

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 27 January 2004  
(*Morning*)

Session 2

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## SUBORDINATE LEGISLATION COMMITTEE

### 4<sup>th</sup> Meeting 2004, 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)

\*Alasdair Morgan (South of Scotland) (SNP)

\*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)

Maureen Macmillan (Highlands and Islands) (Lab)

\*attended

#### THE FOLLOWING ALSO ATTENDED:

Margaret Macdonald (Legal Adviser)

#### CLERK TO THE COMMITTEE

Alasdair Rankin

#### ASSISTANT CLERKS

Joanne Clinton

Catherine Fergusson

#### LOCATION

Committee Room 3



# Scottish Parliament

## Subordinate Legislation Committee

Tuesday 27 January 2004

(Morning)

[THE CONVENER opened the meeting at 10:51]

### Delegated Powers Scrutiny

**The Convener (Dr Sylvia Jackson):** I welcome colleagues to the fourth meeting of the Subordinate Legislation Committee in 2004. Apologies have been received from Gordon Jackson, who has constituency appointments this morning.

#### Local Governance (Scotland) Bill: Stage 1

**The Convener:** The first item on the agenda is consideration of the Scottish Executive's response to points that were raised on the Local Governance (Scotland) Bill at stage 1. The legal briefing outlines the response to our question about a continuing problem with the interaction of ancillary and commencement provisions. Do members have any comments to make?

**Mr Stewart Maxwell (West of Scotland) (SNP):** We raised the matter last week because the Executive's reply to our question was:

"the provisions of each Bill are carefully drafted to meet the individual legal and policy needs".

The obvious question for us to ask was, what are the individual legal and policy needs in the case of the Local Governance (Scotland) Bill? We therefore asked that question. The response did not answer what we asked at all: it did not say what the individual legal and policy needs were that meant that the bill had to be drafted as it has been. Given that the Executive has failed to answer the one question that we asked, we should refer the matter to the lead committee.

**The Convener:** Do members agree to that proposal?

*Members indicated agreement.*

#### Antisocial Behaviour etc (Scotland) Bill: Stage 1

**The Convener:** Agenda item 2 is consideration of delegated powers provisions in the Antisocial Behaviour etc (Scotland) Bill at stage 1. A large number of powers to make delegated legislation

must be considered; indeed, I have been told that there are 23 of them in all. As we go through the powers, we will see that there are quite a few issues that relate to the use of directions. We should consider whether directions are sufficient and whether they might be moved at a later stage into Scottish statutory instruments. We will consider the issues in turn.

Part 1 of the bill deals with antisocial behaviour strategies—which will, of course, be published—and section 1(8) deals with guidance. From the legal briefing, it appears that the guidance will flesh out the strategies. I should add that the guidance will not be binding on the recipients. Do members think that what is proposed is reasonable, or should we comment on the matter?

**Christine May (Central Fife) (Lab):** Given that the guidance will not be binding and that there will be consultation beforehand, it will probably be sufficient.

**The Convener:** Do members agree?

*Members indicated agreement.*

**The Convener:** The second power relates to section 1(10), which deals with the power to give directions. The Executive has not elaborated on the power, so I will open the matter up for discussion.

**Alasdair Morgan (South of Scotland) (SNP):** First, we should get the Executive to tell us exactly what it has in mind. There is sufficient time and we might want to return to the issue once we have heard what the Executive has to say about directions being given to chief constables. We might want to query that. I think the bill enables that, does it not?

**The Convener:** The legal briefing points out—

**Alasdair Morgan:** They will not be given to chief constables, but there would be a broad power to direct almost anyone to give information and it is not exactly clear to me whom the Executive has in mind.

**The Convener:** So the issue is whom the Executive has in mind.

**Christine May:** It is also what the Executive has in mind.

**The Convener:** Indeed: the issue is also about the type of information the Executive has in mind. I propose that we ask for more information about those two issues.

**Murray Tosh (West of Scotland) (Con):** There seems to be a connection between section 1 and section 2 in that respect. Section 1(3)(c) requires people to co-operate and exchange information in the context of the strategy and section 1(10) then appears to instruct that people shall give

information, which seems to underline something that is in the bill already. Section 2 then gives ministers a power specifically to compel registered social landlords to provide information. It seems that there is repetition, except that, in section 2, the injunction is that registered social landlords should collaborate with the local authority and the police in forming a strategy.

It is not clear to me what they will be expected to put in the strategy and how far collaboration on the strategy will require them to go. Taking the two issues together, the bill seems to be partly repetitive and partly escalatory. The legal adviser is looking perplexed—perhaps she could respond to what I have said.

**Margaret Macdonald (Legal Adviser):** I think that you should get the Executive, rather than me, to explain the matter.

**The Convener:** If Murray Tosh is not clear about how the three parts of the bill that he has identified relate to one another, we should ask for clarification. I am certainly not clear how they relate to one another, either. Would that be okay? Are there any other points that relate to that matter?

**Murray Tosh:** I am quite happy to have such clarification, as long as the clarification falls within the competence of the committee. We deal with subordinate legislation, but there seems to be a policy issue as well as a subordinate legislation issue, as the bill appears to give ministers very wide powers indeed to tie a particular type of landlord into a particular type of working with local authorities and police forces.

**The Convener:** You are raising issues that relate to the directions that we are discussing, so I think that the matter is perfectly within our competence.

**Christine May:** As far as I recall, the power resulted from a number of landlords averring that they had no responsibility for the social behaviour of their tenants and that they were therefore not obliged to provide such information. I think that the power aims to close that anomaly and oblige all landlords to take some responsibility for the behaviour of their tenants.

**Murray Tosh:** But only registered social landlords are mentioned.

**Mike Pringle (Edinburgh South) (LD):** What is—

**The Convener:** Just a second. Would members go through the convener, please?

**Murray Tosh:** The reason for only registered social landlords being mentioned might be a policy issue and a matter for the lead committee. I am not clear about what the delineation is. However, it

appears that the application of section 2 with section 1 puts potentially substantially heavier obligations on registered social landlords because of their requirement to collaborate and I am not clear what such collaboration in drawing up a strategy means. Does collaboration on the strategy require implementation, protocols and all sorts of obligations that one might not expect with a strategy, but might find in reality, depending on what the guidance states?

11:00

**The Convener:** Exactly. On section 2, which concerns directions for registered social landlords, paragraph 17 of our legal advice states:

“subsection (2) seems to suggest that Directions may have a more general effect”.

I think that that is what Murray Tosh is getting at.

**Murray Tosh:** Yes, but there also seems to be a power to instruct a registered social landlord to deliver a specific amount of information to the strategy team.

**The Convener:** Yes. It is not clear.

**Murray Tosh:** Does that impose obligations on the landlord in an operational sense? Are we talking instead about very broad strategies? I am not clear about what the Executive is trying to do or what powers it is seeking to confer on local authorities in order to compel landlords to deliver up information.

**The Convener:** Paragraph 17 of the legal advice also says:

“If it is the intention that only some registered social landlords will be required on an individual basis to collaborate with local authorities then perhaps the matter could be considered administrative in character and appropriate for a direction-making power.”

I am trying to get back to what the committee is concerned with.

**Murray Tosh:** But what the legal brief says is true only if the basis of that collaboration is clear.

**The Convener:** Absolutely.

**Murray Tosh:** We would have to know what a landlord is expected to do before we could reasonably say that it was administrative.

**The Convener:** Yes. We have shown that we need a bit more clarity on the whole issue. Is that agreed?

**Members indicated agreement.**

**The Convener:** We will write a letter to the Executive along those lines.

Section 3(3) concerns reports and information, and contains a power to make regulations by statutory instrument. Is that procedure okay?

**Members indicated agreement.**

**The Convener:** Part 2 is on antisocial behaviour orders. Section 14 is on records of orders. Subsection (2)(f) contains a power to make regulations by statutory instrument, subject to annulment. Is that agreed?

**Members indicated agreement.**

**The Convener:** Part 3 is on the dispersal of groups. We can consider sections 20 and 21 together, as they are on the same issue.

**Alasdair Morgan:** Section 20, on guidance, raises a point that has come up in relation to other legislation earlier in the session, if I recall correctly. The bill contains fairly controversial powers that may require guidance. There is no compulsion on ministers to issue guidance—the word “may” is used. I think that most people would consider guidance to be necessary in this case.

**The Convener:** The legal brief points out that the equivalent English legislation—the Anti-social Behaviour Act 2003—contains a code of practice, which, at Westminster, is laid before Parliament, unlike what would happen here.

**Murray Tosh:** I am always wary of recommending that we do something because Westminster does it, but it appears to be good practice in this case. If Westminster thinks that it is appropriate for a code of practice to be laid before Parliament, we would be at least interested in that, and we would be entitled to ask why the Scottish Executive did not propose to do the same here.

**Alasdair Morgan:** That would apply even more to section 21, which is about directions. Given the fact that the persons exercising powers include chief constables—presumably—we are clearly talking about ministers giving directions to chief constables. We would at least wish to seek further clarification on that.

**The Convener:** The big issue is why the powers have been provided for as they have and do not involve a procedure that would require the directions to be laid before Parliament.

**Mike Pringle:** I am on the Justice 2 Committee, which is considering the bill. Sections 20 and 21 have exercised that committee considerably. I entirely agree with what has already been said about section 20. If the equivalent English act comes with a code of practice, a code of practice should be attached here, and there should be more guidance. The powers are very wide and we should know why there is not more guidance about what they mean. I think that that question will also be asked at this afternoon’s meeting of the Justice 2 Committee.

As far as section 21 is concerned, we should certainly point out that it would be entirely new for

a chief constable to be directed by a politician—and it would be an extremely bad move.

**The Convener:** Are we agreed on that?

**Christine May:** Is the question not one of whether the general provisions—the provisions that might have a more general effect, rather than an effect only in an individual case—may be scrutinised by Parliament?

**The Convener:** Yes. I think that that is the big issue. Although I take Murray Tosh’s point that we do not necessarily follow practice south of the border, we should note that the matter has been considered down south and that the Westminster Parliament has gone down a certain avenue. That raises questions about why the Executive has gone down a different avenue.

**Murray Tosh:** Sure, but the primacy lies in why the Executive has done things as it has. The English example serves merely to underline the nature of our bewilderment.

**The Convener:** Absolutely, Murray. I give in.

Part 4 is on the closure of premises. Section 23(2) provides for regulations to be made by statutory instrument subject to annulment. Are we agreed?

**Members indicated agreement.**

**The Convener:** Part 5 is on noise nuisance. It relates to noise control and provides for the imposition of a fixed penalty. In the case of failure to pay that penalty, proceedings are to be instituted under certain circumstances. The question is whether we feel that a direction is appropriate in this case. The legal brief says that the power in section 43 is

“undoubtedly of a legislative nature”.

There does not seem to be a good reason why the power has been left to ministerial direction rather than to a legislative instrument.

**Mr Maxwell:** I agree with that opinion, but I was wondering about the general question of permitted levels of noise and the approval of measuring devices, which is covered by section 44. From my general knowledge, it seems that regulations or rules about permitted levels of noise and the measuring devices that are used by environmental health officers are already in place. Could we get clarification from the Executive as to why the powers of section 44 are necessary?

I recall from family experience the devices environmental health officers set up to measure noise levels—they fitted noise level indicators to the juke-boxes in the pub downstairs from where I was living at the time—and I am not sure why section 44 is necessary.

**Murray Tosh:** The provisions apply to noise

“which may be emitted from any dwelling.”

It may be that what Stewart Maxwell knows about concerns the regulation of public houses. Incidentally, I think that the local authority to which Stewart Maxwell refers ought to be given powers to operate that way in all local authority areas in Scotland, if its actions were effective. Those laws might not apply to dwellings, however, as they would attach only to licensed premises.

**Mr Maxwell:** But the noise was measured—

**Mike Pringle:** The—

**The Convener:** Just hold on two seconds. Let us hear Stewart Maxwell.

**Mr Maxwell:** The noise machine or indicator was used in the premises—in the flat, not in the pub.

**The Convener:** I call Christine May.

**Murray Tosh:** The obligation—

**The Convener:** Christine May.

**Murray Tosh:** The obligation, convener, would have been on the licensed premises not to exceed the limits, not on the house.

**The Convener:** Okay. Before we go any further down this route, I should point out that the policy memorandum tries to explain how part 5 brings policy into line with existing legislation.

**Christine May:** If the breach of something is to be a criminal offence, there should be clarity as to what the circumstances are in which an offence will have been committed. It is kind of Soviet, or even Kafkaesque, to have regulations under which someone commits an offence but is not allowed to know until they have committed it the circumstances in which it has been committed. There should be a definition of the appropriate noise levels. Either parameters should be set, or decibel levels should be specified.

On the approval of measuring devices, there must be a way—similar to that which applies under breathalyser regulations—to specify the nature of the equipment to be used, its tolerances and so on. That would be only reasonable.

**Murray Tosh:** I absolutely agree with that. My comment was intended to head off any suggestion that we should be asking the Executive why it is introducing these new powers in sections 43 and 44. That is a policy point—it is a political matter. The point for us is that the powers the Executive is introducing should be properly framed.

**The Convener:** We should use the points that Christine May made in expressing our concerns about why the Executive has gone down the route that it has in sections 43 and 44. Is that agreed?

**Members indicated agreement.**

**The Convener:** Subsections (1) and (4) of section 46 make supplementary provision as to fixed-penalty notices. Subsection (1) confers on the Scottish ministers the power to specify in an order a form for a fixed-penalty notice and provides that if such a form is specified, a fixed-penalty notice shall be given in that form. Under subsection (4), the amount of the fixed penalty can be changed.

The legal briefing suggests that as the power in subsection (1) is exercisable by statutory instrument that is subject to annulment, it seems entirely appropriate. However, we are less happy about the broad power in subsection (4) to amend the penalty figure.

**Alasdair Morgan:** The section does not refer to the standard scale of fines, but the objective is to keep the level of the fixed penalty below a number on the standard scale. Perhaps we should ask for subsection (4) to refer to that and to say that the level at which the fixed penalty is set should not be higher than a point on the standard scale. Otherwise, in theory, the number could be set at anything, although that would be counterproductive.

**Christine May:** The other point about the ability to vary the level of the fine is that it involves a Henry VIII power. We do not normally accept that the negative procedure should apply to an instrument to exercise that power and we should make that point.

**The Convener:** We will raise both those points with the Executive.

**Alasdair Morgan:** If the level of the fixed penalty were limited by reference to something, I suspect that we would let the Executive get away with the provision, as it is a small Henry VIII power.

**Christine May:** Before he became fat.

**The Convener:** We will pass on quickly to part 6, which concerns the environment. Our comments about section 49 are similar to earlier comments. It is suggested that the committee might wish to refer proposed new section 33A(8) of the Environmental Protection Act 1990 to the Executive for further justification. Is that agreed?

**Members indicated agreement.**

**The Convener:** Section 51 deals with directions in respect of the duty under section 89 of the Environmental Protection Act 1990.

**Christine May:** I will make the same point as I made about section 21. Any directions that are general rather than specific should be subject to parliamentary scrutiny.



**The Convener:** Do we agree to write to the Executive to ask for justification of the route that it has taken?

**Members indicated agreement.**

**The Convener:** Part 7 concerns housing and antisocial behaviour notices. Section 62(3) deals with the failure to comply with a notice and the action by an authority at the landlord's expense. The legal briefing suggests that, in principle, the provision has nothing too untoward, but that it does not appear to include the power to make provision as to the amount of expenses for which the landlord may be liable; it includes only the power to describe expenses. Do we agree to ask about that?

**Christine May:** It is unusual for us to ask whether the Executive has enough powers rather than to criticise it for taking too much.

**Murray Tosh:** I do not understand the argument. I understood that paragraph 58 of the legal briefing argued for us to suggest a limit on expenditure by landlords, but I wondered why we would want to suggest that. The promotion of some orders might be highly expensive because it involves equipment, professional witnesses and other matters. Why would we seek to curtail the recovery of expenses in such circumstances?

**The Convener:** The legal adviser is worried that the bill does not give enough clarity about what ministers want to do with the powers. We are not going into any policy issues.

11:15

**Murray Tosh:** In what respect is section 62(2) deficient? It allows the local authority total discretion to take the necessary measures. Subsection (3) allows the authority to recover expenses under ministerial regulation.

**The Convener:** Our legal briefing says:

"It is suggested that if the power is needed to describe the expenditure then it might also be necessary to impose some reasonable limit on the expenditure. In other words, are the Executive satisfied the power is sufficient to allow them to do all that they may wish to do?"

Do members not think that that question is reasonable?

**Alasdair Morgan:** The Executive would be very satisfied, because it can send the guy involved a bill for anything.

**Christine May:** I read the paragraph slightly differently. Section 62(3)(b) concerns prescribing the description of expenditure. Subsection (3)(a) refers to expenditure that is

"incurred, by virtue of subsection (2)".

In prescribing the level of expenses, the argument

could be left open as to whether a piece of expenditure that was not described was incurred by virtue of subsection (2).

**Murray Tosh:** I accept that, but we would want any dispute about whether expenditure was eligible to be recovered to be decided by the legislation rather than by the local authority.

**Christine May:** That is the point that we are trying to make.

**The Convener:** That is the point.

**Christine May:** The question is whether the powers are sufficient or are too restricted.

**Murray Tosh:** The legal briefing is framed in terms of seeking a reasonable limit on expenditure.

**The Convener:** The legal adviser accepts that perhaps we can interpret what she says slightly differently, but she says that she is not sure and thinks along the lines of Christine May's argument. The aim is to have clarity on those issues.

**Murray Tosh:** I am all in favour of seeking clarity.

**Christine May:** See me after.

**The Convener:** Do we agree to ask for clarity along the lines of Christine May's suggestion?

**Members indicated agreement.**

**The Convener:** We will see what comes back from that.

Part 8 concerns housing and registration areas. Section 66(3) deals with notice of designation. Do we agree that we have no issues to raise about that power?

**Members indicated agreement.**

**The Convener:** Section 68(2)(b) concerns notice of revocation of designation.

**Christine May:** The power seems reasonable.

**The Convener:** Do we agree that we have no further comment?

**Members indicated agreement.**

**The Convener:** Section 69(8) concerns the registration of relevant houses within a designated area. We could ask the Executive to explain what the words

"how fees are to be arrived at"

mean and what it wishes to include in any order that is made under the power, with the purpose of testing whether the power is sufficient. We are again asking for clarity. Is that agreed?

**Members indicated agreement.**

**Alasdair Morgan:** Is the phrase

“how fees are to be arrived at”

in common usage?

**The Convener:** I am reliably informed that it is not.

**Alasdair Morgan:** Some of us often wonder how fees are arrived at.

**Mike Pringle:** You are right.

**The Convener:** We will see whether that matter is clarified.

Part 9 is on parenting orders. Does section 76(3) seem reasonable?

**Members indicated agreement.**

**The Convener:** Section 85 does not place an obligation on the Scottish ministers to consult before issuing guidance. The legal briefing says that although we are usually in favour of guidance, reservations may be expressed when such guidance attempts to act as a substitute for legislative provisions. We made a similar point earlier, but it might not apply to section 85. Do members have any points to raise with the Executive?

**Christine May:** The key point is that guidance is not subject to any parliamentary procedure, so we should test the Executive on whether the guidance should be dealt with under a legislative procedure.

**The Convener:** Do we agree to write to ask the Executive to justify going down that route?

**Members indicated agreement.**

**The Convener:** Part 10 concerns further criminal measures. Do we agree that the provision on community reparation orders is reasonable?

**Members indicated agreement.**

**The Convener:** Section 92(3) concerns the requirement to display a warning statement. In general, the power is okay. The only point to raise is that it is unclear whether the Scottish ministers are bound or only empowered to make regulations. Do we want to ask for clarification of that?

**Christine May:** We can ask.

**The Convener:** Do we agree to ask about that?

**Members indicated agreement.**

**The Convener:** Part 11 concerns fixed penalties and section 95(2) is on fixed-penalty offences. Our legal briefing says that the power in subsection (2) is acceptable in principle, but that the powers in subsection (3) are very wide and might be open to use in a less than acceptable way. However, the

exercise of those powers is subject to affirmative procedure. What are members' views?

**Christine May:** The power to amend the penalty level is not the problem as such; the problem is that the power to do so opens up the possibility of making other changes. The provision is extremely wide, whether or not it is subject to parliamentary scrutiny. Did the Executive intend to create the power to open up all sorts of other things to change? I am not sure that it did. The scope of the provision needs to be made clearer, following which the level of parliamentary scrutiny will be a relevant question.

**The Convener:** Are we asking the Executive about a concern that section 95(3) might need to be amended to limit the power?

**Members indicated agreement.**

**Mr Maxwell:** The bill allows ministers to change the table in section 95(1) completely. The power in section 95(3) seems to allow ministers to rewrite part 11. A power to change a complete part of an act would be extremely wide.

**The Convener:** Perhaps we should also ask the Executive about how it intends to use the power. Is that agreed?

**Members indicated agreement.**

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

Subsections (1) and (3)(g) of section 97 deal with the amount of the fixed penalty and the form of a fixed-penalty notice. The only difficulty lies in the possible effect of an order that is made under section 95(3), to which, in theory, none of the restrictions in section 97 might apply. That is similar to a previous point.

**Alasdair Morgan:** That will be covered in the Executive's response to our previous question.

**The Convener:** That is okay.

**Christine May:** Section 97(3) gives the Scottish ministers the power to add requirements without scrutiny.

**The Convener:** We will leave that until we have the response to our other question.

Part 12 concerns children's hearings. Do members have any points to make on section 103(4)?

**Christine May:** No.

**The Convener:** We are agreed.

Part 13 deals with miscellaneous and general provisions and section 106 is on the disclosure and sharing of information. Do members have any questions about subsection (5), or is it reasonable? The legal briefing suggests that we might want to consider seeking further information

on several points. For instance, it is unclear whether it is intended that the power should extend to amendments to acts that the bill affects or only to substantive provisions in the bill.

**Alasdair Morgan:** We should seek an explanation, because the explanatory notes contain nothing about the matter.

**The Convener:** Our legal briefing says:

"the Executive has not given any indication of how and in what circumstances it would intend to use the power or any clear reason why it is considered necessary."

Do we agree to ask about those two points?

*Members indicated agreement.*

**The Convener:** It is unclear whether section 106(3), which is on guidance, applies only to substantive provisions of the bill or whether it extends to amendments that the bill makes to other enactments. That is the same point that we just made about section 106(5). Do we agree to ask about that?

*Members indicated agreement.*

**The Convener:** There are two points about section 109, which deals with directions.

**Christine May:** Amending or revoking directions is fine, but the bill contains no provision to amend or revoke guidance. Is that a deliberate omission?

**The Convener:** The situation is unclear. Do we agree to ask about that?

*Members indicated agreement.*

**The Convener:** Section 112(2) is on commencement. We can make the same point about that provision as we did about the Local Governance (Scotland) Bill. Do we want to make the point again?

**Mr Maxwell:** I think that we do. As we have moved no further forward in the past couple of weeks, I see no harm in making the point to the Executive that we have still not had a clear explanation of why it has taken that route. We have yet to find a description of the legal and policy needs that require the provision. We should ask the same question about the provision in the Antisocial Behaviour etc (Scotland) Bill.

**The Convener:** Is that agreed?

*Members indicated agreement.*

**The Convener:** It is suggested that the Executive could be asked for illustrations of the type of provision that might be included in regulations that are made under the power in paragraph 3(3) of schedule 3, if only to test its adequacy. Is that agreed?

*Members indicated agreement.*

**The Convener:** Schedule 4 is introduced by section 111 and deals with minor and consequential amendments. Paragraph 1(c) of the schedule will insert proposed new section 27(5A) into the Social Work (Scotland) Act 1968. The legal advice is that the power in new subsection (5A) is reasonable. The only problem is with whether the subsection obliges ministers to make the regulations concerned. Do we agree to ask about the Executive's intentions?

*Members indicated agreement.*

**The Convener:** The committee will note that proposed new subsection (5B) contains yet another direction-making power. We have talked about direction-making powers in general. Our legal briefing says that the question is

"whether the Ministers should be able to embellish the statutory provisions by non-statutory directions bearing in mind that local authorities are in this instance bound by the Bill to comply with these directions."

Do members want to ask the Executive the questions that are in our legal briefing?

*Members indicated agreement.*

**Christine May:** For the record, it is important to note that the 1968 act has a list of mandatory requirements. If the directions that the bill proposes can add to that list, it is essential to use not directions but regulations, because regulations are subject to parliamentary scrutiny.

**The Convener:** Yes. We will include all the points from our legal briefing in our letter to the Executive.

## Executive Responses

### Shetland Islands Regulated Fishery (Scotland) Variation Order 2004 (SSI 2004/1)

#### Ura Firth, Shetland Scallops Several Fishery Order 2004 (SSI 2004/5)

11:30

**The Convener:** Item 3 is on Executive responses. We asked last week about regulatory impact assessments in relation to these two fishery orders—I think that Stewart Maxwell raised the matter. The Executive has acknowledged its error of not recording where RIAs could be obtained, and it is taking remedial action. I suggest that we simply report on the orders to the lead committee and Parliament. Is that agreed?

**Members indicated agreement.**

### Meat Products (Scotland) Regulations 2004 (SSI 2004/6)

**The Convener:** We had a number of questions about the regulations. The first related to the definition of “free circulation”, and to whether the reference to “Article 23” should be to “Article 24”. There is some debate about which it should be. I suggest that we report our discussion on the matter to the lead committee and Parliament.

**Members indicated agreement.**

**The Convener:** Our second question was whether the reference in regulation 5(3) to paragraph (2) of the same regulation was correct. Furthermore, the Food Standards Agency Scotland conceded that paragraph (1) is defective to the extent that we had pointed out. I suggest that we report those matters to the lead committee and Parliament. Is that agreed?

**Members indicated agreement.**

**The Convener:** Our third question was on a bigger issue, to do with regulation 9(1)(g). A full explanation is outlined in our legal advice. Our question was why that provision had not been modified in the same way as the equivalent English regulations. The legal advisers think that the Scottish drafting is superior. We should draw the attention of the lead committee and Parliament to the information that we got back from the agency. Is that agreed?

**Members indicated agreement.**

**The Convener:** Our fourth question was on regulation 9 having a paragraph (1) but no

subsequent paragraphs. That typographical error has been conceded; we can simply report that.

Stewart Maxwell may wish to comment on the answer to our fifth question, which was whether a meat content of 120 per cent was correct. He wanted an explanation of that.

**Mr Maxwell:** I would like to commend the Food Standards Agency on its explanation. It is very clear now how the figure can come to 120 per cent. If the agency’s explanation had been included in the first place, we would have understood the figure better. However, it is clear now.

**The Convener:** We will pass that on.

**Murray Tosh:** Could we clarify that Stewart Maxwell is registering 120 per cent satisfaction with the agency’s response?

**The Convener:** I am sure that he is.

Our sixth question was on the failure to include in the preamble a reference to the requirement to consult. We have been having a bit of a debate about the issue, but I think that we should just report to the lead committee and Parliament the reply that we received on the matter from the Executive.

**Members indicated agreement.**

**The Convener:** Our seventh question was on the absence of a transposition note. I am afraid that it was sent in error—not directly by the committee, but by the clerks, I think. We are sorry about that. However, I gather that the legal advisers were interested to note that the regulations required to be notified to the Commission under the technical standards directive, which the explanatory note indicates has been done. The adviser was pleased about that. If we all agree, we will report all that to the lead committee and Parliament.

**Members indicated agreement.**

### Infant Formula and Follow-on Formula Amendment (Scotland) Regulations 2004 (SSI 2004/7)

### Processed Cereal-based Foods and Baby Foods for Infants and Young Children (Scotland) Regulations 2004 (SSI 2004/8)

**The Convener:** Members will recall that our first question to the Food Standards Agency on these regulations was in connection with the same matter that we raised in relation to regulation 9(1)(g) of the Meat Products (Scotland) Regulations 2004 (SSI 2004/6). We will refer all our comments to the lead committee and Parliament.

Our second question was about the preambles to both regulations, neither of which included a reference to the requirement to consult. Our legal advisers remain of the opinion that a reference to the European Community requirement should be cited in the preambles. We should report that advice to the lead committee and Parliament.

On the absence of transposition notes, I assume that we wish to be strong on this point: we think that it really is necessary to include transposition notes in this case. If they are included for the equivalent English regulations, why should they not be included to assist us here?

**Members** *indicated agreement.*

## **Instrument Subject to Approval**

### **Local Government Finance (Scotland) Order 2004 (SSI 2004/14)**

11:35

**The Convener:** No points have been identified on the order.

## **Instrument Subject to Annulment**

### **Welfare of Animals (Slaughter or Killing) Amendment (Scotland) Regulations 2004 (SSI 2004/13)**

11:35

**The Convener:** There are issues in relation to the existence of two types of licence, and to whether the term "licence" as used in paragraph 9 of schedule 1 refers to both types of licence. We will ask for clarification on that. No other points arise.

## Proposed Regulatory Framework Inquiry

11:36

**The Convener:** We pass now to the final agenda item, which is our proposed inquiry into the regulatory framework in Scotland, with a view to introducing a statutory instruments bill. Murray Tosh has left but I do not think that he had any points to raise. We will go through the terms of reference paper before us point by point.

I congratulate Alasdair Rankin and the other clerks in his team. I think that members will agree that the paper is very clear in setting out the main points to be considered. We should go through each part of the paper in turn. The paper begins with the objectives and scope of the inquiry. Do members have any questions in addition to those that are raised in the paper, particularly in paragraph 2, or are members quite happy with the proposals?

**Mr Maxwell:** I found the paper very clear. It covers the bases, or starting points, for the inquiry. I do not have any additions to make to paragraph 2. The paper scopes out what we should be doing very well.

**Mike Pringle:** I agree with that. The paper is clear and it is excellent that we know where we are going.

**Christine May:** I have one point to make on paragraph 3, which mentions interaction with the European and External Relations Committee. Depending on where it has got to, the new European constitution contains specific detail on subsidiarity and consultation, particularly on regulations. It might be worth taking a look at the provisions in the context of what we are doing.

**The Convener:** That is agreed.

Paragraph 4 is about the methods of the inquiry. We will need to consider the appointment of an inquiry adviser. The specifications are included in the annex to the paper. Do members have any points to make about the annex?

**Christine May:** Considering the amount of work involved, I wondered whether having an adviser—in the singular—is appropriate. Perhaps we should be considering having a whole team of folk.

**The Convener:** Normally—

**Christine May:** That was meant to be a light-hearted question. I am not really suggesting that we employ a whole load of folk.

**The Convener:** Okay. We are glad about that.

**Mr Maxwell:** There will be a lot of work involved. It is a big inquiry, involving several sections and taking up the rest of the parliamentary session. In fact, it might not be sufficient to have just one adviser, although that might depend on the individual's breadth of knowledge—we are talking about Scottish, UK, European and worldwide comparisons. I wondered whether there should be two advisers, or various advisers specialising in different areas as we go along, rather than just one person.

My second point is more of a plea. I know that we cannot necessarily put this in the person specification, but could the adviser speak to us in plain English?

**The Convener:** They definitely should do.

Another issue that might arise relates to the inquiry's quite long duration. One person might not be able to give the commitment that is required. Again, we might consider more than one person over the period.

Does Mike Pringle have any other points to make?

**Mike Pringle:** No—that is fine.

**The Convener:** The paper states:

"When the Committee agrees the remit of the inquiry, members, with advice from SPICe researchers, can draw up lists of potential witnesses. Calls for written evidence can be made through the website and using the media approach below."

Is that okay?

**Christine May:** Will the committee have any input into the final selection of the adviser, or will we remit selection to the convener, in consultation with the clerks?

**The Convener:** The normal practice is for the committee to discuss such matters in private session.

**Christine May:** That is fine.

**Mike Pringle:** I presume that, as usual, we will be given three or four people and we will choose one of them.

**The Convener:** Yes—if three or four people can be found, which could be difficult.

**Mike Pringle:** That might be a big if. Finding three or four people might not be easy.

**Mr Maxwell:** I would like clarification of a small point about calls for written evidence. Obviously, much of the detail that will be involved in the inquiry will be specific and technical. Will there be a general call for written evidence or will we approach obvious organisations and individuals to alert them to the fact that there is an inquiry?

**The Convener:** Usually, there is a mixture of approaches.

**Mr Maxwell:** That is fine.

**The Convener:** Paragraph 5 of the paper is on the inquiry's media profile. It states:

"A news release and interviews with Holyrood and the House magazine are advised as the best way to launch the inquiry."

**Mr Maxwell:** Good luck.

**The Convener:** And to you. We will see whether we can hit the front pages—that would be an achievement. I hope that the general profile of the committee's work will be raised.

Paragraph 6 deals with reporting. The other week, I asked the clerk about the committee's reports, although I really asked about the allied issue of annual reports on the committee's work. Obviously, there would be a committee report.

The paper identifies the main areas of modern regulatory practice and reform. Paragraph 7 deals with the Scottish system and the United Kingdom context. We can use the links that are given. The paper gives links to information on the wider focus at UK level and on departmental regulatory impact units.

Paragraph 9 deals with UK parliamentary committees.

**Alasdair Rankin (Clerk):** I have spoken to House of Commons clerks about the timing of UK parliamentary committee visits. They suggested that a good time for them and their committees to meet a delegation from the Subordinate Legislation Committee would be March. I can progress that matter with them.

**The Convener:** I have an administrative question. Do we have to put a proposal for a visit through the Conveners Group, or will there be a visit as part of the inquiry?

**Alasdair Rankin:** It is normal practice to put a submission to the Parliamentary Bureau.

**Christine May:** That was certainly done for the Enterprise and Culture Committee's visits to Denmark and to Canada, I think. We must get authorisation for payment of expenses.

**The Convener:** Okay.

Paragraph 10 of the paper deals with common law jurisdictions, such as those in Australia, Canada and the United States of America. Obviously, important material is available that we can use.

**Christine May:** The section is particularly helpful.

**The Convener:** It deals with various matters. Do you have any comments to make on other European regulatory systems and European Union regulation?

**Christine May:** The paper suggests considering approaches in two countries. The Committee of the Regions is an institution that can be not particularly highly thought of, but I wonder whether it would be worth asking what work it has done. I know that it has done work on the matter.

**The Convener:** Paragraph 14 is on the timescale for the overall inquiry. The paper suggests that a full year is needed for each inquiry.

**Christine May:** That is reasonable. We might struggle to finish before that.

**The Convener:** Yes. We should consider spring 2007 rather than 2004.

**Mike Pringle:** Do you know something that we do not know?

**The Convener:** As members have no other points to make, do we agree to what has been suggested, with the slight changes that have been proposed?

**Christine May:** Yes. However, given the inquiry's potential length, we should revisit its remit from time to time to ensure that we are sticking to it and that no other issues have arisen that require to be added to the inquiry.

**The Convener:** That is true—I suppose that there might be other issues.

Do members agree to that approach?

**Members indicated agreement.**

**The Convener:** We will meet again next week.

**Christine May:** I can hardly wait.

**The Convener:** I thank members.

*Meeting closed at 11:45.*





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