



OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 11 December 2018

Session 5



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CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
“WORK OF THE DELEGATED POWERS AND LAW REFORM COMMITTEE IN 2017-18”	2
INSTRUMENT NOT SUBJECT TO PARLIAMENTARY PROCEDURE	17
Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (Commencement No 1, Transitional and Saving Provisions) Regulations 2018 (SSI 2018/368 (C 23))	17
HEALTH AND CARE (STAFFING) (SCOTLAND) BILL: AFTER STAGE 1	18

DELEGATED POWERS AND LAW REFORM COMMITTEE

37th Meeting 2018, Session 5

CONVENER

*Graham Simpson (Central Scotland) (Con)

DEPUTY CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

COMMITTEE MEMBERS

*Tom Arthur (Renfrewshire South) (SNP)

*Mary Fee (West Scotland) (Lab)

*Alison Harris (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Paul Cackette (Scottish Government)

Graeme Dey (Minister for Parliamentary Business and Veterans)

Steven Macgregor (Scottish Government)

Luke McBratney (Scottish Government)

CLERK TO THE COMMITTEE

Andy Proudfoot

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament
Delegated Powers and Law Reform Committee

Tuesday 11 December 2018

[The Convener opened the meeting at 10:45]

Decision on Taking Business in Private

The Convener (Graham Simpson): I welcome everyone to the 37th meeting in 2018 of the Delegated Powers and Law Reform Committee. Before we move to the main item of business, we have to make a decision on taking business in private. It is proposed that we take in private item 5, which is consideration of the evidence that we are about to hear from the Minister for Parliamentary Business and Veterans. Does the committee agree to take that item in private?

Members indicated agreement.

“Work of the Delegated Powers and Law Reform Committee in 2017-18”

10:45

The Convener: Agenda item 2 is consideration of the committee’s work during the parliamentary year 2017-18. We have before us Graeme Dey, the Minister for Parliamentary Business and Veterans, who is accompanied by the Scottish Government officials Steven Macgregor of the Parliament and legislation unit; Luke McBratney of the constitution and United Kingdom relations division; and Paul Cackette from the legal directorate. Thank you all for coming—you are very welcome.

I understand that you want to make some opening remarks, minister.

The Minister for Parliamentary Business and Veterans (Graeme Dey): Yes, with your indulgence, convener, but I will keep them brief.

When I appeared before the committee previously, I said that the committee has a hugely important role in scrutinising the delegated powers that ministers and others are to be given through new acts and in scrutinising the use of existing powers, and I very much remain of that view. You carry out an important duty for the Parliament, and you do so rigorously, which is as it should be. The importance of the committee’s work will become increasingly apparent as we get further into the legislative preparations for Brexit.

Today’s principal topic is the committee’s sixth annual report. I welcome the fact that the report highlights the improvements that the Government has made across a number of areas in the past reporting year. I am particularly pleased that the committee has reported that the quality of instruments from the Government has continued to improve. The report reflects the fact that the standard of legislation that is produced is generally high, although I accept that there is always room for improvement and I intend to deliver on that whenever possible, taking account of the views of the committee and other committees of the Parliament.

As the report recognises, the current parliamentary year will be challenging, with the legislative implications of Brexit remaining unclear. I am certain that it will require even better planning, quality assurance and an explanation of the Government’s Scottish statutory instrument programme, which is a challenge that Mike Russell, the Cabinet Secretary for Government Business and Constitutional Relations, and I are tackling jointly.

I give a commitment that my officials will continue to work closely with the committee clerks and the Parliament to ensure that there is an accurate and up-to-date flow of information on the expected number of SSIs stemming from the European Union (Withdrawal) Act 2018. I also assure the committee that it is a priority of mine that the standard of all instruments that come before the Parliament will continue to be as high as possible. I am sure that my officials will vouch for that.

I do not want to take up any more time, convener, as I am here to answer the committee's questions.

The Convener: Your officials were smiling nervously as you said that, minister. Thank you for those comments, which are appreciated.

As you say, we welcome the overall improvement in the quality of secondary legislation, but we were disappointed that the number of instruments that were drawn to the attention of the Parliament on the three most significant reporting grounds increased. That increase predated your appointment, but what are you doing to address the issue?

Graeme Dey: I take that point on board, convener. Whether or not those instruments predate my appointment, I am responsible for them and I am here to answer for that increase. A lot of work is going on that was started by my predecessor, Joe FitzPatrick, which I am ensuring continues. It might be useful to bring in Paul Cackette to detail some of the work on the impact of Brexit.

The committee wrote to me in the third quarter of the reporting year to congratulate the Government on the lowest number of instruments being reported since the production of the quarterly reports began. Obviously, that was positive, but we have a comprehensive and on-going training programme for drafters, and robust checks are in place at each point in the process. Ideally, mistakes would not be made, but we are all human and it happens. We are trying to drive down the number of mistakes as much as we can. If this committee and other committees spot something that they think is an issue, it is important that they draw it to our attention.

I will bring in Paul Cackette to talk about what we are doing on Brexit.

Paul Cackette (Scottish Government): It is worth saying a little about the work on quality assurance that the committee knows that we do and about the process that we have in place. It is important to recognise that that falls into two categories. We follow technical and process steps to support the quality of instruments and—to endorse what the minister said—the legal services

directorates very much intend to maintain a relationship with the committee and the committee's legal advisers that recognises the value of the committee's scrutiny. That relationship is respectful and creates a culture in which we are willing to respond so that, if things go wrong, we accept that we need to do better and get things right in the future.

The convener mentioned examples of instruments that were reported on reporting grounds. It is important to me that, when things go wrong and we accept that there is scope for improvement, that is a wake-up call for us as much as anyone. We recognise the importance of achieving the maximum quality in instruments, and aspiring to the highest standard possible involves a cultural aspect.

As the committee knows, we have procedures and systems in place to support drafters of instruments in their own divisions. We have a checking process called styling that gives an overarching view across the directorate, which ensures consistent quality and standards as well as responsiveness to points that the committee has made.

We also have quality control systems that involve senior lawyers checking instruments before they come to the Parliament. That is particularly important now because, although we have been fortunate to recruit additional new staff to the directorate in the past year—most, if not all, of them are now in place—they are all new to the Government, so it is necessary to take additional steps in their induction to ensure that they are supported and that they understand the procedures and processes that we apply to instruments. One step that we took was the relaunch of our SSI drafting manual in the directorate in August. That is all part of the support that new members of staff are given.

We are looking at peaks in order to smooth out work across divisions. In the directorate, some areas of activity have more Brexit-related demand than others, so we are identifying ways for additional drafting resource to step in to meet the requirements to lay instruments in time for proper scrutiny. That involves people who have been identified as skilled and autonomous drafters. They might not have expertise in the areas concerned, so we are taking steps to train them so that they understand the context.

We are working closely with the solicitors to the committee to maintain the quality of instruments. Along with internal checks, that has been a key priority for us in assuring the standard of outputs. The period ahead will be a challenge for us, because of the number of instruments that are coming, but we are maintaining quality as far as

we can and ensuring that people are tooled up effectively to deliver as need be.

The Convener: Thank you for that comprehensive answer, Mr Cackette. That is very encouraging.

Are you doing anything to ensure that legislation is clear and understandable to the end user—the layman, if you like? I know that you feel strongly about that, minister.

Graeme Dey: The answer to that question is yes. It might not always appear so, but I absolutely get that point. The approach that we have been planning to adopt will be rolled out from the start of 2019. A simple, two-paragraph covering note will come with any instrument to give an understanding, right at the outset, of what the instrument seeks to achieve. We have taken on board some of the valid criticisms that came from the Conveners Group, and that approach should become apparent in the early months of next year.

The Convener: That is good. The committee was pleased to note that relatively few commitments are outstanding from the period covered by our report, but there are some historical commitments outstanding from previous parliamentary years. That issue was raised with your predecessor and we were given an assurance that the Government would report back to the committee on its plans to reduce the figure, but we have yet to receive such an appraisal. Can you give us an update on that today?

Graeme Dey: I can, and I apologise if you have not had that report already. We are on the case, as it were. As you know, we undertake to find opportunities as they arise to correct anything that needs to be addressed. The Government's intention is to fulfil all the current commitments by the end of the current parliamentary session and to fulfil as many new commitments as possible.

I will write back to you formally in response to your annual report, including as much of an update as I can on the timings of when we intend to fulfil those commitments. We have dates for some of them. For example, there are a number of outstanding commitments to be fulfilled in the early weeks of 2019, but we are still trying to identify a suitable opportunity to make other amendments.

I will write back to you in response to your annual report, but, if it is useful, we will look to provide regular updates to the committee. I said to officials this morning that it might be helpful if, when we know that we are going to take some action, we apprise the committee of that, if you would like us to.

The Convener: That would be very useful. Of course, you may feel that it is no longer necessary to correct the legislation to fulfil some of those

commitments. If that is the case, you could let us know.

Graeme Dey: Absolutely.

The Convener: Since you gave evidence to us in September, what progress has been made on the quality of accompanying documents? I will show you an SSI that has come to us. You will have a copy of the Housing (Scotland) Act 1987 (Tolerable Standard) (Extension of Criteria) Order 2019, which came to the committee last week. There is nothing to concern this committee, but there may be questions for the lead committee. The SSI is very short. That may be a good thing, but the policy note is also extremely short. I think that there are a number of questions that any member of the lead committee would want to drill down into, and the policy note is probably not detailed enough. Given that it is quite an important piece of legislation that will require homeowners to install smoke alarms and carbon monoxide detectors, I feel that a level of detail is lacking. We could go too far one way by oversimplifying instruments, but at some point the lead committee will have to consider that instrument and I do not think that the policy note contains enough information.

Graeme Dey: I have had the issue drawn to my attention only in the past few minutes, but I understand the point that you are making. If you are amenable, we will look into the matter and get back to the committee on it. The lead committee will obviously raise any concerns that it has, but I take your point. You are also right in saying that there is a balance to be struck between responding to the asks of parliamentary committees and going too far in that regard. We will get back to you on that in detail, if that is okay.

We have revised our internal guidance to emphasise the need to provide accessible summaries and policy notes. Alongside that, we have been undertaking a sampling process and have been looking at instruments to see whether, on reflection, they do what they should do and are explained simply enough. That work has thrown up some good learning for us, and we will continue to develop that approach because it is clearly paying dividends—I could offer some examples. We recognise that we can do better, and that is what we aspire to do. I hope that those checking processes will help to get us there.

I would not say that we welcome this, but we are open to committees such as this one showing us examples—as you have done today—of where we could do things differently, and we will take that advice on board.

The Convener: Okay. That is appreciated.

11:00

Alison Harris (Central Scotland) (Con): What steps does the Government take when it receives notification of minor points from the committee?

Graeme Dey: I recognise that the committee has highlighted an increase in the number of instruments that contain, from the committee's perspective, minor points of issue. Those include typos that would not invalidate the legislation in any way. The short answer to the question is that we take those points on board and we try to improve. I will bring in Paul Cackette to give a detailed answer on what that looks like in practice.

Paul Cackette: What we do depends on what the impact of the minor points would be: clearly, an assessment is made of the extent to which the points that arise will create legal doubt or ambiguity or lack of clarity. We like to address such things sooner rather than later. This goes back to the balance to be struck between the commitment to correct instruments and our not wanting to clog up the committee or the statute book with minor amendments when no real ambiguity could be perceived. However, if there are questions or real worries about whether something creates ambiguity or is wrong, that would be addressed sooner rather than later.

Alison Harris: Thank you for your response. I appreciate that the minor points do not affect the validity of the instruments, but 84 instruments that were lodged by the Scottish Government over the reporting period had minor points that the committee notified, which was 22 more than in the previous reporting period. It is therefore important that the Government takes steps to ensure that the number of minor points that are being reported is reduced.

Graeme Dey: The checking process could be improved. Human nature is such that when we have shaped a document and continue to read it and check it ourselves, we tend to see what we think is on the page rather than what is actually there. There is a lesson for us on how we go about the checking process. I give a commitment on that, because we aspire to do better in that regard.

Alison Harris: Thank you. The committee has noted that some bills that are currently being considered by Parliament have contained a high number of delegated powers—for example, the Planning (Scotland) Bill and the Transport (Scotland) Bill have more than 100 delegated powers between them. The committee aims to ensure that its scrutiny of delegated powers balances the need to give the Government legislative flexibility with the need to provide accountability and transparency in the exercise of those powers. However, given the high number of delegated powers in some bills, how does the

Government strike a balance between flexibility and accountability and transparency when preparing legislation? What are the key factors in deciding whether a delegated power is to be included in a bill?

Graeme Dey: I do not think that there is a specific Government trend of having bills that include a high number of delegated powers. I acknowledge the criticism that has been made about that, but I do not think that there is a trend. I guess that a number of things come into play—practical application, or how the bill is to be delivered, being one.

Of course, it might well be the case that bills in relation to which a high number of amendments are lodged by members of committees will lead to delegated powers being brought into play. That is not to excuse us with regard to the concerns that you are expressing.

The key thing is that a bill that contains a sizeable number of delegated powers is not a blank cheque for the Government, because the secondary legislation will come back to the committees and be scrutinised in detail, and those committees will have the opportunity to bring ministers before them to explore the issues. The parliamentary process is sufficiently robust to allow such checks and balances.

At the outset, the Government can engage with committees. A good example of that would be the Social Security (Scotland) Act 2018, in relation to which Jeane Freeman was heavily engaged with the Social Security Committee. That will have a lot of secondary legislation attached to it, but I think that we got the bill to a satisfactory space.

There is work to be done between the Government and the committees to work through issues at the early stages. If there are concerns about specific bills, however, I am happy to explore them.

The Convener: Do you ever look at a bill such as the two that Alison Harris mentioned and think, "That is quite a lot of delegated powers and we should maybe trim things down a bit"?

Graeme Dey: The issue comes down to practical application. Legislation must be implementable in a sensible way. I do not have any sense that colleagues are desperate for delegated powers; I think that it is just a question of how legislation develops. If the committee has concerns around trends, I am happy to explore those.

Stuart McMillan (Greenock and Inverclyde) (SNP): I have a number of questions, the first batch of which concern Brexit, I am afraid.

How many consent notifications under the SI protocol have been sent to the Parliament and how many are still to come?

Graeme Dey: To date, 56 notifications covering 91 SIs have been sent to the Scottish Parliament. Parliament has agreed to the Scottish Government consenting to 75 SIs. Although the numbers continue to fluctuate—the way things are going, they might have fluctuated since I walked in here—there remain approximately 32 notifications covering 45 SIs.

Stuart McMillan: Can you give us an indication of when the last notification might be sent?

Graeme Dey: I am not passing the buck, but we are largely in the hands of the United Kingdom Government in that regard. As you are aware, the UK SI programme is managed and run by the Cabinet Office and the Department for Exiting the European Union, which means that we are not in control of laying dates. There are fortnightly discussions with the Cabinet Office and DEXEU to discuss SIs. Steven Macgregor is heavily involved in those, so I will bring him in to update you on them.

We believe that we are currently in the peak period for notifications. I think that 20 SIs were approved by lead committees last week. We are halfway through the programme, and we think that the volume of notifications will tail off, although we still expect notifications in January and, potentially, beyond then. That is a ballpark estimate. Obviously, we will keep this and other committees updated through my monthly letters and through on-going discussions with your officials.

Steven Macgregor (Scottish Government): We work as closely as we can with the UK Government to understand what its overall SI programme looks like and where instruments with devolved applications fit into that. We are at a little bit of an advantage because of the SI protocol requirement for a 28 days notification period. That means that, 28 days ahead of the UK laying an instrument, we have to start the process, so we get an early look at what the UK Government is planning to do. The UK Government understands that requirement very well and knows that the Scottish Parliament needs that time to scrutinise instruments and offer its views.

The UK Government is also actively trying to avoid laying lots of instruments in February and March, although I think that it is inevitable that there will be a small number. We are trying to understand what that will look like. Obviously, the minister writes to all committees monthly to set out what the future profile looks like. We will keep doing that as best we can.

Stuart McMillan: I have questions on a couple of areas that you raised. We all understand the

reasons for the 28-day period, but there may be occasions when it cannot be achieved. How will the Government work with the relevant lead committees to ensure that they have sufficient time to consider notifications when the timetable is constrained?

Graeme Dey: That is a fair question. Obviously, we aspire to adhere to the 28-day rule, but that is not always in our control. Of the 91 notifications that we have sent, 74 have had the 28-day period. It is regrettable that, in a few instances, it has not been possible to adhere to the 28-day period. The simple answer is that we are working as hard as we can with the UK Government to ensure that it adheres to the 28-day requirement under the protocol, and we will do whatever we can to mitigate problems when it is not possible to have 28 days. We write to committees as soon as possible to advise them of the position that we are in. We are not comfortable with breaching the 28-day period in the protocol, but that is where we are.

Stuart McMillan: You mentioned the monthly updates to the committees, which have certainly been helpful for them in considering their work programmes and the other work that they have to undertake. When you write to the committees, do you supply the expected timetables regarding the SIs that are coming their way?

Graeme Dey: I will just say first, as a final point on your previous question, that we are profiling the remaining notifications to see whether we anticipate any issues so that we can give committees an early heads-up. I am sorry. I should have said that earlier.

In the monthly updates, we provide as much information as possible, but it is not always as detailed as we want it to be. In some workstreams, a committee will get very detailed information including dates, but in other parts of its work it will not, simply because we do not have them. That depends on what comes from UK Government departments. That is not to suggest that there is a deliberate policy of being difficult on the part of UK Government departments; the situation is simply where we are. They face the same challenges as we do. In some instances, there is a fair bit of detail, but in others there is not so much.

I give the committee the assurance that we provide whatever information we have. That is the open approach that we are trying to take. We all have to pull together to get Parliament through the consequences of Brexit.

Stuart McMillan: I think that you answered on this earlier, but I want clarification of a figure that you mentioned. Did you say that 34 SSIs are due to be laid under the European Union (Withdrawal) Act 2018 before 29 March next year?

Graeme Dey: I will double check that, so that I am not misleading the committee. I am told that the number is 36. Steven Macgregor will expand on that.

Steven Macgregor: Currently, we anticipate laying 36 Brexit-related SSIs before Parliament before the end of March 2019, and we think that most of them will be laid in January and February. We are looking at the situation carefully to avoid peaks within the overall number. We are also having regard to the Scottish Government's convention on last laying dates and the last laying dates in the Parliament's standing orders, with a view to giving the Parliament as much time as possible to scrutinise instruments.

Graeme Dey: At present, we anticipate that the breakdown will be that 25 of the instruments will meet the convention requirements and 11 will meet the standing orders' requirements.

Stuart McMillan: That is helpful. Thank you.

The Convener: You said that the 28-day period has not been met for a number of SIs. What has been the worst example?

Steven Macgregor: I think that the number of days for one of the food standards instruments that went to the Health and Sport Committee was initially in single figures, although we managed to push back on that with the UK Government.

I do not wish to go into a lot of detail about it, but there have been cases of the UK Government having planned to lay SIs that the Scottish Parliament would have had fewer than 28 days to consider, but we managed to work with the UK Government to get it to change the laying profile to ensure that the Scottish Parliament would get 28 days to scrutinise those instruments. We will continue to do that in every case in which it is possible.

The Convener: Has there been no case in which the lead committee has struggled to deal with an instrument?

11:15

Steven Macgregor: Apart from the example from the Health and Sport Committee in relation to food standards instruments, the committees have had as much time as they needed. If they have not had enough time, they have come to us and told us that. We will work with the UK Government to do what we can to ensure that the time is available.

Mary Fee (West Scotland) (Lab): Good morning, minister. As with consent notifications, do relevant subject committees know the number of instruments that they are likely to have to consider?

Graeme Dey: The monthly updates provide information as we go along. The number can vary from month to month; the committees have accepted that. As I said, we give the committees as much information as possible: there is no holding back.

Mary Fee: In a previous response, you said that 36 instruments will be laid before the end of March 2019 to deal with a no-deal scenario. When might the remaining SSIs that will be required under the European Union (Withdrawal) Act 2018 be laid, and how many instruments will there be?

Graeme Dey: That is Luke McBratney's area of expertise.

Luke McBratney (Scottish Government): I have talked to the committee in the past about the principles that the Scottish Government is applying to the prioritisation exercise. The 36 SSIs represent the Scottish Government's judgment of the areas of law that it is essential that we fix in advance of March 2019. The Government's policy is to address all areas—it will not address some but not others. It is about the order in which everything is done; a necessary process of prioritisation is being applied to that.

At the moment, the precise timetable to which we will be working is unclear. On the assumption that we will be working to a March 2019 timetable, the remainder of the corrections will be done as soon as possible after March 2019.

Mary Fee: Do you have any idea of the number of corrections?

Luke McBratney: We do not, at the moment. Our focus has been on making the essential corrections that are required, and to do so according to the original timetable. In the event of an implementation period being agreed and further time being provided to make the necessary preparations for exit from the European Union, we will be able to come back to the committee with our changed planning assumptions.

Mary Fee: That would be helpful.

Alison Harris: Has the Scottish Government made any estimates of the impact that any transition period or implementation period that is agreed as part of a withdrawal agreement with the EU would have on the timing and volume of EU exit instruments?

Luke McBratney: The effect of agreement to an implementation period in the first place would be to move the relevant date by which corrections would require to be made from March 2019 to December 2020. In the absence of an agreement on a framework for a future relationship, the number and content of those corrections would not necessarily change, although we would have more time to make the corrections—until at least

December 2020. The March 2019 date is not only the default position for EU exit; it is also the only concrete date that we currently have that we can work towards. In advance of a meaningful vote and withdrawal agreement legislation being laid, that continues to be the assumption to which the Government is working.

Mary Fee: The number of SSIs laid since September has been down on the numbers laid in previous years. Are any SSIs being held up or delayed to allow resources to be deployed to deal with the Brexit instruments?

Graeme Dey: The simple answer is no, not at the moment. As things stand, instruments have not been held back as a consequence of Brexit. However, the committee will appreciate that we need to keep resourcing all our legislation programmes as best we can. That has to be reviewed. Where prioritisation becomes necessary, our key consideration is the public interest, but we would also take account of the impact on the committees, which have work programmes that often have to dovetail quite closely. If we had decisions to take that would impact the committees, we would engage with them.

Mary Fee: Are you concerned that a reduction in SSIs that are not directly connected to Brexit might lead to deficiencies in other areas of legislation?

Graeme Dey: No, because where we have to bring in SSIs, we will. I do not anticipate a problem in that regard.

Mary Fee: I appreciate that you regularly update the committee on the number of SSIs that are laid. Do you have an indication of how many domestic SSIs are expected to be laid by the end of June 2019?

Graeme Dey: We currently anticipate that around 150 non-Brexit-related domestic SSIs will be laid before summer recess in 2019. Inevitably, certain types of SSIs need to be laid at specific times, for example to tie in with the start of the financial year.

We are not anticipating a spike of SSIs above 150 over the next six months, which I imagine is another of your concerns. We continue to keep that under review, and we are trying to manage it in a way that avoids a deluge of SSIs coming to particular committees, if at all possible. You will remember that I was a committee convener in a previous life, so I understand the challenges.

Mary Fee: Do you have a comment on the way in which the secondary legislation programme is managed and the steps that are taken to balance the number of SSIs that are laid each week?

Graeme Dey: A number of factors come into play with that, such as the available resource to draft the SSIs. We have a programme across Government because SSIs are not seen in the context of portfolio silos, although the decision to bring forward SSIs sits with individual portfolios and ministers. We keep under close review the projected number of instruments and whether packages of instruments need to be managed in certain ways to avoid spikes.

Over the past few months, among many other things, I have been talking to colleagues across Government about how we develop better information about medium-term to long-term domestic SSI plans. That is feeding into the letters that go to the committees. There has always been dialogue between officials and clerks to committees; that has not changed in principle, but I hope that the committees agree that we have improved the flow of information through the system.

Everybody recognises that, across the board, it is a fluid position to which we have to respond. I think that, as a whole, the Parliament has been responding superbly to the challenges that have been placed in front of it.

Mary Fee: In response to an earlier question from the convener, Paul Cackette spoke about the additional resource that has been taken on to deal with the Brexit SSIs. Has any other additional resource been deployed to deal with all the instruments that are expected over the coming months?

Paul Cackette: Yes. We have been fortunate in the legal directorate to have been able to recruit some resource in the past year. That was not all designed around Brexit; other drivers led to that resource being taken on.

We have looked at other areas in which there are people with the skills and experience to assist. One of those is the Scottish Law Commission; some of the Scottish Government lawyers who are on secondment there and who have the skills have been deployed to start on the drafting work. That was done with the agreement of the chair of the Law Commission. It is being done in a way that assists the smoothing of the process from our perspective but also, ideally, from the scrutiny perspective, so that instruments come in a more measured way to the Parliament. We are also doing it in a way that, as far as possible, minimises the impact on the work of the Law Commission.

One of the strengths of the Government legal service is that opportunities arise for lawyers to work not just in mainstream legal work but elsewhere in the Government, including places such as the Law Commission. It is at times like this that we have to be imaginative in how we

utilise the resource. The period of time involved now is short but intense. That has been crucial for some of the decisions that we have taken, as we have recognised that, by doing such things, we can minimise the impact of this period and ensure the continuation of much of the essential work of organisations such as the Law Commission.

Mary Fee: Thank you. That was very helpful.

Graeme Dey: All told, four lawyers and the CEO have been assisting, and they will do so through to the end of March.

The Convener: Your mention of the Law Commission is handy, as our next line of questioning is about it, following a visit by committee members. Tom Arthur has a few questions.

Tom Arthur (Renfrewshire South) (SNP): Good morning to the minister and officials. We have discussed SSIs and, inevitably, Brexit a great deal. A key piece of work that has been undertaken by the committee in recent months has been the Prescription (Scotland) Bill, which is an SLC bill. Why are there no SLC bills in this year's programme for government? Is there any particular reasoning or thought behind that?

Graeme Dey: A range of factors is taken into account when we are developing the annual legislative programme. It remains our intention to include one SLC bill per legislative programme that would be appropriate for referral to this committee, but there were no suitable bills at an appropriate state of readiness that the Government was confident would meet the criteria for referral to the committee for inclusion in the year 3 legislative programme—that in essence is where we were. We are still working with the SLC to identify and prepare appropriate bills. Potential candidates are in the pipeline—one would be on judicial factors—so there may be something coming. No decisions have been taken by the Cabinet on the content of the next legislative programme, but I am happy to update the committee in due course on the delivery plans for SLC bills. That is probably as much as I can say at the moment.

Tom Arthur: I appreciate that answer. Your point about criteria is interesting. Do the criteria for referral to this committee for SLC bills act as a barrier to their introduction by the Government?

Graeme Dey: I would not necessarily use the word "barrier", but we would be willing, perhaps along with the committee, to revisit the criteria for referral to the DPLRC, as they are restrictive. From our point of view, if the committee is interested in examining that issue, we could ask our respective officials to work together to explore it further and report back on how we could change them for the next session.

Tom Arthur: I appreciate that, minister. You have mentioned that it is normally the Government's intent to bring forward one SLC bill per legislative programme. Has there been any consideration of the potential for more than one area of law reform to be included in an SLC bill?

Steven Macgregor: The committee has raised that point before and we have looked at it. It is difficult to sequence things in the right way for that to happen; it is difficult to get the Scottish Law Commission's reports done at the same time to enable us to take forward two or more topics in the same bill or, sometimes, to get topics that are related to fit into the same bill. As the minister said, if we are looking at ways of increasing the rate of implementation in order to get more bills prepared for the DPLRC to look at, looking at the criteria might help.

Tom Arthur: We have discussed SSIs and SLC bills, and my final question is about consolidation bills, which also fall within the remit of this committee but are much rarer. Has consideration been given to any consolidation bills? Are there any plans in this session to bring forward any such bills?

Steven Macgregor: That is an area that is kept under review. At present, although there are potential candidates for consolidation, they have to take their place in the queue for prioritisation among the domestic and Brexit priorities that we are delivering. I will ask Paul Cackette if he is aware of any particular candidates within the legal directorate.

Paul Cackette: There is nothing that I am aware of.

The Convener: Just to mop up, I note that, when we visited the SLC, we were made aware of a number of reports that it has produced over a number of years but which have gone nowhere. There was obviously frustration at the fact that, although it had done all that work, nothing had happened with it. Is there any intention to revisit some of those reports and bring them forward as legislation? You could, at least, let the SLC know whether that is your intention.

Graeme Dey: At the outset of the discussion, you indicated that a lot of this predates my time as minister, and this matter certainly does. Can I take it away, have a look at it and write back to the committee in detail?

The Convener: Yes, that will be useful. We can probably assist you by sending you a list of what is outstanding.

Graeme Dey: Absolutely. I will have a look at it for you.

The Convener: It will get you started. I should also tell you that we have written to the Law

Commission, because it asked about the criteria for bills and whether the committee's remit can be extended in that respect. I have written back to the commission as convener of the committee, and I will share that correspondence with you. I guess that we can take things from there, given that in your previous answer you agreed to look at the matter.

Graeme Dey: We are open to having dialogue with the committee on how this can be done better in future.

The Convener: As members have no more questions, I thank the minister for his time and for what has been another useful evidence session.

I briefly suspend the meeting.

11:31

Meeting suspended.

11:32

On resuming—

Instrument not subject to Parliamentary Procedure

Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 (Commencement No 1, Transitional and Saving Provisions) Regulations 2018 (SSI 2018/368 (C 23))

The Convener: Item 3 is consideration of an instrument not subject to parliamentary procedure. As no points have been raised on the instrument, is the committee content with it?

Members indicated agreement.

Health and Care (Staffing) (Scotland) Bill: After Stage 1

11:32

The Convener: Item 4 is consideration of the Scottish Government's response to the lead committee's report on the Health and Care (Staffing) (Scotland) Bill. Members seem to have no questions, so does the committee just wish to note the response?

Members indicated agreement.

The Convener: We now move into private session.

11:32

Meeting continued in private until 11:34.

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