



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# DELEGATED POWERS AND LAW REFORM COMMITTEE

Tuesday 23 February 2016

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.scottish.parliament.uk](http://www.scottish.parliament.uk) or by contacting Public Information on 0131 348 5000

---

**Tuesday 23 February 2016**

**CONTENTS**

	<b>Col.</b>
<b>LAND AND BUILDINGS TRANSACTION TAX (AMENDMENT) (SCOTLAND) BILL: STAGE 1</b> .....	1
<b>BANKRUPTCY (SCOTLAND) BILL: STAGE 2</b> .....	2
<b>INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE</b> .....	14
Scottish Landfill Tax (Qualifying Material) Order 2016 (SSI 2016/93) .....	14
Scottish Landfill Tax (Standard Rate and Lower Rate) Order 2016 (SSI 2016/94) .....	14
<b>INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE</b> .....	15
Utilities Contracts (Scotland) Regulations 2016 (SSI 2016/49) .....	15
Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51) .....	16
Concession Contracts (Scotland) Regulations 2016 (SSI 2016/65) .....	16
Seed (Licensing and Enforcement etc) (Scotland) Regulations 2016 (SSI 2016/68) .....	18
Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/82) .....	19
Council Tax Reduction (Scotland) Amendment Regulations 2016 (SSI 2016/81) .....	19
Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016 (SSI 2016/66) .....	21
Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Order 2016 (SSI 2016/67) .....	22
Seed (Fees) (Scotland) Regulations 2016 (SSI 2016/69) .....	22
Building (Scotland) Amendment Regulations 2016 (SSI 2016/70) .....	22
Building (Energy Performance of Buildings) (Scotland) Amendment Regulations 2016 (SSI 2016/71) ....	22
Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2016 (SSI 2016/72) .....	22
Civic Government (Scotland) Act 1982 (Metal Dealers and Itinerant Metal Dealers) (Verification of Name and Address) Regulations 2016 (SSI 2016/73) .....	22
Local Government Pension Scheme (Management and Investment of Funds) (Scotland) Amendment Regulations 2016 (SSI 2016/74) .....	23
Charities Accounts (Scotland) Amendment Regulations 2016 (SSI 2016/76) .....	23
Firefighters' Compensation and Pension Schemes (Scotland) Amendment Order 2016 (SSI 2016/77) ...	23
Firefighters' Pension Scheme (Scotland) Amendment Regulations 2016 (SSI 2016/78) .....	23
Firemen's Pension Scheme (Amendment) (Scotland) Order 2016 (SSI 2016/79) .....	23
National Assistance (Assessment of Resources) Amendment (Scotland) (No 2) Regulations 2016 (SSI 2016/80) .....	23
Plant Health (Scotland) Amendment Order 2016 (SSI 2016/83) .....	24
Healthcare Improvement Scotland (Delegation of Functions) Order 2016 (SSI 2016/86) .....	24
National Assistance (Sums for Personal Requirements) (Scotland) (No 2) Regulations 2016 (SSI 2016/87) .....	24
Wester Ross Marine Conservation Order 2016 (SSI 2016/88) .....	24
Restriction of Liberty Order etc (Scotland) Amendment Regulations 2016 (SSI 2016/89) .....	24
Loch Sunart to the Sound of Jura Marine Conservation Order 2016 (SSI 2016/90) .....	24
<b>INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE</b> .....	25
Air Weapons and Licensing (Scotland) Act 2015 (Commencement No 2 and Transitional Provisions) Order 2016 (SSI 2016/85) .....	25
Criminal Justice (Scotland) Act 2016 (Commencement No 1 and Saving Provision) Order 2016 (SSI 2016/95) .....	25
Scottish Fire and Rescue Service (Appointment of Chief Inspector) Order 2016 (SSI 2016/96) .....	25
<b>LAND REFORM (SCOTLAND) BILL: AFTER STAGE 2</b> .....	26

---

# **DELEGATED POWERS AND LAW REFORM COMMITTEE**

## **7<sup>th</sup> Meeting 2016, Session 4**

### **CONVENER**

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

### **DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

### **COMMITTEE MEMBERS**

\*Lesley Brennan (North East Scotland) (Lab)

\*John Scott (Ayr) (Con)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

### **THE FOLLOWING ALSO PARTICIPATED:**

Fergus Ewing (Minister for Business, Energy and Tourism)

Colin Gilchrist (Legal Adviser)

### **CLERK TO THE COMMITTEE**

Euan Donald

### **LOCATION**

The Adam Smith Room (CR5)

## Scottish Parliament

### Delegated Powers and Law Reform Committee

*Tuesday 23 February 2016*

*[The Convener opened the meeting at 10:21]*

### Land and Buildings Transaction Tax (Amendment) (Scotland) Bill: Stage 1

**The Convener (Nigel Don):** Good morning, ladies and gentlemen, and welcome to the Delegated Powers and Law Reform Committee's seventh meeting in 2016. As always, I ask members to switch off their mobile phones.

Agenda item 1 is consideration of the Scottish Government's response to the committee's stage 1 report on the Land and Buildings Transaction Tax (Amendment) (Scotland) Bill. If members have no comments, is the committee content to note the response and consider the powers after stage 2?

**Members** *indicated agreement.*

## Bankruptcy (Scotland) Bill: Stage 2

10:21

**The Convener:** Item 2 is the formal stage 2 proceedings on the Bankruptcy (Scotland) Bill. Members should have copies of the bill, the marshalled list and the groupings of amendments.

I welcome to the meeting the Minister for Business, Energy and Tourism, Fergus Ewing MSP—good morning, sir—who is accompanied by Alex Reid, head of policy development at the Accountant in Bankruptcy, and Graham Fisher, head of branch 1 in the civil and constitutional law division of the Scottish Government legal directorate. We will move straight on.

*Sections 1 and 2 agreed to.*

### Schedule 1—Debtor to whom section 2(2) applies: application of Act

**The Convener:** The first group of amendments is on conjunctions. Amendment 1, in the name of the minister, is grouped with amendments 8, 9, 13, 45, 48, 49, 70 and 71.

**The Minister for Business, Energy and Tourism (Fergus Ewing):** I thank the committee for its careful scrutiny of the bill thus far. The first group of amendments responds to the committee's queries by adjusting conjunctions in the bill, particularly with regard to issues explored at stage 1, and removing the word "or" in connecting certain provisions. The Scottish Law Commission drafter is content with the approach.

Although the Government does not accept that as a matter of law there would be doubt about any of the powers involved, amendments 1, 8, 9, 13, 45, 48, 49, 70 and 71, in my name, will remove the word "or" from the powers in the bill that the committee highlighted, which will ensure that the bill follows more exactly the Bankruptcy (Scotland) Act 1985. The amendments will also make minor adjustments to conjunctions in the bill.

I invite the committee to support amendment 1 and the other amendments in the group, and I move amendment 1.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** I support what the minister has proposed. As a mathematician, I think that it is worth saying that 16 different operations can be applied to the combination of two elements. The word "or", as it is commonly used in the English language, is ambiguous, because it can be exclusive or inclusive. In mathematics, there are different terms for the different forms. The minister's proposal, which the committee asked

for, removes the potential for ambiguity and is therefore a helpful contribution to the clarity of the resulting legislation.

**The Convener:** Minister, do you wish to wind up or comment on the legal position of mathematics?

**Fergus Ewing:** I was not aware of those matters, but I am always ready to advance my education.

*Amendment 1 agreed to.*

**The Convener:** Amendment 2, in the name of the minister, is grouped with amendments 7, 19 and 22.

**Fergus Ewing:** The group contains minor amendments that arise from issues in the committee's stage 1 scrutiny of parts 1 to 4 of the bill, as listed in annex A to the committee's report. The changes reflect points that the drafter has accepted.

Amendment 2 amends paragraph 5(4) of schedule 1 to ensure that the law remains unchanged, while amendment 7 reorders provisions in section 12 to make the section consistent with section 11. Amendment 22 restores the wording "as soon as possible" that is used in the 1985 act, even though the change to the phrase

"as soon as may be"

was not thought to have any practical effect. Finally, amendment 19 restores a provision that was inadvertently not carried across to the bill.

I invite the committee to support the amendments in the group, and I move amendment 2.

*Amendment 2 agreed to.*

*Schedule 1, as amended, agreed to.*

### **Section 3—Debt advice and information package**

**The Convener:** Amendment 3, in the name of the minister, is grouped with amendment 72.

**Fergus Ewing:** Amendments 3 and 72, which take up a minor restructuring that was raised by the committee and agreed to by the drafter at stage 1, move the definition of

"debt advice and information package"

from the interpretation section to section 3. The package is an important measure that gives the debtor details about sources of debt advice, and I invite the committee to support the amendments.

I move amendment 3.

*Amendment 3 agreed to.*

*Section 3, as amended, agreed to.*

*Sections 4 to 9 agreed to.*

### **Section 10—Death or withdrawal**

**The Convener:** The next group of amendments is on abbreviations. Amendment 4, in the name of the minister, is grouped with amendments 5, 6, 10 to 12, 21, 26 to 41 and 61 to 68.

**Fergus Ewing:** The 31 amendments in the group address the point that stakeholders and committee members raised about the use of abbreviations. It is important to record that abbreviations can be a useful drafting device, particularly for providing legal certainty and avoiding lengthy repetition. Equally, though, it is important to ensure that the bill is accessible.

As the drafter has accepted, abbreviations can be dispensed with in places, and accordingly the amendments remove the abbreviations from sections 10, 14 and 63 and schedule 6. Amendment 21 defines the term "C", which stands for "creditor", clearly for sections 46 and 47, which work together.

Abbreviations have been left in some of the bill's other provisions, including those in sections 69 to 73. In those provisions, the device provides clarity, given the large cast list involved, and it is also helpful in making clear which provisions of the bill need to be read together.

I invite the committee to support the amendments in the group, and I move amendment 4.

**Stewart Stevenson:** I welcome the changes, particularly because I believe that abbreviations should be used with caution. Where they have been retained in the bill, I am content that there is adequate proximity between the original spelling out of what is subsequently abbreviated and the abbreviations. That is a perfectly good thing to do.

As a general principle, I have always been uncomfortable with the practice of using single letters to indicate actors in a piece of legislation, particularly when that legislation reuses the same single character in different parts of the construct to mean different people. The amendments that have been lodged avoid that risk but, when single letters are used to refer to particular actors, they should not be reused in different contexts in different parts of the bill. That does not apply in this case, but the general principle is important.

10:30

**Fergus Ewing:** By way of background and to amplify Mr Stevenson's points, I point out that Government drafting practice considers that abbreviations can be a helpful drafting device when used in appropriate circumstances. They can assist with legal certainty and avoid lengthy

repetition, which makes provisions hard to read, and they can help to avoid gender-specific terminology. Removing abbreviations may make legislation more accessible in some but not all cases. There can be a trade-off between accessibility and legal certainty. Abbreviations have a place.

Mr Stevenson is correct to say that using a letter to denote two different things in the same legislation could introduce uncertainty. In the James Bond films, there is no doubt about who M is.

*Amendment 4 agreed to.*

*Amendments 5 and 6 moved—[Fergus Ewing]—and agreed to.*

*Section 10, as amended, agreed to.*

*Section 11 agreed to.*

### **Section 12—Petition for sequestration of estate: provision of information**

*Amendment 7 moved—[Fergus Ewing]—and agreed to.*

*Section 12, as amended, agreed to.*

### **Section 13—Further provisions relating to presentation of petitions**

*Amendments 8 and 9 moved—[Fergus Ewing]—and agreed to.*

*Section 13, as amended, agreed to.*

### **Section 14—Further provisions relating to debtor applications**

*Amendments 10 to 12 moved—[Fergus Ewing]—and agreed to.*

*Section 14, as amended, agreed to.*

*Sections 15 to 21 agreed to.*

### **Section 22—When sequestration is awarded**

*Amendment 13 moved—[Fergus Ewing]—and agreed to.*

*Section 22, as amended, agreed to.*

### **Section 23—Circumstances in which sequestration is not to be awarded in pursuance of section 22(5)**

**The Convener:** Amendment 14, in the name of the minister, is grouped with amendments 15 to 18, 20, 23 to 25, 42, 50 and 52.

**Fergus Ewing:** Amendments 14 to 18, 20, 23 to 25, 42, 50 and 52 revert to using the word “forthwith” in the bill as it is used in the Bankruptcy (Scotland) Act 1985. The intention of the drafting changes in the bill as introduced was to modernise

terminology. I want to be clear that the Government does not support outdated terminology in bills, including consolidation bills, when there is scope for modernisation. In particular, because this is a consolidation bill that provides for the continuity of the law, its intention is clearly not to change the meaning of the relevant provisions. Nonetheless, in the circumstances of the bill and given the points made by R3 Association of Business Recovery Professionals, the committee and the drafter at stage 1 about the difficulties in translating the ambiguity that is inherent in the word “forthwith”, the amendments will put the bill’s provisions precisely in line with the source legislation.

I invite the committee to support all the amendments in the group, and I move amendment 14.

**Stewart Stevenson:** I was never certain that “forthwith” is an obsolete word and that remains my position. It is interesting that the word has occurred in parliamentary debate since the issue arose in this context without it being used by any of those who have been party to the discussions in the committee. The fact that it spontaneously emerged as a word in common use by someone who is considerably younger than I am suggests that it is not yet obsolete.

In any event, I am an aficionado of the “Oxford English Dictionary”, which is the most definitive description of the English language. It has a simple rule: once something appears in the dictionary, it is never removed. Therefore, as far as that dictionary is concerned, the word “forthwith” will remain for ever more, and I very much welcome that fact.

**John Scott (Ayr) (Con):** Perhaps a little less loquaciously, I will express my support for the Government’s reinstatement of “forthwith”. The ambiguity that the word provided when the original legislation was constructed was almost certainly deliberate; perhaps “ambiguity” is too strong a word and “flexibility” describes it better. I am pleased that “forthwith” will be reinstated.

**Fergus Ewing:** The background notes that I have reveal that the bill as introduced preserved the term “forthwith” in section 22 at the request of stakeholders such as HM Revenue and Customs, which wished to retain the existing jurisprudence and particularly that on the requirement on the sheriff to grant an award of sequestration. One can see that there is a clear purpose and rationale behind HMRC—which is frequently a petitioner in petitions for sequestration—preserving existing case law as a guide to interpretation.

A number of individuals made the point—we thought on reflection that it was valid, which is why we lodged the amendments—that preserving the

word “forthwith” and not replacing it with terms such as “without delay” or “immediately” would avoid the perception of any change in the meaning of the legislation. Of course, consolidation legislation is not intended to, and should not, amend the law; it should consolidate the law. The word “forthwith” will therefore remain on the statute book, if the committee so agrees.

*Amendment 14 agreed to.*

*Section 23, as amended, agreed to.*

*Sections 24 and 25 agreed to.*

#### **Section 26—Registration of warrant or determination of debtor application**

*Amendments 15 and 16 moved—[Fergus Ewing]—and agreed to.*

*Section 26, as amended, agreed to.*

#### **Section 27—Further matters in relation to award of sequestration**

*Amendment 17 moved—[Fergus Ewing]—and agreed to.*

*Section 27, as amended, agreed to.*

*Sections 28 and 29 agreed to.*

#### **Section 30—Recall of sequestration by sheriff**

*Amendment 18 moved—[Fergus Ewing]—and agreed to.*

*Section 30, as amended, agreed to.*

*Section 31 agreed to.*

#### **Section 32—Application under section 31: further procedure**

*Amendment 19 moved—[Fergus Ewing]—and agreed to.*

*Section 32, as amended, agreed to.*

*Sections 33 to 44 agreed to.*

#### **Section 45—Procedure where no statutory meeting called**

*Amendment 20 moved—[Fergus Ewing]—and agreed to.*

*Section 45, as amended, agreed to.*

#### **Section 46—Submission of claims for voting purposes**

*Amendment 21 moved—[Fergus Ewing]—and agreed to.*

*Section 46, as amended, agreed to.*

*Section 47 agreed to.*

#### **Section 48—Proceedings before trustee vote**

*Amendment 22 moved—[Fergus Ewing]—and agreed to.*

*Section 48, as amended, agreed to.*

#### **Section 49—Trustee vote**

*Amendments 23 and 24 moved—[Fergus Ewing]—and agreed to.*

*Section 49, as amended, agreed to.*

*Sections 50 to 54 agreed to.*

#### **Section 55—Removal, resignation etc of interim trustee**

*Amendment 25 moved—[Fergus Ewing]—and agreed to.*

*Section 55, as amended, agreed to.*

*Sections 56 to 62 agreed to.*

#### **Section 63—Termination of original trustee’s functions**

*Amendments 26 to 41 moved—[Fergus Ewing]—and agreed to.*

*Section 63, as amended, agreed to.*

*Sections 64 to 69 agreed to.*

#### **Section 70—Removal of trustee other than where trustee is unable to act or should no longer continue to act: general**

*Amendment 42 moved—[Fergus Ewing]—and agreed to.*

*Section 70, as amended, agreed to.*

*Sections 71 to 85 agreed to.*

#### **Section 86—Further provision as regards vesting of estate**

**The Convener:** We come to minor and technical amendments to parts 5 to 8. Amendment 43, in the name of the minister, is grouped with amendments 44, 46 and 47.

**Fergus Ewing:** Amendments 43 and 44 insert text that was inadvertently omitted during drafting, and amendments 46 and 47 make minor typographical amendments. They address points that were raised by the committee and were agreed by the drafter of the bill at stage 1.

I invite the committee to support all the amendments in the group, and I move amendment 43.

*Amendment 43 agreed to.*

*Section 86, as amended, agreed to.*



**Section 87—Dealings and circumstances of debtor after sequestration**

*Amendment 44 moved—[Fergus Ewing]—and agreed to.*

*Section 87, as amended, agreed to.*

*Section 88 agreed to.*

**Section 89—Assessment of debtor's contribution**

*Amendment 45 moved—[Fergus Ewing]—and agreed to.*

*Section 89, as amended, agreed to.*

*Sections 90 to 95 agreed to.*

**Section 96—Payment break**

*Amendment 46 moved—[Fergus Ewing]—and agreed to.*

*Section 96, as amended, agreed to.*

*Sections 97 to 102 agreed to.*

**Section 103—Orders under section 101: supplementary**

*Amendments 47 and 48 moved—[Fergus Ewing]—and agreed to.*

*Section 103, as amended, agreed to.*

*Sections 104 and 105 agreed to.*

**Section 106—Recovery orders: supplementary**

*Amendment 49 moved—[Fergus Ewing]—and agreed to.*

*Section 106, as amended, agreed to.*

*Section 107 agreed to.*

**Section 108—Taking possession of estate by trustee**

*Amendment 50 moved—[Fergus Ewing]—and agreed to.*

*Section 108, as amended, agreed to.*

*Sections 109 to 118 agreed to.*

**Section 119—Public examination**

**The Convener:** We come to minor and technical amendments to parts 9 to 14. Amendment 51, in the name of the minister, is grouped with amendments 53 to 56.

**Fergus Ewing:** Amendments 51 and 53 to 56 fix references and a typographical error, and make minor changes that were accepted by the drafter and the Government during stage 1. I would be

happy to expand on the amendments, should members wish me to.

I invite the committee to support the amendments in the group, and I move amendment 51.

**The Convener:** Given that no one wants to speak, I do not think that you need to add to those comments, minister.

*Amendment 51 agreed to.*

*Section 119, as amended, agreed to.*

*Sections 120 to 125 agreed to.*

*Schedule 2 agreed to.*

10:45

**Section 126—Adjudication of claims: general**

*Amendment 52 moved—[Fergus Ewing]—and agreed to.*

*Section 126, as amended, agreed to.*

*Sections 127 to 129 agreed to.*

**Schedule 3—Preferred debts**

*Amendment 53 moved—[Fergus Ewing]—and agreed to.*

*Schedule 3, as amended, agreed to.*

*Sections 130 to 162 agreed to.*

*Schedule 4 agreed to.*

*Sections 163 to 167 agreed to.*

**Section 168—Payment of debtor's contribution**

*Amendment 54 moved—[Fergus Ewing]—and agreed to.*

*Section 168, as amended, agreed to.*

*Section 169 agreed to.*

**Section 170—Documents to be sent to creditors**

*Amendment 55 moved—[Fergus Ewing]—and agreed to.*

*Section 170, as amended, agreed to.*

*Sections 171 to 185 agreed to.*

**Section 186—Protected trust deed: discharge of trustee**

*Amendment 56 moved—[Fergus Ewing]—and agreed to.*

*Section 186, as amended, agreed to.*

*Sections 187 to 199 agreed to.*

### **Section 200—Supervisory functions of Accountant in Bankruptcy**

**The Convener:** The next group is on minor and technical amendments to parts 15 to 18. Amendment 57, in the name of the minister, is grouped with amendments 58 to 60, 69, 73 and 75 to 77.

**Fergus Ewing:** Amendments 57 to 60, 69, 73 and 75 to 77 make the minor changes to parts 15 to 18 of the bill identified in annex A of the committee's stage 1 report. They include words omitted in consolidating certain provisions of the Bankruptcy (Scotland) Act 1985, and rectify minor typographical errors and references to other legislation. Again, convener, I can expand on this group should members wish.

I move amendment 57.

**The Convener:** It seems that members have nothing to add.

*Amendment 57 agreed to.*

*Amendments 58 and 59 moved—[Fergus Ewing]—and agreed to.*

*Section 200, as amended, agreed to.*

*Sections 201 to 210 agreed to.*

### **Schedule 5—Information to be included in the sederunt book**

*Amendment 60 moved—[Fergus Ewing]—and agreed to.*

*Schedule 5, as amended, agreed to.*

*Sections 211 to 217 agreed to.*

### **Schedule 6—Meetings of creditors and commissioners**

*Amendments 61 to 68 moved—[Fergus Ewing]—and agreed to.*

*Schedule 6, as amended, agreed to.*

*Sections 218 to 222 agreed to.*

### **Section 223—Disqualification provisions: power to make regulations**

*Amendments 69 and 70 moved—[Fergus Ewing]—and agreed to.*

*Section 223, as amended, agreed to.*

### **Section 224—Regulations: applications to Accountant in Bankruptcy etc**

*Amendment 71 moved—[Fergus Ewing]—and agreed to.*

*Section 224, as amended, agreed to.*

*Sections 225 to 227 agreed to.*

### **Section 228—Interpretation**

*Amendment 72 moved—[Fergus Ewing]—and agreed to.*

*Section 228, as amended, agreed to.*

*Sections 229 to 233 agreed to.*

### **Schedule 7—Re-enactment of sections 10 and 189 of the Bankruptcy (Scotland) Act 1913**

*Amendment 73 moved—[Fergus Ewing]—and agreed to.*

*Schedule 7, as amended, agreed to.*

### **Section 234—Modifications, repeals, savings, revocations and transitional provisions**

**The Convener:** Amendment 74, in the name of the minister, is grouped with amendment 78.

**Fergus Ewing:** As noted in my letter of 11 February, amendments 74 and 78 simplify commencement of the bill, following discussions with the Scottish Courts and Tribunals Service. They amend sections 234 and 236 of the bill so that the operational provisions of the bill will no longer apply to petitions or applications for sequestration lodged before the commencement date for the bill where sequestration has been awarded by that date. Instead, the bill will simply apply to petitions or applications lodged after the commencement date.

It is a modest and sensible change to assist the courts' transition to the new regime in the bill. I am assured by the Scottish Law Commission that it does not affect the law consolidated by the bill.

I invite the committee to support both amendments in the group, and I move amendment 74.

**Stewart Stevenson:** I welcome the couple of changes on that matter. It is always useful, once a legal process has commenced, that it is allowed to complete under the rules and the legal formulation that applied at the point of commencement. There is, of course, the balancing difficulty that sequestrations as a process, while taking approximately three years in general, can often take much longer. However, the balance of advantage will always lie with allowing the legal process to continue under the regime that existed at the time that it was initiated, unless there is some overriding reason why that has to be changed. Accordingly, I welcome the changes.

**Fergus Ewing:** The aim of the amendments is to assist the court authorities in handling petitions lodged before commencement, which will be able to proceed under the old law. The amendments do not affect the law consolidated by the bill.

*Amendment 74 agreed to.*

*Section 234, as amended, agreed to.*

**Schedule 8—Modification of enactments**

*Amendments 75 and 76 moved—[Fergus Ewing]—and agreed to.*

*Schedule 8, as amended, agreed to.*

**Schedule 9—Repeals and revocations**

*Amendment 77 moved—[Fergus Ewing]—and agreed to.*

*Schedule 9, as amended, agreed to.*

*Section 235 agreed to.*

**Section 236—Sequestrations to which this Act applies**

*Amendment 78 moved—[Fergus Ewing]—and agreed to.*

*Section 236, as amended, agreed to.*

*Sections 237 and 238 agreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration.

10:53

*Meeting suspended.*

10:58

*On resuming—*

**Instruments subject to Affirmative Procedure**

**Scottish Landfill Tax (Qualifying Material) Order 2016 (SSI 2016/93)**

**The Convener:** No points have been raised by our legal advisers on the order. Is the committee content with it?

**Members** *indicated agreement.*

**Scottish Landfill Tax (Standard Rate and Lower Rate) Order 2016 (SSI 2016/94)**

**The Convener:** No points have been raised by our legal advisers on the order. Is the committee content with it?

**Members** *indicated agreement.*

## Instruments subject to Negative Procedure

### Utilities Contracts (Scotland) Regulations 2016 (SSI 2016/49)

10:59

**The Convener:** Scottish statutory instrument 2016/49 contains drafting errors. First, “services contract” is a significant term in the regulations and is mentioned in regulation 2(1) in relation to the definition of “contract”, and in regulations 35(3)(c), 61(1)(a), 77(10), 85(4)(b) and 85(8)(a) and (b). Those provisions should have referred to “service contract”, which is the term defined in regulation 2(1).

Secondly, there is a minor error in regulation 3(1), which introduces the subject matter and application of the regulations. The reference to

“procedures for procurement for the award of a contract, or to the organisation of a design contest”

is an error. The Scottish Government intends that “to” should be read as “for” in the provision. It is not self-evident, however, that that particular word should be read into the provision.

Does the committee agree that the errors should be corrected by means of an amending instrument, rather than by means of a correction slip, as soon as possible?

**Stewart Stevenson:** I am always uncomfortable when something that appears to be substantive—this is a case in which it could be—is dealt with simply by correction slip on the narrow ground that that denies the Parliament the opportunity to see, first, that such a change is being made and, secondly, why the change is being made. The committee should ask that the correction be effected by an amending instrument rather than simply by a correction slip that would pass many people by—it would certainly pass the Parliament by.

**John Scott:** I support what Stewart Stevenson says. I think that it would be welcomed if the Government were able to bring forward an amending instrument rather than a correction slip as soon as possible.

**The Convener:** If I catch the mood aright, members feel that a correction slip should deal with a patent error whereas something about which there is manifest ambiguity and in relation to which it is not at all obvious what is meant should not be corrected by a correction slip.

**Stewart Stevenson:** You have used the correct word, convener. There is a manifest error, but the

manifestly correct solution to the error is not manifest.

**The Convener:** I take it that the committee agrees that the regulations should be corrected.

**Members indicated agreement.**

**The Convener:** Does the committee therefore agree to draw the regulations to the attention of the Parliament on the general reporting ground, as they contain drafting errors?

**Members indicated agreement.**

### Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51)

**The Convener:** The regulations contain two drafting errors. First, there is an error in regulation 17 in that the references to “the chief constable” in paragraph (8)(a) and (b) should instead be references to “the senior officer”.

Secondly, there is an omission in that the reference to the “Conduct Regulations” in the definition of “misconduct hearing” in rule 2 of the Police Appeals Tribunals (Scotland) Rules 2013—hereinafter to be known as “the rules”—requires to be updated to refer instead to the “2014 Conduct Regulations”. That is required in consequence of other changes to the rules made by the regulations.

The Scottish Government has undertaken to lay an amending instrument to deal with those points as soon as is reasonably practicable. Does the committee agree to draw the regulations to the attention of the Parliament on the general reporting ground, as they contain two separate drafting errors?

**Members indicated agreement.**

### Concession Contracts (Scotland) Regulations 2016 (SSI 2016/65)

**The Convener:** The regulations contain various errors. The following provisions appear to be defectively drafted. First, paragraph 2 of the preamble narrates that the instrument makes ambulatory references to 11 directives, Council regulations or Commission decisions, so that those measures are to be construed as amended from time to time. The operative provisions of the instrument have omitted to make all those ambulatory references apart from one, in regulation 32(18) relative to directive 1999/93/EC.

Secondly, the definition in regulation 2(1) of “contracting body” should have been a definition of “contracting entity”, meaning a contracting authority or utility. “Contracting entity” is an

expression that is used many times in the regulations.

Thirdly, regulation 63(1) makes transitional provision when a procurement was commenced before 18 April 2016. The provision contains an exception that refers to regulation “47(1)(a) to (3)”. That exception should have covered the circumstances that are set out in regulation 47(1)(a), (2) and (3)—on termination of concession contracts—and so not the circumstances that are set out in regulation 47(1)(b) and (c).

Fourthly, regulation 63(2) makes a saving provision when a procurement was commenced before 18 April 2016. The provision contains an exception in respect of a “service concession contract”. It was intended to refer to a “services concession contract” as defined by regulation 3(3). A “service concession” has a different meaning, which is contained in the concession contracts directive—directive 2014/23/EU—and that meaning is applied by virtue of regulation 2(2).

Furthermore, the following provisions contain other drafting errors. In regulation 51(5), “GPS economic operator” is defined, but the term that is used in the regulation is “GPA economic operator”. Regulation 64(2) makes a transitory provision before the full commencement of regulations 32(1) to (7), which contain rules as to the electronic means of communication. There is a patent error, as the provision applies during a period beginning on 18 April “2106” rather than 2016, which is the commencement date of most of the provisions of the regulations.

The Scottish Government has undertaken to lay an amending instrument to correct those errors, and the amendment would also come into force on 18 April 2016. Does the committee agree to draw the regulations to the attention of the Parliament, as they contain various drafting errors?

**Stewart Stevenson:** As part of my on-going campaign for the use of plain English in parliamentary procedures and processes, I wonder whether the committee could have an explanation of the term “ambulatory references”.

**The Convener:** I might be able to help you. Ambulatory means walking, and they are therefore references that walk on to the stage every time that we need to see them. They are actors who appear on the stage at the moment they are referred to, so they are references that apply wherever they fit into the law at that point in time. I am looking at the lawyers who will be able to tell me whether I am right or wrong.

**Colin Gilchrist (Legal Adviser):** That is essentially correct, convener. The European instrument has to be read as amended from time

to time, so any amendments to the European instrument will be taken into account over time.

**The Convener:** Are you happy with that explanation?

**Stewart Stevenson:** Forgive me, convener, but I want to be absolutely clear that our issue with the omission of ambulatory references is that the provisions are fixed at a particular version of a European instrument, whereas the legal intention is that they should continue to refer to that instrument as amended or replaced thereafter. Is that what we are saying?

**Colin Gilchrist:** Yes, that is correct. Without the ambulatory reference, the reference to the European instrument is fixed at the point of making the instrument. It does not take into account any subsequent amendments.

**Stewart Stevenson:** I think that I have got it. We are saying that it should be drafted in a way that makes clear that it refers to the instrument and all successors or amendments to that instrument, and that without that reference it does not have that effect.

**Colin Gilchrist:** Yes.

**Stewart Stevenson:** Right, I think that I am better informed. I hope that readers of the *Official Report* will be similarly informed. Thank you, convener.

**The Convener:** You are welcome. Are there any other comments?

**John Scott:** Taken together, there seem to be quite a lot of mistakes in the regulations, which is disappointing. The mistakes are quite serious, particularly the ambulatory references. We can only hope that there is time to correct all the stuff that needs to be corrected and to bring the instrument into force on 18 April.

**The Convener:** Indeed, but my information is that the Government has agreed that it will do so. Let us hope that it has the means. Nonetheless, does the committee agree to draw the regulations to the attention of the Parliament in the normal way in relation to the various drafting errors?

**Members indicated agreement.**

**The Convener:** Does the committee agree to report the defective drafting points on ground (i) and to report the other drafting errors on the general reporting grounds?

**Members indicated agreement.**

### **Seed (Licensing and Enforcement etc) (Scotland) Regulations 2016 (SSI 2016/68)**

**The Convener:** Paragraphs (2), (6) and (7) of regulation 15 appear to be defectively drafted.

Those paragraphs require ministers to take certain steps in relation to a “licence holder”. The policy intention, however, is that certain of those steps are required to be taken in relation to persons who are not licence holders, having regard to the definition of that term in regulation 2, but who have simply applied for a licence under regulation 4. To the extent that paragraphs (2), (6) and (7) of regulation 15 fail to refer to the latter group of persons, those paragraphs do not appear to fully deliver the intended policy.

The committee may wish to note the Scottish Government’s intention to amend regulation 15 to correct the errors at the earliest available opportunity, and the committee may also wish to encourage the Scottish Government to do that as soon as possible, and in any event prior to the commencement of the regulations on 1 July 2016.

Does the committee agree to draw the instrument to the attention of the Parliament under reporting ground (i), as paragraphs (2), (6) and (7) of regulation 15 appear to be defectively drafted?

*Members indicated agreement.*

#### **Education (Fees, Awards and Student Support) (Miscellaneous Amendments) (Scotland) Regulations 2016 (SSI 2016/82)**

**The Convener:** The regulations contain a drafting error. New paragraphs (2) and (3) of regulation 2 of the Education Maintenance Allowances (Scotland) Regulations 2007, as inserted by regulation 12, each refer to “paragraphs (1)(a)”. The correct references should be to “paragraphs 1(a)”, without the brackets around “1”.

The committee may wish to welcome the Scottish Government’s commitment to amending the error at the next available opportunity. Does the committee nonetheless agree to draw the instrument to the attention of the Parliament under the general reporting ground, as it contains a drafting error?

*Members indicated agreement.*

#### **Council Tax Reduction (Scotland) Amendment Regulations 2016 (SSI 2016/81)**

**The Convener:** Our legal advisers have suggested that the regulations raise a question of whether they relate to matters that are reserved by section F1 of part II of schedule 5 to the Scotland Act 1998, and as such the committee may wish to report the regulations as raising a devolution issue.

The matter has been raised several times before in connection with previous instruments

that amended the Council Tax Reduction (Scotland) Regulations 2012 and the Council Tax Reduction (State Pension Credit) (Scotland) Regulations 2012, which I will refer to as “the principal regulations”. Each time our legal advisers were of the same view—that a devolution issue had been raised. The Scottish Government’s view is that the principal regulations do not relate to any of the reserved matters that are described in section F1 of part II of schedule 5 to the Scotland Act 1998, and that therefore no devolution issue is raised. The Government’s view has remained the same each time the committee has considered the issue in relation to the principal regulations and amending regulations. Each time the committee has considered the matter in relation to the principal regulations and the amending regulations, a majority of members have preferred the Scottish Government’s view. I invite members’ comments.

**Stewart Stevenson:** I concur with the Scottish Government’s position that this is not an issue that is covered by section F1 of part II of schedule 5 to the Scotland Act 1998 on the basis that this cannot be held to be a benefit in legal terms because it is merely a reduction in a charge.

My difficulty, which I have articulated previously, is that if we were to accept that this is a devolution issue that is caught by schedule 5 of the 1998 act, we would get ourselves into the difficulty of capturing other reductions in charges, in particular the bus travel concession scheme, in which the reduction in the charge may be even more substantial, and which would be deemed to be a benefit. Clearly, we have not taken that position previously.

I respect and read with interest the legal advice that we get, but it is precisely that—advice—so it is for us, as members of the committee, to decide what to do on the basis of that advice. In this case, I will once again accept the Government’s view rather than that advice.

**John Scott:** In terms of consistency, you will not be surprised that, once again, I will not adhere to the position that my colleague Stewart Stevenson has outlined, but instead prefer the advice of the committee’s legal advisers.

We are all aware that this is the 11th instrument that has raised a devolution issue. I suggest that the regulations do not have a proper legal basis. That has certainly been suggested, and suggested sufficiently strongly to put doubt in everyone’s minds. A court that was asked to decide on the matter would, in all probability, hold the regulations to be ultra vires because the regulations relate to matters that are within the reservation of a social security scheme, as outlined in section F1, on social security schemes, of part II of schedule 5 to the 1998 act. Essentially, it is a benefit in kind and

is not within the gift of the Scottish Government. I prefer to take the advice of our committee advisers to that of the Scottish Government.

11:15

**Lesley Brennan (North East Scotland) (Lab):** I duly note, and agree with, the advice from the committee's legal advisers. Moreover, I note that the committee is dealing with the process and procedures relating to the regulations. Although I may not accept the Scottish Government's legal advice, I support the policy. Therefore, if this comes to a vote, I will abstain.

**The Convener:** That is fine. Clearly, we are going to come to a vote. We will come to that in just a moment.

We need to have a proposition to put to the committee. I am proposing from the chair that the regulations do not engage a devolution issue. In other words, we will vote on the negative proposition that the regulations do not raise a devolution issue. On that basis, does anybody want to say anything else, or should we just go to a vote? Members seem to be comfortable that everything that needs to be said has been said.

In that case—and contrary to the advice of our legal advisers—the proposition is, that the committee considers that the regulations do not raise a devolution issue and should not be drawn to the attention of the Parliament. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

**For**

Don, Nigel (Angus North and Mearns) (SNP)  
Mason, John (Glasgow Shettleston) (SNP)  
Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)

**Against**

Scott, John (Ayr) (Con)

**Abstentions**

Brennan, Lesley (North East Scotland) (Lab)

**The Convener:** The result of the division is: For 3, Against 1, Abstentions 1.

That is duly noted. The proposition that the Council Tax Reduction (Scotland) Amendment Regulations 2016 do not raise a devolution issue is agreed to.

### **Gender Recognition (Marriage and Civil Partnership Registration) (Scotland) Regulations 2016 (SSI 2016/66)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members indicated agreement.**

### **Gender Recognition (Marriage and Civil Partnership Registration) (Modification) (Scotland) Order 2016 (SSI 2016/67)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members indicated agreement.**

### **Seed (Fees) (Scotland) Regulations 2016 (SSI 2016/69)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members indicated agreement.**

### **Building (Scotland) Amendment Regulations 2016 (SSI 2016/70)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members indicated agreement.**

### **Building (Energy Performance of Buildings) (Scotland) Amendment Regulations 2016 (SSI 2016/71)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members indicated agreement.**

### **Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2016 (SSI 2016/72)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members indicated agreement.**

### **Civic Government (Scotland) Act 1982 (Metal Dealers and Itinerant Metal Dealers) (Verification of Name and Address) Regulations 2016 (SSI 2016/73)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members indicated agreement.**

**Local Government Pension Scheme  
(Management and Investment of Funds)  
(Scotland) Amendment Regulations 2016  
(SSI 2016/74)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**Charities Accounts (Scotland) Amendment  
Regulations 2016 (SSI 2016/76)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**Firefighters' Compensation and Pension  
Schemes (Scotland) Amendment Order  
2016 (SSI 2016/77)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**Firefighters' Pension Scheme (Scotland)  
Amendment Regulations 2016  
(SSI 2016/78)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**Firemen's Pension Scheme (Amendment)  
(Scotland) Order 2016 (SSI 2016/79)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**National Assistance (Assessment of  
Resources) Amendment (Scotland) (No 2)  
Regulations 2016 (SSI 2016/80)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**Plant Health (Scotland) Amendment Order  
2016 (SSI 2016/83)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**Healthcare Improvement Scotland  
(Delegation of Functions) Order 2016  
(SSI 2016/86)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**National Assistance (Sums for Personal  
Requirements) (Scotland) (No 2)  
Regulations 2016 (SSI 2016/87)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**Wester Ross Marine Conservation Order  
2016 (SSI 2016/88)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**Restriction of Liberty Order etc (Scotland)  
Amendment Regulations 2016  
(SSI 2016/89)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

**Loch Sunart to the Sound of Jura Marine  
Conservation Order 2016 (SSI 2016/90)**

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*



## Instruments not subject to Parliamentary Procedure

### Air Weapons and Licensing (Scotland) Act 2015 (Commencement No 2 and Transitional Provisions) Order 2016 (SSI 2016/85)

11:19

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

### Criminal Justice (Scotland) Act 2016 (Commencement No 1 and Saving Provision) Order 2016 (SSI 2016/95)

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

### Scottish Fire and Rescue Service (Appointment of Chief Inspector) Order 2016 (SSI 2016/96)

**The Convener:** No points have been raised by our legal advisers on the instrument. Is the committee content with it?

**Members** *indicated agreement.*

## Land Reform (Scotland) Bill: After Stage 2

11:20

**The Convener:** I invite members' comments on the correspondence that has been received from the Scottish Government on amendments to the Land Reform (Scotland) Bill.

**John Scott:** The question is whether we should write to the minister. In my view, we should, to inform him of our views.

The committee still has concerns after stage 2 about the compatibility of the bill with the European convention on human rights. If anything, the amendments that were made at stage 2 have made that even more problematic. I understand that there are also other concerns to which members may refer.

We are not a policy committee, but my principal concern is that we are in great danger of making very bad law. I do not wish to see the Parliament brought into disrepute, and have often said the bill has very real potential to do that. Many parts of the bill are likely to provoke ECHR challenges.

**The Convener:** The letter came from Aileen McLeod, so John Scott's reference to "him" should be taken as being to "her". Richard Lochhead is the cabinet secretary, but it is Aileen McLeod who is dealing with the issue.

**Stewart Stevenson:** I take an entirely different view from John Scott. We have had no advice that there are any ECHR issues in respect of what is before us. If there were, we would deal with them. Any secondary legislation carries the risk that ECHR rights will be breached. The appropriate time to deal with that risk is when the secondary legislation is introduced. There is nothing special about what is before us in that regard.

However, there is an important issue on the proposals that the Government continues to work up on how we put in the public domain information about ownership of Scotland's land. It is very important in policy terms that the Government gets that right.

In relation to the committee's narrower interest in the construction of good law, this will clearly be a significant provision. I want to be very clear that when in due course the secondary legislation is produced that will give effect to a register of ownership, the Government will ensure that there is adequate parliamentary opportunity to consider the policy. It is not sufficient for the bill simply to be amended at stage 3 to place duties on the Government, important as that will undoubtedly be.

It is important that the bill is also constructed to explain how enhanced affirmative procedure will operate to provide, at the appropriate point before the policy is published as a draft instrument and published in the *Business Bulletin*, that the Parliament has the opportunity to consider it. The committee should consider writing to the minister in those terms, to ensure that she is quite clear in her mind what it is that we are after.

**John Scott:** I draw Stewart Stevenson's attention to the legal advice that we have been given because it is quite clear that despite the stage 2 amendments the bill remains largely as it was. Our legal advice points us to very definite European convention on human rights article 8 concerns, for the avoidance of doubt or misunderstanding.

**John Mason (Glasgow Shettleston) (SNP):** There is clearly a huge appetite for major reform of land legislation in Scotland because it has been unsatisfactory for a long time. Almost everybody supports the idea that the bill should do that. The committee's concerns about the original section 35, the amendment and any amendments that might be expected at stage 3 are to do with lack of detail in the bill. John Scott has his opinion about ECHR, but the reality is that we do not know about many such areas because the bill does not have the detail. We need to ask the Government for as much detail as possible in the bill.

**Lesley Brennan:** I agree with John Scott that we should write to the minister. It seems as though the policy is still in development, and there is a way to go before stage 3. Although I agree that there is support for the principles, we need to know the details, which is why we should write to the minister now.

**The Convener:** I do not want to disagree with you but, once we see the stage 3 amendment, the committee will not have time to do anything terribly constructive. That is why I am looking for the committee's guidance on how I should write on its behalf because, to be frank, that is all we can do to ensure that we lay out our concerns.

As always, I am conscious that ministers and their advisers will be listening to us as we speak, and they will certainly read the *Official Report*, so they will get the basic message. I am looking for guidance about what I might say on the basis that concern is one thing but positive suggestion is another.

From what our lawyers have advised us, I have extracted the fact that there is, at the very least, a model within the Convention Rights (Compliance) (Scotland) Act 2001, which we have met relatively recently, for drawing up regulations in such a way as they must be subject to scrutiny and consultation. That consultation has to be looked at

and discussed before regulations can be laid and approved. We could point the Government towards that model as an acceptable route.

**John Scott:** Other than making an effort to be helpful, it is perhaps for the committee merely to define the problem. As it is the Government that has proposed the legislation, it is really up to it to bring forward the solution, which is, self-evidently, that the policy should be researched and placed in the bill. That would thereafter afford us and others the opportunity to scrutinise the policy. That is for the Government to do; it is not for us to suggest how it achieves that.

**John Mason:** In an ideal world, we could sit back and wait for the Government to say whatever it is going to say. However, the reality is that we are now extremely tight for time in the parliamentary session so we need to cut some corners. One corner can be cut by saying in the convener's letter to the minister that, if things go ahead as we anticipate they will, there should be an enhanced form of affirmative procedure. We should also give the details that the convener mentioned about consultation and so on.

**The Convener:** There are clearly two parts to the committee's view. John Scott has made the point that he does not want anything other than that the provision be on the face of the bill. I am sure that we can understand that view.

There is also the practical view that we are where we are and, if the provision cannot be in the bill, it should be done through regulations, which would be so close to being the way in which we generate bills afterwards that it will work. I suspect that I need to articulate both those points, but I am open to suggestions.

11:30

**Stewart Stevenson:** If I have read correctly what colleagues have said, we are of one view in that there should, by whatever means this bit of policy development is completed and put into law, be adequate parliamentary time for it to be properly scrutinised, because it is significant policy. If the Government does that by way of amendment at stage 3, so be it, but there must still be adequate parliamentary time to deal with it. If the Government makes the changes through secondary legislation, as it appears determined to do, the same principle will apply. That is our overriding point.

John Scott is perfectly reasonably articulating that his preference—the committee has previously said this in other domains—is for the changes to be made in primary legislation. It is perfectly reasonable for us once again to say that to the Government, while recognising that the reality of our being in the fifth-last week of this session of

Parliament is that the proposal is unlikely to be introduced early enough and that the policy is not likely to be developed enough for us and other committees to look at it in sufficient detail. However, that is a matter for the Government, not for us.

**John Scott:** Indeed. It is not a matter for us—it is not our problem that the Government finds itself in this extremely awkward position of making poor legislation and, as John Mason helpfully pointed out, seeking to cut corners because of the timescales that we face. The Government is in a dreadful position. This is, essentially, the final month of a five-year term. The issue is about when the Government has chosen to introduce the legislation in what is essentially an undeveloped form. That is a matter for it. It is for this committee to ensure that processes are adhered to and that corners are not cut. I am sorry to be so uncompromising, but if that is a problem, it is a problem of the Government's own making.

**John Mason:** We could go on and on about this. As in a range of life's issues, when a problem is of somebody else's making, we accept that. At the same time, we must find a practical solution. The proposal that we write to the Government and specify that an enhanced affirmative procedure would be useful is the correct one.

**Lesley Brennan:** My concern is that the policy has not been worked out. There is a lack of scrutiny and consideration. If the proposal is that the policy be developed under regulation, I am concerned about that.

**The Convener:** I have heard what everybody has said and members have heard what I have said. Clearly, I need to write to the Government, because that is all that we can do in the timetable to which we are working. I am happy to reflect everything that has been said—that is my duty.

**John Scott:** I am certain that you will do that wonderfully well, convener.

**The Convener:** All that I will say is that I do not think that all the various points that have been made, including mine, are inconsistent with one another, although they definitely do not start from the same place. In the letter to the Government we need to reflect that we would not want to have been in this position in the first place. Members have articulated clearly why that should not have been necessary. However, while recognising that we are in this position, we must ensure that whatever is introduced—and retained—in the bill fits the best possible processes for providing good parliamentary scrutiny and proper policy development on a proper timetable. That will not be in this session, because we are talking about regulations that will be dealt with in the next session, if regulations are where we go.

Are colleagues comfortable with that approach? I can see it being a fairly long letter. We will try to reflect everything that has been said. Does anybody have anything to add?

**John Mason:** Will you circulate the letter before you send it?

**The Convener:** I am happy, in principle, to do so, given the contentious nature of the matter. At the end of the day, I will have to sign off my letter, but I am happy to circulate the first draft.

**John Scott:** I would be grateful if you would circulate the letter. It is a vital issue. In the absence of a revising chamber, this committee's role is to be one of the guardians of the rules and processes of our Parliament. Therefore, what I have said is absolutely fundamental to the integrity of this committee.

**The Convener:** If members are comfortable, I will leave that item there.

*Meeting closed at 11:35.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body

All documents are available on  
the Scottish Parliament website at:

[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

Information on non-endorsed print suppliers  
Is available here:

[www.scottish.parliament.uk/documents](http://www.scottish.parliament.uk/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

---