SUBORDINATE LEGISLATION COMMITTEE

Tuesday 23 March 2004
(*Morning*)

Session 2

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SUBORDINATE LEGISLATION COMMITTEE
11th 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 GAVE EVIDENCE:

Douglas Greig (Scottish Executive Enterprise, Transport and Lifelong Learning Department)
Alisdair Meldrum (Scottish Executive Enterprise, Transport and Lifelong Learning Department)

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERKS

Joanne Clinton
Bruce Adamson

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 23 March 2004

(*Morning*)

[THE DEPUTY CONVENER *opened the meeting at 10:30*]

Regulatory Framework Inquiry

The Deputy Convener (Gordon Jackson): Good morning. I open the 11th meeting this year of the Subordinate Legislation Committee. We have a poor turnout today, I am afraid. We are quorate, but only just. I have apologies from Sylvia Jackson, who is unwell. Stewart Maxwell has other commitments. Mike Pringle is at a Justice 2 Committee meeting in Glasgow. Murray Tosh may or may not stagger in in due course.

Before we come to the instruments, we are conducting an inquiry into the regulatory framework. We are pleased that we have witnesses from the Executive here today. Before we go straight to questions, could one of you introduce the three of you and tell us what you do?

Douglas Greig (Scottish Executive Enterprise, Transport and Lifelong Learning Department): I am Douglas Greig, head of the enterprise and industry division at the Scottish Executive's Enterprise, Transport and Lifelong Learning Department. Among other things, I deal with improving the regulatory framework. My colleagues are Alisdair Meldrum, who heads the improving regulation unit, and Liz Hannah, who is the expert on these matters.

The Deputy Convener: Maybe I could get the ball rolling. We are interested in the approach that Scottish Executive departments take to regulation. For example, we are aware that departments have to prepare a regulatory impact assessment in respect of policy proposals that might impact on business, charities, the voluntary sector or whatever. When is that required? Is it required in relation to bills, or just in relation to secondary legislation? Where does that fit in? I will just fire the question out. You decide among yourselves who is best to answer it.

Alisdair Meldrum (Scottish Executive Enterprise, Transport and Lifelong Learning Department): It can be required in any legislative situation in which it is recognised that there could be a burden on business, from either primary or secondary legislation. Invariably, we have discussions with policy developers about whether the primary legislation inflicts a burden or whether the burden will arise from the secondary legislation. We can agree with them to defer the preparation of a regulatory impact assessment until the secondary stage, when the regulations are being prepared, but there are occasions when it is prepared in the face of the primary legislation coming forward.

The Deputy Convener: Is that a choice that you have? There is no statutory requirement to prepare a regulatory impact assessment at one stage or another.

Alisdair Meldrum: There is no hard-and-fast rule. It is a matter for judgment, based on where we and the policy developer see the burden arising.

Christine May (Central Fife) (Lab): Do you consider only the impact of the policy proposal or the secondary legislation, or do you consider the impact that a proposal will have in the round, when taken together with other aspects of the regulatory framework?

Alisdair Meldrum: We tend to look at each one as an individual item.

Christine May: Is there an argument for looking at the situation in the round, or in the context of similar provisions that already exist?

Alisdair Meldrum: Are you suggesting that there could be a cumulative effect? We recognise that the cumulative effect is an issue for business, but the regulatory impact assessment process is a means of giving advice to people who are developing a policy and of considering the options. We see it as a method of assessing the burdens that arise out of a proposition and the options within it, so as to advise officials and ministers on what judgments are needed as a policy is taken forward.

The Deputy Convener: As I understand it, the impact assessment is what you might call the main tool that the Scottish Executive has to assess regulations, but is that it? Are there other methods or tools of which we should be aware?

Alisdair Meldrum: It is our primary tool for assessing the burden of regulation on the business community. We see other issues as being of importance to the business community—the atmosphere within the enforcement regime is also of importance. However, when it comes down to the measurable burden on business, the regulatory impact assessment is our main tool, as you say.

Douglas Greig: Alisdair is right to say that it is the main tool, but the short paper that we submitted and the Scottish Parliament information

centre paper, which contain a range of measures, tried to put that in the context of raising awareness and transparency about the effects of regulation, which we take forward in a number of ways, including direct engagement with businesses and business organisations, which allows them to feed back to us.

The regulatory impact assessment is certainly the main measure—to lapse into statistics for a minute, I point out that 40 to 50 regulatory impact assessments are currently being carried out because of various bits of legislation. However, other measures that are set out in the SPICe paper, such as the microbusiness test and the test running of forms, are equally important.

We have also massively changed our procedure, in that we now carry out consultation fairly early on, before the legislation is introduced, and engage directly with businesses that might be affected by it. Even regulatory impact assessments are designed to raise awareness of the process and its transparency and we hope that, over time, they will improve the regulatory burden.

The Deputy Convener: I want to take us back a stage to a matter in which I am particularly interested. When departments carry out regulatory impact assessments, what criteria are used to determine whether there must be regulation, instead of simply having no regulation or having self-regulation? Sometimes I wonder whether we need regulations in the first place.

Alisdair Meldrum: We encourage policy developers to consider that issue very seriously. Indeed, it is one of the processes in the regulatory impact assessment guidance that developers use. When we are discussing the matter with them, we ask them to consider whether they should use other possible routes. We have to ask daft-laddie questions, because invariably we are neither experts in nor even familiar with the detail of the developers' agenda or their policy objectives. As a result, we try to ask trigger questions that will make them consider non-regulatory options and build them into their assessment of the potential options.

Alasdair Morgan (South of Scotland) (SNP): In his political introduction to the UK guide to regulatory impact assessment, no less than the Prime Minister said:

"Where regulations … are introduced, this should be done in a light touch way".

That phrase has been used quite a bit recently, especially with regard to Lord Penrose's inquiry into Equitable Life. Does a light touch sit easily with the whole concept of regulation, which has a legal basis? Has the impact of the conclusions of the Equitable Life inquiry fed through and might it change the way in which things are done?

Alisdair Meldrum: Although the specific conclusions of the Equitable Life inquiry have not yet fed through to us, the quandary that you raise is one that we have faced since time immemorial and has not come to the fore simply because of Equitable Life. Indeed, the business community presents us with the same quandary from time to time. We see our role as encouraging policy developers to adopt as light a touch as possible in their approach to whatever issue they are addressing, which is why we encourage them to consider non-regulatory routes.

However, although the business community generally welcomes such an approach, from time to time we are also left in no doubt that it would prefer very clear-cut legislative regulations that make it all the easier to have a black-and-white situation and which do not leave too much to the regulator's discretion. That is why, although a light touch is often sought, the business community does not always welcome giving a regulator the discretion to interpret what has been written with a light touch.

Alasdair Morgan: If we leave aside cases in which regulators become involved—which does not happen in relation to many of the regulations that the Scottish Parliament deals with, apart from those in relation to water—is the concept of a light touch just a myth? After all, either you have regulation or you do not.

Alisdair Meldrum: Invariably, regulations will have an enforcer, even if that is only the courts. For instance, the Scottish Environment Protection Agency is the regulator on many of the big issues that go through the Scottish Parliament and which impact on the business community.

Alasdair Morgan: So how do you deal with any legal liability that might arise because of regulations not being appropriately enforced, as might happen with Equitable Life?

Alisdair Meldrum: That is an issue that the policy custodian would have to address. We leave the policy custodians in no doubt that we are here only to guide, encourage and advise them on how we would wish them to address regulatory matters. However, it is for policy developers and their ministers to make decisions on, and to answer for, the course of action that is taken.

Christine May: That puts almost everybody in an impossible situation if something goes wrong. On the one hand, you are there to guide and to advise and consult industry. Having done all that consultation, you come back and say, "In this case, minister, our recommendation is this, and the industry agrees with us that the matter can be given a light touch or left to self-regulation." On the

other hand, if it all goes pear-shaped, you then say, "Well, minister, we only guided and advised."

Alisdair Meldrum: I mean that we, as the improving regulation unit, can only advise the policy developer to adopt a light touch. Those in the policy area and the minister responsible for that area will have to take the decision on which touch is appropriate in the light of the consultation and discussion that they will have had with the business community and other stakeholders.

Christine May: I am not suggesting that it is necessarily easy, that you will always get it right or that the policy developer will adopt the right touch because of your advice or regardless of it.

Douglas Greig: I am not the legal expert here, but there are various interpretations of any legal text. I will not put words into the Prime Minister's mouth, but I suspect that "light touch" might mean, particularly when we transpose European Union regulations and laws into domestic ones, that we should not gold plate them or take them literally. I think that it means that we should look at the "whereas" clauses and consider how a law or regulation could be alleviated when being introduced either through a domestic statutory instrument under the European Communities Act 1972 or by any other kind of secondary means. At that stage, we can sometimes ask whether a lighter touch could be applied, with the agreement of industry and, as Alisdair Meldrum has rightly pointed out, within the bounds of what the accountable officer for that policy area deems appropriate. Ensuring that the policy is implemented properly and effectively still comes back to that accountable officer.

Alisdair Meldrum: One aspect of our process that might address the mistakes in the regulatory process that you are suggesting can happen is the fact that we have adopted the review RIA process, which requires policy developers to revisit within 10 years their decisions on the course to adopt. It requires them to reassess the costs involved in a particular course of action and whether it was and still is the best course of action to address the situation that they were trying to address. The review RIA process provides them with the opportunity to review the situation and to check that the approach that they adopted is still current and appropriate. Indeed, it puts an obligation on them to do so.

The Deputy Convener: I would like to jump ahead to something that is mentioned in our later questions, because it seems to be connected with what you are talking about. What happens if you discover that the RIA is not being done? Is that something over which you have power? Are there steps that you can take? Do you have any authority to bring to bear on the situation?

Alisdair Meldrum: It does not rely on power or authority. All that is required is for us to point out to the people responsible that they have not done what the guidance suggests they should have done. We try to get them to redress matters.

We have to confess that, on occasion, we have to get regulatory impact assessments done after the event. That is much less frequent than it was at one time. The on-going work of trying to educate and spread the message throughout the Executive has almost wiped that situation out. At one time it was relatively common, but we have managed largely to overcome it, although it still happens on occasion.

10:45

The Deputy Convener: I suppose that this question is hypothetical, but what happens if you take a different view of a proposal's regulatory impact than the sponsoring department? If there is a conflict, would you inform the minister? What happens if he thinks that you are right and the department is wrong? I hate to talk about power all the time, but where does the ultimate responsibility lie?

Alisdair Meldrum: The responsibility lies in the department that is developing the policy and with the ministers associated with it. We have never come to loggerheads or reached such disagreement about a judgment of a proposal's likely impact as to make us consider getting our ministers into a confrontation over the detail of a regulatory impact assessment.

The Deputy Convener: Can you see a place for your having more authority to force amendment or to ensure that steps are taken? Would your influence be increased if you were part of the Office of the First Minister in the same way as the regulatory impact unit is part of the Cabinet Office at Westminster? Would your influence increase if you were centralised in that way?

Alisdair Meldrum: We have not seen a need for that approach in the Scottish scene. We are aware of how different our approach tends to be from that of Whitehall. We acknowledge that there is a difference, but we have found that our consultative, advisory, cajoling approach has generated benefit, spread the message and transformed awareness of the economic implications of decisions within the Executive.

The Deputy Convener: So far so good.

Alisdair Meldrum: It is noticeable that, over the years, officials have gained a more firmly grounded awareness of the economic implications of their decision-making processes, particularly in the areas of environment and planning.

Alasdair Morgan: Earlier you said that you go out and engage with businesses. How do the microbusiness tests work? How do you engage with businesses and carry out those tests?

Alisdair Meldrum: You are asking about the microbusiness test. We see the obligation as being on the policy developer, to engage with the business community in relation to his agenda and, in preparing the regulatory impact assessment, to take account of the business community's views on the costings and the burden involved. We would advise policy developers on how to do that. Our role would be to advise them of the business and trade associations that they might approach to gain entrance and to identify companies in the sector to which they could speak.

Alasdair Morgan: Right, so engagement is with the business and trade associations. Is that the main route?

Alisdair Meldrum: That tends to be the initial approach route.

Douglas Greig: The enterprise networks can also provide—

Alasdair Morgan: How many microbusinesses are members of trade associations or are engaged with the enterprise networks, once they have received their initial start-up advice? Most microbusinesses are so busy getting on with running themselves that they have precious little time to engage with a trade association or to talk to the enterprise company unless they need something. I wonder how effective the networks are at getting microbusinesses' views about the impact of a regulation.

Douglas Greig: We could get you figures from the enterprise networks on the number of small businesses that engage with them. I will certainly commission that work if it would be helpful. I will leave the Federation of Small Businesses and other small-business organisations to answer for themselves. We use our best endeavours to try to encourage the policy developers to achieve correct assessments of the effects on microbusinesses. However, I agree that we cannot get pin-point accuracy.

Alasdair Morgan: Clearly, neither the Federation of Small Businesses nor the Forum of Private Business would tell us that they do not represent small businesses, even though both organisations aim to represent the same people. I just wonder how many such people are not represented.

Christine May: Probably a lot, I would think.

Douglas Greig: Another assumption that has to be made is the extent to which there might be a radically different cost structure or impact on different businesses. Not every small business will be a member of those organisations, but the question is whether the memberships of those organisations are representative. We cannot measure the impact on hundreds of thousands of microbusinesses, so we try to consider the impact on the typical or average business.

Alisdair Meldrum: Whether or not businesses are members of such organisations, policy developers find it challenging to get feedback and input from the business community.

Christine May: Is it still difficult even with the establishment of the business gateway, which used to be the small business gateway.

Alisdair Meldrum: It is still difficult to get individual companies to provide input to the costing of policy development.

Christine May: Presumably, that is because such input involves an additional cost burden on the companies, which have their own work to do.

Alisdair Meldrum: That is right.

Christine May: Unlike the RIU down south, which considers the impact of regulation on the voluntary sector and charities, you focus only on the impact on businesses. Would you welcome the extension of your remit so that it covered those sectors?

Alisdair Meldrum: We do not exclude charities and voluntary sector organisations from our interests. We are continuing the long-standing policy of attending to the interests of businesses, charities and voluntary sector organisations. We give more attention to the interests of the business community almost by default, but we do not specifically exclude the interests of charities and the voluntary sector.

Douglas Greig: We and others are aware of the existence of the voluntary issues unit within the Executive and of the compact with the voluntary sector. We influence each other and raise awareness. We speak to each other to ensure that the voluntary issues unit is aware of any RIA that might have an impact on the voluntary sector and vice versa.

Christine May: Would it be more advantageous for your reputation and status if the voluntary sector were formally included in your remit?

Alisdair Meldrum: It has never been formally excluded from our remit.

Christine May: However, we know the sensitivities of the sector and that most people have a desire to be formally recognised. The fact that the sector is not formally excluded equally means that it is not formally included. The voluntary sector is not referred to.

Douglas Greig: However, we are aware of it. The cake could be cut in any number of different ways, but it still comes down to the need for our people who deal with the different sectors to speak to and understand each other.

Christine May: This may be a minor point. Your unit is called improving regulation in Scotland and the Scottish Executive has an improving regulations strategy. Does improving regulation in that context mean less regulation or more effective regulation, or both?

My other question picks up on Gordon Jackson's earlier reference to areas of dispute. In the event of a disagreement, is there scope for the advice that you give to the policy developers to be made available to ministers?

Alisdair Meldrum: There is certainly scope for that advice to be made available to ministers. We act not under strict statutory operational guidance but within the normal administrative convenience of the Executive, so we could advise ministers to intervene at any point if they wished.

You asked whether improving regulation means less regulation. We accept that the business community would view less regulation as an improvement. To the extent that that is the business community's ambition, it is one of our ambitions, because we are trying to represent its interests within the system.

We adopted the title "improving regulation" after devolution, largely in recognition of the fact that regulation will ever be there and that we should be doing whatever we can to improve the regulatory environment. The purpose of that is not only to make the regulations better but, as I said earlier, to make the regulatory environment better.

Murray Tosh (West of Scotland) (Con): Earlier, you talked about the greater awareness in the Executive's departments of the potential impact of regulation, particularly in the environment and planning fields. I suppose that the justification for the work that you are doing lies in your belief that people understand the requirements more.

How might we measure improved regulation and test whether a greater understanding in the Executive departments about the requirements of business is being fed into improved regulations? Further, how might we assess business's perception of that?

Douglas Greig: Measuring awareness in that way is difficult. We would have no objection to undertaking a customer satisfaction survey. As part of the on-going changing to deliver programme and the continuous improvement policy in the Executive, we are a lot more conscious of the need to be aware of what our clients, customers and stakeholders think of us. It might be that we need to consider a degree of measurement in that regard. I should say, as an ex-economist, that the fact that an exercise involving awareness seminars and surveys is never going to give precise measurements means that I have a slight difficultly with the suggestion. Nevertheless, that might be something that we should consider.

Alisdair Meldrum: A ministerial small business consultative group meets roughly every quarter under the chairmanship of the Deputy First Minister and Minister for Enterprise and Lifelong Learning. All the principal business representative bodies are on the group and I attend as a matter of course because regulatory matters are a standing agenda item for the group.

To a great extent, that group recognises that the Executive is applying its resources as effectively as it can to improving the regulatory agenda. At those meetings, the business representatives have the opportunity to make known their views on the regulatory agenda. To that extent, they have an opportunity to register whether they think that our approach is right. They also take the opportunity to raise their concerns about issues that are causing them heartache, such as planning matters and water issues, which were referred to earlier.

Through that kind of regular contact with the business community, ministers are kept aware of the degree to which they are getting matters right.

Murray Tosh: I appreciate that satisfaction is not an easy thing to assess, but if you are going to tell a parliamentary committee that people are much more aware of the requirements and that the system is working well, I think that we are entitled to ask what the evidence for that is. I do not disbelieve what you are saying, but I am well aware that there are contrary voices.

Alisdair Meldrum: I am sorry; I thought that you were asking how you might be able to judge the level of satisfaction. We officials feel able to judge it by examining the content of the policy submissions that are sent to ministers, which much more thoroughly address the economic implications of proposals, and the accompanying regulatory impact assessments. That is how we come to the conclusion that that awareness is much greater than it once was.

11:00

Murray Tosh: So you can see and assess the improvement and you think that your quarterly meetings with business groups allow them to see it. Given that we are not involved in your quarterly meetings and that we do not see the policy

submissions that go to ministers, how might we measure it?

Alisdair Meldrum: The regulatory impact assessments that accompany bills that go before the Parliament are laid in SPICe and are available to all members. I hope that they also illustrate the matter to members of the Parliament.

Christine May: Do the assessments go on your website?

Alisdair Meldrum: They are on our website in final form and in partial form as they are developed in the course of consultation processes.

Christine May: Do you have any way of monitoring the number of hits on them?

Alisdair Meldrum: No. We have tried to do so, but I am afraid that we have not been successful yet.

Christine May: We might want to think about talking to information technology staff about that.

I want to skip a little bit and talk about the enforcement concordat. One way of measuring how well you are doing is through the responses that you get to consultations and so forth. I recall having to implement the concordat from the other side, when I was leader of Fife Council—I remember folk in the policy and resources committee saying, "What?" How is the enforcement concordat enforced and are interpretation and application even among local authorities? What feedback do you get on the concordat?

Alisdair Meldrum: I must make it clear that we—which at the time meant the Scottish Office—and the Convention of Scottish Local Authorities were both signatories to the concordat. As COSLA largely conducts the promotion of the concordat among local authorities, I should not try to speak too fully about the local authority situation. However, I acknowledge that application of the concordat is not uniform. Although we had 100 per cent sign-up of local authorities in Scotland soon after the concordat was published, work is still to be done to achieve universal application of the concordat's precepts among local authorities.

Christine May: Do you continue to work with COSLA to do that?

Alisdair Meldrum: We are still working towards that with COSLA. From time to time, we have meetings with the lead officers in local authorities to assist them to spread the message in their authorities, but there is no doubt that the message is being spread more effectively in some authorities than it is in others. Likewise, we are trying to spread the message among the enforcement agencies that are linked directly to the Executive, but we acknowledge that the response is variable even among those agencies. We are involved in an on-going education process.

Christine May: I want to go back a bit to the Deputy First Minister's quarterly meetings. Are issues to do with the application of the concordat ever raised in those meetings?

Alisdair Meldrum: Yes.

Christine May: Is that another standing item?

Alisdair Meldrum: The matter is viewed as part of the regulatory issues. Comments often come from the business community about inconsistencies in the application of regulation. That issue is touched on regularly in the meetings.

Christine May: In England and Wales, the better regulation task force publishes regular reports on general or particular aspects of regulation. Would a similar unit be of assistance here and, if so, why do we not have one?

Alisdair Meldrum: We have not as yet seen the need for such a unit because we can benefit from the work of the better regulation task force. We know that the task force is a creature of the Prime Minister and that its remit does not extend north of the border. We regularly receive its reports and have never hesitated to ensure that we promulgate them to the parts of the Executive that have a parallel interest in the issues that are addressed by the task force. We try to ensure that we learn lessons, wherever they come from, and that the policy developers take those lessons on board.

Christine May: I have two further points, the first of which concerns the 10-year requirement to assess. I know that it is the promoting department that does that, but would it not be better if you did it?

Alisdair Meldrum: We would hope that the experts on the subject would be best placed to do that. Their thinking would be subject to our views and scrutiny at the review process, as was the case in the initial process.

Christine May: Are you confident of their complete objectivity in such an exercise?

Douglas Greig: We are confident in our ability to make them understand and to ensure that they have understood the business impact.

Christine May: You point out subjectivity where it arises.

Alasdair Morgan: Would it be better if the situation were the other way round, so that unless the Executive were active in introducing a new instrument, the previous one would lapse after a certain period? I am thinking of the sunset regulation, in which case the period of time might have to be slightly longer than 10 years; it might

have to be 15 years, for example, after which time the instrument would lapse and have to be renewed.

The Deputy Convener: And be rejustified?

Alasdair Morgan: Yes.

Alisdair Meldrum: To a great extent, we hope that the review process amounts to a rejustification of the measure. Given that we have not got to the 10-year point at which we would go through a review, the process has not been tested as yet. Our expectation is that that will be the case, however.

Alasdair Morgan: And the review process is not given the parliamentary scrutiny by a subject committee that the original order received.

Alisdair Meldrum: No. That is not built into the review process.

The Deputy Convener: On one level, I take your point that it makes no difference. In lawyerspeak, however, we would talk about the onus shifting or the dynamic changing. If the instrument were to be a sunset regulation, the onus would shift to justifying doing the measure again, as against letting it drop.

Alisdair Meldrum: That is correct.

The Deputy Convener: In the back of my mind, I am thinking of how many instruments come before this committee. In practice, would the sunset regulation route produce a phenomenal burden on any system?

Alisdair Meldrum: We would need to assess that. I do not think that we could judge that at this distance.

Christine May: Would it not spur people on to consolidate instruments? They do not do that under the existing system.

Alisdair Meldrum: It might well.

Christine May: Consolidation is an issue that is raised at committee time and again.

Alisdair Meldrum: I know that the UK Government is encouraging that approach to regulatory processes to be taken at European level. The UK Government is very conscious of the need for consolidation in some areas of European regulation and is encouraging the European Commission to go down that road. If the committee believes that there are similar situations that need to be addressed in the Scottish context, I am sure that that kind of approach would be encouraged.

Christine May: Although you say that the question has not arisen as yet, there are instruments around that predate the Scottish Parliament. Surely they must be coming up for a 10-year review?

Alisdair Meldrum: But the review process is being applied only to those instruments that have come through since devolution.

The Deputy Convener: I take it that there is a practical reason for that? The scale of the regulations that are lying about is huge.

Alisdair Meldrum: If we did otherwise, we would face the difficulty of establishing a start date.

Christine May: I suppose so.

Alasdair Morgan: The Deregulation and Contracting Out Act 1994 allows some regulations to be removed if they are causing an unnecessary burden, but there have been no such removals since devolution—I do not know whether there were any before. Does that mean that there are no unnecessary burdens, or does it mean that the mechanism does not exist for anyone to think about removing regulations?

Alisdair Meldrum: We know that we have that power still at our disposal, but we have not felt a need to put in place the process to allow orders under the Deregulation and Contracting Out Act 1994 to be brought forward because a requirement for that process has not been brought to our attention.

Alasdair Morgan: Have any regulations been removed south of the border over the same period?

Alisdair Meldrum: South of the border, the 1994 act is no longer used, as there is now the Regulatory Reform Act 2001. We did not sign up to that because we were assured that there would not be a need for us to sign up to it. Nevertheless, the UK Government continues to bring forward a regular programme of orders under the Regulatory Reform Act 2001.

Alasdair Morgan: You were assured by whom?

Alisdair Meldrum: We were assured by officials in the constitution area who were drawing up the rules and procedures for the new Parliament that we would not need fast-track procedures, as we would have time at our disposal to pursue matters in the normal course of events.

Douglas Greig: I think that that has probably come to pass. Nobody has come to us with a proposal asking us to rescind an order. Until they do, we do not know whether we can change things quickly.

Alisdair Meldrum: At the moment, the normal processes have accommodated all the demands that have been made of them.

Alasdair Morgan: I will not ask any more about that. It points us towards some interesting questions that we should ask about how the Regulatory Reform Act 2001 works south of the border and why—or whether—it is necessary there.

Christine May: There are a number of questions that we might ask as a result of what we have heard.

The Deputy Convener: I thank our witnesses. I have the impression that your overall position is that, in the past few years, things have got much better. The cynic would say that I would say that; as Murray Tosh points out, there may be other views. However, is it your position that we are getting the hang of regulatory impact assessments and so on?

Alisdair Meldrum: We know that we have a long way to go. We are conscious of the mediocre quality of many of the regulatory impact assessments that are done. In spite of those shortcomings, we have made a lot of progress and have seen big improvements throughout the Executive concerning awareness of the economic implications of actions.

The Deputy Convener: On behalf of the committee, I thank you very much. We will take a short break.

11:12

Meeting suspended.

11:17

On resuming—

Executive Responses

Individual Learning Account (Scotland) Regulations 2004 (SSI 2004/83)

The Deputy Convener: The second agenda item is Executive responses to points that we have raised on a number of instruments.

The first is the Individual Learning Account (Scotland) Regulations 2004 (SSI 2004/83). It has been suggested that we might want to draw the attention of the lead committee and the Parliament to the regulations on a number of grounds. Are we happy to do that?

Christine May: I agree that we should do that on all five grounds.

The Deputy Convener: Do I need to read out the grounds from the briefing paper?

Christine May: We can just take the grounds as read.

The Deputy Convener: Yes. They will appear in the committee's report anyway.

Road Traffic (Parking Adjudicators) (Dundee City Council) Regulations 2004 (SSI 2004/86)

The Deputy Convener: I am smiling because, according to the regulations, Dundee City Council has an amazing number of parking regulations—but there it is.

Murray Tosh: I am conscious of the business requirement to do this seriously.

The Deputy Convener: The first point that we raised with the Executive on the regulations was that they were not drafted in gender-neutral terms. Christine May might want to comment on the Executive's response.

Christine May: I thought that it was interesting. The Executive said that gender-neutral terms for such regulations have not been used previously and that the regulations merely replicate the terms that previous regulations have used. However, I do not believe that that is a good enough excuse. Poor drafting is poor drafting. The Executive could have taken on board our point about using gender-neutral terms.

The second point that we raised on the regulations was that there was no provision for the communication to an appellant of decisions to extend the prescribed time limits. The Executive accepts that point, but says that up to now such

matters have been dealt with by administrative practice—which is fair enough—and that no difficulties have arisen from that. However, that does not mean that difficulties will not or could not arise. Therefore, I believe that we should report the regulations to the lead committee on both the grounds that I have described.

The Deputy Convener: I agree. I am not sure that I follow the Executive's response to our point about using gender-neutral terms. I can understand that it would be easier to amend the terms of an instrument that was not similar to previous instruments. However, despite the Executive's argument about consistency, there must be a break sometime. If we accept the Executive's argument, does that mean that similar regulations must keep using the same terms for the next 100 years? There has to come a point at which the terms in the regulations are changed, so I do not find that a good argument.

Alasdair Morgan: The logic, which is particularly bizarre, is that the regulations for Dundee cannot be corrected because the regulations for Aberdeen are written in a different way. One wonders who on earth will ever examine both sets of regulations side by side. People park illegally in one place or the other.

There were inconsistencies galore in one of the other sets of traffic regulations that we considered, which dealt with uniforms for parking attendants. The Executive was quite happy to have everyone responsible for uniforms from the sultan of the Ottoman empire down to the local council, and to have inconsistencies in that regard without wanting to correct them. The argument is very weak.

Christine May: Perhaps those points will be picked up in the 10-year review that we heard about earlier.

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

Road Traffic (Permitted Parking Area and Special Parking Area) (Dundee City Council) Designation Order 2004 (SSI 2004/87)

The Deputy Convener: Does anyone have any points?

Alasdair Morgan: No. I think that we should just draw the lead committee's attention to the points that have been made.

The Deputy Convener: Okay. Thank you.

Teachers' Superannuation (Scotland) Amendment Regulations 2004 (SSI 2004/89)

The Deputy Convener: Again, we might want to draw the attention of the lead committee and the Parliament to the defective drafting in the regulations, which the Executive has acknowledged, as well as to its explanation for consolidating the regulations.

Christine May: That is most welcome.

The Deputy Convener: Absolutely.

Non-Domestic Rating (Rural Areas and Rateable Value Limits) (Scotland) Amendment Order 2004 (SSI 2004/91)

Christine May: Further information was requested and the Executive has supplied it. I suggest that we tell the lead committee.

The Deputy Convener: Okay. We will do that.

Regulation of Care (Fees) (Scotland) Order 2004 (SSI 2004/93)

Christine May: Similarly, we will draw the lead committee's attention to the fact that the Executive has supplied the further information that was requested.

The Deputy Convener: We will point out the explanation that we have received.

National Health Service (General Ophthalmic Services) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/98)

Christine May: Again, we required an explanation, which has been provided.

The Deputy Convener: We will point that out.

Housing (Scotland) Act 2001 (Alteration of Housing Finance Arrangements) Order 2004 (SSI 2004/105)

The Deputy Convener: This is another order in relation to which the Executive has acknowledged defective drafting. As always, we will draw that to the attention of the lead committee and the Parliament.

Housing (Scotland) Act 2001 (Payments out of Grants for Housing Support Services) Amendment Order 2004 (SSI 2004/108)

Christine May: The order's meaning could be clearer, as the Executive has acknowledged. An

explanation has been provided, which we could report to the lead committee.

The Deputy Convener: Yes.

Rural Stewardship Scheme (Scotland) Amendment Regulations 2004 (SSI 2004/109)

Christine May: The regulations contain a technical defect, as a result of which they appear to have a retrospective effect, which was not authorised by the enabling act. It is important that we draw that to the lead committee's attention.

The Deputy Convener: Okay. I take it that we are all happy with that.

Members *indicated agreement*.

National Health Service Trusts (Dissolution) (Scotland) Order 2004 (SSI 2004/107)

The Deputy Convener: There has again been an acknowledgement of defective drafting by the Executive. We will draw that to the attention of the appropriate bodies.

Instruments Subject to Annulment

Special Waste Amendment (Scotland) Regulations 2004 (SSI 2004/112)

11:23

The Deputy Convener: Item 3 is consideration of instruments subject to annulment. Is there anything that we want to ask the Executive about SSI 2004/112?

Christine May: What is meant by "producer return" in new regulation 15A(5)? The Executive does not tell us that. There are also some minor points.

The Deputy Convener: We can deal with those in an informal letter. Are we content to ask the Executive that one major question?

Members *indicated agreement*.

National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004 (SSI 2004/114)

The Deputy Convener: Is there anything on which we need further clarification?

Christine May: Quite a lot.

The Deputy Convener: Perhaps I should list what we need clarification on, given that we are talking about a new set of regulations. We are interested in knowing why regulations 7(1)(c) and 7(1)(d) and regulations 9(1)(c) and 9(1)(d) apply only in relation to convictions in the United Kingdom. The reference in regulation 7(5) to paragraph (3) does not seem quite right, and it may be that a reference to paragraph (4) was intended. We would like an explanation of why regulation 7(1)(f) provides that the health board must refuse to list a person if it is not satisfied that they have an appropriate knowledge of English, even though schedule 1 provides that only European Economic Area nationals are bound to submit with their applications evidence of their knowledge of English. There seems to be slight confusion over that. We will ask the Executive about those things.

Christine May: There is another point as well, on transitional arrangements.

The Deputy Convener: We want the Executive to explain what the position is on the preparation of an order containing transitional provisions, as referred to in, for example, regulation 3(1).

Christine May: In addition to that, there are numerous drafting errors.

The Deputy Convener: Absolutely. I think that we would call them "sadly numerous".

National Health Service (General Medical Services Contracts) (Scotland) Regulations 2004 (SSI 2004/115)

The Deputy Convener: Do we want to ask the Executive about anything in the regulations?

Christine May: We do. It is interesting that the errors that have been pointed out to us are not contained in the English regulations, which were introduced nine weeks earlier than the Scottish regulations and could have formed a reference point, if the Executive had thought of that.

For example, the definition of "assessment panel" in regulation 2(1) contains substantive provision as to the membership of a panel. That membership provision has not been incorporated into a substantive provision, as it has in the English regulations. In paragraph (c) of the definition of "patient" in regulation 2(1), "immediately necessary treatment" is provided under regulation 15(6) by—heavens above! I got lost in the regulations themselves, and I am now getting lost in the difficulties that we have with them because of the complexity of the matter.

The Deputy Convener: Of course.

Christine May: Paragraph 1(9) of schedule 2 states:

"No … opt out notice may be served by a contractor prior to 1st April 2004."

How would that be possible, given that the regulations do not come into force until 1 April 2004? That condition works in England, because the English regulations came into force on 1 March.

In subparagraphs (14), (15) and (17) of paragraph 5 in schedule 2, the reference to

"where ... 1 January 2005 is nine months or more after the date of the out of hours opt out notice"

does not make sense because the regulations do not come into force until 1 April 2004, which is less than nine months from 1 January 2005.

In paragraph 18 of schedule 8, there is a reference to "paragraph 28", which does not seem to exist.

There are also footnote errors.

The Deputy Convener: That is a fair catalogue of legitimate questions that we will want to ask the Executive.

National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Regulations 2004 (SSI 2004/116)

The Deputy Convener: Committee members should have a separate sheet on the regulations.

Christine May: Unfortunately, convener, we have a separate three sheets, and I consider that it is the convener's job to read them out.

The Deputy Convener: We have a number of things that we want the Executive to explain. There are eight such points, some of which are quite minor whereas others are more important. We will send that list to the Executive.

In addition to that list, there are nine further possible errors on which we might ask the Executive to comment and, in an informal letter, we will need to mention the minor errors that we have noted. I cannot be bothered counting them, but there is a seriously large number of them—perhaps 30 or so.

Murray Tosh: Perhaps we should make it a formal letter, then.

The Deputy Convener: We should ask, with slight note of irritation in our voice, why there are quite so many errors.

Christine May: I recently had a meeting with my local health board at which concern was raised about how the guidelines that are coming out make the implementation of the ethos of the Primary Medical Services (Scotland) Act 2004 difficult for boards and practitioners. There was a request that all the regulations be available for the committee to consider as that act made its passage through the Parliament. It was not thought that that was necessary, but, sadly, I think that it probably was.

The Deputy Convener: It has to be said that this is a very big set of regulations, to be fair—although I do not want to be over-fair, given the number of mistakes. The regulations are almost like a book. However, we have a lot of questions to ask on just one instrument.

We will send the full list of our comments to the Executive, and someone will have the pleasure of answering them in detail.

Housing (Scotland) Act 2001 (Assistance to Registered Social Landlords and Other Persons) (Grants) Regulations 2004 (SSI 2004/117)

11:30

The Deputy Convener: The way in which paragraphs (m) and (o) of regulation 6 are drafted leads us to question whether they fall within the

insolvency reservation that is set out in part II of schedule 5 to the Scotland Act 1998. The committee might wish to ask the Executive to comment on that.

Alasdair Morgan: I am sure that none of us would wish to stray into the reserved powers of the mother of Parliaments.

The Deputy Convener: Particularly yourself, Alasdair.

Christine May: We will definitely not stray.

Dairy Produce Quotas (Scotland) Amendment Regulations 2004 (SSI 2004/118)

Christine May: There is a query about a reference made to paragraph (6) of regulation 12 of the principal regulations for a definition of "exceptional circumstances". There is a complex series of references to various bits and pieces, which I think we should ask the Executive about. We should also ask why regulation 2, on interpretation, was thought necessary, given that the principal regulations are referred to only once by the present regulations.

The Deputy Convener: Okay.

Tribunals and Inquiries (Dairy Produce Quota Tribunal) (Scotland) Order 2004 (SSI 2004/119)

The Deputy Convener: This is the first time in the meeting that I can speak these words: no points have been identified on the order.

Christine May: Hallelujah!

Police Grant (Scotland) Order 2004 (SSI 2004/120)

The Deputy Convener: There is one point to raise on the order, which we could refer to the Executive. Alternatively, we could just deal with it informally.

Alasdair Morgan: We should be lenient on this one.

Christine May: We should deal with it informally.

The Deputy Convener: Okay. There is a further point about form, but we will deal with that by way of informal letter.

Police (Scotland) Amendment Regulations 2004 (SSI 2004/121)

The Deputy Convener: There is nothing to raise on the regulations.

National Health Service (Tribunal) (Scotland) Amendment Regulations 2004 (SSI 2004/122)

Christine May: There has been a fortnight between the previous regulations and the regulations before us, which are replacement regulations—at least, they amend the previous regulations. Why could we not have just had the whole lot?

The Deputy Convener: Given that the new regulations are so short, we should at least ask for an explanation. There might be one, and we should ask for it. Is that agreed?

Members *indicated agreement.*

Criminal Legal Aid (Fixed Payments) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/126)

The Deputy Convener: I feel a declaration of interest coming on. [*Laughter.*] Does anyone have anything to say?

Christine May: We should say that the Executive should make the regulations available free of charge, as they are replacement regulations.

Murray Tosh: Do we understand you to mean that your legal aid income was criminal, convener?

The Deputy Convener: Anyway—moving swiftly on, thank you.

Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2004 (SSI 2004/128)

The Deputy Convener: No points have been identified on the regulations.

Natural Mineral Water, Spring Water and Bottled Drinking Water Amendment (Scotland) Regulations 2004 (SSI 2004/132)

Christine May: The regulations do not mention Dasani or bromate, so Coca-Cola is off the hook. There are no other points.

The Deputy Convener: Thank you.

Jam and Similar Products (Scotland) Regulations 2004 (SSI 2004/133)

The Deputy Convener: I am not sure what a "similar product" to jam is, but—

Alasdair Morgan: Marmalade.

Christine May: Jellies, or preserves.

The Deputy Convener: Indeed—but there is nothing to concern the committee.

Instruments Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Order 2003 Revocation Order 2004 (SSI 2004/124)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 6) (Scotland) Order 2003 Partial Revocation Order 2004 (SSI 2004/125)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 10) (Scotland) Order 2003 Revocation Order 2004 (SSI/2004/129)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (Orkney) (No 2) (Scotland) Order 2003 Revocation Order 2004 (SSI/2004/130)

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 5) (Scotland) Order 2003 Revocation Order 2004 (SSI/2004/131)

11:33

The Deputy Convener: The final item on the agenda is instruments not subject to parliamentary procedure. The amnesic shellfish regulations are our old friends—indeed, they are the friends of the Tory party. No points of substance arise, but the committee may wish to consider whether to raise with the Executive the absence of illustrative maps, either formally or informally.

Christine May: We usually get them, do we not?

The Deputy Convener: Could we have a decision? Do we make the point formally or informally?

Murray Tosh: We should make it a formal point.

The Deputy Convener: A formal point—thank you very much.

That brings us to the end of what was, for us, a substantial agenda. Thank you all very much.

Meeting closed at 11:34.

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