SUBORDINATE LEGISLATION COMMITTEE

Tuesday 23 January 2001
(*Morning*)

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SUBORDINATE LEGISLATION COMMITTEE
3rd Meeting 2001, Session 1

CONVENER

*Mr Kenny MacAskill (Lothians) (SNP)

DEPUTY CONVENER

*Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)
*Gordon Jackson (Glasgow Govan) (Lab)
*Ms Margo MacDonald (Lothians) (SNP)
*Bristow Muldoon (Livingston) (Lab)
*David Mundell (South of Scotland) (Con)

*attended

WITNESSES

Richard Grant (Scottish Executive Development Department)
Tim Ellis (Scottish Executive Development Department)
Murray Sinclair (Office of the Solicitor to the Scottish Executive)
Colin Wilson (Office of the Scottish Parliamentary Counsel)

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERKS

Ruth Cooper
Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 23 January 2001

(*Morning*)

[THE CONVENER *opened the meeting at 11:19*]

Housing (Scotland) Bill

The Convener (Mr Kenny MacAskill): Good morning, and welcome to the third meeting in 2001 of the Subordinate Legislation Committee.

The first item on the agenda under delegated powers scrutiny is the Housing (Scotland) Bill. We are about to be joined by four representatives from the Executive who will give evidence. I will give them time to come in and settle down.

Ms Margo MacDonald (Lothians) (SNP): May I get a wee cuppa before we start?

The Convener: There is plenty of time for that.

Bill Butler (Glasgow Anniesland) (Lab): Do I need to make a declaration of interests?

The Convener: Yes—if you have any interests, you should declare them.

Bill Butler: I am a serving councillor with housing responsibilities.

The Convener: I wish the witnesses good morning. I will let you settle yourselves. We are grateful for your attendance at the committee and for letting us take evidence from you.

Once you have settled, perhaps you would like to introduce yourselves briefly to the committee. We have met several of you before, but the membership of the committee has changed substantially since you were last here. One or more of you may wish to make some provisional comments on the points that the committee raised.

Richard Grant (Scottish Executive Development Department): I am Richard Grant, head of housing division 2.

Tim Ellis (Scottish Executive Development Department): I am Tim Ellis and I am from the housing bill team.

Murray Sinclair (Office of the Solicitor to the Scottish Executive): I am Murray Sinclair and I am the instructing solicitor on the bill.

Colin Wilson (Office of the Scottish Parliamentary Counsel): I am Colin Wilson from the office of the Scottish parliamentary counsel, and I am the draftsman of the bill.

Richard Grant: Rather than make an introductory statement, we would be happy to go straight into questions, if that is okay with you, convener.

The Convener: That is fine. Do members have initial questions that they wish to raise?

The first question that we have is on the use of the term "modify". It has been flagged up to us that, to an extent, its use in the bill is unusual. Do you have any comment on that?

Colin Wilson: The word "modify", if used without definition, is arguably uncertain as one could not be entirely sure how wide the meaning should go. Sometimes help is found in the context, but from the drafting point of view, we tend to define the term if it is intended to have a particularly wide meaning or where it is important that it is understood widely.

In the case of the Housing (Scotland) Bill, the use of "modify" attracts the definition that is given in the Scotland Act 1998, which says

"'modify' includes amend or repeal".

The transitional interpretation order that was made under the Scotland Act 1998 applies to the interpretation of acts of the Scottish Parliament. Article 6(3) of that order says that words and expressions that are used in an act of the Scottish Parliament and that are listed in section 127 of the Scotland Act 1998 have those meanings unless the contrary intention appears. Therefore, in the Housing (Scotland) Bill, the word "modify" will be construed in accordance with its definition in the Scotland Act 1998.

The Convener: The power in section 3(5) is subject to the negative procedure. Is there an argument that perhaps the affirmative procedure should be used? What are the reasons for your approach, apart from convenience and ease from the Executive's point of view?

Murray Sinclair: Section 3(5) inserts new section 32A into the Housing (Scotland) Act 1987.

Richard Grant: The burden of the provision is to require local authorities to provide permanent accommodation when meeting a particular duty. The order allows for exemptions to be made to that requirement when it is appropriate and sensible to provide temporary accommodation at the outset. Executive policy is that such exemptions would be allowed for a while, but would not take away the duty to provide permanent accommodation.

We have no strong views on whether the provision should be subject to the affirmative or the negative procedure. It is a matter of getting the

details right and, as it is a new provision, we may need to come back to it once or twice, although we hope that we will get it right first time. We envisaged the issue being one of detail rather than of major principle. The principles are enshrined in the primary legislation and therefore we thought that the negative procedure would probably do. However, we could reconsider if you wished us to.

Ms MacDonald: The practical reason for dealing with the matter by the affirmative procedure is that there could be a wide variety of reasons for the provision not being applied—that is, for finding temporary solutions. In such circumstances, it is sometimes advisable to set time limits by which the temporary situation must be resolved.

Richard Grant: That could be the right approach in particular cases. The detail requires a fair amount of discussion with the interested parties that are represented on the homelessness task force. Everyone recognises that, in principle, it is sensible to be able to use temporary accommodation in the first instance in specific cases.

Murray Sinclair: The provision is a further example of the difficult balance of judgment that we face when we confer powers. In this case, we considered two propositions. On the one hand, is the provision sufficiently serious to require a debate in the Parliament? On the other hand, is the proposed exercise of the provision such that, in practice, we expect it to be concerned with comparatively minor matters of detail, for which the negative procedure ought to be enough? Parliament would still have an opportunity to debate the relevant order by negative resolution, but it would not be required to do so.

Thus far, and given the way in which we anticipate exercising that power, our judgment has been that the provision does not require the order to be subject to debate in the Parliament.

The Convener: I appreciate that.

On section 6(1) and the power to specify in regulations types of occupancy of residential accommodation, it seems to me that a definition of such accommodation is important. If we are not to find a definition in section 6(1)—and I understand that there may be an argument about flexibility—what other types of residential accommodation do you anticipate coming into existence? It should be possible to define what is meant by residential accommodation at present. Given that rights are involved, the lack of a definition may be problematic.

Richard Grant: I will explain the policy context. The policy comes from concerns that have been raised about the rights of hostel accommodation residents. The bill section heading indicates that, although those words are not included in the text of the section. At present, residents of hostel accommodation do not have extensive rights.

The definitions of hostel in existing legislation are quite narrow—they are not as broadly defined as the definition that we and the homelessness task force want. When colleagues considered the rights of hostel residents, they were unable to be precise about the range of categories that might be included without going into further consultation.

Therefore, our approach has been to say what is definitely not included in the definition and then to introduce a further order. It is intended to give rights where none exist and it is clear that in the categories of tenancy that are listed in section 6, such as the assured tenancy or the Scottish secure tenancy, extensive rights already exist in statute.

11:30

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): In section 9(1)(b), the phrase

"or of a description specified, in an order made by the Scottish Ministers"—

has been drawn to our attention. How would that phrase apply if it were suggested that the private sector be brought in?

Richard Grant: I will comment on the policy and my colleagues may be able to explain in more detail how section 9 works. Our intention is for that phrase to relate exclusively to the social rented sector—that is, local authority landlords or registered social landlords.

Murray Sinclair: We would take the view, subject to Colin Wilson's comments, that that would be the effect of the draft section. The three subparagraphs of section 9(1)(b) form the umbrella under which we will be working and qualify the power that is contained in the words that are below them. In our view, we could not add to those categories by use of that power and it would not be our intention to do so.

Bristow Muldoon (Livingston) (Lab): I think that I know the answer to the question, but I will ask it for the purposes of clarity. Scottish Homes transferred housing stock to a housing company that operates in my constituency and in other parts of Scotland. Had that company still been with Scottish Homes, it would have been a registered social landlord, but it is categorised as a company. Am I correct to assume that such organisations are not included in the bill's definition of registered social landlord?

Richard Grant: The definition of registered social landlord is found in part 3 of the bill. We intend that all registered housing associations will become registered social landlords. The bill

provides for an order that will allow bodies that are on the contractually registered list—of which there are only three or four—to become registered social landlords. That list is run by Scottish Homes because it was unable to register those bodies under statute. In future, an organisation that wishes to receive funding for new housing provision, or that receives houses through a community ownership stock transfer will have to be a registered social landlord.

There remain a couple of bodies—you may be referring to one of them—that do not fall into any of those categories but that have received a grant or stock from Scottish Homes in the past. Terms and conditions were attached to those transfers and grants, but those bodies were not required to become contractually registered landlords. We believe that it would be inappropriate to apply the legislation retrospectively to those bodies. In future, if they wish to obtain grants or take on further stock, they will need to become registered social landlords.

Bristow Muldoon: So, while your intention is not to require them to become registered social landlords, if they wish to benefit from or qualify for Government investment programmes, such as the empty homes initiative, the new housing partnership or whatever, they will have to become registered social landlords.

Richard Grant: Yes, although it would depend on the type of initiative. If those bodies wanted to access housing association grant, they would need to become registered social landlords. That grant, which will change its name, is the primary mechanism for funding new building by housing associations and will be available to registered social landlords. Also, if they wanted to become involved in stock transfers, they would need to become registered social landlords. That would be true for new housing partnership money, most of which will be linked to stock transfer to community ownership.

Murray Sinclair: They certainly would not be ineligible because they were a company. Section 50 gives the criteria for eligibility and makes it clear that companies are not precluded because they are companies.

Ms MacDonald: I apologise that I do not have the bill in front of me—I forgot to bring it with me. I remember reading section 50. It did not spell it out that companies should have charitable status or be non-profit making.

Murray Sinclair: No, but there are very complicated provisions about the purposes for which the relevant company has to operate. I did not mean to suggest that all companies would be eligible. It is simply that a company will not be ineligible because it has the status of a company.

Richard Grant: It would have to be a company with the primary purpose of providing housing, and which was non-profit making.

David Mundell (South of Scotland) (Con): Section 38 inserts new section 61A(2)(d) in the Housing (Scotland) Act 1987, which gives ministers what seems to be a wide-ranging power. Would you clarify what is intended by that provision?

Richard Grant: New section 61A is intended to give an exemption from the right to buy for certain property. It is meant to ensure that there are no problems for existing housing associations in extending the right to buy to property for which there is currently no right to buy.

There are some exceptions to the exemption, so the position is quite complicated. In specifying those exceptions, we wanted to take account of housing association properties that had the right to buy until 1989, and houses that would be built or acquired in the future where it was clearly understood that there would be a right to buy. We had to narrow down the exemption to target exactly what the ministers wanted to. We think that we have got it right, but there may be details that need further tinkering with. New section 61A(2)(d) is included in case someone asks about this or that category of housing. It allows us to fine-tune the exemption further. In drafting the provision, we had only minor tinkering in mind. We hope that that will not be necessary because we have examined the matter very carefully.

The Convener: In sections 27(4), 28(4) and 29(3), the word “modify” is used. Those sections on, respectively, consent to subletting, consent to exchange of houses, and short Scottish secure tenancies are fundamental. I wonder whether what you mean by modifying would be de minimis. If not, would it not be appropriate to have some greater specification, given the significant effect that any modification could have on the rights of individuals?

Richard Grant: As you can see from the section headings, section 27 is about giving consent to subletting, and section 28 is about giving consent to exchanges. We require local authorities and registered social landlords to give that consent—they may refuse consent only where they have reasonable grounds for doing so. We would like to be able to modify the subsections that give a clear indication of where there would be grounds for refusal. Again, we feel that in the light of experience, we may want to change those grounds. The bill gives the grounds that we feel apply at the moment, but legislation lasts a long time.

The provisions originated from legislation drafted many years ago. In the course of events, there

may be another case in which we would want to make a clear provision that it is reasonable for landlords to turn down an application. There is a balance between the rights of tenants and the right of landlords to protect their property so that it is available for people on the waiting list.

Murray Sinclair: Because the provision is designed to give us a means of catering for unforeseen problems, we are not really in a position to restrict it.

Colin Wilson: Sections 27 and 28 are very similar. In both sections, subsection (3) states:

"There are, in particular, reasonable grounds for refusing such consent",

and sets out a number of examples of what such reasonable grounds would be. However, in subsection (2) of those sections, the general rule is that a landlord

"may refuse such consent only if it has reasonable grounds for doing so."

There may be other grounds that fall under subsection (2) of sections 27 and 28 and which are not listed, which would still be available to the landlord. The power is simply to amend the examples, not to amend the basic rule.

The Convener: Turning to section 53, I know that we have touched on the definition of social landlords, but is not there an argument that the criteria should be specified? You must have some idea about the definition of a social landlord.

Tim Ellis: That section is taken largely from existing provisions. A lot of the material in that part of the bill is derived quite closely from the Housing Associations Act 1985, which covers the system operated at the moment. Current legislation covers the core criteria referred to in section 50, which gives the new executive agency powers to set rather more detailed criteria on how organisations are run than is possible at present. The existing criteria for registration run to some 30 or 40 pages, which is not the sort of thing that we intend to put into regulations.

David Mundell: I would like to ask about section 45(1). The current wording says that ministers may direct local authority or social landlords to prepare a strategy, but it is not clear what the nature of that direction is. It is not an order, yet the wording appears to create a requirement.

Richard Grant: We had in mind a circular letter from the Scottish ministers, communicating that ministers would like to see certain things in place by a certain date.

David Mundell: What if the landlords did not comply?

Murray Sinclair: The bill provides simply for a direction, which is not a statutory instrument and is not subject to any parliamentary procedure. I think that I am correct in saying that the bill contains no sanction for breaching the direction. Therefore, it would be enforceable by two means. First, by judicial review, as landlords would be acting unlawfully if they did not comply with the direction. Second, although it would be highly unusual, there are powers under current local government legislation by which the Scottish ministers can, in certain circumstances, force local authorities to comply with statutory duties. In practice, however, we do not expect that the provision would be enforced in that way. I suspect that the sanctions against failing to comply with any such direction would be political.

Richard Grant: We should bear it in mind that these are essentially housing management powers, which would be regulated by the regulatory agency. At the moment, housing associations must have a strategy for tenant participation; when Scottish Homes, as the regulatory agency, does its performance checks it looks at whether associations have a satisfactory strategy. The work of the regulator is a way in which the quality and extent of the strategy is examined and further guidance might be given.

The Convener: Section 98 contains a particularly sweeping power to make ancillary provision. I understand why that might be wanted, but what is anticipated? Is it just a general catch-all power to allow you to act as you see fit?

11:45

Colin Wilson: That is the kind of power that is often found in big, complicated bills. Its purpose is to catch those things that fall through the cracks elsewhere. Section 97(2) allows the Executive, in exercising other specific powers, to make consequential and supplemental provisions. However, that depends on the conditions for the exercise of those powers being met. There may be cases where the other powers have been exercised and it is later discovered that an enactment was missed, or a transitional arrangement was overlooked. It is necessary to have the means to put such things right. There is a lot going on in the bill, on different time scales, and it is difficult to foresee exactly how everything will work together. Section 98 provides the flexibility that is needed to produce a sensible result.

Ms MacDonald: On the general principle, I agree that such provisions give the Executive the opportunity to be sensible and businesslike, and to employ good management practices and so on: they also give the Executive the chance to get out of things if it wants to.

Colin Wilson: Section 98 is confined to provisions that are considered necessary

"for the purposes or in consequence of this Act."

It refers to tidying up the downstream effects. What it does is give effect to the purposes of the act.

Ms MacDonald: Section 98 is included as a catch-all to plug any holes that might appear. That can be positive or negative. The Executive is saying that it does not know exactly how this very comprehensive and utterly radical bill will work out in practice, so it needs the power to tidy things up. However, the Executive might also think, "Well, we didnae anticipate that when we drafted the bill, so we will just plug that hole."

Colin Wilson: The provision is confined to

"incidental, supplemental, consequential, transitional, transitory or saving"

provisions—the usual litany. That is all the ancillary stuff. The section cannot take away from the core provisions of the bill. It is about tidying up and cannot be used against what the legislation requires.

Bill Butler: This is not an unusual power.

Colin Wilson: No. It is common in big, complex bills to have such a power. The National Parks (Scotland) Act 2000, which the committee considered, had a similar provision.

Murray Sinclair: We could compare section 98 with the ordinary form provision in section 97. The power under section 97 is taken in connection with the power to commence the provisions of the bill. It is common to make such a provision when commencing the provisions of the bill—in fact that is done almost universally.

If, for example, some time after the new tenancy provisions have commenced it is discovered that there is some ancillary transitional case for which we should have catered, we will be able to address that through the power under section 98—we will already have exercised the commencement powers—as long as we can still say that we are acting for the purposes of, or in consequence of the act. If something arose five years after commencement, we might struggle to say that. However, as long as we can show that we are acting in consequence of the act, the provision will enable us to address such problems.

Bill Butler: The other safeguard is that the exercise of the power would be subject to an affirmative resolution of the Parliament.

Bristow Muldoon: I echo Bill Butler's point.

The bill is complex and lengthy. On previous occasions, we have asked the Executive to include more definitions in a bill. As a consequence, however, it is not unreasonable for the Executive to have the flexibility of section 98.

Bill Butler's point was about the protection that is available—any resolutions made under the provision must go before the Parliament. If anyone thought that something controversial was being sneaked through, there would have to be a debate in Parliament.

David Mundell: I am far more comfortable that the provision is in section 98 on page 59, rather than in section 2 on page 2, which is what happened with the National Parks (Scotland) Act 2000.

The Convener: As we have no more questions for the witnesses before we discuss our report, I thank them for coming along and for taking the time to answer our questions.

Having heard the evidence, what points do members wish to make in our report to the lead committee?

David Mundell: Would it be better for the Executive to insert the required definition of "modify" in the bill, than to rely on a definition from some other piece of legislation? If the intention is to amend something, why does not the Executive simply say so? I did not know that modify was defined in the Scotland Act 1998, although perhaps I should have done.

Bristow Muldoon: If particular words are defined in the Scotland Act 1998, it is not sensible to keep repeating those definitions. People will refer back to the parent act that established the Parliament, as that is where they will find clear definitions. Words should be defined only when they deviate from the definition in that act.

My general view of the witnesses' answers is that the range of subordinate legislation powers included in the bill is perfectly appropriate. We should recognise that the bill overcomes some of the objections that the committee has raised on previous occasions about major pieces of legislation lacking definitions—it contains a considerable number of definitions. The subordinate legislation powers in the bill are both sensible and appropriate as far as parliamentary scrutiny is concerned. I would like that general flavour to be incorporated into the committee report.

Ms MacDonald: I would like to draw to the lead committee's attention Mr Grant's slight hesitation when I asked him about the definition of "temporary"—about how long something temporary remains so, and about the anomalous definition of emergency or urgent housing. He was not sure about those matters, and the lead committee should work that out with the Executive as that is an important part of the bill. The situation is imprecise and leaves the decision on how to apply the Executive's intention to the same housing officers who do not live up to the spirit of

the Family Homes and Homelessness (Scotland) Bill.

Ian Jenkins: I am slightly less sceptical about the Executive than Margo MacDonald. There are bound to be anomalies and problems in a bill that deals with how people live their lives. I would not like legislation to be so inflexible that we are stuck with it. In general, I am quite happy, given that we are taking it on trust, to allow tweaking provisions throughout the bill. The motivations are generous.

Ms MacDonald: There can be any number of reasons for someone being housed temporarily and housing management must have the flexibility to make such a decision. However, as any Shelter housing worker will tell us, such a provision could be misapplied. There must be a time limit inside which temporary accommodation must be assessed or the authority must provide a permanent secure tenancy. The provision is open-ended, and that is an issue with which Shelter housing aid workers deal all the time.

Bill Butler: There would be no harm in drawing that concern to the lead committee's attention.

The Convener: I agree with David Mundell. The term "modify" is very wide and if it means "amend" the bill should simply say that. The general thrust of the bill is right and the Executive is not doing anything untoward in seeking the ability to fine tune. However, we should draw the lead committee's attention to the question of what is meant by "modify" and leave it to make a decision. If we do not raise the issue it may pass that committee by. We can at least advise those members about the debate.

There may be occasions where the affirmative procedure may be more appropriate than the negative procedure. I would have to work through my notes to clarify exactly which. Again, perhaps that is a matter for the lead committee. The bill's use of subordinate legislation is not, in principle, untoward. We might want to flag up to the lead committee the tautological argument surrounding "modify" and "amend" and whether the definition of the register and so on should be subject to the negative or the affirmative procedure. Is that agreed?

Members *indicated agreement.*

Regulation of Care (Scotland) Bill

The Convener: Agenda item 2 is the Regulation of Care (Scotland) Bill. We have agreed to consider the bill and make representations to the Executive. We discussed several points during the legal briefing.

We discussed whether national care standards should be laid before Parliament in a statutory instrument subject to the affirmative procedure, given that standards are important in flagging up the Executive's agenda. That would allow an opportunity for consideration, rather than simply allow such standards to be introduced through an administrative edict. We might ask the Executive how it proposes to introduce the standards. We have flagged up the same issue in relation to previous bills, such as the Standards in Scotland's Schools etc (Scotland) Act 2000. If the Executive has not considered the use of an instrument subject to the affirmative procedure, we should ask why not.

Section 23 concerns commission registration and registers. We could ask why matters dealt with under subsection (1)(e) are not covered by an instrument subject to the affirmative procedure, given the nature of the functions that have been introduced in subsections (1)(a) and (1)(e).

I would welcome some clarification as to what is meant in section 24 by major amendments. Margo MacDonald raised that point.

Sections 36 and 38 cover codes of practice and grants and allowances for training. We should ask whether those powers should be exercised by statutory instrument, especially given the importance of the code of practice. We should seek the Executive's comments about why it has taken the approach that it has.

12:00

Bill Butler: There is also an issue with section 39. We could request more substance in the bill on the protection of sensitive material.

The Convener: Section 56 deals with commencement orders. We can ask the Executive why the negative procedure is being used—that is highly unusual.

We will see what replies we receive. If we are not satisfied, there will be time to call witnesses.

Convention Rights (Compliance) (Scotland) Bill

The Convener: Agenda item 3 is also delegated powers scrutiny, this time with regard to the Convention Rights (Compliance) (Scotland) Bill. We agree to defer consideration of the bill until next week, given our agenda today.

Feeding Stuffs (Scotland) Regulations 2000 (SSI 2000/453)

The Convener: Agenda item 4 is Executive responses. A European aspect of the regulations has been highlighted. Do you have any comment, Margo, given your previous involvement on the European Committee?

Ms MacDonald: No. I always went for a cup of coffee when that committee got on to the feeding stuffs regulations—they are pretty dire.

The Convener: It appears that the Executive is acknowledging some problems of failure to implement Community obligations. We presumably draw that to the attention of the lead committee and, it has been suggested, to the European Committee, for its interest. We will see what it makes of it—or whether it, too, just goes for a cup of coffee.

Sexual Offences (Amendment) Act 2000 (Commencement No 2) (Scotland) Order 2000 (SSI 2000/452)

The Convener: The order has come back to us yet again.

Gordon Jackson (Glasgow Govan) (Lab): Last week, I said that the Executive response was not exactly encouraging. It has responded again and, in fairness, I think that the latest response is much better. It goes a long way to persuading me that section 7(2) of the Sexual Offences (Amendment) Act 2000 does not require commencement proceedings. My attention was particularly drawn to the argument that it is simply part of the incidental part of the act, and concerns how the act is commenced, unlike the substantive part of the act, which concerns the regulation of sexual offences. I am inclined to think that the Executive's response might be correct.

Having said that, like other legal minds who have thought about the matter, I would not put my mortgage on that. I am still puzzled about why the Executive would want to take any risk on the matter. I appreciate that it may be to do with the Home Office not being prepared to do a commencement order. However, I would have thought that, even if it is not strictly necessary, it could do no harm to bring in section 7(2) by a commencement order. I am puzzled as to why, if there is a doubt, that is not done.

I am fairly confident that a legal argument could be made against the Executive on this point. I do not mean that it would necessarily succeed, but a statable argument could be made in the courts against the Executive. Why the Executive should take that kind of risk at all is slightly puzzling. It seems to be saying, "We are saying we're right, and so be it." That is up to the Executive, but I would be inclined to ask why it does not ask the Home Office to commence the section, as is suggested, so avoiding any risk. Why should the Executive take a chance on a serious criminal statute? Because it is a criminal statute, it will be construed strictly. The Executive's attitude seems a bit cavalier to me.

Ms MacDonald: I am with Gordon Jackson on that point. Can we ask the Executive for good reasons why it is not writing to the Home Office to ask that a commencement order be laid?

The Convener: I think that it may now be too late to ask the Executive. The matter is not going to a lead committee, so it is simply a matter of our drawing it to the Parliament's attention. We should simply state our concerns for the record and for whoever else may care to take cognisance of them.

I am advised that there is indeed time to write to the Executive again pointing out our deep concern.

Ms MacDonald: The legal adviser said that she had taken advice on the matter. I reiterate that it seems entirely reasonable for us to ask the Executive why it does not ask the Home Office to lay a commencement order.

The Convener: As we have time to do so, shall we write to the Executive saying that, although we see merit in its argument, we can also see merit in the counter argument, and that, in view of the serious nature of the problems that could arise, we feel that ministers should consider implementing the provision with a commencement order? We should also point out that doubt has been expressed by the speaker's counsel at Westminster and the counsel general in Wales. That would give the Executive a further opportunity to say that there is a way out. It is no skin off the Executive's nose; all it has to do is write a letter to the Home Office and get things done down in London. Is that agreed?

Members *indicated agreement.*

Scotland Act 1998 (Agency Arrangements) (Specification) (No 2) Order 2000 (SI 2000/3250)

The Convener: We drew the order to the attention of Parliament and of the lead committee on the ground that it required further explanation, but that information has now been received.

Cattle (Identification of Older Animals) (Scotland) Regulations 2001 (SSI 2001/1)

The Convener: There was defective drafting in the regulations which has been acknowledged by the Executive.

Draft Code of Recommendations for the Welfare of Livestock: Sheep (SE 2001/58)

The Convener: No points arise in relation to the code.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 6) (Scotland) Revocation Order 2001 (SSI 2001/9)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 2) (Scotland) Partial Revocation Order 2001 (SSI 2001/10)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Revocation Order 2001 (SSI 2001/11)

The Convener: The orders are not subject to parliamentary control. No points arise in relation to them.

Act of Sederunt (Ordinary Cause Rules) Amendment (Commercial Actions) 2001 (SSI 2001/8)

The Convener: The instrument is not laid before the Parliament. No points arise in relation to it.

Meeting closed at 12:09.

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