JUSTICE 1 COMMITTEE

Wednesday 5 October 2005

Session 2

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JUSTICE 1 COMMITTEE
30th Meeting 2005, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
Margaret Mitchell (Central Scotland) (Con)
*Mrs Mary Mulligan (Linlithgow) (Lab)
Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Karen Gillon (Clydesdale) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)
*Mr Jim Wallace (Orkney) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 4

Scottish Parliament

Justice 1 Committee

Wednesday 5 October 2005

[THE CONVENER *opened the meeting at 10:42*]

Interests

The Convener (Pauline McNeill): Good morning and welcome to the 30th meeting in 2005 of the Justice 1 Committee. I apologise for the late start—the committee had a previous meeting in private about the Family Law (Scotland) Bill.

I have two apologies—Margaret Mitchell and Stewart Stevenson are unable to join us today. Mike Pringle has also sent apologies. Members might know that he is otherwise engaged with his member's bill. I welcome Jim Wallace as his substitute. As usual, I ask members to switch off mobile phones or other gadgets, because they interfere with the sound.

I ask Jim Wallace to declare any relevant interests.

Mr Jim Wallace (Orkney) (LD): I am a non-practising member of the Faculty of Advocates. I do not know whether this is a relevant interest, but when I was Minister for Justice, I was responsible for one of the consultation documents that ultimately led to the legislation that we are considering today; I was also a minister when the bill was presented to Parliament.

The Convener: How could we forget? It is nice to have you here for stage 2. I believe that we will probably have you for most of stage 2 because Mike Pringle will be dealing with his bill at stage 1.

Items in Private

The Convener: I invite members to agree to discuss in private item 4, which is consideration of a draft response to the European Union green papers. Is that agreed?

Members *indicated agreement*.

The Convener: Item 5 is consideration of our approach to the scrutiny of the forthcoming Scottish commissioner for human rights bill. Do members agree to take item 5 in private?

Members *indicated agreement*.

Family Law (Scotland) Bill: Stage 2

10:43

The Convener: Item 2 is stage 2 consideration of the Family Law (Scotland) Bill. I welcome the Deputy Minister for Justice, Hugh Henry, who has with him this morning Carol Duncan, the bill team leader, and Kirsty Finlay, a solicitor at the Scottish Executive. David McLeish is also with the ministerial team.

We are at the beginning of the stage 2 process of the bill.

Section 1 agreed to.

Section 2—Void marriages

The Convener: Amendment 9, in the name of Marlyn Glen, is in a group on its own.

Marlyn Glen (North East Scotland) (Lab): Amendment 9 seeks to ensure that where a marriage is concluded on the basis of consent induced by duress or error, that marriage shall be void irrespective of where it takes place. I am sure that we all agree that consent is essential to the formalisation of marriage. However, consent induced by duress or error is not consent. The question is why the grounds on which a marriage is void under proposed new section 20A of the Marriage (Scotland) Act 1977 relate only to a marriage that has been solemnised in Scotland. The grounds for rendering a marriage void on the basis of consent given under duress, error or a failure to understand the nature of marriage or of consenting to the marriage should apply irrespective of where the marriage is solemnised.

I move amendment 9.

The Deputy Minister for Justice (Hugh Henry): I pay a particular welcome to Jim Wallace. It will be an interesting experience to be grilled by him once again—this time, however, he is not my boss. I am sure that our relationship will be as cordial as ever.

The Executive is aware of the concerns that have been raised in some quarters over the need to extend section 2 to cover marriages that have been solemnised outside Scotland. However, it is our opinion that that would be an unnecessary provision, given our intention to lodge amendments to section 28 to deal with the matter.

Section 2 is concerned with putting on record certain elements of the common law in Scotland. Section 28, by contrast, is the part of the bill that deals with marriages involving a foreign element.

It is our intention to amend section 28 to set out the fact that a foreign rule as to the validity or invalidity of marriage will not be recognised or applied in Scotland where doing so would be contrary to Scottish public policy. Duress or error would be included in that category, and the marriage would be void regardless of where it was celebrated. I believe that that should offer sufficient protection to those who marry abroad without the need to amend section 2.

With those assurances, I invite Marlyn Glen to withdraw amendment 9.

Marlyn Glen: Without seeing the amendment to section 28 that the minister is talking about, it is quite difficult to be completely reassured on this point. However, I appreciate that what he has said about duress and error is now on the record. I look forward to seeing the amendment to section 28, which will deal with the points that I have raised, and seek leave to withdraw amendment 9.

Amendment 9, by agreement, withdrawn.

Section 2 agreed to.

After Section 2

The Convener: Amendment 1, in the name of the minister, is in a group on its own.

Hugh Henry: I am sure that the committee will welcome amendment 1, which abolishes marriage by cohabitation with habit and repute. The committee examined this aspect of Scottish law during its stage 1 consideration of the bill and questioned whether this is an appropriate time to abolish the doctrine. I have given the matter further consideration and have concluded that the time has come to do so.

However, we do not wish to prejudice couples who might have already begun to constitute such a marriage, so amendment 1 will have prospective effect. It will not stand in the way of couples who may have constituted a marriage by cohabitation with habit and repute before the new section that abolishes it comes into force. The amendment will ensure that, from the date of commencement, no further couples will be able to begin a cohabitation that could in the future become a legal marriage by using this outdated element of the common law.

I move amendment 1.

Mr Bruce McFee (West of Scotland) (SNP): I have some concerns about the proposals. When the committee initially considered this matter, there was a desire to end what seemed to be a pretty outdated piece of legislation. Perhaps some people chose to pretend that they were married rather than actually get married, but I think that things have moved on a bit since then.

My concern relates to the fact that there might be cases in which people genuinely think that they are married but find, much later on, that they are not legally married. I am thinking particularly about those who got married abroad but, in doing so, did not entirely conform to the laws of the country that they were in, perhaps because the laws were particularly difficult to understand or because of a language barrier.

I believe that very few cases go to court of people who ask for their marriage to be recognised. Although I understand why most members of the committee want to get rid of marriage by cohabitation with habit and repute as a method of proving a marriage, my concern is that doing so may have the unintended consequence of catching some individuals who, through no fault of their own or perhaps through some misunderstanding that, in retrospect, they should have anticipated, end up finding that they are not married. In such a case, if one party dies, the other is not entitled to the estate; if the parties divorce, the children of the marriage and the former spouse might not be properly supported. I would like to satisfy my concern about that before agreeing to the proposal. My concern is that, in tidying up a rule that we think is old fashioned, we might not protect people who are entirely innocent victims.

The Convener: I know that the minister wants to come back on that, but first I will allow Jim Wallace to speak.

Mr Wallace: I am generally supportive of amendment 1. The rule that it removes is a throwback to another age. If my memory can go back to my lectures in family law—which started about 30 years ago this month—my understanding is that people genuinely had to believe that they were married, not that they had cohabited for a long time and thought that if they carried on for another few years they could consider themselves married. I suspect that we have moved on from that time. When we are dealing with something as fundamental as marriage, it is important that, in this day and age, the law should be clear and concise. The Scottish Law Commission described marriage by cohabitation with habit and repute as a rather vague way in which to constitute a marriage. Given all the things that can flow from it, I would be concerned if we were to keep the rule for the sake of sentiment or as a throwback to our older common law.

I will make two points that pick up on Bruce McFee's comments. I wonder whether the Executive has considered the example that Bruce McFee mentioned. Do such situations occur, or are they hypothetical? Secondly, what consultation has been undertaken? This is a major step, and I cannot remember whether the issue was part of

the earlier consultation that was undertaken on family law and, if so, what the response was to the consultation.

Bruce McFee said that such situations may not be the fault of the people involved but, to be fair, when people take as fundamental a step as marriage there are certain obligations on them to ensure that they get it right. Therefore, I have some sympathy with abolishing something that is vague, not least given that the bill also introduces further protection for cohabitees.

The Convener: I will add some comments before I ask the minister to speak. It has to be said that from the outset the Executive has been open-minded on the issue and asked the committee to consider whether it had a view one way or the other. Provided that protection is put in place for those who may have relied on marriage by cohabitation with habit and repute up until now, there is no real place for it in Scots law; I raised that issue during the debate.

I had a concern about those who had gone through a ceremony and mistakenly believed that they were married. I had understood that people could get a declarator of marriage in that situation, but I might be wrong. Jim Wallace makes the point that they should have checked the position out before the ceremony, but there is such a thing as honest belief; someone who undertakes no checks at all would be in a different position. Although I know that there will be very few cases, I would be concerned if, by abolishing marriage by cohabitation with habit and repute, we leave no remedy for couples who genuinely thought that they had gone through a marriage ceremony in another country, only to find that they were not genuinely married.

Marlyn Glen: I welcome amendment 1. It fits well with the intention of the bill to modernise family law, and deals with the confusion caused by the fact that some of the population—too many people—believe that there is something called common-law marriage. The amendment clarifies the situation.

In modernising family law, we must be clear about what we are doing. The provisions in amendment 1 run alongside those on providing information on marriage and divorce to couples before they marry to ensure that they understand their rights and responsibilities and where they stand legally.

Hugh Henry: I will try to address the points in the order in which they arose.

Bruce McFee is right to say that there are very few such cases. Indeed, between January 2003 and July 2005, there were only nine, and in seven of those cases one party sought financial benefit from the estate of the other party, who was deceased. Such situations arise very seldom and usually for very specific reasons.

Jim Wallace was right to refer back to the Scottish Law Commission, which recommended the abolition of marriage by cohabitation with habit and repute in its 1992 report on family law. It is clear that the idea has been around for some time. However, the convener is also right to point out that initially we did not intend to address the matter. We were neutral on the question whether it was necessary to legislate in this area and it was only because the committee—and, to be fair, other stakeholders—raised the matter that we concluded that it would be right to move forward. As a result, in response to Jim Wallace's question on consultation, I should say that, although there was no formal consultation on the matter, we certainly discussed it with the committee and others. One could say that the general consultation on the bill provided an opportunity to raise the matter although, at that time, we concluded that we would take a neutral position on it.

The more specific point about people who believe that they are married because they have gone through a ceremony, whether abroad or not, is a completely different issue. The provision that is abolished by amendment 1 does not apply to those people. We are talking about people who have tried to establish that they were married simply because of the way in which they organised and lived their lives. I do not know whether it is fair to say that this happens in every such case, but usually the parties involved will not have gone through a ceremony. If someone who has been through a ceremony of some sort, whether here or abroad, faces problems, that is another issue that needs to be examined. I do not think that such problems can be addressed by the parties establishing a marriage by cohabitation with habit and repute.

Following comments by the Scottish Law Commission, the committee and others, we have concluded that this is the appropriate time to abolish the concept.

Mr McFee: I seek some clarification. Hugh Henry is right to point out that people go down this road either intentionally or unintentionally, and I accept that, with regard to those who do so intentionally, it is time to draw the line under the matter.

However, I wonder whether there is another mechanism. I am not declaring an interest, but I simply highlight a practical example that I know well. I was married in Estonia—my wife is from there, and I worked there at the time. In that country, if people marry in a church, the church believes that they are married; however, the state does not recognise church weddings, and requires

people to go through a civil ceremony afterwards. When we booked the civil ceremony, we were assured that there would be a simultaneous English translation, but that turned out not to be the case. Incidentally, I have checked everything out—the marriage is legal and I cannot get out of it.

Similar situations could arise for other individuals. If those individuals could pursue another course of action, I will be happy to agree to the abolition of marriage by cohabitation with habit and repute, but, if not, I think that, for the protection of individuals who may be in a situation through no fault of their own, there must be some mechanism whereby they can have their marriage declared valid. I do not know how that could be done when one of the parties is dead. It is not as if the surviving party can turn round and say, "I'd better get through a marriage ceremony, because my spouse has just died." I am not sure whether other options would be open to that person, and I have some concerns. I do not know whether that is Professor Norrie's bag—it probably is, given that I am seeking advice.

11:00

The Convener: We have a note from the adviser on that point. I have to agree with Bruce McFee, in so far as I also have concerns. I am not saying that such situations should not be tested; it should not be enough for a person simply to claim that they went through a ceremony, and I would want to ensure that there is some other way in which that could be tested. I do not think that people in the scenario that Bruce McFee described should be able to rely on marriage by cohabitation with habit and repute. I am clear about that, but I might be prepared to allow them to rely on something else to test whether they genuinely believed that they had gone through a ceremony without, perhaps, being properly advised and whether they had taken all the proper steps. If the Executive was prepared to continue to talk about such scenarios, whether real or not, I would feel that it would be right to support amendment 1.

You get the last word on this, minister, because it is the Executive's amendment.

Hugh Henry: I think that we are talking about two different things. The situation that Bruce McFee describes would normally be attended to by a declarator. I would need to take advice on whether that procedure would always work if one party was dead. There may also be a role for the registrar general for Scotland.

We are talking specifically—at the behest of the committee, which debated and considered the matter—about something different. We are talking about situations in which people do not go through a ceremony but believe that they are married because of the circumstances in which they have lived for some period. We have concluded, and would still conclude, that dealing with the matter through amendment 1 was the right thing to do. Indeed, that is what the committee concluded. The type of circumstance that Bruce McFee describes is a separate issue altogether, and if further inquiry needs to be made into such cases, I am happy to have that done. However, I do not think that any direct consequence would flow from amendment 1 in such situations.

The Convener: What you are saying sounds absolutely right and sensible, but I would like to ask a question before we leave the subject. If we abolish the rule, does that mean that Bruce McFee could never rely on it? I am just using you as an example, Bruce.

Mr McFee: By all means.

Hugh Henry: I repeat that we are talking about something completely different. If someone has been through a marriage ceremony that, for whatever reason, is considered defective, that person has access to another remedy. I do not think that Bruce McFee, or anyone else, would seek to establish a marriage by cohabitation with habit and repute in those circumstances. On the contrary, they would seek to have the marriage declared valid.

The Convener: I think that there are still further questions.

Mr McFee: I am trying to establish that there is another remedy. That is my concern. I agree with 99.5 per cent of what the minister has said and with the reasoning behind doing away with marriage by cohabitation with habit and repute. However, my concern is that that may have some unintended consequences by closing off a remedy for individuals who are married abroad—and there are probably more such individuals nowadays than there were previously.

If it will be possible to obtain a declarator of marriage even after the death of a spouse, I will drop any opposition that I have to the proposal in amendment 1. I seek reassurance; I am not sure whether Professor Norrie is my best point of reference on that. If individuals in the circumstances that I have described will not be affected by amendment 1, I will withdraw any opposition to it. If that is not the case, I have significant reservations about agreeing to an amendment that would put some individuals in a more difficult situation than they are in at present.

Mrs Mary Mulligan (Linlithgow) (Lab): Is the minister saying that marriage by cohabitation with habit and repute would never have been used to resolve the situation that Bruce McFee has

outlined because there are other ways of doing that and that abolishing marriage by cohabitation with habit and repute would not disadvantage people? That was my understanding, but if that is not the case, I have missed something.

The Convener: I think that we are getting there, but if we are to sweep away marriage by cohabitation with habit and repute, the committee just wants to be clear about what it is doing. If you do not mind, minister, it would be helpful if you could provide clarification.

Hugh Henry: I confirm to Mary Mulligan that what she described is exactly the point that I am trying to make. Bruce McFee has described a hypothetical situation. I refer back to the cases that we have dealt with. I am not aware that any of the cases in which marriage by cohabitation with habit and repute was established involved the circumstances that he described. We believe that another route is available to people who are in those circumstances. I think that we are talking about two completely different things.

I stand to be corrected—there is a first time for everything, and there may be someone somewhere who has gone through some kind of ceremony and now seeks to establish a marriage by cohabitation with habit and repute. Our point is that, in any case, we are not dealing with the matter retrospectively. We are saying that if someone found themselves in such a situation in the future, it would not be open to them to establish a marriage by cohabitation with habit and repute. I believe that we are talking about two completely different things.

The Convener: You said that you had identified nine cases. Are those cases in which there had been no ceremony and one of the parties went to court to establish a marriage by cohabitation with habit and repute?

Hugh Henry: That is my understanding.

Mr McFee: Can I obtain some advice from our adviser about whether, when one partner in a couple who believed that they were spouses dies, it is possible for the other partner to obtain a declarator of marriage at that point?

The Convener: The adviser cannot speak at this stage.

Mr McFee: Can he nod?

The Convener: Perhaps the minister's answer to my last question might help you, in that it revealed that there have been no reported cases in which marriage by cohabitation with habit and repute has been established in the circumstances that you are concerned about. Does that help?

Mr McFee: It helps slightly, in that it seems that there have been no such cases in the past two and a half years.

The Convener: The minister is saying that there is another route for the cases about which you are concerned, in which there has been a ceremony in another country—a declarator of marriage can be obtained.

Mr McFee: Sure. I was merely trying to establish whether it was possible to obtain a declarator of marriage after one of the individuals who believed that they were married had died. I do not know whether that is possible. It is an interesting statistic that seven of the cases that the minister mentioned involved a claim being made on the estate of the deceased.

Hugh Henry: It is my understanding that the route of obtaining a declarator of marriage would still be available, regardless of whether one of the parties had died.

Mr McFee: If that is the case, that is fine.

The Convener: I think that all the points have been covered. What the minister has said has been helpful.

Amendment 1 agreed to.

Section 3—Extension of jurisdiction of sheriff

The Convener: Amendment 2, in the name of the minister, is grouped with amendment 10.

Hugh Henry: Section 3 extends the jurisdiction of the sheriff court to include actions for declarators of marriage and declarators of nullity of marriage, except where the action is raised after the death of both parties to the marriage. Since the introduction of the bill, persuasive arguments have been made by the Law Society of Scotland and the Scottish Law Commission that this is an unnecessary restriction. We have listened to those representations, and have lodged an amendment to remove that restriction while retaining the extension of the jurisdiction.

Marlyn Glen's amendment to section 3 does not achieve the aim of removing the restriction that section 3 places on the sheriff court. Instead, it removes section 3 in its entirety. That would mean that the status quo would remain and that such actions would remain competent only in the Court of Session. I know that that is not what the amendment seeks to do. I hope, therefore, that Marlyn Glen will not move amendment 10, as what we have proposed in amendment 2 would have the desired effect.

I move amendment 2.

Marlyn Glen: The intention of amendment 10 was to ensure that the sheriff court would have full jurisdiction without exception over actions for declarators of nullity of marriage. I invite the minister to provide just a little more clarification and to reassure me that the intention of

amendment 10 has been covered and that sheriff courts will be able to deal with all cases. Now that I have seen the Executive's amendment and heard what the minister has to say about it, I am just seeking clarification on it.

Hugh Henry: To avoid doubt, I confirm that we are doing as Marlyn Glen has suggested: we are making sure that the sheriff court can consider such matters.

Amendment 2 agreed to.

Amendment 10 not moved.

Section 3, as amended, agreed to.

Sections 4 to 6 agreed to.

After section 6

The Convener: Amendment 11, in the name of the minister, is grouped with amendment 13.

Hugh Henry: Amendment 11 is a simple amendment that is designed to protect spouses in drawn-out cases where they ask the court to regulate occupancy of, or exclude a spouse from, the matrimonial home. Amendment 13 does the same for the corresponding provisions in schedule 1 for civil partners.

The bill reduces from five years to two years the period during which the rights of a non-entitled spouse or civil partner are protected. Concern has been raised that two years will not allow sufficient time for the introduction and completion of court actions, potentially leading to unfair outcomes.

The amendments, therefore, put beyond doubt the fact that the clock stops when someone asks the court to regulate rights to occupy the matrimonial or family home or to exclude her or his spouse or civil partner from that home until the action has been resolved or withdrawn.

I move amendment 11.

Amendment 11 agreed to.

Section 7—Amendment of definition of "matrimonial home"

The Convener: Amendment 12, in the name of Marlyn Glen, is grouped with amendments 4 and 8.

Marlyn Glen: Amendment 12 seeks to ensure that the policy intention behind section 7 is achieved. There is a difference between amendment 12 and amendment 4; amendment 12 talks about intention, and amendment 4 talks about occupying the home. I would like to explore that in some detail.

The terms used in the explanatory note to the bill differ from those used in section 7. On section 7, the explanatory note says:

"This amendment provides that where the tenancy of a matrimonial home has been transferred from one spouse to the other with the intention that it is to be the other spouse's separate residence, it should no longer be regarded as the matrimonial home."

The section does not refer to the intention behind a transfer, so amendment 12 would amend the bill to reflect what is in the explanatory note.

Amendment 4 approaches the same point differently. It refers to the spouse's occupation of the home, rather than just the intention. Some difficulties arise from that. For how long would the spouse have to occupy the home? What would be seen as occupation of the home? I would like to explore the difference between amendments 12 and 4.

I move amendment 12.

11:15

Hugh Henry: I am not sure whether doubts exist about the length of occupancy, as Marlyn Glen suggested. The intention behind section 7 and paragraph 9 of schedule 1 is that when the tenancy of a matrimonial or family home transfers from one spouse or civil partner to the other with the intention that it is to be the other party's separate residence, the home should no longer be considered the matrimonial or family home.

However, we recognise that the bill leaves a gap between the policy intention and its legal effect. As Marlyn Glen has said, a question arises about the intention and the effect. We recognised that an amendment was needed to clarify section 7. We therefore lodged amendment 4 for spouses and the equivalent amendment 8 for civil partners. The amendments will implement the policy objective based on the facts of the case rather than the intentions of the parties, thus avoiding any complications.

It is important to consider facts rather than intentions. I seriously worry about putting in law something that is predicated on intentions. That is why we cannot support Marlyn Glen's amendment 12. The advice that we have been given is that legislation should deal with facts rather than with intentions and that referring explicitly to the intention of the parties—as amendment 12 does—could create problems when the intention exists but the intended circumstances never come to pass. With that explanation, I hope that Marlyn Glen will withdraw her amendment.

Mr Wallace: I support the minister's comment that fact is more important than intention in such situations. It is inevitable that the matter would become an issue only if a dispute arose. In that situation, trying to ascertain the intention would probably only exacerbate the dispute. Given the circumstances in which the section would be likely

to come into play, having hard evidence of what happened rather than trying to divine the intentions of parties who might be at odds with each other will provide some certainty.

Mrs Mulligan: I am not sure whether the minister answered Marlyn Glen's questions about what the word "occupies" means in amendment 4 and about whether a time limit applies. Must a home be occupied immediately or does it just have to be occupied at some stage in the future?

The Convener: It would help to have that point clarified.

Hugh Henry: We return to the question whether a house is occupied or not. We have not specified a time limit. The decision concerns the circumstances and facts of a case, rather than timing.

The Convener: If a spouse had not occupied a property, would that mean that they should look for evidence that they were taking steps to do so? Would that have to be demonstrated to the court?

Hugh Henry: If there were to be a dispute, it would be for the courts to consider all the circumstances of the case and to determine whether the fact that someone had been in the house for a day was sufficient to give them occupancy. It would be dangerous to start specifying periods, because someone could come to stay for a week for whatever reason and, if they had nowhere else to stay, they might be regarded as an occupant for that period. On the other hand, if someone came to stay for a week who lives elsewhere, we would not necessarily regard them as occupying the house other than on a temporary basis. I am advised that occupation is within judicial knowledge and therefore it would be quite appropriate for the courts to determine.

Marlyn Glen: It is important that, when we are considering changing legislation, provisions are clear and understandable from the beginning. I am slightly reassured by the idea that there is a definition of occupancy that could be determined by the courts. However, I point again to where the explanatory notes talk about intention. While I might be quite content to withdraw my amendment, I wonder whether the minister could reassure us that he will look again at the issue to ensure that it is totally clear.

The Convener: I presume that if there were a disparity between the bill and the explanatory notes, there would be revised explanatory notes at stage 3 to accompany the policy intention in the bill.

Hugh Henry: Yes, there would be revised notes.

We have acted in this way because we believed that there was a gap and that there was a need to act. We believe that we have addressed the problem appropriately, but we will reconsider it, and if we think that anything more needs to be done we will come back to it. It is our intention to ensure that the bill works. We think that what we are proposing will work, but if it is found that something else is required, we will address it at stage 3.

Amendment 12, by agreement, withdrawn.

Amendment 4 moved—[Hugh Henry]—and agreed to.

Section 7, as amended, agreed to.

The Convener: That takes us to today's target, which was to reach section 7. The target for day 2 will be announced in tomorrow's business bulletin. Members may be aware that we will not be dealing with stage 2 again until after the parliamentary recess. I remind everyone that the deadline for lodging amendments is Friday 28 October at 12 noon.

I thank the minister and the ministerial team for appearing this morning. We will see you when we deal with stage 2 again.

Regulatory Powers Inquiry

11:24

The Convener: I refer members to the paper prepared by the clerks that sets out the background to phase 2 of the Subordinate Legislation Committee's inquiry into the regulatory framework in Scotland. The convener of that committee has invited us to submit views on the role of the Justice 1 Committee in relation to the scrutiny of subordinate legislation. The deadline of 14 October is very tight. As convener, I have been invited, as part of a panel of conveners, to give oral evidence to the Subordinate Legislation Committee. I suggest that the only way in which we can prepare a draft response is to do so by correspondence.

Members will see from the background paper that we deal with quite a lot of subordinate legislation, the vast majority of which we may have questions about. We have not had cause to annul any instruments, although the Subordinate Legislation Committee gave us strong advice not to approve one instrument. It was agreed by the committee and the Executive that that instrument would go back to the Executive, but we did not formally annul it. If anything occurs to members, perhaps they could e-mail the clerks, and I will give evidence on members' behalf.

11:25

Meeting continued in private until 12:40.

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Tuesday 18 October 2005

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