

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 9 September 2003  
*(Morning)*

Session 2

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# **SUBORDINATE LEGISLATION COMMITTEE**

## **5<sup>th</sup> Meeting 2003, Session 2**

### **CONVENER**

\*Dr Sylvia Jackson (Stirling) (Lab)

### **DEPUTY CONVENER**

\*Gordon Jackson (Glasgow Govan) (Lab)

### **COMMITTEE MEMBERS**

\*Mr Stewart Maxwell (West of Scotland) (SNP)

\*Christine May (Central Fife) (Lab)

\*Mike Pringle (Edinburgh South) (LD)

\*Murray Tosh (West of Scotland) (Con)

### **COMMITTEE SUBSTITUTES**

Bruce Crawford (Mid Scotland and Fife) (SNP)

Alex Johnstone (North East Scotland) (Con)

\*attended

### **CLERK TO THE COMMITTEE**

Alasdair Rankin

### **SENIOR ASSISTANT CLERK**

Steve Farrell

### **ASSISTANT CLERKS**

Joanne Clinton

Alistair Fleming

### **LOCATION**

Committee Room 3

## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 9 September 2003*

*(Morning)*

[THE CONVENER *opened the meeting at 10:34*]

### Delegated Powers Scrutiny

#### Vulnerable Witnesses (Scotland) Bill: Stage 1

**The Convener (Dr Sylvia Jackson):** I welcome everybody to the fifth meeting this session of the Subordinate Legislation Committee. The first agenda item is delegated powers scrutiny of the Vulnerable Witnesses (Scotland) Bill at stage 1. As someone new to the committee, I found the Scottish Executive's policy memorandum particularly useful, as it gave an outline of the various delegated powers involved.

I will go through the relevant parts of the bill, starting with the rules of court. I suggest that there is nothing in the provisions to which exception could be taken.

**Christine May (Central Fife) (Lab):** We note that the courts have powers to draw up procedural rules but, as we know, having such a power and exercising it can be two different things. It would be useful to suggest that, as a matter of good practice if nothing else, those rules should be drawn up. It is essential that that is done, and I think that we should draw attention to that. In other words, we assume that the courts will draw up such rules, but we should note our view that that is good practice, and we would hope to see the rules once they are drawn up.

**The Convener:** That is a good point.

In discussing the rules of court in relation to the policy memorandum, we should mention the relevant provisions in the bill. The first is proposed new section 271A, on child witnesses, which section 1(1) of the bill inserts into the Criminal Procedure (Scotland) Act 1995, and in particular new section 271A(3)(b). New section 271C covers vulnerable witnesses other than child witnesses—it is section 271C(3)(b)(ii) that confers rule-making powers on the courts. New section 271H(3) deals with special measures.

Section 10 of the bill is on procedure in connection with orders under sections 8 and 9.

I think that those are all the parts of the bill that cover rules of court. Taking into account Christine May's comments, are we all agreed on rules of court?

**Members indicated agreement.**

**The Convener:** Part 1 of the bill deals with criminal proceedings. I invite the committee's comments on proposed new section 271H(1)(f). New section 271H(1)(a) to (e) defines the special measures that may be taken. Section 271H(1)(f) confers powers on the Scottish ministers to make orders about other special measures, by way of subordinate legislation subject to the parliamentary procedure of affirmative resolution.

**Christine May:** It is right that there should be special measures in such a sensitive area as the protection of vulnerable witnesses. I welcome the proposal that such measures should be considered by the full Parliament. The Executive has left provision for additional procedures to be drawn up in the future. Flexibility is allowed for such changes to be made as technology changes or as circumstances dictate.

I have a more general question about whether the use of the affirmative procedure is sufficient in such instances. I am reminded by the committee's legal advisers that that is normal in legislation of this sort, but I reiterate what I believe the committee has said in the past: the use of the affirmative procedure to amend primary legislation is fine up to the point where the amendment significantly changes that legislation. I do not think that the committee made a decision in session 1 on precisely where that point was. That question applies in this case.

**The Convener:** The Executive has stated that any additional special measures may have financial implications, so it considers the affirmative procedure to be appropriate.

**Christine May:** As long as the financial implications are not used as a reason to fail to do something. In an area as sensitive as the protection of vulnerable witnesses, it is not reasonable to cite cost as a reason not to use special measures. I hope that, if that reason were used, it would be in order that the appropriate committee might agree that funds be voted for special measures, rather than that they might not be taken because it was too dear to do so. That point might come up when we examine the issues concerning district courts.

**The Convener:** Perhaps I am being naive, but I understood that there would be financial implications and that that is why the affirmative procedure should be used. However, Christine May makes a good point that we could put to the relevant lead committee.

Are we agreed on that?

**Members indicated agreement.**

**The Convener:** We will now consider section 271N(1), which deals with the application of sections 271 to 271M to proceedings in the district court. Section 271N(1) confers power on the Scottish ministers to extend, by order made by statutory instrument subject to affirmative resolution, the special measures provisions.

**Mike Pringle (Edinburgh South) (LD):** I sit on the Justice 2 Committee, which is considering the bill. I raised the point in that committee about why district courts are not covered by the primary legislation. From my experience of sitting in the district court, I know that people who are well known in the local community are charged. There is just as much need to protect vulnerable witnesses in the district court as there is in the High Court or the sheriff court. I agree that we should ask the lead committee to reconsider the matter and that the Executive should also reconsider its position.

**The Convener:** I will clarify what the two issues are in this section. One is concerned about when the ministers decide to exercise their powers and the other is about the extent of the powers. Are there any further points?

**Murray Tosh (West of Scotland) (Con):** We should ask why the ministers do not propose to act in the same time scale. There might be good, substantive reasons, but if we have not picked them up from the policy memorandum then we should establish what the explanation is. The superficial analysis might be that there are expenditure and works implications for local authorities to bring district court premises up to the necessary standard to allow for separate rooms and video links. However, that is not a good reason for delaying the implementation of the necessary reforms. That might be a reason for allocating funds to ensure that the premises are in a satisfactory condition. There might be other reasons that are not obvious to us and we should try to clarify those in the time scale.

**The Convener:** We are talking specifically about addressing those issues to the Executive. Do members agree that, when we receive the Executive's answers—which might lead to more questions—we will refer the matter to the lead committee?

**Members indicated agreement.**

**The Convener:** Let us discuss the location of the court. It is less easy to understand why the special measures that can be authorised should vary according to the location of the court where a case is tried.

**Christine May:** In the case of sentencing, for example, the Executive wishes to standardise sentences as far as possible. There is a wish that similar methods of punishment be used throughout the country. In the case of the location of courts, we are talking about creating differences because of geography. There might be good reason for that, but it is not explained by the Executive. It might be to reduce travel distances, but the committee should be told why.

We should emphasise to the Executive that we are anxious to have the best possible drafting of instruments for the protection of vulnerable witnesses. That is of paramount importance in local communities where we have all come across vulnerable witnesses who have been afraid to give evidence because they have been intimidated or too distressed. Cases have collapsed as a result. If we can play our part to ensure that that does not happen, it will be welcomed.

10:45

**Mr Stewart Maxwell (West of Scotland) (SNP):** I agree with all that has been said about district courts and the lack of clarity about why they are not covered by the primary legislation. However, I am uneasy about the power of ministers to apply subordinate legislation to the district courts. If the proposals are important in the High Court and the sheriff court, they are equally important in the district court. We are discussing important legislation and I am uncomfortable with the idea that the power to introduce or not to introduce legislation for the district courts should be left entirely in the hands of ministers.

**The Convener:** That makes explicit all our previous comments. Are we all agreed?

**Members indicated agreement.**

**The Convener:** Part 2 of the bill deals with civil proceedings. Section 13(1)(e) confers power on the Scottish Ministers to add to the special measures, by order made by way of statutory instrument and subject to affirmative resolution. The power is similar to that dealt with in section 271H(1)(f), about which Christine May made the point about financial implications and with which we agreed. Do we agree that this power is in the same vein?

**Members:** Yes.

**The Convener:** I welcome Gordon Jackson to the meeting. I missed him when he came through the door.

**Gordon Jackson (Glasgow Govan) (Lab):** I have lost track of our new arrangements. What did we decide?

**Mike Pringle:** We had the legal briefing between half-past 9 and half-past 10.

**Gordon Jackson:** I am still an hour behind. I am really sorry. I have been in Edinburgh since half-past 9.

**Christine May:** Glasgow is in a different time zone.

**Gordon Jackson:** I forgot that we changed the time of the meeting after years of meeting at half-past 10 and quarter-past 11.

**The Convener:** We accept your apologies, Gordon and we are sorry to have missed you.

Part 3 of the bill deals with miscellaneous and general provisions. Section 20 deals with the commencement and short title of the bill. The section confers power on the Scottish ministers to bring the provisions of the bill into force by an order made by statutory instrument that would not be subject to parliamentary procedure.

**Christine May:** Why does the Executive propose that the bill comes into force in different places at different times? The bill should come into force regardless of the geographical location of the courts. We should make that point to the Executive.

**Gordon Jackson:** I wonder—with some hesitation—whether we are moving away from the committee's job on such matters. We have always taken a strict view that we would deal with the technical drafting, not the political arguments, which the Justice 1 Committee and the Justice 2 Committee can take up. I know that we can take guidance from the clerk on this point, but I am frightened that we will get too far into the politics of the commencement of the bill. There is nothing wrong with the bill's coming into force at different times in different places. Christine May's point is that the committee exists to protect people, but I am not sure whether we are doing the justice committees' job, rather than ours. It would be perfectly legitimate for Christine May to make the point in the chamber that she objects to the bill's coming into force at different times in different places, but I am not sure whether the Subordinate Legislation Committee should make that point.

**The Convener:** I am reliably informed that our role includes the consideration of the use of delegated powers.

**Gordon Jackson:** Fine.

**The Convener:** The legal brief tells us that we are competent to raise the issue. However, as I am fairly new to the committee, I am willing to hear more from Gordon Jackson.

**Gordon Jackson:** I am simply sounding a slight note of hesitation. In the past, committee members of all parties were careful to ensure that the

committee did not deal with political arguments, but with legal ones. We are in danger of discussing the politics of the bill rather than the legal issues relating to its subordinate legislation provisions.

**Murray Tosh:** The policy issue is just the context for our question, which to ask the Executive why it intends to proceed by statutory instrument, rather than including the matter in the primary legislation.

**Gordon Jackson:** That point is well entitled. I was just firing out a little thought.

**Mike Pringle:** I am concerned that, because the bill is the first one to be dealt with in this session of the Parliament, the Executive might have rushed it and not given it enough time. In particular, as I have said in the Justice 2 Committee, I am concerned about why the bill will not apply to district courts. It is legitimate to ask about that.

**The Convener:** Before Gordon Jackson arrived, we were discussing the big issue that Murray Tosh has just raised, which is why certain measures are in the primary legislation and why other measures are to be introduced through subordinate legislation. For instance, district courts are being dealt with differently from other courts, such as the High Court. Obviously, that matter is within our remit.

**Gordon Jackson:** All I am saying is that it is difficult to define where the line is crossed. I have no problem with Christine May's point, which was—I am not quoting her—that the bill should be implemented everywhere at the same time, but I felt that that took us into the politics of the bill rather than the reasons for the subordinate legislation provisions. I agree that it is not entirely clear where that line is.

I want to sound a note of caution because, in the long term, the committee will not work if we always end up discussing the politics of legislation, which, fundamentally, is not our job.

**The Convener:** We have no intention of discussing the politics of the bill. We have a genuine concern about why certain measures are in the primary legislation and other measures will be introduced through statutory instruments.

**Gordon Jackson:** I totally accept that that question is legitimate.

**Christine May:** I would be happy if we could find technical words in which to raise the point. I take Gordon Jackson's point: we do not want to run the risk of not getting an answer and of being slapped down because the matter is none of our business. We should proceed properly.

**The Convener:** Unlike Gordon Jackson, most committee members are fairly new to the legal scene.

**Mike Pringle:** He is the expert.

**Gordon Jackson:** It is not very expert stuff.

**The Convener:** Most of us are trying to find our feet and to discover what background information would be useful. If Gordon Jackson can help us in any way, that would be useful. We might return to the issue next week.

Do members agree that Christine May's point is the main point on section 20?

**Members indicated agreement.**

**Murray Tosh:** Excuse me, convener. I have another meeting to attend.

**The Convener:** Okay. We are sorry to see you go.

## Executive Responses

10:54

**The Convener:** Agenda item 2 is to discuss the Executive's responses to the various questions that we raised last week.

### **Products of Animal Origin (Third Country Imports) (Scotland) Amendment (No 3) Regulations 2003 (SSI 2003/333)**

**The Convener:** I welcome any comments on the Executive's response to our points on the regulations. While members are thinking, I remind them that we asked for further explanation from the Scottish Executive on two main questions, which, in essence, related to timing. Are members happy with the Executive's explanation?

**Christine May:** We are happy, but, nonetheless, the matter should be reported to the lead committee and to the Parliament for information. However, we accept the reasons that the Executive has given.

**The Convener:** The reasons that were given for the delay in producing the regulations were that the bringing into force of the collagen decision for third country imports was delayed and that the Executive was trying to bring the various pieces of subordinate legislation together, which seems reasonable.

### **Form of Repair Notice (Scotland) Regulations 2003 (SSI 2003/335)**

**The Convener:** As Christine May made a point on the regulations at the previous meeting, perhaps she will say how good she thinks the answer is.

**Christine May:** I have a doubt about the completeness of the answer. The Executive said that local authorities expressed no preference as to whether the forms were produced individually or as a series, but it did not say whether it had asked local authorities about that—I suspect that they were not asked. In future, where such work is being done, it would be good practice to ask such questions proactively. Other than that, I accept the answer, but we should draw the Executive's response to the attention of the lead committee and the Parliament.

**The Convener:** To summarise, we will draw the Executive's answer to the attention of the lead committee and the Parliament, on the ground that the matter required explanation.

**Christine May:** We should also write to the Executive on that point.

**The Convener:** We will do that.



### **Form of Improvement Order (Scotland) Regulations 2003 (SSI 2003/336)**

**The Convener:** Members will remember that we doubted whether the regulations were *intra vires*. Do members feel that we should ask the Executive to revisit the regulations?

**Mr Maxwell:** We should not let the matter go. The point might be minor, but it is important and the Executive's response does not clarify the issue. We are still confused about whether the period of 21 days is to start when the form of improvement order is served, or at some other time. Where there is confusion, there will be future problems, so we should ask the Executive to clarify the matter. It would not be good to proceed with the regulations if they are confused.

**The Convener:** I ask the clerk whether we should send a note to the Executive before we report to the lead committee and to the Parliament.

**Alasdair Rankin (Clerk):** It would be better to send a letter to the Executive with any remaining points. The committee can discuss the reply at next week's meeting, after which the matter can go into the committee's report.

**The Convener:** Okay.

### **Housing Grants (Form of Cessation or Partial Cessation of Conditions Notice) (Scotland) Regulations 2003 (SSI 2003/337)**

**The Convener:** We raised four points with the Executive on the regulations. Some of our points have been acknowledged, but there is a difference of opinion between us and the Executive on other issues. I think Christine May has a point about the question whether the regulations are *intra vires*.

**Christine May:** Our original question was why the wording of the notice that the regulations set out does not follow the conditions in the parent act. While I accept that, in some circumstances, it might not be practical or possible to adhere to all those conditions, the question remains whether any of those conditions can be disallowed for the purposes of grant. There is a clear difference of opinion between the legal advice given to the Executive and that given to the committee.

My experience of these sorts of things is that, where doubt exists, somebody will find it and use it to their advantage and possibly also to the disadvantage of others. Before we decide what action, if any, to take, I suggest that we go back and explore further the differences in the legal advice that we have been given.

11:00

**The Convener:** The clerk confirms that we have time to do that. Do members agree that we should continue to pursue the *intra vires* issue?

**Members indicated agreement.**

**Christine May:** Before we move on, I want to say that the rest of the responses were perfectly adequate.

### **Housing Grants (Form of Notice of Payment) (Scotland) Regulations 2003 (SSI 2003/338)**

**The Convener:** Our query related to whether the form or meaning of the regulations could be clearer. From the response that the Executive has provided, it looks as if we need only to draw its response to the attention of the lead committee and the Parliament. Is that agreed?

**Members indicated agreement.**

### **National Health Service (Compensation for Premature Retirement) (Scotland) Regulations 2003 (SSI 2003/344)**

**The Convener:** We raised three points on the regulations. The first related to whether a definition in superseded legislation meant that the regulations failed to comply with the proper legislative process. I gather that our second point, about how the instrument relates to same-sex relationships has also been raised by the United Nations Human Rights Committee in relation to a case in Australia. The reply that we have been given seems to say that the issue will be taken up in the light of further developments.

The last point that we raised related to two instances in which the Executive failed to follow proper legislative practice. Do members have any points that we should bring to the attention of the lead committee and the Parliament?

**Christine May:** Bearing in mind Gordon Jackson's caveat that we should keep to the technicalities, the regulations could be said to be fine under the European convention on human rights, as those changes have not yet come into effect. Although we might wish that the Executive had been proactive on the issue, technically it did not have to be. Although we might regret that, we need to accept it—are we allowed to say that?

I suggest that we report the rest of the Executive's response to the lead committee and the Parliament.

**The Convener:** We might want to pursue the point about the application of the regulations to people in same-sex relationships. Are we sure that we want to accept what the Executive says on that issue?

**Mr Maxwell:** No. I heard what Christine May said, but the Executive has a case to answer when it says that it will wait until the domestic law of Scotland is resolved on the matter. If we are in breach of the ECHR, we are in breach of it. The Executive's response that:

"the law of Scotland at present does not provide for a system of formal recognition of same-sex relationships"

does not answer the point about whether the instrument complies with the ECHR.

**The Convener:** I am tempted to agree with Stewart Maxwell that we should write back to the Executive to make that point. Do members have a view on that?

**Mike Pringle:** I am inclined to agree with what others have said.

**Gordon Jackson:** I am inclined to keep my mouth shut.

**The Convener:** In the light of what we have been told about the case in Australia, it would do no harm to raise the issue again with the Executive. We should pursue it a little further.

### **National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Regulations 2003 (SSI 2003/376)**

**The Convener:** Members will remember that we raised points about defective drafting. The Executive says that it intends to remake the regulations as part of a consolidation exercise that is currently underway. The projected date for the consolidated regulations to come into force is 8 October 2003. Is the response sufficient?

**Mr Maxwell:** I am sorry, but I am looking at a date of 6 October 2003.

**The Convener:** I have 8 October.

**Mike Pringle:** My papers show 6 October.

**The Convener:** I thought that it was my eyesight but, for some reason, two of us have 6 October and two others have 8 October. We will double-check the date. We want to ensure that the record is correct.

Are members agreed that we will draw the instrument to the attention of the lead committee and the Parliament? We will highlight the defective drafting and the fact that the Executive has addressed the problem by consolidating the regulations.

*Members indicated agreement.*

### **Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Regulations 2003 (SSI 2003/382)**

**The Convener:** We return to our old favourite.

Having read the Executive response, I do not understand the part that relates to regulation 3(3) on the implications for importers. I refer in particular to the comment that only importers

"who know that their products do not comply with the analytical report will commit an offence on their products failing analysis carried out under Article 3.1."

**Christine May:** I would like us to ask the Executive to return to regulation 3(1)(a), which refers to article 3.1 of the Commission decision on random sampling. It is clear that the obligation is on the member state but, if that is the case, how can the individual importer satisfy himself? As drafted, the regulations make it impossible for the importer to comply. That will not do. With the greatest of respect to the Executive, the regulations are defectively drafted—they need to go back.

**The Convener:** Are we agreed, with particular reference to regulation 3(1)(a) and its reference to article 3.1 of the Commission decision?

*Members indicated agreement.*

**The Convener:** We will await the Executive's further response before we pass all our comments on the regulations to the lead committee and the Parliament. One of the issues of defective drafting that we raised was to do with the definition of "sample". I gather that the Executive is thinking of amending the regulations. We would welcome that.

**Christine May:** It is to be welcomed that the Executive recognises that many of the points that we make are valid. That said, the regulations require to be substantially rewritten.

**The Convener:** For Gordon Jackson's benefit, I add that we hope to have the Food Standards Agency Scotland before the committee. It will be useful to talk to agency representatives.

### **Diseases of Animals (Approved Disinfectants) Amendment (Scotland) Order 2003 (SSI 2003/334)**

**The Convener:** We drew the Executive's attention to a possible consolidation of the area covered by the order. The Executive response provides us with that reassurance. Are members content to draw that to the attention of the Parliament?

*Members indicated agreement.*

### **Public Appointments and Public Bodies etc (Scotland) Act 2003 (Commencement No 2) Order 2003 (SSI 2003/348)**

**The Convener:** We had a doubt about the order being *intra vires*.

**Christine May:** I think that our only comment would be to ask when commencement of schedule 3 to the enabling act will take place. There is still a doubt about the actual commencement date, because two dates are mentioned. I think that we should refer the order to the Parliament on that ground.

**The Convener:** Is that agreed? Gordon Jackson looks like he is not sure.

**Gordon Jackson:** I am not trying to dwell on what the committee has done in the past, but if there is disagreement or doubt around an issue, I think that the best thing to do is simply to refer the matter to the Parliament. We cannot decide on the issues. Sometimes we have come to the conclusion that only a court will be able to decide in 10 years' time on a matter about which we have doubts now. We cannot act as a court and tell the Executive that it is right or wrong about such matters; we can only highlight the fact that there are doubts around certain things. If the Executive decides to run with provisions despite those doubts, that is its business. If it turns out that the Executive gets something wrong—

**Christine May:** Some people will make money out of it.

**Gordon Jackson:** Yes. "Every cloud", as people say.

**The Convener:** No further points arise.

### **Movement of Animals (Restrictions) (Scotland) Order 2003 (SSI 2003/353)**

**The Convener:** We raised three points about the order. The first referred to defective drafting that the Executive has undertaken to correct. Our second point was about the absence of an Executive note. Our third comment was a request for clarification, which has now been supplied, about the order's European Community law implications. We should therefore simply bring those three points and the responses that we received to them to the attention of the Parliament. Is that agreed?

*Members indicated agreement.*

### **Diseases of Poultry (Scotland) Order 2003 (SSI 2003/354)**

**The Convener:** This is an interesting one. Like me, Stewart Maxwell has an issue to raise about the order.

**Mr Maxwell:** In its response, the Executive stated that commercial poultry is transported almost exclusively by road vehicle in Scotland and that it would be rare for poultry to be transported by other means. That might be true—I accept that—but it seems perverse that the Executive will

not cover all eventualities. The use of the powers available seems unduly limited in this case. We should refer the matter on that basis. I know that it might be rare for people to transport chickens by plane or by some other method, but it is possible to do so. It seems remiss not to cover such eventualities.

**The Convener:** Are you suggesting that we write back to the Executive in the first instance?

**Mr Maxwell:** Yes, if there is time.

**The Convener:** I understand that there is time to do that. I hope that we will return to the matter next week and ensure that all the relevant issues have been dealt with. No further points arise.

### **Sexual Offences (Amendment) Act 2000 (Commencement No 4) (Scotland) Order 2003 (SSI 2003/378)**

**The Convener:** The explanation that we have received from the Executive on this order is essentially what we asked for, and I think that we can be reassured by its response. Is that agreed?

*Members indicated agreement.*

### **Public Appointments and Public Bodies etc (Scotland) Act 2003 (Commencement No 3) Order 2003 (SSI 2003/384)**

**The Convener:** We raised points about defective drafting. We also had doubts as to whether the order was intra vires in so far as the order purports to commence a provision that we thought was commenced by the parent act. Do members have further thoughts on the order?

**Christine May:** As was the case with the Public Appointments and Public Bodies etc (Scotland) Act 2003 (Commencement No 2) Order 2003 (SSI 2003/348), we should simply report the order to the Parliament for its consideration.

**The Convener:** Is that agreed?

*Members indicated agreement.*

### **Act of Adjournment (Criminal Appeals) 2003 (SSI 2003/387)**

**The Convener:** Members will remember that we raised a point over defective drafting, which was acknowledged by the Lord President's private office. We should welcome the Lord President's intention to use an amending instrument to remedy the defect. Do members agree to pass on that comment to the Parliament?

*Members indicated agreement.*

**Act of Sederunt (Sheriff Court Company  
Insolvency Rules 1986) Amendment 2003  
(SSI 2003/388)**

**The Convener:** Again, the response to our queries was made by the Lord President's private office. Our first point that the form of rule 31A(2)(a) could be clearer has been acknowledged. The second point about defective drafting has also been acknowledged.

**Mike Pringle:** It was a very respectful letter.

**The Convener:** Yes.

Is it agreed that we pass on those comments to the Parliament?

**Members** *indicated agreement.*

**Instrument Subject to Approval**

**Food Protection (Emergency Prohibitions)  
(Amnesic Shellfish Poisoning)  
(West Coast) (No 8) (Scotland) Order 2003  
(SSI 2003/402)**

11:15

**The Convener:** No points arise on the order.

**Draft Instrument Subject  
to Annulment**

**Disposal of Records (Scotland)  
Amendment Regulations 2003 (draft)**

11:16

**The Convener:** The regulations are necessary as a result of devolution. Do members have points to raise?

**Gordon Jackson:** Not really. I am not sure whether our legal adviser could clarify why the Executive has used the rare form of draft regulations subject to annulment. Why have draft regulations subject to annulment in 40 days, when the Executive could have laid regulations subject to the negative procedure, which would have allowed annulment in 40 days? I find that odd. Are there many such instruments?

**The Convener:** I gather that there are only a few of them.

**Gordon Jackson:** I ask out of pure historical curiosity.

**The Convener:** It is a very old form of primary legislation. No points arise on the draft regulations.

## Instruments Subject to Annulment

### **Food (Brazil Nuts) (Emergency Control) (Scotland) Regulations 2003 (SSI 2003/396)**

11:17

**The Convener:** We return to regulations that relate to food. Perhaps you would like to fire away on the Brazil nuts, Christine?

**Christine May:** I assume that I am not to mention "Charley's Aunt".

Unlike the English and Northern Irish regulations, these regulations make no reference to article 5 of the Commission decision, which requires certified copies of documentation. We should raise that anomaly with the Executive. Regulation 2(b) refers to "paragraph (1)", but there is no paragraph 1. I suspect that the Executive means "paragraph (a)". The issue of sampling regulations that arose with the Food (Hot Chilli and Hot Chilli Products) (Emergency Control) (Scotland) Regulations 2003 (SSI 2003/382) arises again in respect of these regulations. Concerns have been raised on that issue. We should write to the Executive to raise those three points.

**The Convener:** Was the point about the regulations breaching the 21-day rule covered? The breach seems reasonable in this case.

**Mr Maxwell:** Can I clarify whether we will question why the regulations state that "it shall be ensured", but no duty is imposed on anyone? Christine May alluded to that.

**The Convener:** Yes. You are talking about regulation 5(3). That is a good point. Thank you.

Is the suggested action agreed?

**Members** *indicated agreement.*

### **Nursing and Midwifery Student Allowances (Scotland) Amendment Regulations 2003 (SSI 2003/401)**

### **Gaming Act (Variation of Fees) (Scotland) Order 2003 (SSI 2003/403)**

**The Convener:** No points arise on the instruments.

### **Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Amendment Order 2003 (SSI 2003/404)**

**The Convener:** Does Christine May want to make a comment about crabs?

**Christine May:** My point was not about crabs, but about lobsters. As the order refers to male and female lobsters of different sizes, I would like to know how people know which is which, so that they can avoid catching them.

**Mike Pringle:** I am sure that a lobster fisherman would tell you the difference. Fishermen do not avoid catching them—lobsters are caught live, identified and, if necessary, put back. Unlike what happens with normal fish, which are dead by the time they are brought on to the boat, lobster fishermen have the opportunity to measure lobsters. If they are too small, they go back into the sea.

**The Convener:** We have the details of the measurements.

**Christine May:** I see that the parent act says that if lobsters of the wrong size are caught, they should be put back "forthwith".

It would have been useful if a sketch map of the area had been provided with the order.

**Mr Maxwell:** Do you mean the area of the lobster?

**Christine May:** Perhaps there should be a picture of the skirt, together with a recipe for mayonnaise.

**The Convener:** This is the high point of the meeting.

We will write to the Executive informally to mention your point about a map, which is a good one.

### **Collagen and Gelatine (Intra-Community Trade) (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/405)**

**The Convener:** No points arise on the regulations.

## Minor Errors in Instruments

11:22

**The Convener:** The final agenda item is on the letter that we have received from the office of the solicitor to the Scottish Executive, which is about printing errors and other minor errors in instruments. I draw members' attention to a few of the points that are made in the letter.

The first point is about instruments being made in a short time scale. As different bills have come along, the situation has become more and more hectic. At the committee's away day, we heard about the Executive's proposed Scottish statutory instrument tracking system, which will provide a more detailed timetable and allow the Executive to see how instruments are progressing through the system.

The Executive has taken on board some of the general points about training in the drafting of instruments that we made at the away day. The Executive says that it is addressing the issue of quality assurance.

The letter also mentions the role of Scottish statutory instrument advisers. The Executive is reviewing that role and ascertaining whether it can develop better practice by considering what happens at Whitehall.

Are there any points or elaborations on the letter?

**Christine May:** On the proposed SSI tracking system, I understand that the Parliament already has such a system, so we might well ask why the Executive is developing a new one, although it could be too late to raise that point. I would also like to know when the Executive thinks that the system will be introduced, as no time scale is given in the letter. The system still might not be introduced four years down the line.

**The Convener:** I gather that our system tracks instruments as they go through Parliament.

**Christine May:** Okay.

**Mike Pringle:** I am slightly disappointed with the letter because it is a little negative, although it is more positive towards the end. It is a pity that Murray Tosh is not here, as he made some interesting comments on the issue earlier.

**The Convener:** Do you mean that the tone of the letter is negative?

**Mike Pringle:** Yes. I feel that it is defensive. We simply want to improve the system.

**Mr Maxwell:** I agree with Mike Pringle's comments about the negativity of the letter, especially in relation to the first two paragraphs.

Given that the committee is attempting to improve matters, some of the comments in the letter are unnecessary, such as the slightly nippy point that the Executive frequently disagrees with us on points raised. Letters with such a tone do not assist the relationship between the Executive and the committee.

**Gordon Jackson:** When I read the letter, I thought that it was a bit defensive, but the person who wrote the letter is only human and people tend to be defensive when they are under attack. To be fair to the man who wrote the letter, as it goes on, one consciously senses the tone changing and there are many positive comments.

I want to put down a marker—I hope that the situation will improve. I am embarrassed that, month after month, we constantly pick up lots of minor errors. After a while, we get embarrassed doing that and we start to think that we are picky and being a pest because we constantly pick on small matters. However, we should not have to make such complaints. Some mistakes are inevitable, but there is absolutely no doubt that in the first session of Parliament there were too many mistakes and we should not be embarrassed to say that.

We should start again and if there are improvements, we should be glad about it.

**The Convener:** At the away day, we discussed the point that, if we continue to work together, there will be improvements, particularly when the new tracking system is introduced. We have agreed that the informal meetings between members and officials should continue, as should the informal meetings about drafting between Executive officials and committee officials, which are always useful. I assume that we are as agreed as we were at the away day that we should enhance our relationship with the Executive.

As there are no further points, I thank members for attending and for their contributions.

*Meeting closed at 11:27.*

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