For us, internally, it is about being clear about what the legislation does and what the guidance will need to say, and then communicating that publicly. As I said, that is an on-going process that we always try to improve.

**Graeme Dey:** I am not going to sit here and claim that we get it absolutely right all the time, because there are occasions when people interpret guidance in a way that is at odds with what is intended. As constituency MSPs, we all come across such cases, and we have to double check what is meant. Often, there is a lack of clarity in the wording, or people interpret what is said in a way that suits what they are looking for.

As I said, I am not suggesting that the system is perfect, but I think that the balance is right. I hope that we are quick to respond when legitimate issues are raised with us internally and externally. MSPs of all parties have come forward with queries that have alerted us to the fact that there might be a degree of misunderstanding of what is intended.

**Mary Fee:** The minister will probably agree that, given the nature of the pandemic and the level of

guidance and instruction that has been given, people get slightly confused, because things change so quickly. That has been one of the issues.

**Graeme Dey:** I recognise that criticism—if we want to call it that. All of us are having to adapt to the changing challenges that the pandemic sets us. That is why it is important that, as parliamentarians, we do our bit in articulating to the public what we are asking people to do and how they are required to do it. I accept that it is often a fast-moving situation and that some of the public are finding it difficult to keep up.

**Mary Fee:** You will know that the committee has previously highlighted the number of negative instruments that come into force almost immediately, which breaks the 28-day rule. Again, the committee appreciates that that is often necessary, but we want to ensure that that is done only when it is absolutely necessary. How do you monitor those breaches to ensure that legislation that is not so urgent does not breach the 28-day rule?

**Graeme Dey:** I am happy to give an assurance that the Government and I take that issue extremely seriously. When we find ourselves in a situation in which we are at risk of breaking the 28-day rule, I am always careful to look at the justification for doing so. We do not break the rule as a matter of course; sometimes, circumstances outwith our control lend themselves to doing that. Whenever possible, I seek to ensure that the relevant committee conveners and the Presiding Officer are sighted on the reasons for breaking the rule. I offer the reassurance that we do not do that lightly. It is always a matter of regret when it happens.

10:45

**Steven Macgregor:** There is a requirement that, when we breach the 28-day rule, we write to the Presiding Officer to explain why that happened. That has to happen every time the 28-day rule is breached. We go through an internal process that involves officials having to explain why we thought that that was necessary and ministerial clearance, including by the Minister for Parliamentary Business and Veterans. Before we get to the point of breaching the 28-day rule, we know that we will have to justify that very clearly to the Parliament.

**Mary Fee:** Finally, I want to ask the minister about the use of emergency coronavirus-related instruments. I accept that you may not be able to give me a definitive answer to this question, but do you expect the use of emergency coronavirus-related instruments to begin to fall?

**Graeme Dey:** That is an interesting question. I could speak with more certainty about primary legislation relating to coronavirus. Three separate pieces of legislation have gone directly through the Parliament, and we have done some horizon scanning to see whether anything is likely to arise in, for example, the next six months that would require activity through primary legislation in particular. The only thing that is immediately apparent to us is, of course, the potential impact of coronavirus on the forthcoming election. A dialogue is going on across and with the Parliament about contingency plans that we might require to address that.

I can speak with less certainty about emergency instruments that might be required in relation to the pandemic because we do not know what might arise. They are introduced only out of necessity.

**The Convener:** I want to go back to a point that Mary Fee raised earlier about clarity between law and guidance. When ministers address members in the chamber, do they make it clear enough what is required by law and what is guidance? You will probably be aware that some members have asked to have that made clearer.

**Graeme Dey:** When I have heard that, my personal reflection has been that that has been made clear at the time. However, there is a very large volume of information out there—someone touched on that earlier—and perhaps we need to reflect on how we reinforce that. I can certainly think of multiple occasions when the First Minister or someone else has articulated in the chamber how something will be done and what form it will take, but there have been subsequent misunderstandings. We are alive to that.

**The Convener:** Michelle Ballantyne would like to ask a supplementary question.

**Michelle Ballantyne (South Scotland) (Con):** I want to pick up on that point. The expression “the rules” is used all the time. In Parliament, it is perhaps incumbent on us to use more technical language and to talk about regulations or guidance. I think that a lot of the confusion comes from the First Minister or whoever talking about “the rules”. The rules could refer to regulations or guidance. That is the message to take back.

**Graeme Dey:** As you said, that pertains to all of us, because all members use that phraseology.

**Stuart McMillan (Greenock and Inverclyde) (SNP):** I have questions about Brexit, but before I go on to them, I want to highlight a point regarding Mary Fee’s questions.

I sit on the Parliament’s branch executive committee of the Commonwealth Parliamentary Association. The CPA British islands and Mediterranean regional conference was last

Thursday and Friday, and the issue of delegated powers came up quite a lot in the dialogue. Some of what the minister has said is being replicated in other Parliaments across the region.

Colleagues from Wales highlighted that they have 21 days, whereas we have 28 days, and they highlighted similar issues relating to delegated powers being superseded by a new set of powers. Those are issues in the subject committees and the committee that deals with delegated powers there. I thought that I would make you aware of that because it might be worth your officials’ while to have some dialogue with other Parliaments in the region to provide assistance and comparisons between what is happening here and what is happening elsewhere.

**Graeme Dey:** That is a reasonable point. Regular dialogue takes place between our officials and officials in other devolved Administrations. I am not sure whether it goes wider; you have given me something to think about.

**Stuart McMillan:** I turn to Brexit, which it seems, at times, that Covid has put in the shade.

On legislation that will arise as a result of the UK leaving the European Union, when you wrote to the committee in August, you estimated that around 50 Scottish statutory instruments and 70 UK statutory instruments that affect devolved matters would be needed by the end of the transition period on 31 December. A number of SI notifications have been sent since then. Can you provide an update on those figures?

**Graeme Dey:** As I have said before, it is very much a movable feast. Interestingly, if I had been able to speak to the committee when it was originally intended, I would have told the committee that there were to be 16 UK SIs relating to the Northern Ireland protocol; the figure is now 18. That shows how the situation changes.

To answer your question directly, we believe—this is an estimate—that a total of 71 SI notifications and SSIs will be required by the end of the transition period. Of the total of 33 UK SI notifications, 16 currently sit with the Parliament, and the Parliament has agreed to the Scottish ministers consenting to two further SIs during September. It is expected that the majority of the 38 Scottish statutory instruments will be laid in the Parliament in October and November. A pinchpoint is expected in late October and early November, which we are working hard to manage. Considerable effort goes into smoothing the numbers so that committees do not become overwhelmed, but we face an unavoidable issue at the end of October and in the first week or so of November, which will be extremely busy.



**Stuart McMillan:** Can you provide more information on that pinchpoint? Is it just a timing issue, or is it to do with something else?

**Graeme Dey:** I will bring Steven Macgregor in on that.

**Steven Macgregor:** I am happy to speak to that. We think that there will be two waves of EU exit activity. The first wave, which consists of the UK SI notifications, is happening now. We have sent quite a large number of them to the Parliament over the past few weeks, and more are being sent as we speak. We think that this is the critical period for that type of activity.

We also think that most of the Scottish statutory instruments will come towards the end of October and the start of November; many of them will be for the Rural Economy and Connectivity Committee to consider. We have been doing quite a bit of work internally to make sure that the instruments do not all come in the same week. We also want to ensure that, where possible, domestic statutory instruments do not come in the same week as UK statutory instruments.

At the moment, we think that we have got the figures down to a more reasonable level, but we are actively managing the situation and making sure that the minister can input to that process.

**Graeme Dey:** The problem is that we have a hard backstop, which means that finding flexibility is increasingly difficult. However, we are doing everything that we can to do so; we are working in close conjunction with the committees to manage the flows.

**Stuart McMillan:** Are you confident that the SIs and SSIs will provide all the legislation that is required by the end of the year?

**Graeme Dey:** In so far as that is possible, yes they will.

**Stuart McMillan:** Will further legislation be required beyond that date, for example under the terms of the withdrawal agreement or the future relationship with the EU?

**Graeme Dey:** I will bring Steven Macgregor in to talk about our current planning assumptions.

**Steven Macgregor:** It is certain that more legislation will be required, but at the moment it is difficult to say what it will look like, because there is currently no agreement. We do not know what the shape of the agreement will be or at what speed the UK Government wants to move. We do not have any great intelligence on what that might look like. We will gradually get more information from the UK Government as time passes, and we will definitely share it, when we can do so within the confidentiality requirements.

**Stuart McMillan:** The committee has previously said that it was grateful for the regular updates that you provided to us and to subject committees on EU-related legislation. You restarted that practice recently. Will you continue to provide updates on the volume of legislation over the coming months, such as breakdowns of the number of SSIs and SI notifications?

**Graeme Dey:** Absolutely. The approach has worked extremely well. When we returned from summer recess—if one can call it a recess—I had one-to-one meetings with the relevant committee conveners, and we also sent follow-up letters. That communication is not just about the volume of legislation; we also try to give the conveners an understanding of the topics, as far as that is possible. The conveners will be quick to come back to look for any further information. It is a good relationship. To go back to what I said earlier, it has been an exercise in the Parliament pulling together to keep the show on the road. Overwhelmingly, it has worked well.

**Stuart McMillan:** You spoke a few moments ago about the number of SIs and SSIs that are still to come, and the timescales. What impact will that have on the 28-day rule and the Parliament's ability to consider SI notifications before the deadline for the Scottish ministers' consent?

**Steven Macgregor:** We will try, in as many cases as possible, to ensure that the full 28 days are allowed, but the challenge is in the fact that we cannot be certain when UK affirmative instruments will be taken in the UK Parliament, so we have to work back from their laying date.

In some cases, it might seem that our planning assumption is for a period of less than 28 days, but where that is the case, we will engage with the UK Government and ask it to ensure that no debate takes place on the relevant instruments until the Scottish Parliament has formed a view on whether the Scottish ministers should consent. We might not be able to achieve that in all cases, but we will do it in as many cases as possible—especially if the Parliament identifies something that it thinks is significant or critical and wants more time to look at an instrument.

**The Convener:** In a second, we will move to a question from Michelle Ballantyne, but I first remind Mary Fee that she has a follow-up question, so I ask her not to go away.

**Michelle Ballantyne:** Clearly, there is a substantial amount of legislation to go through before the end of the current parliamentary session, which is, no doubt, a big challenge for you. I am wondering about the work that we have to do on non-Covid and non-EU withdrawal legislation. How is the Scottish Government prioritising all the other stuff that needs to be done,

to ensure that SSIs are laid before the Parliament in time and that committees get time to scrutinise them?

**Graeme Dey:** Is that about primary legislation or secondary legislation, or both?

**Michelle Ballantyne:** It is about both; it is about everything that you have to do beyond Covid and EU withdrawal legislation.

**Graeme Dey:** There is a weekly monitoring exercise—I see that Steven Macgregor is nodding his head. We are alive to all the challenges. The two unknowns in all this are Brexit-related instruments—any increase in them would add to the burden—and Covid. However, looking ahead, with a fair wind and with the continuing co-operation of the Parliament, I am optimistic that we can get through the primary legislative programme.

As you know, earlier this year, on behalf of the Government, I took some pretty tough decisions not to proceed with legislation, simply because of the circumstances in which we find ourselves. The Government would not shy away from doing that again were it to become necessary, but I do not foresee its being necessary in relation to primary legislation if the Parliament continues to function with the different ways of working that we have found.

On secondary legislation, we have put in an enormous amount of work—by “we”, I mean officials—to separate out the instruments that are absolutely essential from those that we might want but do not need. We have been pragmatic all round, in our approach. When some committees look at the volumes of instruments that they get, perhaps they do not see it that way, but that is the approach that we have taken and will continue to take.

As I said, we monitor weekly any issues that arise. We also work closely with the committees to consider what flexibility we can offer to accommodate their workload on legislation.

Due to other pressures, it is sometimes not possible to get a stage 1 report out by the intended date, or a stage 2 deadline needs to be tweaked. We try to accommodate that, although it is increasingly difficult to do so, given that we are coming towards the end of the parliamentary session. However, I am optimistic.

11:00

**Michelle Ballantyne:** That is good. That leads me nicely on to the second point that I want to raise. The committee often considers packages of SSIs, particularly around new acts—for example, the Social Security (Scotland) Act 2018 and the Transport (Scotland) Act 2019. I am sure that the

issue is also relevant to subject committees. It would really help to be given advance notice, so that we can prepare for those packages coming through. Do you know whether there are any such sets of instruments coming through, and are you able to keep us updated on their progress, so that we can timetable them?

**Graeme Dey:** That is a perfectly reasonable request, so we will look to provide that information to the committee.

When it is possible to do so, we bunch instruments, although they will not necessarily be on exactly the same subject. If a number of affirmative instruments are coming at the same time, we will engage with the subject committee to try, as far as possible, to time instruments such that the committee can have a session with the cabinet secretary or the relevant minister to move the instruments on, and then focus on its other business. It always involves a two-way conversation. I thought that the committee was getting that information. If you are not, I undertake to address the matter.

**Michelle Ballantyne:** That would be helpful. Are you aware of any groups of instruments that are coming?

**Graeme Dey:** I am not, off the top of my head.

**Steven Macgregor:** I am not aware of any, either. We are better at doing that than we were previously. I have been around long enough to remember the Parliament’s concern that it was getting instruments on the same topic in different weeks. For bill implementation work, we try to make sure that the bill teams identify packages of instruments, and that we have early dialogue with the clerks of this committee and the relevant subject committees.

**Graeme Dey:** We undertake to look into that, and will write to the committee if there is anything that we need to draw to its attention.

**Michelle Ballantyne:** Thank you. That moves me on to ask about a problem that we have spotted, and which has arisen today. It relates to what you were saying earlier about the need to implement change quickly and things happening fast. As we approach the end of the parliamentary session, there will be more pressure on the timetable for scrutinising bills. If the gaps between bill stages are tight, how can the Government help to ensure that the committee is given sufficient time to carry out appropriate scrutiny? For example, we have the revised delegated powers memorandum for the Social Security Administration and Tribunal Membership (Scotland) Bill. We are looking at the revised memorandum only today, yet stage 3 of the bill will take place this afternoon, so there is no time for the committee to ask any questions, and get

answers, before the Parliament has to vote on the bill at stage 3. That poses a problem of democratic deficit. Taking on board the pressures that you are under, how can we be assured that that will not happen routinely over the next few months? Can you put in place steps to ensure that we get the time to scrutinise?

**Graeme Dey:** To be honest, I was not aware of the conflict that has arisen today. The timing for the bill was set some time ago, and another relevant consideration is the nature of the bill. If the bill is contentious, and there is a great deal of interest in it, and we anticipate a lot of amendments, we will work with the committees regarding how much time they think that they will need between the stages. The reverse is also true, if a bill sets out to achieve something that we all support. In such cases, there must be the relevant scrutiny, but that normally takes place in the early stages of the bill. I think that this afternoon's bill has only four Government amendments. However, it is a reasonable point, and I will take it away and think about it. We are not living in a perfect world, and sometimes circumstances arise that make such situations necessary.

We can all point to an individual bill's relationship with an individual committee, but my officials and I have to take an overview. We are trying to piece everything together and make the timings work in relation to resourcing the bills. For example, if a stage 2 involves a lot of amendments from the Government and Opposition members, which is rightly part of the process, we need to provide additional resources to ensure that we can stick to the timings for the bill, but that has an impact on other bills.

It is a bit of a jigsaw for me to ensure that everything works according to the plan. I also need to take account of committees saying, "We might need a little more time. Can we have that time? Can we move this in order for us to do another piece of work on another piece of legislation?" I offer the reassurance that considerable effort and thought goes into timetabling, but we are not perfect. We will reflect on the point that Michelle Ballantyne has made.

**Michelle Ballantyne:** I am sure that you do not plan on the back of a fag packet, so to speak. Usually, amendments at stage 3 are avoided, but if that happens, it would be helpful if you could give us a heads-up in advance that there will be a revision, so that we can at least think about how that impacts us. That would be helpful.

**Graeme Dey:** Absolutely.

**Mary Fee:** I want to ask briefly about Scottish Law Commission bills. You will know that a review group has been looking at the issue, and the committee has worked quite closely with the

Scottish Law Commission. Committee capacity has a major impact on the handling of Scottish Law Commission bills. Given the situation with Covid, our withdrawal from the EU, the timetable of Government bills and the fact that we are coming up to the dissolution of the Parliament, there is a squeeze on committees and the Parliament in relation to how they do their work. I am keen to hear your view on what the Government can do to minimise the impact that all those issues have on the progress of Scottish Law Commission bills.

**Graeme Dey:** I am a big fan of what the working group has done. It is really important that we have a good look at the recommendations, which I hope will be as I anticipate them to be. The working group and the Government are very much on the same page on the issue.

You will appreciate that it would have been impossible to anticipate, at the outset of the session, the combined impacts on the Parliament's time of Covid and Brexit. Nevertheless, we have to look to the future. What would better ways of working look like? My personal view is that the role of the DPLR Committee could be tweaked in order to take a more significant part in that process. I am keen for some of the SLC bills to be introduced in the next session. One obvious example relates to moveable transactions, which would benefit the economy. The Defamation and Malicious Publication (Scotland) Bill is obviously going through the Parliament at the moment.

I hope that the Parliament will respond positively to the working group's report. The Government certainly hopes to be able to respond positively to it and to be very supportive. I hope that in session 6 we will approach SLC bills in a slightly different way, to ensure that there is a flow of such bills through the parliamentary session, which would benefit us all. I am enthusiastic about that strand of work.

**Mary Fee:** That is very helpful. I appreciate that response. The committee has looked at that issue frequently in the past and is keen that SLC bills should not be seen as political pieces of work. They are not Government bills. They are completely separate, so there should always be a separate timetable to progress such bills. Your commitment to consider how that could be done is welcome.

**Graeme Dey:** You make a reasonable point. Unfortunately, some people will consider some SLC bills as being quite sterile, but there is some really good stuff in them. We have worked with the SLC on developing its approach to shaping bills and on its consultation approach. We need to improve people's willingness to participate in SLC consultations on legislation. There is perhaps a

view that the likelihood of such bills coming to fruition is limited, so people might not necessarily engage at that early stage. If we can send a clear message in the next parliamentary session that there is a very strong chance of at least some such bills being introduced, we will get more robust engagement at an early stage and bills will come forward more developed.

We then have to work out how the Parliament would wish to process such bills. There is the risk that some subject committees might be concerned about taking a different approach. They might feel that particular bills ought to sit with them for scrutiny. However, I do not think that it is beyond the wit of the Parliament to find a better way of dealing with SLC bills. I would certainly be disappointed if I or any of us were sitting here five years from now not able to reflect that we had made considerable progress in that regard.

**Mary Fee:** That is very helpful.

**Stuart McMillan:** On the minister's final point, the various members of the committee in this parliamentary session and in previous sessions have shown that the Parliament can deal with SLC bills efficiently and effectively in order to improve legislation in Scotland. I welcome your comments about potentially tweaking the committee's role, but the proof that the Parliament and the committee can do that work already exists.

**Graeme Dey:** Whether the Parliament is willing to tweak the committee's remit is obviously a matter for the Parliament, but it strikes me that that would be a way to increase the volume of SLC bills. We have made progress on SLC bills, but there is a frustration that a number have not progressed. One example that is cited is a bill on moveable transactions. The Government has expressed its support for the principles of such a bill. As I said, I hope that our approach will be slightly different in the next parliamentary session and that we will make even greater progress on SLC bills.

**Michelle Ballantyne:** That would be extremely welcome. I completely agree with you on moveable transactions. That issue should have been dealt with, because it would have huge economic benefits to business. It is a shame that the proposal is still sitting there.

**Graeme Dey:** As I said earlier, none of us could have envisaged the combined impact that Covid and Brexit have had on the Parliament's work. That said, I think that we have done a significant job in keeping the show on the road in relation to the number of bills that the Parliament has progressed. Before the meeting, I was looking at the number of bills that the committee has considered at stage 1 and at those that it has considered at stage 2. I think that the numbers are

16 and 11. That has been done over a very short period—I do not need to tell the committee about its workload. That illustrates how the Parliament has continued to function.

**The Convener:** Thank you, minister. That has been a very useful, open and frank discussion. The relationship seems to be on a good footing, and I hope that that will continue.

Our substantive point today was about the Social Security Administration and Tribunal Membership (Scotland) Bill. For the record, I should say that, as I understand it, the standing order requirements on the bill's timings were met, but the shortest time possible was provided. The takeaway is that, regardless of whether a bill seems to be important or less important, on a point of principle and scrutiny, we need the time to ask the questions and consider the answers.

Does the minister have any closing comments?

**Graeme Dey:** I would not use the language of "less important" or "more important". The point that I made earlier is that we can anticipate that certain bills, given their nature, will require more time than others will. I take your point about the Social Security Administration and Tribunal Membership (Scotland) Bill, and we will continue our dialogue on the council tax issue.

**The Convener:** We can put it on the agenda for next time. [*Laughter.*] We might follow up by letter if any more questions arise in the course of our discussions.

I will suspend the meeting briefly to allow the minister and Mr Macgregor to leave. I remind them to use the social distancing protocol as they do so. Thank you very much indeed.

11:15

*Meeting suspended.*

11:17

*On resuming—*

## **Instruments subject to Made Affirmative Procedure**

**The Convener:** Agenda item 3 is consideration of two instruments that are subject to the made affirmative procedure, on which no points have been raised.

**Health Protection (Coronavirus)  
(Restrictions and Requirements)  
(Scotland) Regulations 2020 (SSI 2020/279)**

**Health Protection (Coronavirus)  
(International Travel) (Scotland)  
Amendment (No 15) Regulations 2020  
(SSI 2020/288)**

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

**Members** *indicated agreement.*

## **Instruments subject to Affirmative Procedure**

11:17

**The Convener:** Agenda item 4 is consideration of two draft affirmative instruments, on which no points have been raised.

**Census (Scotland) Amendment Order 2020  
[Draft]**

**Human Tissue (Excepted Body Parts)  
(Scotland) Regulations 2020 [Draft]**

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

**Members** *indicated agreement.*

**The Convener:** I noticed that the list of groups that the Scottish Government consulted on the human tissue regulations focused on medical groups and did not include public or religious groups. Although that is not an issue that the committee needs to consider, would members be content if we highlighted it to the lead committee?

**Members** *indicated agreement.*

**Instrument not subject to  
Parliamentary Procedure**

11:18

*Meeting continued in private until 12:22.*

**Act of Sederunt (Simple Procedure  
Amendment) (Civil Online) 2020  
(SSI 2020/293)**

11:18

**The Convener:** Agenda item 5 is consideration of an instrument that is not subject to parliamentary procedure and on which no points have been raised. Is the committee content with the instrument?

**Members** *indicated agreement.*

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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