

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 25 September 2001
(Morning)

Session 1

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SUBORDINATE LEGISLATION COMMITTEE

26th Meeting 2001, Session 1

CONVENER

*Ms Margo MacDonald (Lothians) (SNP)

DEPUTY CONVENER

*Ian Jenkins (Tw eeddale, Ettrick and Lauderdale) (LD)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)
*Colin Campbell (West of Scotland) (SNP)
*Gordon Jackson (Glasgow Govan) (Lab)
*Bristow Muldoon (Livingston) (Lab)
*David Mundell (South of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED

Margaret Macdonald (Scottish Parliament Directorate of Legal Services)

ACTING CLERK TO THE COMMITTEE

Bill Thomson

ASSISTANT CLERKS

Ruth Cooper
Alistair Fleming

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 25 September 2001

(Morning)

[THE CONVENER *opened the meeting at 11:22*]

Item in Private

The Convener (Ms Margo MacDonald): Good morning. I welcome members to the Subordinate Legislation Committee's 26th meeting in 2001. The first agenda item is the committee's decision on whether to take agenda item 7 in private. I propose that we discuss the item in public, unless anyone can show good reason to take it in private. Is that agreed?

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): There is no good reason to discuss the item in private.

Members *indicated agreement.*

Rural Stewardship Scheme (Scotland) Regulations 2001 (SSI 2001/300)

The Convener: Item 2 on the agenda is Executive responses. We raised five points on the regulations. The first point concerns the fact that the regulations are made under two acts—the European Communities Act 1972 and the Environment Act 1995, as we discussed at our previous meeting—and the difficulties that can arise from that. Does the committee agree that we should draw the Executive's response to the attention of the lead committee and the Parliament?

My view is that it is important that the European Commission should be able to work out how its legislation is being enforced and that the people who will fall under the remit of the regulations should know where the regulations are coming from. The committee must decide whether the regulations correctly implement a Community obligation. Does anyone wish to comment?

Ian Jenkins: The principle is clear. If a new criminal offence is created, people who are caught by such a provision ought to know the regulations under which they have been apprehended and the penalties to which they might be subject. Although it is possible to make provisions under two different enabling powers—it happens

elsewhere—it is not good practice. We should draw attention to that.

The Convener: We will draw those points to the attention of the lead committee and the Parliament.

Our second question on the regulations concerns the meaning of the terms "application" and "application for aid". The committee might simply draw the point to the attention of the lead committee and the Parliament on the ground of defective drafting—it is no big deal.

We also asked the Executive whether regulation 16, which simply states the legal position, should have been included. I must confess that I did not understand all of the issue, but it seems that English legislation has been interpreted to fit Scots law, which has led to difficulties in the wording. Is that right?

Bill Thomson (Clerk): There seems to have been a transposition of the English terminology into the Scottish regulations, which are not wholly clear as a result.

The Convener: As the issue centres on debt recovery, we should make the regulations clear. We will draw the point to the attention of the lead committee and the Executive on the ground of defective drafting. We did not really understand the intention behind the provision and it might cast doubt on the effect of other legislation.

Ian Jenkins: As some of the regulations are embodied in previous legislation, they are not quite necessary.

The Convener: There must be a word for that.

Ian Jenkins: Mr Mundell used a term earlier.

David Mundell (South of Scotland) (Con): Convener, some people might say that the regulation was otiose.

The Convener: Well, I wish those people would come to the committee. We would all like to be able to use that word.

I suggest that we draw those points to the attention of the lead committee and the Parliament.

Fourthly, we asked the Executive for an explanation of why regulations 17(3) and (4) appear to repeat the provisions of section 136 of the Criminal Procedure (Scotland) Act 1995. Such repetition in the provisions—and, accordingly, the unclear intention behind them—might mean that they are ultra vires, as they concern the time limit that applies to any enactment. We should therefore draw that point to the attention of the lead committee and the Parliament, again on the ground of defective drafting. It is unnecessary to repeat the wording of section 136 of the Criminal

Procedure (Scotland) Act 1995; indeed, it makes the provision technically ultra vires.

Ian Jenkins: I should ask Mr Mundell whether that is another example of an otiose provision.

David Mundell: I think that it might be.

Colin Campbell (West of Scotland) (SNP): He is very perceptive.

11:30

The Convener: Indeed.

We also asked the Executive why regulation 14(5), which provides for the service of notices by post, was considered necessary. The Executive replied that the issue was an illustration of the danger of combining powers under different enabling acts in the same instrument. It is ironic that the Executive should acknowledge that problem with regard to this question and not any of the others that we asked. I suggest that we draw the point to the attention of the lead committee and the Parliament on the same ground as that of question 1.

Do any members oppose my suggestion?

Ian Jenkins: We should draw the matter to the attention of the lead committee and the Parliament in terms of the legal advice that we have received.

The Convener: We will leave the matter just now, although it seems to crop up very often. We have already made comments about defective drafting to the Executive. The problem is that some of these provisions are quite important.

Gordon Jackson (Glasgow Govan) (Lab): There seems to be a huge amount of defective drafting in the instruments that come before the committee. As I have never been involved in the legislative process, I do not know whether that is usual. It might well be the case in every Parliament that, with the volume of legislation, there are always mistakes and drafting errors that the legal adviser picks up. However, I wonder whether the number of errors that we find is usual, because it does not seem acceptable to me. We are doing nobody a favour if we do not point that out.

Colin Campbell: I am glad that Mr Jackson, as a professional, has raised the matter. As a complete amateur at his second Subordinate Legislation Committee meeting, I am surprised to see instruments that are defectively drafted and ultra vires.

Gordon Jackson: I do not know—I am not a professional in that sense—perhaps every Parliament has this problem and the number of errors that we pick up is only average. However, I find the matter disturbing.

Colin Campbell: So do I.

The Convener: We will have the pleasure later of hearing Mr Mundell's report on the scrutiny of legislation conference that he attended in Sydney. I am sure that he listened out for some handy—and by no means otiose—hints on the matter.

That said, I take Gordon Jackson's point seriously. As in any other operation, there will be allowances for mistakes and corrections, which is one of the reasons why we are here. If the norm in the House of Commons for such errors is 5 to 10 per cent, I presume that that sets some benchmark and it would be reasonable for the committee to ask whether the Executive is hitting that target. If it is not, how much is that down to the fact that so many people in the Executive are new to their jobs? I am with you, Gordon; I want to know why there is so much defective drafting. We seem to spend a fair amount of the time on the problem.

Gordon Jackson: For the avoidance of doubt, I am not being condemnatory.

The Convener: Neither am I.

Gordon Jackson: There might well be a perfectly good explanation. Perhaps there are teething troubles with all the new people in the Executive. I am not sitting on some high horse and criticising everyone. However, I would like to hear why we are finding so many mistakes.

The Convener: The committee sees the results of defective drafting. If our suspicions about the number of errors are borne out, perhaps we could make suggestions for improvements. We will not know until we ask, so we will ask. The obvious point is training. As there is a bit of money left in last year's kitty, perhaps some training could be carried out, if that were required.

National Health Service Trusts (Membership and Procedure) (Scotland) Regulations 2001 (SSI 2001/301)

The Convener: We asked the Executive for comments on two aspects of the regulations. We asked for an explanation of what paragraph (5) adds to paragraph (1) of regulation 12. Does the committee agree to draw that to the attention of the lead committee and the Parliament on the ground that the regulations are defectively drafted?

Members indicated agreement.

The Convener: We also asked for an explanation of why the explanatory note does not highlight the amendments made to the consolidated regulations, nor indicate where the

detail of the provisions may be found. Do we agree to draw that to the attention of the lead committee on the ground of defective drafting of the explanatory note?

Colin Campbell: Yes.

The Convener: It is quite important because the explanatory note is supposed to make things easy.

Health Boards (Membership and Procedure) (Scotland) Regulations 2001 (SSI 2001/302)

The Convener: We raised four points on the regulations. We asked why the changes to the current regulations are not highlighted in the explanatory note. The Executive said that there was so much other stuff around that even though the changes were not included in the explanatory note, the information was available. The committee felt that the information might be there, but that the situation could change—things go out of print, get lost and all the rest of it—so it would be just as well to have that information in the explanatory note.

Colin Campbell: If it is custom and precedent to have an explanatory note, it should be explanatory.

The Convener: We should draw that to the attention of the lead committee, noting that the explanatory note failed to indicate the changes made by the regulations and that it is not good enough to say that that information can be found elsewhere. Is that agreed?

Members indicated agreement.

The Convener: There was some repetition in the regulations—we made a similar point about SSI 2001/301—and we should draw that to the attention of the lead committee and the Parliament on the ground that regulation 11(1) is defectively drafted in that it contains a reference to committees that is duplicated in regulation 11(5). The provision does not make clear whether the associates of committee members who are not committee members are covered, although that is the intention. People who read the regulations will understand what that means—the Executive has not been clear about the status of committee members and people who might be drafted on to the committee. Do we agree to send that back to the lead committee and the Executive?

Members indicated agreement.

The Convener: We asked for an explanation of the relevance of the reference to paragraph 6 of schedule 1 to the National Health Service (Scotland) Act 1978.

Ian Jenkins: The Executive repeated information in regulation 4 that is already included in paragraph 6 of schedule 1 to the parent act. Perhaps it is a belt-and-braces approach.

The Convener: That is correct.

Ian Jenkins: We should draw those points to the attention of the lead committee.

The Convener: Yes. The committee also asked the Executive why regulation 2(1) states that members of boards are to be appointed by the Scottish ministers when paragraph 2 of schedule 1 to the National Health Service (Scotland) Act 1978 contains the same provision. It is not a huge point, but does the committee want to draw the attention of the lead committee and the Parliament to the provision on the ground that it unnecessarily repeats provisions of the enabling act? Technically, that makes the regulations ultra vires and is yet another example of defective drafting.

Bristow Muldoon (Livingston) (Lab): Would it be better to set out an explanation of the way in which a statutory instrument would work in the explanatory note? It would read better if, for example, the note said that the parent acts gives such and such a power.

The Convener: Does that not happen already? I thought that that was what the explanatory note was supposed to do.

Bristow Muldoon: That is what I am saying. Perhaps that is the point that we should make to the Executive.

The Convener: The explanatory notes are just not clear enough.

Gordon Jackson: I follow the Executive's explanation here. To use David Mundell's word, the Executive accepts that regulation 2(1) is otiose, but says that it makes sense. Excuse my ignorance, but why is repeating a provision, which is not contrary to another provision, ultra vires?

The Convener: As far as I can work it out, the act gives the power, therefore the provision is unnecessary.

Gordon Jackson: I can see that it is otiose, but why is it ultra vires?

The Convener: I will seek advice.

Gordon Jackson: Right.

The Convener: We will get a written explanation that will go to all members of the committee. I have asked the question two or three times and have understood the explanation while it was being given, but when I tried to recall it two minutes later, I could not.

Colin Campbell: That is something that we all suffer from.

The Convener: We will get a written explanation and paste it in the back of our papers each week, so that we all know what it means.

Ian Jenkins: Last week we decided to have some sort of training day.

The Convener: We are having one. That is in hand.

I am assured that the point in question is technical and that we should not lose sleep over it. All the same, we would like to understand it.

Do we agree to draw the attention of the lead committee and the Parliament to the provision, as it is technically ultra vires?

Members indicated agreement.

Scottish Social Services Council (Appointments, Procedure and Access to the Register) Regulations 2001 (SSI 2001/303)

The Convener: We raised four points with the Executive in relation to the regulations. The Executive was asked to explain why the preamble makes no reference to the fulfilment of the statutory obligation on the Scottish ministers, contained in section 56(2) of the Regulation of Care (Scotland) Act 2001 and schedule 2, paragraph 7, to consult prior to making the regulations.

The Executive said that it understood why we had asked the question and that the omission was an oversight. That does not affect the validity of the regulations and details of the consultation were set out in the Executive note that accompanied them.

Are we satisfied with that?

11:45

Ian Jenkins: We could draw the matter to the attention of the lead committee and the Parliament. The Executive has accepted that there is defective drafting and we are pointing out that the preamble does not refer to the statutory requirement to consult prior to making the regulations. That should be in the document.

The Convener: The committee's second question asked the Executive to explain the vires of regulation 2(1), which appears to empower the Scottish ministers to appoint "such number of members" as they "think fit". This is another case of matters being detailed in the legislation. Regulation 2(1) partly repeats the wording of paragraph 2 of schedule 2 to the Regulation of Care (Scotland) Act 2001. The Executive has said that it considers that it was desirable to do that as

a first step in setting out clearly the scheme of appointment that is envisaged by the regulations.

There is a question as to whether the Executive has the power to do that. I suggest that the committee should draw the instrument to the attention of the lead committee and the Parliament on the ground that it is technically ultra vires. It is another example of defective drafting.

Bristow Muldoon: The other issue is inconsistency, as only parts of the original provisions are contained within the regulations. For example, no restrictions are contained within the regulations. If the Executive was being consistent, the regulations would have included restrictions.

The Convener: That answers Gordon Jackson's question. If the Executive is going to repeat provisions, it should repeat them exactly, so that there is no difference.

That will be drawn to the attention of the lead committee and the Parliament.

Members indicated agreement.

The Convener: The committee's third question on the regulations was to ask the Executive to explain which provision of the parent act justifies the sub-delegation to the Scottish social services council contained in regulation 13(3).

Ian Jenkins: We should draw the response to the attention of the lead committee and the Parliament.

The Convener: The fourth question on the regulations was on fees. As section 56(1)(b) of the Regulation of Care (Scotland) Act 2001 provides for fees to be specified in the regulations, the committee asked which power justifies the sub-delegation of fees, contained in regulation 13(5), to the Scottish social services council.

The Executive reckons that section 56(1)(b) empowers the Scottish ministers to make regulations that require the council to secure that access to the register shall be afforded to any person on the payment of

"such fees as may be specified in the regulations".

The provision is potentially ultra vires. Should we draw this to the attention of the lead committee and the Parliament?

Gordon Jackson: Those are difficult issues. I am not disagreeing that we should draw this to the attention of the lead committee and the Parliament, but it is difficult to know whether it is sub-delegation. Sometimes we do not have the ability to adjudicate on such matters. We should point out that we have raised the issue.

The Convener: The issue will be drawn to the attention of the lead committee and the

Parliament.

Members indicated agreement.

Education (Student Loans) (Scotland) Regulations 2000 Amendment (No 2) Regulations 2001 (SSI 2001/311)

The Convener: We thought that the title of the regulations was quite a mouthful—to use strictly legal terms. We asked last week whether some of the words in the title were unnecessary. The Executive responded that it wanted to draw attention to the difference between mortgage-style student loans and the student loans to which the regulations refer.

David Mundell: This is one of the issues that the committee will continue to examine. We have said that the titles of instruments should make clear to ordinary citizens exactly what they are about. The Executive has provided an explanation, which can be justified, as to how the title has been arrived at. There must be best practice—as we have said on other issues that we have raised with the Executive, such as consolidation—in producing titles that are as snappy as possible and convey what is in the instrument without being such a mouthful.

The Convener: The Executive must decide whether the title can be changed before it comes to the fifth consolidation, which I am assured is the point at which it would consider changing such things. We will draw the point to its attention.

Bristow Muldoon: I am not sure whether it is worth drawing to the attention of the lead committee.

The Convener: It is the principle. We might want to say to the Executive that it should consider the length of titles.

David Mundell: This is not so much an issue for the lead committee; it is a general point for the Executive. It would be best raised at informal chats with the Executive.

Bristow Muldoon: It is a fair point to raise with the Executive.

David Mundell: The lead committee will not be able to do anything about the instrument. It is worth raising the general issue.

The Convener: Should we write an informal letter to the Executive to say that the problem continues to arise?

David Mundell: Previously, the committee has had informal chats with the Executive on drafting issues. The issue could be discussed at that level.

The Convener: Should we discuss it in that way

rather than by letter?

Ian Jenkins: We have put our comments on record. Anyone who wants to know our views can read the *Official Report*.

The Convener: If the situation does not improve, we can have a chat with the Executive.

Colin Campbell: I understand why some regulations have enormous titles, but they are off-putting for members of the public who want to get information. It is fine for lawyers or people like ourselves who are put in a situation where we have to deal with it, but it is grim for people who want to know what to do and where to do it.

The Convener: We will raise the matter informally.

Members indicated agreement.

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 6) (Scotland) Order 2001 (SSI 2001/316)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (East Coast) (Scotland) Order 2001 (SSI 2001/317)

The Convener: Item 3 on the agenda is instruments subject to approval. The orders are a couple of mouthfuls.

Ian Jenkins: Poisonous mouthfuls, if we are not careful.

The Convener: No points arise on the orders.

Ian Jenkins: Which instruments are you talking about, convener?

The Convener: The forgetful shellfish ones. The (Amnesic Shellfish Poisoning) (West Coast) (No 6) (Scotland) Order 2001 (SSI 2001/316).

Colin Campbell: You forgot the Food Protection (Emergency Prohibitions) part of the title.

The Convener: I thought that that was a bit otiose.

Are we agreed that no points arise on the orders?

Members indicated agreement.

Parole Board (Scotland) Rules 2001 (SSI 2001/315)

The Convener: A number of questions for the

Executive arise from this instrument. Do members have any comments?

Colin Campbell: The schedule has not been numbered.

Ian Jenkins: Rule 2(2) provides that a reference to "a numbered Schedule" is a reference to

"the Schedule bearing that number in these Rules".

However, there is only one schedule to the rules, which is not numbered.

Colin Campbell: I am glad that Ian Jenkins understood that.

Ian Jenkins: There is also some confusion about the expression "to these Rules" following references to the schedule in the rules. We can ask for an explanation of that.

The Convener: I refer members to the provision for the sending of documents that is made under rule 11 of the instrument. The Executive has allowed for fax transmission, but it has not mentioned electronic communications. Last week we asked a general question about the Executive's stance on that matter, so we may want to let it go.

The instrument contains an example of drafting that may be very hurtful to the lawyers who sit on this committee. I would hate that to be the case. Rule 12(3) permits the chairman of the board or the chairman of a tribunal to authenticate corrections to records of decisions of the board or tribunal

"by certificate under his hand".

I think that that term is borrowed from English law.

Gordon Jackson: I do not know.

Colin Campbell: Is there an equivalent Scottish expression that Scots lawyers would understand?

The Convener: Could the word "signed" not be used? I am sorry that Gordon Jackson did not know that the term

"by certificate under his hand"

was borrowed from English law, but now he does. Once again, this is a question of style in the drafting of regulations.

Gordon Jackson: "Signed" would be fine, would it not?

The Convener: I am glad that there is total unanimity in the committee on that point. Perhaps it would be enough just to speak to the Executive about the matter. However, if we have a number of questions to put to the Executive, we can ask it about the use of the expression

"by certificate under his hand"

as well.

Are there any further matters relating to the instrument that members would like the committee to bring to the attention of the Executive?

Ian Jenkins: The instrument states that

"the powers of the Board may be exercised by any 3 members of the Board."

Subsequently it states that those three members may be appointed by the chairman of the board. I am not sure what the difference is between those two provisions. The Executive may mean that the powers of the board cannot be exercised simply by three members getting together in a corner, but that their actions need to be authenticated by the chairman.

Gordon Jackson: Is there not a chairman of the whole board? I do not think that the reference is to a chairman appointed by the three persons who are meeting.

The Convener: That is why we are not sure what is meant by the provisions. We will write to the Executive to clarify certain points, including this one.

Ian Jenkins: A few other points have been drawn to our attention. We should write to the Executive to ask the questions that are raised in the legal advice that we have received. The instrument also contains a number of typographical errors that should be drawn to the Executive's attention.

12:00

The Convener: Rule 17 contains references to a number of provisions of the Prisoners and Criminal Proceedings (Scotland) Act 1993. It also refers to the Convention Rights (Compliance) (Scotland) Act 2001 and the Crime and Disorder Act 1998, but there are no footnotes in the instrument to explain those references. We will seek clarification from the Executive on that.

Ian Jenkins suggested that we raise with the Executive all the issues that have been brought to our attention.

Ian Jenkins: These are all technical points, and I do not think that it is worth our spending more time on them.

The Convener: There is also a less technical point relating to consultation. We can bring that to the Executive's attention as well.

Food Protection (Emergency Prohibitions) (Radioactivity in Sheep) Partial Revocation (Scotland) Order 2001 (SSI 2001/313)

The Convener: The next order for consideration

relates to radioactivity in sheep.

Colin Campbell: Radioactive sheep, for goodness' sake.

The Convener: That goes back to Chernobyl. The instrument raises an interesting issue, as everyone has forgotten about the Chernobyl disaster.

Colin Campbell: Eighteen farms are affected. That is astonishing.

The Convener: No points arise for this committee from the order.

Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (West Coast) (Scotland) Revocation Order 2001 (SSI 2001/314)

The Convener: The next order for consideration relates to paralytic shellfish poisoning as opposed to amnesic shellfish poisoning. I am happy to inform the committee that no points arise from the order.

Conference Report

The Convener: I am happy that David Mundell was able to represent the committee and Parliament at the conference "Re-Engineering Regulations and Scrutiny of Legislation for the 21st Century", which took place in Sydney, Australia. David's report has been circulated to members. We cannot include his report in the committee's annual report, because the conference took place after the end of the parliamentary year. The report will live on in memory and will be included in next year's annual report. I ask David Mundell to speak to his report.

David Mundell: Thank you, convener. Members will be pleased to hear that I do not intend to read out the report.

The Convener: Good.

David Mundell: I was accompanied to the conference by Alasdair Rankin, the clerk to the committee, and Margaret Macdonald, the Parliament's legal adviser. There is no doubt that our attendance at the conference was an extremely worthwhile exercise on behalf of the Parliament. Myriad contacts have been made and a body of knowledge has been gained. That knowledge does not rest only in me but in Margaret and Alasdair.

The bulk of the documentation from the conference will be placed in the Scottish Parliament information centre, so that it can be available to members. We also intend to send a

copy of our report to the Presiding Officer, to the Procedures Committee and to Angus MacKay, who is the minister responsible for modernising government. Many of the issues that were highlighted in contributions made at the conference related to the modernising government agenda.

It is ironic that we had to travel to Sydney to have an opportunity to meet representatives of the House of Lords, the House of Commons, the Welsh Assembly and the Northern Ireland Assembly. We had productive discussions about our different, though complementary, practices. It would be worth our continuing those exchanges in another format, because we have a great deal to share on the issues that Gordon Jackson raised this morning—how many errors are to be expected, how many regulations are to be expected and so on.

We should not forget that at the moment there is considerable interest in the Scottish Parliament and in the fact that we are developing almost from a blank sheet of paper. There was great interest from the delegates across the world in what we were doing in Scotland, where we had started from and the choices that we made when we had a greater freedom of choice than many people who had precedents to follow. We found particular interest among delegates from South Africa and Kenya—emerging countries where they are looking to develop systems and they were keen to find out what we were doing.

Everyone at the conference was concerned with the volume of regulation. That was the overriding principle in whichever topic was discussed. Every law-making nation is producing more law and the question is how to manage that body of law. When new law is created, how does it relate back to enabling existing provisions? That is a challenge for all nations. There were discussions about how that could be done.

Various initiatives to cut back the body of law are being pursued by the UK Government, the Australian Government and the New Zealand Government. However, everybody agreed that even if we have the will to do it, it is a difficult exercise. The report highlights a number of ways in which people have sought to reduce the body of law. For example, there is a series of provisions called sunset provisions. Each regulation contains a date on which it expires and it would only be re-enacted if somebody proactively did something about it. That means that a fireworks act of 1858 would fall unless somebody decided that there was a current issue. Those provisions should be considered.

Two areas are worthy of the Parliament's consideration. The first is what is now being called tertiary legislation, which we have come across

increasingly in this committee and in the way that the Parliament works. We have accepted it for practical reasons. The main thrust of the body of the law is contained in guidance or regulations that are issued by ministers. There is no mechanism for scrutinising that sort of regulation, which would determine, for example, how care homes are laid out, the number of staff that they have and the regulations that will apply to tuition fees and graduate endowment.

The regulations will not be scrutinised by anyone. They are a third layer of legislation after the enabling act and the subordinate legislation that this committee considers, but the meat is never properly considered by anyone. In more experienced jurisdictions, it is an issue that they are trying to address by ensuring that if there were a substantive provision, the regulations would also be laid before Parliament so that they were scrutinised in some way. That is an important point.

The second point is whether there should be a formal process of review—regulatory impact analysis or RIA as it is referred to. That would mean that when the regulations appear before this committee, they would not just appear with the explanatory note, they would appear with a much greater impact analysis so that it is clear that all the repercussions have been thought through. That is an issue for the Executive because it is resource-consuming to do that. The RIA concept is certainly gaining a great deal of credence in other jurisdictions as a way of conducting pre-scrutiny of regulations.

My final point was highlighted by Murray Sinclair last week—that we should consider how the Commonwealth of Australia copes with the issues that arise as devolved law evolves in that environment. I did not fully understand the set-up of the Commonwealth of Australia and its individual states. It is not that dissimilar to the United Kingdom's situation in some ways. There is a body of experience that we should not forget to draw upon. We often talk about the Scottish Parliament in the context of European models, but there are also Commonwealth models to consider.

The Convener: I thank David Mundell for his report. I enjoyed reading it. I particularly enjoyed reading about your open-hearted invitation on behalf of the Parliament to consider hosting a conference in 2005. I will ask the clerk to report to the committee on the implications of such a generous offer before we proceed further.

The other thing that I noticed was the RIA. Your report says that there is already some type of RIA in the UK.

David Mundell: Yes.

The Convener: It is worth drawing that to the

attention of the Parliament when the report is presented, to say that it might want to consider whether it can learn from the way in which the UK is using it or whether we can improve on it.

David Mundell: That is possible. Margaret Macdonald accompanied me to the conference—

The Convener: That was the next thing. I was going to ask Margaret if she would speak to the committee as a delegate at that conference.

Margaret Macdonald (Scottish Parliament Directorate of Legal Services): I echo everything that David Mundell said. I found the conference extremely interesting and worth while as well as hard work. If anyone looks at the papers that were issued to us, they will find them to be of enormous interest. For me, it was an opportunity to meet other legal advisers. I found that we share many of the same problems. It seems that the same issues arise on subordinate legislation around the world.

It was interesting to learn that the Parliament of New South Wales has limited power to amend statutory instruments. I was also interested in the power of the New Zealand committee to annul instruments many years afterwards on a petition from an affected member of the public.

The Convener: I noticed that that was not time-barred.

Margaret Macdonald: No, it was not.

The Convener: There were details in the report that I found interesting, but the first thing that must happen is that the report is lodged so that it is there for everyone to access. We should learn things from it. Once again, thank you very much indeed.

David Mundell: All the ancillary documents will also be in SPICe—not just the report, but the various contributions. We understand that a full Hansard transcript will also be available on CD-ROM.

Bill Butler (Glasgow Anniesland) (Lab): For Christmas?

David Mundell: Yes, for Christmas.

Gordon Jackson: For those who cannot sleep of an evening.

David Mundell: That is right.

Annual Report

The Convener: The final item is consideration of the draft annual report, which members have. As I explained, David Mundell's report on the Sydney conference will be referred to in a preamble to the annual report. It will say that, in the course of the year, the Subordinate Legislation

Committee was represented by David Mundell, the clerk and the legal adviser at the international conference in Sydney, and that because the conference did not happen in the period to which this year's annual report refers, next year's annual report will have a full report on it.

Is there anything that anyone wishes to raise on this year's draft annual report?

Members: No.

The Convener: That is adopted.

Ian Jenkins: As it is David Mundell's last meeting before he sails off into the sunset of legislation, I suggest that we say farewell officially to him.

David Mundell: It is my last meeting and I thank particularly the clerking staff, Alasdair Rankin and our legal adviser, Margaret Macdonald, for their help and support. I have conveyed my thanks to our previous convener, Mr MacAskill. I wish Margo MacDonald all the best in her new role. I wish Ian Jenkins and Bristow Muldoon the best of luck in completing the course. I got to Becher's Brook the second time round, but I am sure that one of them will make it to the finishing line.

The Convener: Even in my short time here I know how invaluable you have been, David, in the committee. I say genuinely that all of us will miss you greatly.

David Mundell: I am sure that Mr Fraser will be an able substitute.

The Convener: He had better be. With that, I thank you.

Meeting closed at 12:16.

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