



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# SCOTLAND BILL COMMITTEE

Tuesday 21 June 2011

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**Tuesday 21 June 2011**

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**SCOTLAND BILL COMMITTEE**

**1<sup>st</sup> Meeting 2011, Session 4**

**CONVENER**

\*Linda Fabiani (East Kilbride) (SNP)

**DEPUTY CONVENER**

\*James Kelly (Rutherglen) (Lab)

**COMMITTEE MEMBERS**

\*Richard Baker (North East Scotland) (Lab)

\*Nigel Don (Angus North and Mearns) (SNP)

\*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

\*Alison Johnstone (Lothian) (Green)

\*John Mason (Glasgow Shettleston) (SNP)

\*Stewart Maxwell (West Scotland) (SNP)

\*Joan McAlpine (South Scotland) (SNP)

David McLetchie (Lothian) (Con)

\*Willie Rennie (Mid Scotland and Fife) (LD)

\*attended

**CLERK TO THE COMMITTEE**

Stephen Imrie

**LOCATION**

Committee Room 2



## Scottish Parliament

### Scotland Bill Committee

*Tuesday 21 June 2011*

[Adam Ingram *opened the meeting at 10:00*]

### Interests

**Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP):** Good morning everyone, and welcome to the first meeting of the new Scotland Bill Committee in the fourth session of the Scottish Parliament. It is my dubious honour as the oldest member present to convene the first couple of agenda items.

I remind all those present, including members, that mobile phones and BlackBerrys should be turned off completely, as they interfere with the sound system even when they are switched to silent.

Apologies have been received from David McLetchie.

The first item on the agenda is declarations of interests. In accordance with section 3 of the code of conduct for members of the Scottish Parliament, I invite members to declare any interests that are relevant to the committee's remit. I remind members that declarations should be brief but sufficiently detailed to make clear to any listener the nature of the interest. I kick off by saying that I have no declarable interests.

**James Kelly (Rutherglen) (Lab):** I declare that my brother Tony Kelly is a solicitor and sole proprietor of the firm Taylor & Kelly, which operates out of 3 Main Street, Coatbridge.

**Linda Fabiani (East Kilbride) (SNP):** I have no declarable interests.

**Richard Baker (North East Scotland) (Lab):** I have no declarable interests.

**Nigel Don (Angus North and Mearns) (SNP):** I have no declarable interests.

**Alison Johnstone (Lothian) (Green):** I have no declarable interests.

**John Mason (Glasgow Shettleston) (SNP):** I am a member of the Institute of Chartered Accountants of Scotland, which could provide a witness.

**Willie Rennie (Mid Scotland and Fife) (LD):** I have no declarable interests.

**Stewart Maxwell (West Scotland) (SNP):** I have no declarable interests.

## Convener

10:02

**Adam Ingram:** The next item is the choice of a convener. The Parliament has agreed that only members of the Scottish National Party are eligible for nomination as convener of this committee. I am pleased to announce that Linda Fabiani is the SNP's nominee for the post.

*Linda Fabiani was chosen as convener.*

**Adam Ingram:** Excellent. I congratulate Linda on her appointment and hand over the chair to her for the remainder of the proceedings.

**The Convener (Linda Fabiani):** Thank you very much. I appreciate being convener of this committee and I thank Adam Ingram for starting us off so well.

## Deputy Convener

10:03

**The Convener:** The next item is the selection of a deputy convener. Members have a note from the clerk that sets out the procedure for selecting a deputy convener, which is similar to that for selecting a convener. The Parliament has agreed that members of the Labour Party are eligible to be chosen as deputy convener of this committee. I understand that James Kelly is the Labour Party nominee for the post.

*James Kelly was chosen as deputy convener.*

**The Convener:** It would be great if we were to have this degree of consensus all the way through our proceedings.

## Work Programme

10:04

**The Convener:** Item 4 is our approach to developing a work programme. It is of course for the committee to consider its approach, but I refer members to the note from the clerk, which sets out some background for the committee and the likely timescales ahead. It also provides a basic outline for a work programme; the details are for committee members to fill in. I invite members to discuss the item, but it is not my intention to finalise it today. I just want to give you a chance to identify the key areas, especially those in which you believe we need to take further evidence.

Our work between now and the end of the year is to scrutinise the Scotland Bill, which the United Kingdom Government said represents the

“largest transfer of fiscal powers to a devolved Government”.

There is also the Scottish Government’s proposal for the inclusion of another six policy areas, as well as the issues regarding the UK Supreme Court, which are relevant at the moment. Members will see from the clerk’s note that, for us to cover all those matters, the work programme is likely to involve a maximum of 10 to 12 meetings between now and Christmas. The report that we produce will help to inform the Scottish Parliament’s consideration of a legislative consent motion, which will take place towards the end of the current calendar year. That will coincide with the Scotland Bill completing its passage through the House of Lords and returning to the Commons for its final stages. We should be aware that the exact timetable is not yet known and that we may have to work more quickly if the timescale changes.

In a joint letter to the committee last week—which, I understand, everyone received a copy of—the Secretary of State for Scotland and the Chancellor of the Exchequer said that a number of the Scottish Government’s proposals had already been rejected as part of the Calman process but that

“the UK Government has committed to listen carefully to any detailed proposals supported by robust evidence that are put forward by the Scottish Government”

and the Parliament.

I hope to build consensus across the parties on the committee, and to explore constructively the evidence for the devolution of additional powers to our Parliament. David McLetchie—who, as I said, has submitted his apologies—was a member of the previous Scotland Bill committee, and I am sure that his input will be valuable in that regard. For the rest of us, membership of the committee

will provide a fresh opportunity to engage on the detail of the bill as it is amended by Westminster. I hope that we can engage positively with one another and with expert opinion from within the Parliament and beyond as we go through the consideration process.

I am happy to open the floor to members for comments on the proposed work programme.

**Stewart Maxwell:** My comment is not so much on the proposed programme. I think that it would be helpful for us to get some sort of grid that laid out the Calman commission recommendations and the Scotland Bill proposals so that we could see how often they line up and what the differences are. Would that be possible? Such a document would be a helpful starting point for us.

**The Convener:** Yes—the clerks will be happy to provide that. I suggest that we also put on that grid the additional areas that we will look at, so that it is a full grid. I know that this has been dealt with, in part, in the papers for today's agenda, but it might also be useful for everyone to have a note on that grid of where there is agreement between the Scottish Parliament, the Scottish Government and the Westminster Government on how we should move forward. Are you thinking of an at-a-glance chart that will make deliberations easier?

**Stewart Maxwell:** Yes. As David McLetchie is the only member who was on our predecessor committee, it would be helpful for returning members who were not on the committee in the last session and for the new members to have a simple grid to glance at. That would allow us to tick off quickly areas on which there is agreement and no real debate to be had, and to home in on those on which there is disagreement or in which there is more detail to be looked at.

**The Convener:** If we put it on the committee's web page, it will also be useful for MSPs in general.

**John Mason:** I realise that as I am new to the Parliament I stand to be corrected, but 10 meetings strikes me as being relatively few to examine the range of issues that must be looked at, given that we must consider not only what is in the bill, but what is not in the bill. Is that number of meetings normal?

**The Convener:** There is a recognition that things are fairly tight, especially if the timetable changes. The suggested number of meetings is based on our having a weekly meeting between now and when we have to put together a report.

Members will see from the paper that has been circulated that I have suggested that, for those who can, it may be worth their while coming along to general information meetings at points during recess to engage with people from different walks

of life. I hope that members can take advantage of that. It might be that, through that process, we will be able to home in on issues in a way that will enable us to focus on them better at our formal meetings, which are formally recorded.

I know that James Kelly has two meetings of the Justice Committee to go to this week. That is quite unusual, but it happens. I hope that, should it be felt necessary—if the timescale is becoming constricted—we can consider having more meetings, and perhaps even the odd evening meeting, if it is possible to get at least a large majority of the committee together. I will ask Stephen Imrie to examine those possibilities.

Of course, we cannot sit while the chamber is sitting, and everyone has many commitments apart from this committee—it was really difficult to even get people together for this meeting, as everyone knows, and I had to make a fairly unilateral decision about holding future meetings on a Tuesday afternoon. We cannot suit absolutely everyone, and that is causing difficulties.

Your concerns are noted, John. We all feel that the timescale will be tight, and managing that will be hard work.

Are you just smiling at me, Richard, or do you want to make a comment?

**Richard Baker:** I am just smiling enigmatically at you. However—

**The Convener:** See? I knew you had something.

**Richard Baker:** I assume that, as we are going to finalise our work programme next week, there will still be time to make contributions to the clerks ahead of that meeting, once we have considered the range of topics that are covered in the paper and have thought about the broader programme.

**The Convener:** It would be helpful if everyone could do that. If things come into your mind as you read the paperwork, you should let Stephen Imrie know your thoughts as soon as possible, as there might be a lot of things that have to be slotted in to enable us to make our final decision next week on the work programme.

I should also say that the work programme provides us with a base, but we might choose to consider other issues that arise during evidence taking and further discussion. The work programme is fairly rigid but, by necessity, it is not set in stone.

**Adam Ingram:** I take it that we will discuss the issue of external advisers at next week's meeting, and that we will have a range of people to consider.

**The Convener:** I have chatted about that with the clerks and I am happy to discuss it today, but it has struck me that it might be difficult to decide quickly on advisers, because there is such a broad range of subjects to be dealt with and it will be difficult to get one person or two people who can cover them all. I have asked the clerk to compile a list of experts on the various aspects that we will consider, and we can discuss fully next week whether formally to appoint an adviser or advisers to the committee or to pull in expert advisers for specific elements of the discussion.

**Nigel Don:** I support that suggestion. James Kelly and I were on the Justice Committee in the previous session, when it dealt with the Criminal Justice and Licensing (Scotland) Bill, which was, frankly, three bills rolled into one. We had two advisers and very nearly needed three. It is important to have someone who is seriously expert on the subject that you are working on. I do not think that we will find someone who is going to be able to find their way around all the issues that are before us at the level at which we would like, so the convener's suggestion is a good approach.

**The Convener:** I welcome Joan McAlpine to the meeting.

**Joan McAlpine (South Scotland) (SNP):** I apologise for being late; I could not find the committee room.

**The Convener:** We will get you a wee ball of string for when you go back.

Do you have any interests to declare?

**Joan McAlpine:** I draw members' attention to my entry in the register of members' interests, and the fact that I have a weekly column in *The Scotsman*, for which I am remunerated.

10:15

**The Convener:** We are discussing the work programme, if you want to think about whether there is anything that you would like to mention.

**Stewart Maxwell:** I should have mentioned this earlier, but it would not really be part of the grid to which I referred. Is there a summary document on some of the other contributions that have been made to the wider debate, such as the Steel commission information? I have not read that, except for bits and pieces, so a document—either in full or in summary form—from the Scottish Parliament information centre or the clerks would be helpful.

**Stephen Imrie (Clerk):** I am happy to check with SPICe whether it has produced such a document and, if not, to ask it to produce one for the committee. I am also happy to speak to SPICe

about any further requests for information or briefings for committee members.

**Willie Rennie:** Has the Scottish Government published any papers on the further powers that it is requesting under the bill? I have not seen anything in documentation form.

**The Convener:** As far as I am aware, nothing has been published formally. We have the statements that the First Minister has made in the chamber since Parliament reconvened after the election. We can check whether there is an intention to publish something formally.

**Willie Rennie:** It would be useful if there were more flesh around the proposals. That would allow us to consider the details before evidence sessions.

**The Convener:** John Swinney is available to give evidence to us next week, if the committee agrees.

**Joan McAlpine:** It is my understanding that the papers will be published quite soon. The Crown Estate paper will be the first to be published.

**Stewart Maxwell:** It is today—certainly, there is an article in today's newspapers that comments on the fact that the Scottish Government will submit the paper to the UK Government, although I am not sure whether that is the same as publishing it. We could ask about that.

**The Convener:** We can. I ask Stephen Imrie to check what is available and whether anything that is published as general information or submitted to the UK Government can be supplied to the committee before the Cabinet Secretary for Finance, Employment and Sustainable Growth appears before us.

**Willie Rennie:** It will be difficult for us to take evidence from a minister without having seen detailed documentation in advance, if it exists. We will want to have read all that stuff before we take evidence.

**The Convener:** The Government's views on those matters are a matter of public record. We can probe those views more deeply with the cabinet secretary when he appears before us, but we will certainly request the documentation that you seek.

**Alison Johnstone:** We have mentioned having a grid and ensuring that all of us are up to speed with all developments. Could that process include a policy briefing on the amendments that are being debated at Westminster this week, just so that we understand what impact those may have on the bill?

**The Convener:** Am I right in saying that the clerks intend to provide rolling information on such developments in the run-up to each meeting?



**Stephen Imrie:** Indeed. We will need to keep the committee up to speed as the bill progresses, not only today in the Commons but through the House of Lords, in order that we ensure that members are aware of amendments that have been tabled in the UK Parliament, what they are intended to do and whether they are or are not agreed to along the way. We are happy to look at the bill as it emerges from its third reading and report stage today, and to give members a briefing on what has and has not been agreed to.

There is also a debate to be had about the Scottish Government and its intention to provide the committee with information in the form of a legislative consent memorandum on the amendments as they are tabled, especially if they are new amendments that are substantial and have not been debated before. In that situation, it will be for the Scottish Government to lodge a legislative consent memo to keep the committee up to speed. In any case, the clerks, the legal advisers and SPICe will be happy to do that along the way, to ensure that members are kept fully up to date on the bill at its various stages.

**Stewart Maxwell:** For clarification, was Stephen Imrie suggesting that the Scottish Government will publish an LCM at the end of the process, which was my understanding, or that an LCM will come along with each substantial amendment, so that there will be a number of LCMs as we go along?

**The Convener:** There are timescales within which things must be done. I defer to Stephen Imrie's superior knowledge on that.

**Stephen Imrie:** For members' interest, rule 9B.3.1 in the standing orders indicates that it is for the Scottish ministers to lodge a legislative consent memorandum in relation to any amendment that is tabled in the United Kingdom Parliament that

"makes (or would make) relevant provision for the first time or beyond the limits of any consent previously given by the Parliament, normally no later than 2 weeks after the amendments are tabled or agreed to."

I have spoken informally to the Cabinet Secretary for Parliament and Government Strategy's office and to Scottish Government officials, to find out the Government's intention in relation to the package of amendments that is before the House of Commons today. We will liaise with Scottish Government officials through the process.

The issue is whether the amendments that are made are substantial enough and different enough for the first time to require an LCM. I am sure that the Scottish Government will want to keep the committee and the wider Parliament informed through some sort of commentary on the amendment process along the way. On the

package of amendments that is being considered today, we would normally expect the minister to lodge an LCM within two weeks.

**Stewart Maxwell:** For absolute clarity, are you saying that if the group of amendments is deemed to be substantive, an LCM could be lodged on it, and that if there is further substantive amendment as the bill goes through the House of Lords, there could be further LCMs? There will be not just one LCM at the end of the process.

**Stephen Imrie:** That is exactly the case. Obviously, there will be a decision about how substantial the amendments are and whether they introduce new provisions for the first time or take the bill beyond the consent that was previously given by the Scottish Parliament.

**The Convener:** I thank Alison Johnstone for raising the issue. It is important that we are aware of the changes that are likely to be made. Are members happy for me to pull together their comments so that we can finalise the forward work programme for next week's meeting?

**Alison Johnstone:** Is this the appropriate moment to suggest another couple of areas that we might put into the mix?

**The Convener:** By all means. Anything that you mention will be taken into account.

**Alison Johnstone:** Okay. The first issue is the potential to devolve control of the carbon emissions reduction target or its replacement, or to give the Scottish ministers powers to set targets for the energy companies in delivering their obligations in Scotland. Currently, that happens at UK level, but if we are serious about the commitments that we have all made to address fuel poverty and meet our climate change targets, such an approach would enable us to move faster and further.

Secondly, although higher education is devolved, the Privy Council currently governs the constitutional elements of university governance. Can we look at that? Our universities are facing tough times, and several parties that are represented on the committee have asked questions about university governance in recent times. Is the committee open to considering the issue as part of our work programme?

**Richard Baker:** We should certainly look at other areas. The higher education issue is interesting. Some of the structures of universities are set down by act of Parliament, so it would be interesting to consider the issue, although I am not sure where we would get to. Will we finalise the work programme next week?

**The Convener:** Yes.

**Richard Baker:** Members might want more time to reflect on other areas, in addition to the ones that Alison Johnstone mentioned. I hope to get some suggestions to the clerks during the week.

**The Convener:** There might well be other issues that folk want to raise. I suggest that people feed in potential areas for discussion so that Stephen Imrie can put them on the grid that he is putting together. It is going to be some size of grid, Stephen; we will need to spread it out in the middle of the table.

Joan, do you want to add something?

**Joan McAlpine:** No. I was going to ask about the LCM, but Stephen Imrie has explained that fully.

**John Mason:** I will go back to the timetable, if I may. Is there an issue around the fact that the recesses are different? Could anything happen in July when we are not sitting?

**The Convener:** Yes. The discussion in the House of Lords will take place in July.

**John Mason:** Do we need to react to that?

**The Convener:** Stephen Imrie will keep in close contact with me and James Kelly—we are certainly not going away on holiday together, but I hope that we are not going on holiday at the same time. Stephen will keep in touch with James and me about anything that comes up and it will be our judgment call as to whether something that needs to be done can be done by circulating an e-mail around the committee. If something substantive comes up, we will have to decide whether we need a formal committee meeting as opposed to an informal one. From what we have picked up, I do not imagine that that is likely to happen. Stephen Imrie and his Westminster counterparts are in constant discussion about timetabling, and I do not think that there is any intention to wheech—can the *Official Report* put “wheech”?—anything through just because we happen to be in recess. I hope that the respect agenda will work both ways throughout the process. We will certainly be on top of anything that comes along.

We will pull together members’ views and finalise them next week. I stress that we need to get issues to the clerks as quickly as possible, so that every committee member has the chance to consider everything when the papers come out before the next meeting, rather than at the last minute.

I also suggest that next week we consider issuing an open call for written evidence so that all in Scotland and elsewhere will have a chance to send in their thoughts during the summer recess.

**Richard Baker:** I want to reflect on Willie Rennie’s comments about what the committee

might look for from the cabinet secretary if we agree to invite him to next week’s meeting. Obviously, we will issue a call for written evidence, and presumably the Scottish Government will respond to that call in a number of areas. However, there is a dearth of information and detail about what the Scottish Government proposes in some areas. It has raised with the UK Government a number of the subject areas that are outlined in our work programme, so in advance of next week’s meeting, and to inform our deliberations and any meetings that take place during the summer, I would like the committee to impress upon the cabinet secretary that it would like to have further details about the Government’s proposals and any correspondence that it has had with the UK Government and ministers. Perhaps not official submissions but correspondence and other relevant materials will be essential if we are to make progress, particularly in advance of next week’s meeting with the cabinet secretary, especially if we are to be able to ask him the questions that we need to have answered, and if we are to make general progress during the summer and more quickly once Parliament returns. We are working to a very short timescale.

**The Convener:** The committee should certainly aim to hear from the appropriate ministers, either at the Scottish or the UK level, as quickly as possible. It was originally thought that we would probably not be able to hear any representations from ministers until after the recess, so I am pleased that the cabinet secretary has agreed to come along next week. It is a big mark of respect for the committee and the Parliament, and I am sure that he will be more than willing to give the committee any available information and, at next week’s meeting, to discuss the potential for giving further information. I am sure that he will also be happy to come back to the committee again.

**Stewart Maxwell:** That is the point that I was going to make. Just because the cabinet secretary comes to the committee next week, it does not mean that that is the end of the matter.

**Richard Baker:** I agree; I do not think that either. However, as John Mason rightly said, we are working to a short timescale, so we want to make as much use of and get as much value as we can from the information that we get from next week’s meeting.

10:30

**The Convener:** I presume that the committee is happy that we try to get the UK ministers to commit as soon as possible, with as much notice as possible so that they can get the dates in their diaries.

**John Mason:** Which UK ministers would that be? Is it specifically those from the Scotland Office, or are we thinking of some other areas?

**The Convener:** The Scotland Office ministers are most closely involved at this level, but I imagine that we are likely to have the Treasury minister as well, because there are many important financial aspects to the bill.

**John Mason:** An area that comes to mind is broadcasting. Are we expecting somebody or not?

**The Convener:** These things can certainly be discussed, but in the context of how constrained we are we must look to our clerk to speak to his counterparts and put together an appropriate programme. Perhaps he can remember which UK ministers came to the previous Scotland Bill Committee.

**Stephen Imrie:** Indeed. Broadcasting was not discussed by the previous committee, so the relevant ministers from the Department for Culture, Media and Sport were not present. The ministers who came along in the past were Michael Moore, the Secretary of State for Scotland, and David Mundell, the Minister of State at the Scotland Office. David Gauke, the Exchequer Secretary to the Treasury, and Jim Wallace, the Advocate General for Scotland, came along too. I am happy to make representations on the committee's behalf to whichever UK ministers you feel are most relevant to the subjects that you want to discuss.

**The Convener:** Is the committee content that we look at that in the round and discuss it with UK counterparts?

**Nigel Don:** I am certainly content with that, but I want to pick up on your comment about giving notice. We are talking about what we can do over the summer, and certainly next term. If you were to put a date in the diary—almost any date—and say that we can get a particular minister on a Monday evening, if that is what it takes, I for one would say, "Give us two months' notice and the answer will be yes." To get some of these folk, we may have to reshuffle a few things in our diaries.

**The Convener:** You are calling for flexibility on behalf of all committee members.

**Nigel Don:** I am reflecting that if you give us one week's notice to be here on a Monday night, the answer will probably be no, but if you give us two months' notice, the answer will be yes. That is the challenge for the clerks.

**The Convener:** I am seeing nods all round; do members agree with that?

**Nigel Don:** I was not picking a Monday night in particular—it could be any other time.

**The Convener:** Let us not get into which night everyone thinks would be best.

**Nigel Don:** My point is not what is best for us, but what may be possible for them.

**The Convener:** Yes. It is a good approach to say that we are flexible, and that we are happy to meet as far as possible the potential for visits by UK ministers, because it is important that we see people. We are giving Stephen Imrie a lot of work.

**Stephen Imrie:** That is okay; it is fully expected. There have been no difficulties in scheduling UK ministers in the past, and I hope that that will continue if that is what the committee is looking for.

**The Convener:** I draw our first formal meeting to a close. We will meet again next Tuesday afternoon at 3 o'clock.

*Meeting closed at 10:33.*



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