



Official Report
Aithisg Oifigeil

DRAFT

Delegated Powers and Law Reform Committee

**Comataidh
nan Cumhachdan Tiomnaichte
agus Ath-leasachadh an Lagha**

Tuesday 27 October 2026

Session 7



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DELEGATED POWERS AND LAW REFORM COMMITTEE
8th Meeting 2026, Session 7

CONVENER

*Calum Kerr (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Q Manivannan (Edinburgh and Lothians East) (Green)

COMMITTEE MEMBERS

*Amanda Lindsay (Central Scot and Lothians West) (Reform)

*Colm Merrick (Glasgow Anniesland) (SNP)

*Paul Sweeney (Glasgow) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Lord Craig Sandison (Scottish Law Commission)

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 27 October 2026

[The Convener opened the meeting at 09:51]

Decision on Taking Business in Private

The Convener (Calum Kerr): Good morning, and welcome to the eighth meeting in 2026 of the Delegated Powers and Law Reform Committee. I remind everyone either to switch off or put on silent their mobile phones and electronic devices.

The first item of business is a decision on taking business in private. Is the committee content to take items 6, 7, 8 and 9 in private?

Members *indicated agreement.*

Draft Instruments subject to Approval

09:51

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

Qualifications Scotland and His Majesty's Chief Inspector of Education in Scotland (Miscellaneous Listings) Regulations 2026 [Draft]

Visitor Levy (Amendment of Returns and Miscellaneous Amendment) (Scotland) Regulations 2026 [Draft]

The Convener: Is the committee content that no reporting grounds are engaged?

Members *indicated agreement.*

The Convener: In relation to the Visitor Levy (Amendment of Returns and Miscellaneous Amendment) (Scotland) Regulations 2026, does the committee wish to note that the original draft of the instrument was withdrawn and the present version relaid following questions raised by the committee with the Scottish Government?

Members *indicated agreement.*

Instruments subject to Annulment

09:52

The Convener: Under agenda item 3, we are considering four instruments. An issue has been raised on the following instrument.

Criminal Legal Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026 (SSI 2026/267)

The Convener: The committee asked the Scottish Government about the retrospective provision made by the instrument. It will set out its full consideration of the instrument in its report on subordinate legislation to be published following today's meeting.

Following consideration of the correspondence, does the committee wish to draw the instrument to the attention of Parliament on reporting ground (c), that it purports to have retrospective effect when the parent statute confers no express authority so to provide?

Members indicated agreement.

The Convener: Does the committee also wish to note that it is unusual to make retrospective provision in the absence of express authority to do so, and to draw the Scottish Government's reasons for considering such an approach necessary in the circumstances to the attention of the Equalities, Human Rights and Civil Justice Committee?

Members indicated agreement.

The Convener: Also, under this agenda item, no issues have been raised on the following instruments.

Sale of Tobacco (Miscellaneous and Consequential Amendment) (Scotland) Regulations 2026 (SSI 2026/278)

Private Residential Tenancies (Prescribed Notices and Forms) (Scotland) Regulations 2026 (SSI 2026/279)

Scottish Land Commission (Number of Land Commissioners) Regulations 2026 (SSI 2026/284)

The Convener: Is the committee content that no reporting grounds are engaged?

Members indicated agreement.

The Convener: In relation to the Sale of Tobacco (Miscellaneous and Consequential Amendment) (Scotland) Regulations 2026, does the committee welcome the fact that the

instrument fulfils a commitment made by the Scottish Government in relation to Scottish statutory instrument 2026/213, by amending the heading of regulation 7 of the Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2011?

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

09:54

The Convener: Under agenda item 4, we are considering instruments that are not subject to parliamentary procedure. No issues have been raised on the following instruments.

Social Security (Amendment) (Scotland) Act 2025 (Commencement No 3) Regulations 2026 (SSI 2026/274)

Natural Environment (Scotland) Act 2026 (Commencement No 2) Regulations 2026 (SSI 2026/275)

Planning (Scotland) Act 2019 (Commencement No 15) Regulations 2026 (SSI 2026/280)

Bluetongue (Scotland) Amendment Order 2026 (SSI 2026/281)

The Convener: Is the committee content that no reporting grounds are engaged?

Members *indicated agreement.*

Scottish Law Commission

09:54

The Convener: Under agenda item 5, we will take evidence from the Scottish Law Commission. I welcome to the meeting Lord Sandison, chair, and Graham McGlashan, project manager. On behalf of committee members, congratulations to you, Lord Sandison, on your appointment as the chair of the Scottish Law Commission.

We will not need to turn on our microphones, even though doing so normally adds a bit of fun and interest to proceedings.

I invite Lord Sandison to make any opening remarks.

Lord Craig Sandison (Scottish Law Commission): Thank you for the congratulations, and thank you for the invitation to give evidence today. I hope that this will be the first in a series of positive engagements with the committee and that it builds on the relationship that was established between the commission and the corresponding committee in the previous parliamentary session.

It might be useful for me to open by saying a few words about me, the other commissioners, what we do and how we operate in order to fill in the members who might not fully understand how the commission operates. My name is Craig Sandison, and I was appointed in May as the 11th chair of the Scottish Law Commission by the Cabinet Secretary for Justice, after the usual public appointments process had taken place.

The chair's role is and always has been part-time—it is currently served on a 50:50 time split. The rest of my time is spent as a senator of the College of Justice or, in other words, as a Court of Session and High Court judge, which is a position that I have held since 2021. For the past four years, I have been one of the specialist judges in the commercial court of the Court of Session. Before going on to the bench, I was in practice at the bar in the commercial law field in Scotland for 25 years, so I very much come from a commercial law background as opposed to anything else.

As I think that members will all be aware, the Law Commission was established by the Law Commissions Act 1965. Its remit is to keep under review the law of Scotland

“with a view to its systematic development and reform, including ... codification”—

we have a few projects on the go in that area—

“the elimination of anomalies, the repeal of obsolete and unnecessary enactments, the reduction of the number of separate enactments and generally the simplification and

modernisation of the law”.

That is the statutory remit that the Law Commission has had for more than 60 years.

The sources of our work are threefold. First, we run five-year programmes—we will shortly be consulting on our next five-year programme, but we are currently working on the 11th programme of law reform. The subjects that go into those programmes are determined by what is essentially a public consultation exercise, which is carried out in the run-up to the start of each programme. That is the primary source when it comes to how we choose projects. We can talk later if people are interested in how we are preparing for the 12th programme, which will start in 2028. The primary source is suggestions from the public after a consultation in advance of each programme.

The second source of our work is the Scottish Government itself, because it can choose to refer particular topics to us for examination and report. In the current programme, we have one such project, which is on tenement law and compulsory homeowners associations. That is an example of the Scottish Government referring a matter to us, but, to take a snapshot of the current programme, it is only one project out of 11, which might give you an idea of range. Such referrals are not a big part of our work, but we do get them.

The third element is where we have a joint project with the Law Commission of England and Wales, which is almost inevitably on matters that apply to the United Kingdom as a whole—so it would not make sense for one Law Commission or the other to do a report independently. We therefore work together with the Law Commission of England and Wales in relation to UK legislation. Those are the three sources of our work at the commission.

10:00

In addition to me, as the chair, there are four other commissioners, one of whom is part time; the other three are full-time commissioners. We are fortunate to have a very high-quality complement of commissioners, as has tended to be the case throughout the history of the commission. Professor Frankie McCarthy is the professor of private law at the University of Glasgow; Professor Gillian Black is the professor of Scots private law at the University of Edinburgh; Ann Stewart, who is the other part-time commissioner, is a practising solicitor of many years’ standing; and the final commissioner is a lady called Roisin Higgins, a King’s counsel, who was previously in practice at the Scots bar.

All the commissioners serve a five-year term, with the possibility of extension, by mutual agreement between them and the Scottish

Government, to a maximum of eight years in office. Both Professor McCarthy and Professor Black have extended their terms and are in the last part of their service; the others are relatively new.

Before moving on to talk about the commissioners themselves, I should say that each of the projects in a programme will be allocated to a lead commissioner, who will bear the principal responsibility for developing and working on it. However, it is important to stress that the commission is a collegiate body. Therefore, no report of the commission is done by just one commissioner, even though that particular commissioner may have done most of the work on the project. At every point in the development of a project, matters will have been brought before the commission as a whole for very detailed discussion, and a discussion paper is usually the first thing that goes out. There is analysis of consultation responses, and then there is the final report. Although the primary work falls on one commissioner, all of that will be a collegiate effort, and it will be looked into in great detail by the commission as a whole. Full-time commissioners generally have two projects on the go at any one time; part-time commissioners usually have one project on the go at any one time.

We are assisted in our work by permanent staff in the form of solicitors, who are in effect seconded from the Scottish Government legal directorate. They are attached to particular commissioners, and they will deal with those commissioners’ projects. We currently have five such project managers.

In addition to those, we have four legal assistants, as we call them. They are recent law graduates—by “recent”, I mean that they have probably just finished their law degrees—and they are looking to spend a year researching one or other of our projects before going on, at the end of that year, to a career either in legal practice or in academia, whatever their choice is.

We also have a chief executive—and some of you may have met the chief executive on a previous occasion. I am sorry to say, however, that she has moved on to better things: she is now an assistant director—perhaps a director, actually—in the agriculture and rural affairs division. We are in the process of recruiting a new chief executive at the moment, and I hope to meet some of the candidates later this week. Finally, we have three administrative staff, who deal with all the administration that needs to be dealt with. There are about 20 of us in all.

We work out of premises at Parliament house in Edinburgh. I very much hope that some or all of you will be able to find the time, among what I know are busy schedules, to come and visit us. You will

get a much better idea of what sort of organisation we are and of how we work if you are able to come and visit us. We would very much welcome you. I appreciate, however, that the demands on your time are many.

I am joined today by Graham McGlashan, who is one of the project managers I have just been describing. He has been with the commission since 2017, and he has been in the Scottish Government legal service for more than 20 years altogether.

I hope that that gives you a general introduction to who we are and what we do, and I look forward to addressing whatever questions you may have.

The Convener: Thank you for the thorough introduction. We would love to visit you, because there are not many places that the committee can visit. You are at the top of our list.

Lord Sandison: We would love to welcome you and would put on a good spread. For those who have not visited Parliament house before, it is an interesting place to visit. We would be delighted to add on a tour of the building.

The Convener: Thank you for the invitation.

I will start, before I open questions to colleagues. Other than Mr Sweeney, the committee members are new parliamentarians, so we are learning the parliamentary job as well as the role of the committee. I have joked that, to me, until I was elected, SLC meant the Student Loans Company.

I am interested in what attracted you to the role of chair. You were appointed on 5 May, which is similar to when we were elected—the vote took place on 7 May and the count was on 8 May, so our tenure is similar. How did you see the SLC's work and what led you to step into the frame to take on the role? You could talk about the strengths of the SLC and what you see yourself bringing to the role.

Lord Sandison: I will start with the commission. I am talking about it before my tenure, but it is fair to say that the SLC has always been a prestigious institution. If I consider past chairpersons, there has been a stellar roll of judges, some of whom have gone on to higher positions. The commission has had two chairs who have gone on to become Lord President of the Court of Session and Lord Justice General, and the first chairman of the commission, Lord Kilbrandon, went on to be a member of the Appellate Committee of the House of Lords, as it was in those days. The SLC has always attracted chairs who have a keen interest in the development and improvement of the law.

I have something of an academic background. I spent 10 years at university, much to my father's dismay, as he was paying for it. I completed a

master's degree and a doctorate in Scots law and focused on the interaction between Scots criminal law and the concept of legality, although I keep forgetting that that was 30 years ago, and have to remind myself that things have moved on a little since then. My career has always had an academic background and I have always been interested in the academic and theoretical side of things, even though I went into practice, rather than academia. When the vacancy opened for the chair of the Law Commission, I saw it as quite a good fit for me. It seems that the Scottish Government and those involved in the public appointments process thought so too, so here we are. I am sure that Graham McGlashan can tell you what the commission thought about it.

The Convener: I will get Graham's phone number and speak to him afterwards. *[Laughter.]*

That is a helpful answer. The committee is seeking to work with your organisation and to better understand it, so I appreciate the overview. The SLC is in its eleventh programme. How do you feel that it is progressing as you pick up the baton?

Lord Sandison: The eleventh programme has 11 projects in total, and some of them were read over from the tenth programme. The programme has 14 months left to run and, of the 11 projects, we have completed four. That includes a report on the mental element in homicide, which Graham McGlashan worked on; a joint report with the Law Commission of England and Wales on the law of surrogacy, which is a controversial subject and is beginning to wake up again in Westminster; and a report on damages for personal injury, which I believe will be brought before the Parliament this parliamentary year. We also reported on tenement law, as I mentioned earlier.

Before that programme ends at the end of 2027, I expect another three projects to complete. The project on civil remedies for domestic abuse is very important. As you know, most SLC reports come with a draft bill attached to them, and that report is at the stage of the draft bill being prepared. I would expect a final report for that project to come along in mid-2027.

We also have Professor McCarthy's big project on heritable security, which is also at the bill-drafting stage. The plan at the moment is that, when the draft bill is in a final form, there will be a further consultation on it, because it is a very technical subject. Nonetheless, I expect that project to conclude in mid-2027 with a final report.

When I came in, the last unallocated project was one on aspects of limitation law—in other words, how long you have before you can raise personal injury actions as well as some other types of action. A report from the commission back in 2007 made certain recommendations that seem to have

become slightly derailed, although the Scottish Government had indicated that it was content with the report. Certain aspects, but not all, were reanimated and became a project in the 11th programme, which I took on when I joined the commission. Because it is a relatively small-scale project, I expect that one, too, to be finished before the end of the 11th programme.

I hope that, by the end of the five-year period of the programme, we will have completed seven of the projects. The ones that remain are a project on execution of documents, which I am afraid sounds a rather deathly dull subject, but it is very important for business competitiveness that we have a system of execution of documents that keeps up with modern technology and does not put Scottish businesses at a competitive disadvantage. That one is just coming to the stage of having a discussion paper, which will be issued in December of this year. Due to the subject's high degree of technicality, the project might not be completed in the course of 2027, but it will be shortly thereafter. That one should finish early on in the period of the 12th programme.

There is a large project on executory law, which is a subject that has received no attention, effectively, for a very long time. It is mostly common law, and it is limping along on the basis of people understanding what other people are likely to do, rather than having a legal basis. That is a large project that Professor Black is working on. It will be a long-term project, so when Professor Black leaves the commission in early 2028, the project will still be live and will have to be passed on to a new commissioner.

We have what I hope will be the final chapter of a lengthy series of reports on the law of leases in Scotland. There are very few subjects within that general topic that remain to be looked at, but there are one or two, and I hope that, with that final report, we will be able to finally bring to an end a long series of engagement with the law of leases. It is still at the scoping stage—in other words, we are deciding what will and will not fall within the scope of the project—so that one will not finish in the course of the 11th programme.

We are also finally undertaking an exercise to consolidate nature conservation law. For those who operate in that field, I believe that it is very difficult to understand nature conservation law because there are many different sources of law. That is a consolidation project of the kind that I mentioned earlier, where the proposal is not to change the law, other than perhaps in very small and necessary ways to allow a better interaction between the various pieces of legislation that exist already, but to produce it in a form that is much more user friendly and easier to understand, not only for practitioners but for members of the public.

That is the 11th programme in a nutshell: four projects are finished, three are expected to finish before the end of the programme, one will finish shortly thereafter and three will, I think, be a little longer term.

Amanda Lindsay (Central Scotland and Lothians West) (Reform): I thank both our witnesses for coming to speak to us. I want to ask about family law. Specifically, I am interested in children who have experienced domestic abuse and their experiences in the legal system. I am particularly interested in the principle of one sheriff and one court for one family, which is about ensuring that judges see a case right through, rather than having separate proceedings, in order to reduce the constant recounting of traumatic experiences. I appreciate that we are a technical committee and that we tend not to get into the weeds of policy, but could you talk about how you are going about developing a report on that issue? That would be useful.

10:15

Lord Sandison: As you know, the report on domestic abuse is about civil aspects of domestic abuse. You will recall that a domestic abuse act that deals with criminal aspects of domestic abuse is already on the statute book—the Domestic Abuse (Scotland) Act 2018, of which I have some experience from when I sat as a criminal judge. We are working on the civil aspects of domestic law—in other words, what a victim of domestic abuse can do without the benefit of the assistance of the criminal justice system, which might not be easy to come by.

There will be further remedies for domestic abuse, including, as you have said, looking at ways in which we can make the experience more trauma informed—in other words, trying to minimise people's re-exposure to the trauma of whatever has happened as a result of having to recount it on various occasions.

That report, which, as I said, is at the draft bill stage, looks at that. I hope very much that the bill will come before Parliament, and this committee, in this parliamentary session. It gives ways in which different and effective remedies, all of which are trauma informed, can be deployed to help people who have experienced domestic abuse, including children.

A whole section of the report is directed not so much at the black-letter law but at trying to make matters easier as a matter of practicality. As you might be aware, in many areas of Scotland, it is very difficult for people to get a lawyer to assist them in relation to domestic abuse problems. There is a whole chapter—that is putting it too lightly; there is a whole part of the project on

domestic abuse—looking at ways in which that experience can be made easier. It is about accessing assistance in the first instance but, once people have accessed it, it is about enabling it to be carried out in a trauma-informed manner, with a view to reaching a conclusion that is just in all the circumstances but avoids the retraumatisation to which you referred.

Professor Black is dealing with that project. Her specialism is family law and she was the lead commissioner in relation to our report on cohabitation, which I believe the Government is considering starting to implement. She was also our lead commissioner in relation to our report on surrogacy, which was a joint report with the Law Commission of England and Wales. She has immense experience of all those matters, and I have every confidence that, when the bill comes along, you will find that it deals to the maximum extent possible with the concerns that you have expressed.

Amanda Lindsay: Thank you.

The Convener: You touched on how you will approach the 12th programme and the consultation on that. Could you give us a bit more information on how you will do that and, within that, how you will prioritise? I imagine that multiple things could be brought forward. How will you set priorities when doing the consultation for the 12th programme?

Lord Sandison: We have just begun the preparatory work for the consultation exercise on the 12th programme. Bear in mind that the timetable for the 12th programme begins on 1 January 2028. We felt that it would be too soon to start the consultation in 2026, so the idea is that we will start it in January 2027.

The consultation exercise will have three prongs. First, there will be, as is inevitable these days, a social media campaign to try to spread the net as widely as possible and catch those who might want to respond. We genuinely want to hear from whoever might have an idea; indeed, that is what the prospectus that I have prepared for the 12th programme says, in so many words. It says, “If you have an idea for something that could be improved in the law of Scotland, we want to hear from you.” I should say that I will not, in the social media campaign, be going to the lengths of playing Lord Kitchener, pointing out at you and saying, “We want to hear from you”, but I expect that it will be something along those lines.

Of course, such campaigns are dealt with by people far younger than me, and it will be a matter for the legal assistants to advise us on. However, I am hoping to have, as the first prong, an effective social media campaign to let people know that we want their ideas for possible law reform projects.

Secondly, we will be making direct approaches to persons and organisations that have asked to be kept informed of our work or which we know will be interested in knowing about the start of the 12th programme. For example, we will inform professional bodies—the Law Society of Scotland, the Faculty of Advocates, the Royal Institution of Chartered Surveyors, accountants and so on—that might be experiencing difficulties with regard to the interaction between the law and their particular profession.

We also maintain close relations with all the academic bodies, many of which will be able to take a systemic view of what is wrong in particular areas of law. We therefore very much welcome any suggestions from academia. Moreover—and this might be slightly surprising—many third sector organisations, too, have particular areas of interest in which they can see things that could benefit from reform.

It is important to note that when we approach all of these people, we are not asking them for solutions to the problems that they see. We are simply asking them to identify the problems. If they have any solutions, that will be great—we can take them on board, consider whether they will work and so on—but what we are really looking for is the identification of problems or issues. It will not matter if people do not have any solutions to propose; hopefully, we will be able to find those when we sort out the project itself.

The third prong of our campaign will be a launch event, which I suspect will be held at one of the academic institutions. It will be an “All welcome” meeting, and I hope that we will be able to have a lively discussion about what is needed.

As I have said, we will start the consultation in January, and we will let it run until the end of May. That will give people a total of four or five months to put in their suggestions. They can do so in whatever format they like; there will be a form on the website, but they will be able to submit their suggestions in writing, too, if they want.

Then, the task will begin to decide among the various suggestions that have been made. If past experience is anything to go by, we will not be short of suggestions. The question, then, is which will be selected, and we will apply three criteria to choose which projects will be taken forward.

The first criterion is what we have called the importance criterion, which is about the need for the project. Is the present law substantively unfair, unclear, inaccessible, inefficient, too complex or outdated? How many people will effecting a change in this particular area of law benefit?

The second is the suitability criterion. There are some who will make suggestions that are highly

political in nature. I would not want it to be said, or thought, that the Law Commission does not deal with controversial matters, because it does; indeed, I have already mentioned the surrogacy issue, which is a very controversial matter that has been dealt with. Therefore, it is not the case that we do not deal with such matters, but there are some things that are just so political that it would not be appropriate for the Law Commission, as a wholly independent and neutral body, to get involved in them. The commission would undoubtedly be drawn into a political debate—or, at the very least, might be seen to be drawn into it. In short, there are certain projects that, although there is a need for them, are not really suitable for the sort of technocratic body that we are—if I can use that term in a non-pejorative way. Such projects might be important, but we would not be the most appropriate body to take them forward.

Thirdly, there is the question of resources. We can take on only so many projects. As I have indicated, there will probably be space for about half a dozen new projects in the 12th programme, in addition to the ones that will roll over from the 11th. I cannot be sure of the precise number of projects, because that will depend on their size. Taking on two small ones or one large one would put the same drain on our resources.

When I say that it is a question of resources, I mean that we need to consider whether we have enough commissioners to enable a project to be serviced in the course of the programme. In particular, when we are thinking about the projects for the 12th programme, we may wish to consider who we will bring in as replacement commissioners. As I have indicated, Professor McCarthy and Professor Black are due to leave—Professor McCarthy will leave before the end of the current programme and Professor Black will leave shortly after the start of the 12th programme—so we will have to keep a weather eye on what sort of person is likely to come in to replace them and see whether any matching can be done between the pool of likely candidates and the projects that we take on. We will do so for no other reason than that it is very difficult for someone who knows nothing about a particular area of law to suddenly have that matter put in front of them and be told, “You are now in charge of developing this area of law.”

That said, with every project, it is standard practice for us to recruit an advisory panel that is made up of people who know about the subject, even if the commissioner is not necessarily a subject-specific expert. Although it is not the case that the commissioner will be all on his or her own in dealing with an unfamiliar subject, things tend to be able to be dealt with more efficiently if the commissioner at least has a good working

knowledge of the area of law in question. However, that is very much a tertiary consideration.

Importance, suitability and resources—in that order—are the criteria that we will use to select the projects. Of course, the final selection is not entirely for us. As I said, if the consultation exercise closes at the end of May next year, we hope to have chosen our preferred subjects by, say, September. We will then need to submit our draft 12th programme to the Scottish Government for approval—that is a statutory requirement. We hope to be able to give the Government our draft programme by the end of September at the latest, which should give it enough time to consider it and to give us the okay to go ahead, which I think that it always has done in the past. I am not conscious of the Government having refused anything, but it is a statutory requirement that we present the draft programme for approval. We will do that in the autumn, with a view to everything being ready to go on 1 January 2028.

The Convener: Is there an issue with some recommendations in reports remaining unimplemented for too long? Is there a solution to that?

Lord Sandison: It is quite difficult, from my point of view, to say whether that is the case, because the Law Commission looks at a particular area of law and makes recommendations. Entirely properly, the choice as to whether to take forward a recommendation is one for members of this Parliament, whether the Government or an individual member, to make. All that we do is identify an area of the law that we have looked at through one or other of the routes that I have mentioned and say what we think could be done to improve it. It is then over to the Parliament, as a legislature, to decide whether it wishes to accept that recommendation. By and large, we do not sit around thinking, “Oh, I wish they would get on and implement that recommendation,” because we entirely respect the role of the legislature in choosing what should go forward and what should not.

We also respect the fact that, although we would perhaps like it to be otherwise, the legislature, as a whole, does not sit here waiting for Law Commission bills to come along because that is the only thing that it has to do. We recognise that, as is the case in every area, bills require resources, time and the inclination to proceed with them. Although we do not see our role as finishing when we submit a report, we are always willing, if a bill proposal is taken forward, to assist the Parliament with implementation and to go through the whole legislative process with it if it wants us to—we respect the legislature having the choice as to whether to proceed with something.

10:30

There are awkwardnesses that arise when the Government has given a response to a report that is entirely positive and then the proposed bill just does not happen. It would be useful for us to know what the reason for that ultimately is. Is it just a question of there not being the necessary resources or parliamentary time, or did the consultation process bring up issues or problems that we did not pick up on in the course of producing the report? It would be a learning point for us if something were to come up in the consultation once a bill is before the Parliament. It would be jolly good for us to know whether we have missed something in the consultation process so that we can learn what we could improve in our processes in order to produce a better bill in the first instance.

In some cases, bills will not be introduced, or they will be introduced and disappear for no reason—that is, for no reason that we know about; there will obviously be a reason, but we do not know about it. A good example is the Leases (Automatic Continuation etc) (Scotland) Bill, which was before the Parliament in the previous parliamentary session but just went away for reasons that we are not entirely clear about. It would be useful to know whether that bill is coming back so that we have clarity and know whether we need to reserve resources that might be needed to assist its passage through the Parliament. Alternatively, if a decision has been taken not to progress with the bill, we can stand down those resources. That sort of thing would be interesting to know.

The Convener: Perhaps we can help with that issue. You have given us some interesting feedback.

Amanda Lindsay: I have a question that is relevant to that point. As a committee, we have a role in scrutinising these bills and procedures. What is your view on how that is working? What advice would you give us? What sort of things should we concentrate our efforts on when these bills come before us?

Lord Sandison: The Scottish Law Commission welcomes the fact that there is now a dedicated committee that will deal with most—although not all—of its bills. I say that not only because the relationships that can be built up are useful for both sides of the equation, but because, as I have already adverted to, many Scottish Law Commission bills—certainly the ones that tend to come before this committee rather than go elsewhere—are of a highly technical nature.

For example, in the present session of the Parliament, you will see the execution of documents bill that I talked about, which is highly

technical in nature. The heritable securities bill, which is about the reform of mortgage law, will also come before you—or rather, a report will come before you, which I presume will then be turned into a bill. As you can imagine, that is also a highly technical area.

The commission's experience is that, because of the nature of the work that members of this committee need to do more widely, they develop an eye for technical detail and for considering how matters interact with each other in a bill. In our experience, that gives them a far greater insight than can be gained on a more generalised committee that deals with subject-specific matters rather than the sort of technical issues that are the bread and butter of this committee.

Therefore, we would be very happy to see a bill from the Scottish Law Commission being allocated to this committee, as opposed to any other committee. That is not only because of the particular relationships that can be built up and the synergies that emerge but because of this committee's growing expertise in considering the technical aspects of bills. To be frank with you, in an ideal world, I would love every bill of the Scottish Law Commission to come before this committee, but we know that, for various reasons, that would not be realistic or sensible. However, if we are required to deal with any committee, we would rather deal with you than with any other, if I can put it that way.

Amanda Lindsay: Aw, thank you.

The Convener: You are our favourite witness—well done.

Q Manivannan (Edinburgh and Lothians East) (Green): Apologies for not being there in person, but thank you so much: your evidence has been very informative. Following on from the previous question, I am wondering whether you have any particular views on the criteria that are used to figure out whether a bill is counted as an SLC bill. You have mentioned that we are your favourite committee, and that you would rather that this committee scrutinised you, rather than a subject committee. I am keen to hear more of your thoughts about the wider existing criteria.

Lord Sandison: We are very respectful of the fact that which committee deals with which bill is very much a matter for Parliament, as opposed to us. I would not want anything that I say to suggest that we want a bigger say in that. We are entirely respectful of it being for Parliament to decide which committee scrutinises which bill.

Having said that, I note that the current standing order, which has been in place from around 2021, was drafted by the Presiding Officer and those advising him in consultation with the Scottish Law

Commission at the time; it is not as if it was imposed on us. As you would expect, and given that there was an opportunity to make representations, the current standing order therefore reflects what we think is the appropriate balance between SLC bills and non-SLC bills.

From my personal point of view, we would love to deal with a single committee, but we recognise that that is not practically possible. I talked a few moments ago about the homicide bill and the mental element in homicide. That is not going to come before this committee, I suspect, because there is already a specialist committee that deals with criminal justice, and it is appropriate for it to deal with that bill.

The application of the criteria is perhaps a slightly different question. They are there, but how they are applied in practice is a different matter. I do not want to be understood to be complaining about it, however, as it is entirely a matter for Parliament how it allocates bill.

I wonder about the notion of something not being likely to be controversial. There are bills, such as the exclusion of documents bill, which no one will be terribly excited about when they come along. Other bills may be different, however. There might be people who are excited about the domestic abuse bill. Will that be regarded as sufficiently controversial to take it outwith the current definition of Scottish Law Commission bills? If so, is there really a justification for that? I wonder.

I stress that I am wondering out loud, rather than trying to be prescriptive about anything, as it is entirely for the parliamentary authorities to decide how they allocate the business before them.

I wonder about the “controversial” element of the definition. The rest of it seems to be pretty much what we would expect. The only other aspect of the current definition to which I would draw attention is that element that asks whether there will be some other legislative move in the same area before another committee in the foreseeable future. The point is not so much about the criterion but about the application of that criterion. From our point of view, the fact that there may be a plan in a couple of years’ time to have a certain subject talked about in the Parliament does not necessarily detract from there being a bill in the same area that could progress now and that could be a suitable bill for this committee.

It is not so much about how the criteria are drafted; the issue is about their application. I stress again, however, that it is entirely a matter for Parliament, and I am not aware of any particular discontent so far about how the criteria have been operated in practice. If you are asking me to

consider the matter from a theoretical point of view, that is what I would say.

Paul Sweeney (Glasgow) (Lab): Thanks for attending the committee today, Lord Sandison. Perhaps we have a shared enterprise in trying to address the issue of legislative limbo. It is not satisfactory that significant amounts of public resource are devoted to projects that do not proceed into the statute book in a timely and efficient way. We have a role as a catalyst to try and push them through the Parliament.

On the issue of secondary legislation, given the committee’s remit on delegated powers, years can pass—even after royal assent—before provisions are enacted in statute. Do you think that there should be some sort of statutory time limit for ministers to proceed to enact secondary legislation following royal assent?

Lord Sandison: The initial difficulty is about what happens if the time limit is not then met. Does the provision fall? I do not think that that is what you are advocating for. Does it automatically have to be brought before the Parliament by a particular time? Those are possibilities.

The trouble with giving a general answer to your question is that so many factors can be brought to bear on when a particular enactment—or a part of an enactment, because an enactment can be passed and then sit on the statute book without a commencement order having been made in relation to any part of it—is commenced.

Quite often, there are obvious reasons for that. The most frequent thing that happens is that, in order to be sufficiently effective, a particular piece of proposed legislation is required to intermesh with another piece of legislation that is yet to be commenced or come on to the statute book, for whatever reason. Resources, primarily financial resources, are another reason for non-commencement. I could give various examples of bills that include perfectly good proposals, go through the parliamentary process and are passed as acts, but they are simply not brought into force because of the demands that they would put on the public purse, which cannot be satisfied at that moment.

As a matter of generality, would we like to see bills enacted more quickly? Yes. Would we like to see acts brought into force more quickly than they sometimes are? Yes. However, there are a myriad of reasons why that does not always happen. As a Law Commission, all that we can do is make our recommendations. It would not be appropriate if we, as an independent body, started lobbying the Government formally or informally to ask, “What about this?”

To go back to the limitation project that I talked about, there was a 2007 report that was accepted by the Government but then not implemented because of a diversion towards a particular area. When our new report on the subject comes out, some might say that it will amount to little more than us asking, “Have you forgotten about the 2007 report that you said you were going to accept in those circumstances?”

We can do some things: we can work around the edges and bring a subject forward for Government consideration, but it is a matter for the legislature, not us, as to whether something is enacted and brought into force. We would love to see things happen. We do not make recommendations for no purpose, but we cannot take an active role in the commencement process.

Paul Sweeney: Perhaps some reporting obligation would at least aid transparency on the reasoning behind delays.

Lord Sandison: There is a draft framework agreement in circulation between the commission and the Government that covers all sorts of aspects of the relationship between the two bodies. One aspect that is dealt with in that agreement is precisely that: the Government coming back to us within a set time period to say whether it will progress a report or not. I am sure that that agreement could be flexed to deal with things that have got on to the statute book but not been commenced. It is fair to say that that draft framework agreement has been going back and forth between the commission and the Government for some time.

Paul Sweeney: I was listening earlier to your litany of projects and where they sit within the programme. If I recall what you said correctly, when you assumed the role, not a single domestic project in the tenth programme had been finalised despite the projects having been carried forward. Is there an issue with resourcing of the Scottish Law Commission? Could a resource constraint be highlighted as affecting the efficiency of the work?

Lord Sandison: The commission has always had a chair and four other commissioners, which is the primary resource consideration for the commission. The question might be whether too much has been taken on to any particular programme, rather than us being able to service it, because we have always known our servicing capabilities. On the other hand, if you are asking whether I would like another couple of commissioners and an extra couple of million pounds in the budget, the answer is yes, I would love that. However, realistically, it is a question of matching the projects that are suggested to us with the human resources that we expect to have.

I hope that you will understand that, when something is suggested that has merit as a project, it is human nature to try to say yes rather than no to that project. That can sometimes result in things lagging behind a programme and a timetable that would otherwise have been preferable.

10:45

Speaking personally, I would like to see more of a correlation between the projects that are in a programme and the period of that programme. It is never going to be exact, because some projects are massive and will never be completed in the course of one programme, even if you were to start them on day 1. Therefore, there can never be an exact correlation such that we will say that a project has to be done within a particular programme—it is just not realistic. However, I would like to see the correlation between projects and programmes brought much more into cohesion, if for no other reason than that a hangover from the previous programme inevitably restricts your ability to take on things for the next programme.

I think that it would be useful for the commission to see cycles and phases of work rather than a continuum in which one programme can blend into another. That approach is useful for almost anybody, and I would like to see a bit more of it. I am encouraging that to happen—as I said, although there will be certain hangovers from the 11th programme into the 12th, I am looking at the human resources that I will have available, either from day 1 of the 12th programme or shortly after its commencement, to enable early commencement of the projects that are selected for that programme. That is a priority for me as the new chair.

The Convener: I am conscious that we must bring things to a close, colleagues, so I will wrap up there, if no one has any pressing questions.

Lord Sandison and Graham McGlashan, thank you very much for your evidence this morning. Thank you also for your positive comments about our committee. It is nice to hear them.

Lord Sandison: They are genuinely felt.

The Convener: Thank you. Your answers have been thorough and reassuring, if I am allowed to use such a word. You show that you are well on top of your brief in this relatively new role. We all hear that enviously as we try to get on top of our own roles. I am sure that there will be a few issues to follow up on, but thank you.

Before we conclude and move into private session, I would like to take a moment to place on record the committee's thanks to our clerk, Greg Black, who not only supported the work of the

Delegated Powers and Law Reform Committee during the previous session but has certainly helped us newbies in the role to get up to speed. He has demonstrated phenomenal professionalism and knowledge, and as he moves on to a new role in a different committee, I formally put on the record my personal and the committee's sincere thanks for all that he has done. We are going to miss you, Greg.

I joked earlier that I nearly wore a black tie, and then I thought, you cannot really do that and then go to First Minister's question time. Sincerely, Greg, we thank you very much for your work. We are sorry to see you go. I wish you all the best for the future.

10:48

Meeting continued in private until 11:02.

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Room T2.20
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