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Pàrlamaid na h-Alba

Official Report

DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 29 April 2014

Session 4

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DELEGATED POWERS AND LAW REFORM COMMITTEE
14th Meeting 2014, Session 4

CONVENER

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

DEPUTY CONVENER

*Stuart McMillan (West Scotland) (SNP)

COMMITTEE MEMBERS

*Richard Baker (North East Scotland) (Lab)
*Mike MacKenzie (Highlands and Islands) (SNP)
Margaret McCulloch (Central Scotland) (Lab)
*John Scott (Ayr) (Con)
*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Paul Cackette (Scottish Government)
Mary Fee (West Scotland) (Lab) (Committee Substitute)
Joe FitzPatrick (Minister for Parliamentary Business)

CLERK TO THE COMMITTEE

Euan Donald

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 29 April 2014

[The Convener *opened the meeting at 09:30*]

Decision on Taking Business in Private

The Convener (Nigel Don): Good morning. I welcome members to the Delegated Powers and Law Reform Committee's 14th meeting in 2014. We have apologies from Margaret McCulloch and, in her place, I welcome back Mary Fee. As always, I ask members to switch off any mobile phones.

Agenda item 1 is a decision on taking business in private. It is proposed that the committee take items 3 and 4 in private. Item 3 is consideration of the committee's draft report on the Historic Environment Scotland Bill and item 4 is consideration of the evidence that we are about to take from the Minister for Parliamentary Business. Does the committee agree to take items 3 and 4 in private?

Members *indicated agreement.*

"Report on Instruments considered in 2012-13"

09:31

The Convener: It gives me great pleasure to welcome Joe FitzPatrick, the Minister for Parliamentary Business, and Steven MacGregor and Paul Cackette, who, I hope, are here to assist him in giving good answers, which is what it is all about.

The committee's "Report on Instruments considered in 2012-13" noted a reduction in the percentage of instruments reported from the percentage in previous reporting periods. Furthermore, the committee's most recent quarterly reports reflect the relatively low number of instruments reported by the committee to date in the current period. The committee welcomes those figures. What steps is the Scottish Government taking to maintain that improvement and, indeed, reduce the numbers of reported instruments still further?

The Minister for Parliamentary Business (Joe FitzPatrick): Thank you very much for inviting me along today. I appreciate the opportunity to come and speak to the committee and to discuss the annual report and other matters.

We are very pleased with the committee's annual report, which shows the progress that we have made in improving our instruments. As you say, we must continue to do that and not let up on it, so to speak.

I put on record my view that the relationship that we have developed between the committee and the Government has been crucial to making sustained progress in improving the robustness of instruments and reducing the number of times that the committee has to report to us. We value its input and consider that to be part of the process.

When an instrument is reported, we can either view that as a conflict and try to be defensive about it or we can view it as being good that the committee has carried out its role and consider how we can ensure that the mistake or issue does not arise again.

That is the relationship that we have started to develop and we will continue to do that. Therefore, our officials regularly liaise with the committee clerks and the Government's legal advisers regularly liaise with the committee's. We want to continue doing that and ensure that it is instilled in the process in future.

That process has developed a few improvements of our systems. For instance, we now have detailed guidance on drafting Scottish

statutory instruments. That has been developed in liaison with the committee, its clerks and legal advisers to the point that we now have training events for drafters on, for instance, transitional provisions, which the committee raised.

It is necessary to hear what the committee says and find ways to enshrine it in the guidance that we give to our drafters and policy teams. We are trying to get policy teams to understand what the committee does and what it is about so that they take ownership of the quality of their instruments and the delegated powers that are associated with their bills.

The Convener: That is helpful. From this side of the table, I see a developing relationship and reflect what you said about there being a desire simply to get things right between us and not be confrontational if we can sensibly avoid it. We will probably return to transitional provisions later.

Mary Fee (West Scotland) (Lab): Good morning, minister. Prior to recess, there tends to be a sharp rise in the number of instruments laid before Parliament, which can impact on the level of scrutiny that the committee can realistically carry out. What action is the Government taking to ensure that such peaks in the volume of Scottish statutory instruments laid are avoided as far as possible, particularly in light of the unusual recess periods this summer?

Joe FitzPatrick: It is not possible to manage the volume of SSIs in the same way that we manage the volume of bills. Some SSIs come in large packages, which by definition provide a peak. However, we try our best to manage that over the period so that there are not significant peaks.

Going forward we are not expecting any major peaks. As well as having a weekly review of SSIs coming forward, we have put in place the process of taking a much longer view of the horizon and sharing it with your clerks so that we can identify where there is potential for a peak. That can then be managed: the committee can manage its time and we can try to level the workload out over the piece.

Peaks can occur for a number of reasons. The obvious ones are when instruments need to come into force for 1 January or 1 April, but Mary Fee is right that potentially there is a peak prior to a long recess—particularly the long summer recess. This year, the first summer recess period is not quite as long, and we will come back for a period, which might reduce the demand to lay instruments before the summer recess. I hope that the recess periods this year will help to level out the workload.

Mary Fee: So you expect things to go a bit more smoothly.

Joe FitzPatrick: As I said, we cannot manage the volume of SSIs in the same way that we manage bills, but we are not expecting any major peaks this year. We need to look at how we can use the three-week sitting period as part of that process.

Mary Fee: Thank you.

As you will be aware, a negative SSI that has been brought into force less than 28 days after it was laid is automatically reported by the committee for breaching the 28-day rule. Recently, a number of instruments that implement United Kingdom-wide policy were reported under the 28-day rule. The committee notes that, in such cases, the Government's reasons for the breach have included the requirement to wait until the UK Government has laid an instrument in similar terms in the UK Parliament, or the fact that liaison with the UK Government has otherwise delayed the date of laying. What work is the Scottish Government undertaking to ensure better co-ordination with other UK legislatures to avoid such breaches in future?

Joe FitzPatrick: We take these timings very seriously, which is shown by the figures: something like 38 such breaches have occurred since 2011, which is about 3 per cent. That is a very small number, which shows that we do not breach the 28-day rule lightly.

However, as you said, one reason why there have been breaches is that we have to work with other Administrations. We are the only Administration that has a 28-day period. The UK Government, the Welsh Government and the Northern Ireland Executive have 21-day periods. We constantly try to ensure that the UK Government and the other Administrations are aware of our different timings as part of the process. Sometimes we manage and sometimes we do not, but we constantly make the point that we have a 28-day period.

We also try to make the point about our different recess times, which often conflict with when the UK Government is trying to pull something forward. The recess at Westminster is later than ours, so timings get squeezed. We try to continue to have that dialogue. I raise the issue frequently with David Mundell, the Parliamentary Under Secretary of State for the Scotland Office, and I know that in turn he tries to flag it up to UK Government departments.

It is helpful that you are continuing to press the case, because I can make the point that I am being pressed by this committee on the importance of the 28-day rule. The rule is in our standing orders; we think that it is important.

John Scott (Ayr) (Con): In other jurisdictions the period is 21 days. Sometimes it is the UK

Government's fault and sometimes it is the Scottish Government's fault that the 28-day rule is breached. Would there be merit in considering extending the period, given that recesses elsewhere can impact on this Parliament? Is there an opportunity to do so, and would that be sensible? Twenty-eight is an arbitrary figure.

Joe FitzPatrick: The Parliament concluded that 28 days was the correct period in relation to instruments that are subject to the negative procedure. It is not for us to tell other Parliaments that they should change their rules. However, if an instrument is laid in Scotland and the UK at the same time, it is clear that the UK can comply with our rule if it complies with its 21-day rule—that is the case that I would make. Sometimes the driver is further away, because it is European legislation and the timescale is tighter.

Whenever we are trying to work with people on an order that needs to come into force in Scotland at the same time as it does in another jurisdiction, we take every opportunity to stress the need to be mindful of our different timings in Scotland. I have raised the issue with Mr Mundell and will do so again.

Stuart McMillan (West Scotland) (SNP): Are the recess dates the main reason for slippage with the laying of SSIs?

Joe FitzPatrick: The unusual recess dates this year provide an opportunity to even stuff out.

Stuart McMillan: I was thinking less about what is coming and more about the 3 per cent of cases in which there was a breach. Were recess dates the main driver in the delays?

Joe FitzPatrick: There are two main reasons why we would not comply with the 28-day rule. One is the different timescale in the UK. That could be to do with our recess, but I think that it is normally more to do with the UK working to a 21-day period while we work to a 28-day period. Mr Mundell and his office are very aware of the differences, but we must ensure that the message gets to all departments in the UK Government and other Administrations.

The other reason for a breach can be that, although we have laid an order that will come into force after 28 days, this committee or another committee has made comments that we have taken on board and acted on by withdrawing and relaying the instrument or laying an amendment order. It can then become impossible to comply with the rule. I hope that the Parliament regards such instances as examples of the Government working with the Parliament to improve instruments. I think that in most cases the committee accepts our reasons for a breach.

The Convener: It is worth saying that we have a different column for 28-day-rule breaches, for precisely that reason; we regard them as different from other breaches. Of course, the Parliament's stats will not say that, but internally we understand the point.

Richard Baker (North East Scotland) (Lab): In our "Report on Instruments considered in 2012-13", we commented on the quality of instruments that had been laid in packages, specifically in relation to the Police and Fire Reform (Scotland) Act 2012. We expressed concern about the high number of instruments that were reported on and the volume of instruments that were laid in a two-month period. We thought that the approach impacted negatively on the Parliament's ability to scrutinise the instruments. Is the Government taking steps to ensure that the matters that we raised are taken into consideration in future when you lay packages of instruments?

09:45

Joe FitzPatrick: The Police and Fire Reform (Scotland) Act 2012 was a big act with a substantial number of instruments attached in a very large and complex package. We dealt with and communicated with the committee on the instruments as a package. In the main, the process was a good one. However, as you say, it highlighted some issues that we have addressed to improve the process. The committee highlighted that an improvement in the quality of the policy notes would help it. We have put in place more detailed guidance—which we have developed in liaison with the committee, with the committee's clerk and with its legal advisers—on what should be contained in the policy notes.

We also note the point that the committee made in its report about instruments that refer to other instruments that will come in a later group. That happened quite a lot in the package of instruments attached to that act and we have taken on board the committee's point that we should try to avoid that wherever possible. However, sometimes when there is a large number of instruments and the substantive instruments come in two packages there will be a small amount of cross-referencing; it will be unavoidable not to have any cross-referencing, but we need to work to try to reduce it whenever possible.

The other issue is to ensure that the committee is aware of such issues at the earliest possible stage. We have therefore instigated a series of implementation meetings between officials and the committee's clerks. I hope that that helps to give the committee an understanding of how a package fits together and of potential cross-references. Future implementation packages are coming forward. For example, the Marriage and Civil

Partnership (Scotland) Act 2014 will have a number of complex instruments associated with it. We will definitely ensure that we work closely with the clerks so that the committee has an understanding as early in the process as possible about how they all interact.

One of the big things that we have learned is that the implementation meetings are helpful. I will therefore propose that, wherever practicable, we try to hold such meetings for the majority of bills—not only for the big bills—when there are delegated powers. Even if there are not great big packages of instruments, there is a benefit in the committee having an understanding at the earliest stage of how the package of instruments attached to a bill will interact.

Richard Baker: So, when it comes to the equal marriage legislation, we can expect smoother processes.

Joe FitzPatrick: Lessons have definitely been learned and we are trying to implement them, in partnership with the committee's clerks and legal advisers.

The Convener: I cannot but think, though, that there may be problems in future—not with the committee in this session of Parliament—because the cross-referencing to which you refer makes it perfectly legitimate for a committee to turn around and say, "We cannot pass this, because we literally and legally do not know what it refers to." That is understood but, in a future Parliament that might not be quite as consensual as this one, there could be political obstruction. As I say, I am thinking well ahead. We could finish up in a position in which a committee says, "How could we defend this? We literally do not know what it means." There may be some mileage in the Scottish Government developing a protocol so that such a situation can be avoided.

Joe FitzPatrick: I will bring Mr Cackette in shortly. I think that the point is that if we were to pull all the instruments with cross-references into one package, the committee might not like the size of the package that it was being asked to deal with in one go and it might be unwieldy.

Paul Cackette (Scottish Government): I certainly agree that a high level of cross-referencing makes it quite difficult to disentangle the package, because the committee would be expected to look at some aspects when they do not know what will come later on, so the cross-referencing will not work.

As it happens, the Police and Fire Reform (Scotland) Act 2012 package had quite a lot of cross-referencing, but not all packages necessarily have that degree of cross-referencing. We have to ensure that it is all packaged together. The point that came from that process is the need to be thoughtful and sensible about the impact of packages on the committee and on the scrutiny process. For example, for the upcoming implementation of the law on same-sex marriage we can certainly look closely at whether the staging process, even if it involved four stages, might be the same and whether better packaging of statutory instruments in their final form would assist members. That is a valid point, as it must help the committee to see the groupings packaged together, even if they cannot be completely disentangled in cases where there is cross-referencing.

Richard Baker: My next question is on consolidating instruments, which we mentioned in our report. The committee is of the view that legislation should be as clear and accessible as possible to the end user and that subordinate legislation that has been amended multiple times should therefore, where possible, be consolidated in order to provide a clear, up-to-date version of the legislation.

Although we would like as many instruments as possible to be consolidated, we are equally of the view that particular care should be taken to ensure that the end product is accurate and does not undermine the purpose of the consolidation. We understand that the consolidation of instruments is a resource-intensive exercise. Can you tell us how the Scottish Government balances the need to consolidate instruments accurately with the resource pressures that that creates?

Joe FitzPatrick: You make two good points—first, that we all want to make legislation as clear as possible for the end user, whoever that might be, and, secondly, that we have to balance how resources are used across the organisation.

Last year, we did seven consolidations, and so far this year we have already done eight and are continuing to look at other opportunities for consolidation. In determining where a consolidation is appropriate, we consider a number of things, including reviews of policy, changes underpinning the primary legislation, and feedback from the Delegated Powers and Law Reform Committee.

One of the things that are important when asking whether legislation is clear and whether it needs to be consolidated in order to be made clearer is who uses the instrument. Is it being read by legal professionals only occasionally or is it something that members of the public are using daily? Clearly that makes a difference, because if it is something that members of the public have to understand, it must be clear, so that would move it up a step in the order of priority. However, committee members can be assured that if they flag up an area of legislation to be considered for consolidation, it is very much part of our process

to look into such suggestions and see whether there is an opportunity to deal with the issue.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I wonder whether you might consider an approach to the amendment of lists, which are a regular feature of secondary legislation. If, instead of amending a list by substitution, deletion or addition, you always ensured that the secondary instrument simply republished the whole list, that would greatly simplify understanding. In a key area of secondary legislation, it would probably prevent the need for substantial future consolidation effort and all that is implied in that. Is that part of the thinking of officials as they draw up secondary legislation?

Paul Cackette: It depends on the circumstances. With a short list—if there were two changes out of five, for example—it might be sensible to substitute the full list. If it was lengthy, there would be less advantage to publishing the full list. All those options are taken into account when considering drafting techniques and determining the best way forward. The one thing that we have to make clear to the Parliament, if we republish a list, is where the changes are, because with a new list, especially a long one, that would not be immediately obvious. The idea of republishing full lists is certainly something that we would consider, but with lengthy lists we tend not to adopt that practice.

Stewart Stevenson: When the list is lengthy, the advantage is greater for the reader. I will give a sense of balance, however, as to where I am coming from. I understand that, when you put an entire list into an update, you open up matters in the consultation process that you might otherwise wish to leave closed. I absolutely understand that.

Given that, for some lists, it is necessary to look through more than a dozen updates, and that it is not always easy to work out what those are, it would seem a matter of good practice, if you wish to work out what the list looks like, to republish lists as a norm, rather than updating them by a whole series of updates.

Paul Cackette: I can see the sense in that, and it is something that I will certainly take back with me. A number of years ago—I cannot even remember the context—somebody mentioned that a schedule to a statutory instrument had been pinned up on the wall in some workplaces. In that sort of example, a reissued version would be much more beneficial to the user, if that is how it is used in the real world. That is a good example of where such an approach would make sense. As I say, I will certainly take that back with me.

John Scott: Minister, I welcome the fact that there were seven consolidations last year and that you are in the process of doing eight this year. How many pieces of legislation need consolidation? Is it tens or is it hundreds? What criteria do you use? I am asking for a ballpark figure or an impression. We feel that quite a lot of legislation needs consolidating, and I congratulate you—I honestly did not know that so many consolidations were being addressed.

Joe FitzPatrick: There are eight so far; we expect to take more forward. Paul Cackette might be able to give you some numbers. I expect some of the areas that the committee has flagged up to be addressed this year. Some of the areas in which the committee has said that instruments need consolidation are areas in which we are considering bringing something forward this year.

Stewart Stevenson: I will give a good example: that of the Common Good Act 1491. It has been substantially amended, not least by another act in 1911. Nonetheless, three lines of the 1491 act are still active. Really, it would be modestly useful to have that drawn forward into modern legislation, not least because the phraseology of the 1491 act is in a very old form of Scots that requires a little bit of effort.

Joe FitzPatrick: That is taken on board.

The Convener: I admit that I would not be surprised if Stewart Stevenson took the opportunity to address that in the future. Nonetheless, the point is fairly made.

Stuart McMillan: The committee has taken a strong interest in the transitional provisions in statutory instruments. In light of recent examples of the Government and the Parliament not getting those provisions right, the committee agreed with the Government a series of measures to seek to avoid any future such instances. Although the Government has made those commitments, they are not prescribed and, as such, future Administrations do not necessarily need to observe them. The committee is therefore of the view that provision should be made for those commitments in standing orders. Would the Scottish Government be amenable to that?

Joe FitzPatrick: It is certainly something that we need to consider, but we need to consider it carefully. For instance, how would we define what a complex transitional provision was? Those are challenges that we need to address and consider.

That said, progress has been made. The two cases of which the committee is aware were very serious. The circumstances under which those cases came about were very unusual. However, they instigated a process whereby we now take steps to ensure that there are 40 days before instruments come into force. That is in order to allow a greater degree of scrutiny.

We have also ensured that an Executive note is attached to commencement orders, and that complex transitional and savings provisions have a policy note, so that folk can understand their intent and purpose. That applies to all but the simplest SSIs. Although that is unusual, they are important matters with big consequences when it goes wrong. That is why Paul Cackette and your legal adviser—who, I think, was Judith Morrison—have done a degree of work. I ask him to talk about the process that they went through.

10:00

Paul Cackette: I endorse the sentiment that we have a common interest in commencement orders in particular because, once we get to the appointed date, it is much harder to sort things out—harder even than with more run of the mill instruments.

There are various procedures and processes in place to try to minimise the risks of a difficulty arising, one of which is the scrutiny processes that are undertaken. The others are constant updates to the advice and support that we give our drafters. We have undertaken specific training on commencement and transitional provisions in the legal directorate. We did it last year and we plan to run it again this year. All those things are designed to ensure that the risk of such difficulties arising is minimised.

Just now, we have the informal procedure of aspiring to 40 days where we possibly can to maximise the scrutiny opportunity so that, if problems arise, we can sort them out before we get to the appointed date. There are different arguments as to whether embedding that procedure in standing orders would be beneficial. I take the point that, technically, the existing understanding does not bind future Administrations. There might be some arguments about how easy it is to define complexity in those circumstances, when complexity would arise and whether it is beneficial to have a relatively formal standing orders requirement when the consensual approach of working together through the process that we have in place may be as good a way, or a better one, to resolve the issues.

However, a formal requirement is worth considering. We touched on it in the initial discussions to which the minister referred, but they were a little while ago and there may be some sense in revisiting the proposal and considering experience with the more recent provisions. Fortunately, such issues have not arisen with more recent legislation, but we must not be complacent and we must continue to ensure that we work together sensibly. I am not wholly sure whether standing orders is the place to address that but, again, it is one of the issues that I would like to progress in my discussions with the person who will take over from Judith Morrison in advising the committee.

The Convener: Thank you for that general discussion. I am conscious that the convener of the Standards, Procedures and Public Appointments Committee is listening, so I am sure that the thought will not be lost.

I will turn to one of the matters that we have raised with the aforementioned committee, which is currently considering the legislative process. At the moment, delegated powers memoranda do not have to include information on proposed delegated powers that do not relate specifically to subordinate legislation, but we routinely ask you to give us the narrative on them. Could you not just supply it routinely first time round, please?

Joe FitzPatrick: I note your evidence on that to the Standards, Procedures and Public Appointments Committee. I am sympathetic to the point—if we are going to have to provide the information, it makes sense to do it routinely—but I am mindful that that committee has not finished its deliberations.

The Convener: We have raised the point and that is probably pretty much all that there is to say on it.

Joe FitzPatrick: There is one other point. The report made some point about the quality of the delegated powers memorandums. It would be helpful to our efforts to improve them in future if the committee could suggest a couple of times when we have particularly got it right and the memorandums have been just what the committee was after. It would help us with training officials if we could show them the sort of thing that we are talking about and that the committee wants to see.

The Convener: That is a challenge to our advisers to find good examples as well as bad. To be fair, they have been mentioned before, so I think that we will be able to find them.

John Scott: Minister, you will be aware that the committee has had some difficulties with scrutinising the delegated powers provisions in bills between stages 2 and 3 due to the timescales that are involved. In our submission to the Standards, Procedures and Public Appointments Committee inquiry, we therefore expressed a view that it may be beneficial to extend the period between stages 2 and 3 and, in turn, the time before stage 3 by which a revised or supplementary delegated powers memorandum must be lodged. We do not yet know the outcome of the SPPA committee's inquiry, but we would be interested to know the Government's view of the proposal and what steps, if any, the Government can take to address our real concerns on the matter.

Joe FitzPatrick: It is absolutely appropriate that the Parliament is reviewing its procedures to ensure that they remain fit for purpose, and the Scottish Government has already submitted its initial views to the committee's inquiry. I have not yet had an opportunity to properly consider all the submissions that have come in, but you make a good point about the gap between stages 2 and 3. There is certainly the example of the Children and Young People (Scotland) Bill, in relation to which we accepted the argument that you made and moved the deadline for stage 3 so that you had more time.

The thing that we have to remember—and, from our side, to instil in policy teams and ourselves when we are scheduling—is that the timescales are the minimum timescales. We do not have to work to those; we can work to longer timescales, which standing orders allow. I guess that the challenge for us, together, is to try proactively to identify those circumstances so that we do not get to a point at which we have not provided enough time for you to do your job, which is a crucial one.

We certainly need to look at the matter, and a part of that will be for us to look more carefully at the implications for this committee of the scheduling of stage 3, but if you identify an area where you think that you probably need longer, you should give us a heads-up on that. It is to be hoped that we do not then get to the point that we could have got to with the Children and Young People (Scotland) Bill—in that case, we managed to resolve the issue, of course.

John Scott: I am very grateful to you for that answer. I do not wish to labour the point, but I will perhaps reinforce it. When there are a great number of amendments at stage 2, we need to consider the collective impact of the amendments taken as a whole. Sometimes each amendment can be considered individually, but when they are all put together, our legal advisers can have a very real problem.

Significant new delegated powers were introduced to the Public Bodies (Joint Working) (Scotland) Bill at stage 3, but the timing of the lodging of the amendments meant that the committee was unable to consider them until the day of stage 3. Furthermore, the lack of information provided with the amendments meant that the convener sought additional information from the cabinet secretary in the course of the debate on the amendments.

The committee considers that it could be helpful to allow either a longer period between the deadline for amendments at stage 3 and stage 3 itself, or a gap between the consideration of the amendments at stage 3 and the vote on the bill. Pending the outcome of the SPPA committee's inquiry, what changes—if any—could the Scottish Government make to ensure that, when new delegated powers are introduced to a bill at stage 3, the committee is made aware of the amendments as early as possible and provided with as much accompanying information as possible?

Joe FitzPatrick: I will take the last point first. It is absolutely reasonable that we should provide you with information on new delegated powers at the earliest opportunity. However, my view is that, wherever it is practical, we should not introduce new delegated powers at stage 3. That is the message that I am putting out to policy teams. The expectation is that, unless particular circumstances make it unavoidable, new powers should not be introduced at stage 3.

Where, for whatever reason, that is unavoidable, I absolutely agree that the Delegated Powers and Law Reform Committee should be briefed as early as possible and given as much information as possible so that you can get advice from your legal advisers. The point is made, but my bottom line is that, in most circumstances, I would not expect new powers to be brought in at stage 3.

John Scott: Do you have any views on timescales between the lodging of amendments at stage 3 and the stage 3 vote?

Joe FitzPatrick: Do you mean separating the amendment phase of stage 3 and the stage 3 vote?

John Scott: Yes.

Joe FitzPatrick: Standing orders allow for that, but I guess that we will have to consider that on a case-by-case basis. The option exists, and we should perhaps have considered it in the case that you highlighted. Indeed, it has been argued that the option should be used if new powers are brought in at stage 3. We certainly need to consider the matter more thoroughly.

John Scott: Thank you.

Mike MacKenzie (Highlands and Islands) (SNP): Good morning, minister. As you will be aware, last year changes were made to standing orders that altered the committee's remit to allow it to take the role of lead committee in scrutinising certain Scottish Law Commission bills. Can you give the committee any further information on the Scottish Government's plans for such bills? Does the Government have plans to introduce any, and at what rate does it intend to implement them?

Joe FitzPatrick: I am very pleased that the Parliament decided to put these new procedures in place, because it had been argued that it was not paying proper attention to the Scottish Law Commission's reports and that there was no mechanism for taking them forward on a regular

basis. I can inform the committee that subject to the Parliament's agreeing that it meets the criteria laid down by the Presiding Officer's determination, the proposed conclusion of contracts etc bill should be with the committee soon. As the bill will be the first to be scrutinised under the new process, it is important that it goes through successfully. It was very carefully selected and we are all pretty confident that it meets the criteria for the procedure.

Looking forward, I expect that there will be at least one such bill every year. Obviously we will work with the Scottish Law Commission to identify the next bill, because we need to keep up what I think is a good and appropriate process. As I said, we just need to get the first bill through correctly. I expect that you will receive it soon, and we will continue to consider what the next bill will be.

Mike MacKenzie: Thank you. That was very helpful.

The Convener: Stewart Stevenson has another question.

Stewart Stevenson: I do, convener. Certain interesting developments that have come to my attention in the past week have led me to seek out information. First—and I hope that the minister can raise this in a perfectly proper way with David Mundell; it is not intended to be a criticism of anyone—I wanted to establish the basis on which the Confederation of British Industry operated. When I looked on the Companies House website, I discovered that it is registered as a company with the number RC000139. However, the website also says:

"Company Incorporated by Royal Charter (England/Wales)

Please contact the company directly as Royal Charter companies are not obliged to register any documents".

That was not very helpful.

The Convener: Forgive me, Mr Stevenson, but I want to stop you for a number of reasons. First, I am sure that the minister has genuinely got only a minute or two more to give us; secondly, although I do not want to tread on your toes, the association of the subject with this committee is not yet obvious to me; and, thirdly, I am absolutely sure that the minister is not going to have a good answer for you at the moment, given that he has not been forewarned of this question. On that basis, I wonder whether you could put your question down on paper and send it to the minister, who will reflect on it at a later date.

Stewart Stevenson: I could, convener, but I want to point out that the issue falls within the committee's purview. Although the royal charter in question is not a Scottish one, such charters apply equally and, given that the matter is not subject to a legislative process but nevertheless creates law of the land, I am quite confident that it would come to this committee. All I really want to do is express a hope that at his next meeting with Mr Mundell the minister will request that the 900 or so royal charters be made publicly available, because it transpires that at the moment they are not. That is notwithstanding the fact that the website of the Privy Council, which is responsible for them, says that the majority of its work is to do with royal charters. It would be helpful to understand how the public good that is an essential part of a royal charter is auditable one way or another.

10:15

Joe FitzPatrick: We will consider Mr Stevenson's points and identify the appropriate minister to respond to them.

The Convener: That is fine. I also suspect that the Government would find a little bit more detail helpful in order to give Mr Stevenson an even better response.

We have overrun by no more than about a minute, minister—

John Scott: I have a final question on a subject that the committee discussed last week. It is not intended to be a constitutional question. Does the minister agree that in the absence of a revising chamber the committee's scrutiny is perhaps even more important than it might be were there to be such a chamber? If so, can he assure us that the Government takes cognisance of the committee's work?

Joe FitzPatrick: We absolutely do. As I said in my initial comments, I absolutely value the committee's comments in helping us to produce more robust instruments and improve the clarity of legislation. In an ideal world, everything coming from Government would be perfect and the committee would have nothing to do. Of course, we do not live in such a world, and although the Government strives to improve the quality and robustness of what it produces, the committee will continue to play a very important role. I see this as a partnership, and we will continue to look at it in that way.

Today's meeting has been helpful to me; I hope that it has been helpful to you. Perhaps we should meet annually, and perhaps closer to the production of the annual report.

The Convener: I think that we would absolutely agree with that sentiment, minister. Thank you very much.

Finally, I take the opportunity to thank you for coming along, minister, and to thank Steve MacGregor, who is legislation programme manager in the Scottish Government's Parliament

and governance division, and Paul Cackette, who is a solicitor in the Scottish Government legal directorate. I should have said as much at the beginning of the meeting, and I am sorry for not doing so. Thank you for your evidence.

10:17

Meeting continued in private until 10:34.

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