SUBORDINATE LEGISLATION COMMITTEE

Tuesday 15 June 2004
(*Morning*)

Session 2

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CONTENTS

Tuesday 15 June 2004

Col.

DELEGATED POWERS SCRUTINY 509
Local Governance (Scotland) Bill: as amended at Stage 2 509
EXECUTIVE RESPONSE 520
Town and Country Planning (Electronic Communications) (Scotland) Order 2004 (draft) 520
INSTRUMENTS SUBJECT TO ANNULMENT 521
Police (Scotland) Regulations 2004 (SSI 2004/257) 521
Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258) 521
Shrimp Fishing Nets (Scotland) Order 2004 (SSI 2004/261) 521
Advice and Assistance (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/262) 521
Criminal Legal Aid (Fixed Payments) (Scotland) Amendment (No 3) Regulations 2004 (SSI 2004/263) 522
Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2004 (SSI 2004/264) 522
Agricultural Business Development Scheme (Scotland) Amendment Regulations 2004 (SSI 2004/267) 523
Regulation of Care (Social Service Workers) (Scotland) Order 2004 (SSI 2004/268) 523
Food Labelling Amendment (Scotland) Regulations 2004 (SSI 2004/269) 523
Individual Learning Account (Scotland) Amendment Regulations 2004 (SSI 2004/270) 523
National Health Service (Tribunal) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/271) 523
Common Agricultural Policy (Wine) (Scotland) Amendment Regulations 2004 (SSI 2004/272) 523
Education Maintenance Allowances (Scotland) Regulations 2004 (SSI 2004/273) 524
Glasgow Metropolitan College (Establishment) Order 2004 (SSI 2004/274) 524
Waste Management Licensing Amendment (Scotland) Regulations 2004 (SSI 2004/275) 524
Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004 (SS1 2004/276) 524
Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 (SSI 2004/278) 524
Beef Carcase (Classification) (Scotland) Regulations 2004 (SSI 2004/280) 525
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT 526
River Findhorn Salmon Fishery District (Baits and Lures) Regulations 2004 (SSI 2004/259) 526
Assynt - Coigach Area Protection Order 2004 (SSI 2004/260) 526

SUBORDINATE LEGISLATION COMMITTEE
21st 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:

Rosemary Lindsay (Scottish Executive Legal and Parliamentary Services)
Sarah Morrell (Scottish Executive Finance and Central Services Department)

CLERK TO THE COMMITTEE

Alasdair Rankin

ASSISTANT CLERKS

Bruce Adamson
Joanne Clinton

LOCATION

Committee Room 3

Scottish Parliament

Subordinate Legislation Committee

Tuesday 15 June 2004

(*Morning*)

[THE CONVENER *opened the meeting at 10:37*]

Delegated Powers Scrutiny

Local Governance (Scotland) Bill: as amended at Stage 2

The Convener (Dr Sylvia Jackson): I welcome members to the 21st meeting this year of the Subordinate Legislation Committee. I also welcome representatives of the Scottish Executive. With us are Sarah Morrell, local democracy team leader in the Finance and Central Services Department, and Rosemary Lindsay of the office of the solicitor to the Scottish Executive. They are here for the first item on our agenda, which is delegated powers scrutiny of the Local Governance (Scotland) Bill, as amended at stage 2.

It would appear from the material that the legal advisers have supplied that there is basically just one matter that we would like to discuss with you. It concerns section 9, together with sections 3 and 5. It involves the movement of provisions regarding the conduct of elections from primary to subordinate legislation.

Mr Stewart Maxwell (West of Scotland) (SNP): It appears from the bill as amended that a Henry VIII power would effectively allow the current Executive—or any future Executive—to amend completely the principle of the bill as set out in section 2: to establish the single transferable vote method of electing local councillors. Could you expand on the reasoning behind the provisions as now drafted? It seems that any future Executive could in effect remove that section by using subordinate legislation and replace it with wording to provide, for instance, for first-past-the-post elections. That seems an extraordinarily wide power. It is too wide; such a move would undermine the principle of the bill.

Sarah Morrell (Scottish Executive Finance and Central Services Department): Rosemary Lindsay might wish to say a little bit about what the power would and would not allow us to do, but it might be helpful if I explain why we have made the change that we have.

Members will recall that the bill, when introduced, included the key elements of the STV system that ministers proposed to introduce in Scotland. As well as the essential principles of multimember wards and a single transferable vote, as stipulated in sections 1 and 2, the bill included a number of sections setting out the detail of the transfer process in particular.

Ministers considered quite carefully whether the provisions should be in primary or secondary legislation. Although the arguments are finely balanced, the Executive concluded that it would put the material into primary legislation for two reasons. First, it thought that such a fundamental change to a new electoral system should probably be in primary legislation. Secondly, it examined precedent—what has traditionally been done in Scotland—and whether, under the Scotland Act 1998, the detail of the additional member system is included in the legislation.

However, throughout the various bill processes—the draft consultation and the evidence given to the Local Government and Transport Committee—several people queried the balance between primary and secondary legislation. Some felt that there was too much primary legislation and that all the provisions for dealing with the count process should be transferred to secondary legislation. Some people believed that there was not quite enough and that there should be a little bit more primary legislation. Ministers therefore thought that they might have got the balance about right, but the Local Government and Transport Committee report recommended that ministers should reflect on whether that was the right approach.

My understanding is that the Local Government and Transport Committee was particularly concerned that although the STV system as set out in the bill was appropriate for Scotland at the moment, circumstances might arise in which it should be changed and that the system should be flexible. The committee thought that that could be achieved by putting the detail into secondary legislation. Ministers listened to the committee's argument and decided that they would give effect to its recommendation.

That is why, at stage 2, ministers intended to lodge amendments to delete sections 3 to 8. However, the parliamentary authorities told us that if we lodged amendments to delete sections 3 to 5 at that stage, they would be wrecking amendments. We therefore adjusted sections 3 to 5 to make it clear that the matters covered in those sections would be covered by section 9. Section 9 was then amended to expand the power within it and ministers intend to lodge stage 3 amendments that will delete sections 3 and 5.

All along the intention has been that the things that are essential to every STV system—the elements contained in sections 1 and 2 of the bill—should be retained. Those are the elements that deal with multimember wards and the single transferable vote. However, we have now taken an approach that gives flexibility to the transfer process, the count process and the technical system of STV.

Mr Maxwell: I fully understand the reasoning. As originally proposed, it was a mistake to have it in primary legislation. This bill is much more like the Northern Ireland Constitution Act 1973, in that it sets out the principles but leaves the detail to secondary legislation; I believe that that is the correct way to deal with it.

However, I do not think that you answered the primary question. Is it not the case that someone could come along and use the amending power to lay subordinate legislation to remove sections 1 and 2 and replace them with new sections that would set up a first-past-the-post system?

Sarah Morrell: We do not think that that can be done. Rosemary Lindsay might want to say a bit more about that.

Rosemary Lindsay (Scottish Executive Legal and Parliamentary Services): Section 9 of the bill sets out what an order that is made using that power must do. Section 9(2) states that

"an order must, in particular—"

and then it lists the basics of an STV system. An order that is made under section 9(2) must make provision for those basics.

Theoretically, an order made under section 9(2) can modify an enactment, so it would be possible to try to modify an earlier provision of this bill. Section 9(2) is, however, subject to the affirmative procedure. A draft of any such order would have to be laid before the Parliament and would be subject to scrutiny and I imagine that it would be politically difficult. I will refer to what the minister said about section 9(2) when the point was raised:

"There are a lot of must-do provisions, and I feel that we should show more faith in the parliamentary system and in the committee system of this Parliament. To put it bluntly, if the Executive wants to hoodwink the committee in the future, the people from interested organisations who will be sitting in the public gallery and the politicians around the table will spot that."—[*Official Report*, *Local Government and Transport Committee*, 4 May 2004; c 862.]

10:45

Mr Maxwell: I do not disagree that that is the current political situation. However, a future Government could be of a completely different make-up and have as a point of principle that it did not want STV, or any other proportional representation system, but a first-past-the-post system. I have read section 9(2) and I understand that it is the basic make-up of an STV system. However, it seems to me that it is not impossible—and you seem to have accepted that it is theoretically possible—that someone could make an order that brings in a first-past-the-post system while still meeting the requirements under section 9(2)(a) to 9(2)(e) if the transfer value is set to zero. The secondary legislation could be written in such a way that it meets all the criteria under section 9(2), but brings in an FPTP system and gets rid of STV. If that is theoretically possible—and that is what you said at the start of your answer—then the bill is fundamentally flawed. If we are trying to bring in STV for local government, that is what we should do and it should be for primary legislation to change that in future.

Rosemary Lindsay: When I say that it is theoretically possible, the control of parliamentary scrutiny is there to ensure that subordinate legislation-making powers are not abused. There is control over the use of subordinate legislation-making powers and if a subsequent government wanted to reintroduce first past the post, the simple solution would be to do it by primary legislation rather than by trying to do it within order-making provisions.

Mr Maxwell: Surely that is incorrect; I have to challenge you on that. If the bill is passed as it stands, surely the simple method would be to use order-making powers, rather than primary legislation, which is much tougher to bring in.

Rosemary Lindsay: Except that there is a limit on the order-making power in that there would be no intention to use it in that way. I imagine an administration would be criticised for using—

Mike Pringle (Edinburgh South) (LD): But there is no intention to use—

The Convener: Mike, please can you go through the chair. Let Ms Lindsay finish and then I will come to you.

Rosemary Lindsay: The order-making power is there to allow the fundamentals of the STV system that were previously in primary legislation to be introduced via secondary legislation. That is the intention.

Mike Pringle: You say that there is no intention to use the order-making power to reverse STV at the present time, but that is not to say that there will not be such an intention in future. As Stewart Maxwell said, we could have a completely new government that is totally opposed to STV and it would be able to use subordinate legislation to take us back to a first-past-the-post system. Surely that would be a much easier way to go. If the bill said that a new administration wanting to change back to first past the post would have to use primary legislation, that administration would have

to introduce a new bill that would have to go through the full parliamentary process. I am not saying that whoever was in power in Scotland at that point and was fundamentally opposed to STV would not do that, but that is the long and more difficult route to changing the system. Using the subordinate legislation power in the bill is easy and quick, and I am fundamentally opposed to that.

Rosemary Lindsay: When I said "intention", I was speaking about the intention behind the giving of the order-making power, rather than any political intention. The order-making power has been given to deliver the policy of STV.

The Convener: We are not debating that the Local Government and Transport Committee suggested, for good reasons, that these changes should be made. However, from the point of view of subordinate legislation, we are worried that the power could be very wide and we do not think that it is right that it should be used in that way.

Alasdair Morgan (South of Scotland) (SNP): I have not so much a question as a point to make to the witnesses. We accept the intention behind the order-making power, but the road to hell is paved with good intentions. It did not strike me until Stewart Maxwell said it that, mathematically, first past the post is just a special case of STV with certain values set to zero or whatever.

Christine May (Central Fife) (Lab): Leaving the policy and the intentions of those who are currently in power to one side, the practical effect of the power, as the bill is currently drafted, could be to allow for fundamental change to sections 1 and 2. From the subordinate legislation point of view, if the existing power could be used to change the fundamental ethos of the bill, would it not be sensible to make provision to eliminate that potential, but leave intact the necessary flexibility on the exact system of STV that is to be used?

Rosemary Lindsay: We have already said that, to give us that flexibility, the order would need to be able to modify enactments. Is the alternative to provide that such a power could not be used to modify enactments? If that were the case, I am not sure that we would retain the flexibility that we suggest is required to allow us to provide for a different system of STV if that should be desirable in future. That would return us to the position where, if one wanted to modify how votes are transferred in the system, one would have to go back to primary legislation.

Christine May: I am not legally qualified, therefore I cannot argue with you, but if there is time before the end of the meeting I would be grateful if you would check whether it is possible to make provisions to restrict the ability to make those changes to the matters that deal with the type of STV to be used, the counting methods and so forth. I believe that it should be possible to restrict those powers to areas that do not change the fundamental principle of the bill.

Murray Tosh (West of Scotland) (Con): Before we leave that subject, it might be sensible to pull that point out further. Is it possible to leave section 22(3), which gives the power to modify enactments, but to include an expression there to make it clear that that power would not extend to sections 1 and 2, or even to section 2 alone, if that were thought to be sufficient? Given that Rosemary Lindsay said that the power could theoretically be used, but that that was not the intention, it strikes me that, to include a reservation such as I suggested would not be declaratory in those circumstances and that it would, in fact, define the scope of section 22(3) in a way that would leave in all the flexibility without undermining the main purpose of the bill.

Sarah Morrell: I have two thoughts on that. As I am sure that members are aware, the power to modify enactments was in the bill as introduced. I suspect that, because we have expanded the list of what must be covered by the power, the split between primary and secondary legislation has been brought into sharper focus. It might be useful for us to check out whether an order-making power that is in a bill can be used to modify that bill. If it cannot, that would answer your point.

Christine May: Our understanding is that a Henry VIII power, unless its use is restricted, can be used to make such modifications.

Sarah Morrell: We can certainly check that out and get a response to the committee as quickly as possible. If we are told that the power could be used to make such modifications, we can look at how we could make clear the intention that the Local Governance (Scotland) Bill should introduce the single transferable vote. The reason why the key elements in the first two sections remain in the amended bill is to make that clear. We will look at whether we can find a way of meeting the concerns that are being expressed.

The Convener: That would be very helpful.

Alasdair Morgan: To further the point, surely there are order-making powers in the Scotland Act 1998, for example, but certain sections in that act are entrenched and cannot be changed by such order-making powers. I am sure that that is the case in other bills as well.

The Convener: Perhaps the witnesses will take that point on board.

Christine May: Supposing we leave the Henry VIII power as it is at the moment. Rosemary Lindsay referred to the opportunity that the affirmative procedure gives for parliamentary

scrutiny, but is it not the case that, under the affirmative procedure, an instrument can only be rejected or accepted and not amended?

Rosemary Lindsay: That is right. Under the affirmative procedure the instrument is laid in draft and is approved by a resolution of the Parliament, so the instrument can either be accepted or rejected. It is not possible to amend the instrument.

Christine May: But is it not possible under the super-affirmative procedure to lay a draft before the Parliament for amendment, and then for an amended draft to be returned to the Parliament for approval?

Rosemary Lindsay: I am not aware of that procedure having been used before.

Christine May: No, but that is my understanding of how the procedure works. Let us consider a situation where somebody with malign intent sought to change fundamentally the purpose of the bill. Under the affirmative procedure, if there were a sufficient majority in the Parliament, there would be no opportunity to either amend or reject the instrument, which takes me back to my original point.

Rosemary Lindsay: No. If a draft instrument attempted to do something such as to reintroduce the first-past-the-post system, it would be up to the will of the Parliament to decide to accept or reject that—there would be no opportunity to make amendments.

Christine May: Politically, I might welcome that intensely. However, from a purely legislative point of view, that is a flaw that would bear consideration.

Murray Tosh: There is a further point. Even if we do not consider the apocalyptic option of someone trying to use an order under section 9(1), as qualified by section 9(2), to undermine the essential system, substantive orders could be laid under those powers, which, even under the affirmative procedure, would leave the Parliament relatively little scope to influence the detail of what is being recommended, other than the straightforward option to accept or reject.

The point that was argued by our legal adviser was that, if we were able to build in a super-affirmative procedure of some kind, we could at least require a draft to be debated and ministers to take that into account. In that way, we would strengthen the role of the Parliament in influencing legislation that is passed.

The Executive witnesses' response is that they are not aware of such a procedure ever having been used, but that is not really the point; the point is whether they consider that the insertion of such a procedure here would be flawed in any way, or whether it would make life difficult, because we have the option to recommend that such procedure should be introduced. We would like to hear some analysis of how the Executive officials would be inclined to advise us or ministers in the event that the committee were to propose such an amendment.

Rosemary Lindsay: My understanding is that, at present, there is no such procedure. I do not think that we could introduce it just for this bill; we would have to take a more general approach for introducing a new type of scrutiny procedure.

Murray Tosh: It strikes me that that would be a policy rather than a legal judgment. I presume that an amendment along those lines would be admissible and, if the Parliament supported it, it could be written into the proposed law as a piece of legislation specific to the future act. We do not have to establish a general principle before we can amend a specific piece of legislation. I wonder whether we could be advised on that interpretation.

11:00

The Convener: The legal adviser has pointed out to me that this came up when we were discussing the national parks legislation. You might remember, Murray, that there was a debate about the super-affirmative procedure then. The witnesses might wish to look back at that.

Would Sarah Morrell or Rosemary Lindsay like to make any further points?

Sarah Morrell: I do not think so. Our memorandum explains the changes that have been made, as well as the changes that ministers are proposing to make at stage 3. If members have any questions on those, we will be happy to try to answer them.

The Convener: Are you quite happy to take away our concerns about the wide power that we have been discussing? First, you were going to check whether the order-making power could change the first two sections of the bill substantially. Secondly, if there is in fact a possibility of that happening, which we are worried about, you were going to investigate whether a safeguard could be inserted in the form of an amendment to section 22(3). Thirdly, there is a more general issue from what Murray Tosh has been saying about the use of the super-affirmative procedure. That is useful in the context of the wider debate around amendments.

Sarah Morrell: I would hope that we could respond to you very quickly on the first two points, on the potential to amend sections 1 and 2. As I said at the outset, ministers were clear that the key principles of an STV system should be in

primary legislation, and that there were good reasons for their being in primary legislation. It is not ministers' intention for those principles to be undermined in any way. That is why there were originally more elements in the bill, and why the key, fundamental elements have been retained.

On the matter of super-affirmative procedure, I suspect that it might take us a bit longer to check that. Although I accept the point that that does not necessarily have to relate just to this bill, I suspect that my legal colleagues might say that some kind of precedent would be set. We will certainly take a look at the matter, and the committee might well want to take its own legal advice in any case.

The Convener: On your point about precedents, we already have one in the form of the Convention Rights (Compliance) (Scotland) Act 2001.

Sarah Morrell: We can have a look at that, too.

Mike Pringle: Can I ask what "very quickly" means? The stage 3 debate is next week. Somebody needs to make a decision on what we are going to be doing extremely quickly. We do not meet until next Tuesday, and it will be too late for us to make a decision on the matter then, if I am right.

Sarah Morrell: On the first two points, I was hoping that, even if we could not get back to the committee this morning—Rosemary Lindsay might say that that is not possible—we could get something to the clerks later today. If we can do that in the course of the morning, we will do so.

The Convener: Okay.

Mr Maxwell: Depending on the response that we get, is it possible for us to lodge an amendment?

The Convener: I have just been asking Alasdair Rankin about that. We will write our report on our scrutiny of the bill at stage 2, but there is nothing stopping an individual MSP lodging an amendment, and they could do so right up to the actual debate.

Are there any further questions, or is the committee happy with those conclusions about how we are going to proceed?

Members *indicated agreement.*

The Convener: I thank Sarah Morrell and Rosemary Lindsay very much for attending.

Before we move to the next agenda item, I wonder whether we could agree on what we would like to include in our report to the Parliament on the relevant sections of the Local Governance (Scotland) Bill.

Christine May: In view of the responses that we have heard—notwithstanding the caveats and unknowns—it is fairly clear that, as currently drafted, the power exists to modify all of the bill. In that case, we should seek to make an amendment to restrict the power under section 22(3), which reads:

"An order under section 9(1) may modify any enactment."

It could not be simpler than to add, "other than the provisions of sections 1 and 2."

Alasdair Morgan: The Executive might have wanted to retain the ability to amend section 1(2), which mentions the number of councillors in each electoral ward. The trouble is that, if that ability is retained, it would be equally possible to amend that number to one. It is a difficult issue.

Mike Pringle: That would be the danger.

The Convener: The simplest thing would be to keep sections 1 and 2 out of it.

Members *indicated agreement.*

Murray Tosh: If we are concerned about the matter, and if the Executive confirms that there are grounds for concern, we would hope that there will be a ministerial amendment to tidy the matter up. If there is no such amendment, there ought to be one from the committee, given that it is a matter of subordinate legislation. That would be best done if the amendment were framed with proper advice and lodged in your name, convener.

You might, as an individual, decide in the course of the debate that you did not want to pursue the amendment but, once it had been lodged and—presumably—admitted, it could be pursued by any committee member who, at the time of the debate, still felt that it should be pursued, if necessary to the point of a vote. If the committee is united in its concern on the matter, it is to be hoped that that would influence ministers anyway, and that they would either lodge their own amendments or accept the committee's amendment, if it were lodged on a non-partisan basis.

The Convener: We could include in our report our intention to proceed in that way if an Executive amendment is not forthcoming.

I was just talking to the clerk about the procedure of how to do that, but Murray explained the situation perfectly—as ever.

Mike Pringle: Experience tells.

The Convener: We will cover the point about the super-affirmative procedure in our report as a more general issue, which we will want to take on board in other areas.

Murray Tosh: It is a more general issue, but the point was made, quite correctly, about there being a precedent. Similar amendments, which the Parliament did not accept, have been proposed for other bills. Although we might wish to do some

work on the general principle, it remains perfectly competent for us to come up with something in relation to this bill. I am not very comfortable about drawing up an amendment myself, but perhaps you could do so with legal advice.

In light of the response from Executive officials, or in the context of party whipping on the bill or whatever, you may well feel unable personally to pursue the matter at the point of debate next week, but the existence of such an amendment would allow another member of the committee, or even a non-committee member, to press the point to a vote, so that the issue may be fully explored in Parliament. I think that that would be seen as a perfectly reasonable thing for you to do in your capacity as committee convener.

The Convener: That would be fine. Another thought that occurs to me is that it might be helpful if the clerk could draft our response fairly rapidly, so that we could pass it to Sarah Morrell and Rosemary Lindsay.

Murray Tosh: We should certainly do that, because the Executive itself might wish to sponsor our suggested amendments. However, the Executive is less likely to take up our suggestion about the super-affirmative procedure. You might need to lodge that amendment at the chamber desk. We might need to let that amendment lie for a few days to allow the Executive to decide whether it will accept it.

Christine May: We should pursue the idea of requiring a super-affirmative procedure only in the event that the Executive rejects our suggestion about the general principle.

Murray Tosh: Sure.

Christine May: The super-affirmative procedure is our fallback position, but it would be less good than amending the bill so that its purpose could not be amended by statutory instrument.

Murray Tosh: Even if the Executive clarified that issue, I would not rule out the possibility of using the super-affirmative procedure. An argument could be made for that, but that is a matter for individuals to decide on during next week's debate.

Mike Pringle: Where does that leave the lead committee? Have we time to bring those matters to its attention before its next meeting?

The Convener: The lead committee is no longer involved. After our committee has considered the bill, it will be considered by the full Parliament.

Mike Pringle: How will we know how the Executive responded? I presume that today's meeting will have finished by the time that we receive the Executive's response.

The Convener: Alasdair Rankin will communicate any response to us as soon as he receives it and we will communicate with each other as we did last week.

Murray Tosh: Ultimately, that means that power will be delegated to the convener to lodge an amendment in the name of the committee.

The Convener: Yes. Even if I do not want to speak to or move the amendment, I have no doubt that other members will be willing to do so.

Christine May: Any member who does not like the terms of any amendment that is lodged on behalf of the committee is perfectly at liberty to lodge an amendment in their own name.

The Convener: Yes.

Executive Response

Town and Country Planning (Electronic Communications) (Scotland) Order 2004 (draft)

11:12

The Convener: Agenda item 2 is consideration of a response from the Executive on the draft Town and Country Planning (Electronic Communications) (Scotland) Order 2004. Members will recall that we queried the drafting of articles 7(2) and 8(2). As the legal advisers suggest, we will draw the attention of the lead committee and of Parliament to what we believe to be defective drafting in those two articles. Is that agreed?

Members *indicated agreement*.

Instruments Subject to Annulment

Police (Scotland) Regulations 2004 (SSI 2004/257)

11:12

The Convener: Under agenda item 3, the first instrument that we must consider is the Police (Scotland) Regulations 2004 (SSI 2004/257). The instrument consolidates 42 sets of regulations and I gather that the Executive has done a very good job on it. However, one or two points—the note from our legal advisers lists points (a) to (k)—should be brought to the Executive's attention. Is that agreed?

Members *indicated agreement*.

Environmental Assessment of Plans and Programmes (Scotland) Regulations 2004 (SSI 2004/258)

The Convener: Apart from the absence of a transposition note, the regulations appear to be in order. Is that agreed?

Members *indicated agreement*.

Shrimp Fishing Nets (Scotland) Order 2004 (SSI 2004/261)

The Convener: There is an issue about the delay in laying the order. Also, there was a slight error in the covering letter and the order will come into force before the full 40 days. Do members have any proposals on what we should do?

Christine May: It would be sensible to have the procedure done properly. Notwithstanding the fact that 10 days have been lost when the order should have been available for inspection and consultation, we should ask the Executive to resubmit the order properly for the avoidance of legal challenge.

The Convener: If there are no other views, are we agreed on that?

Members *indicated agreement*.

Advice and Assistance (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/262)

The Convener: I gather that the regulations have changed many times, and there do not appear to be any points of substance to raise, but our legal advice is that we should have regard to the failure to revoke spent provisions. Reference has also been made to irrelevant footnotes. It is suggested that we pass those points to the Executive for comment.

11:15

Murray Tosh: The briefing suggests that we may wish to consider whether to do that formally or informally. Given that there are many points and given that we have raised the question of revocation before, are we proposing to write to the Executive formally?

The Convener: It is suggested that we write formally.

Christine May: I think that we should.

The Convener: Is that agreed?

Members *indicated agreement*.

Criminal Legal Aid (Fixed Payments) (Scotland) Amendment (No 3) Regulations 2004 (SSI 2004/263)

The Convener: Two points have been raised in the legal brief about the regulations: clearing the statute book of dead legislation and incorrect references to the schedule. Should we write formally or informally to the Executive?

Christine May: If we are writing formally on the advice and assistance regulations, we should write formally on these regulations too.

The Convener: Is that agreed?

Members *indicated agreement*.

Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2004 (SSI 2004/264)

The Convener: We may wish to consider asking the Executive whether the reference to paragraph (3) in new regulation 6(4), as inserted by regulation 4, is correct. In the original version of paragraph (4), as inserted by the Criminal Legal Aid (Youth Courts) (Scotland) Regulations 2003 (SSI 2003/249), the reference is to paragraph (2), so we think that there is a slight error there.

Christine May: Again, there is the issue of spent provisions.

The Convener: Is it agreed that we should write to the Executive to confirm those points?

Members *indicated agreement*.

Agricultural Business Development Scheme (Scotland) Amendment Regulations 2004 (SSI 2004/267)

Regulation of Care (Social Service Workers) (Scotland) Order 2004 (SSI 2004/268)

The Convener: No points have been identified in relation to the instruments.

Food Labelling Amendment (Scotland) Regulations 2004 (SSI 2004/269)

The Convener: The only point that has been raised relates to consolidation. Our legal advisers believe that consolidation may already have started, so we want to ask about progress on that. Is it agreed that we write to the Executive to ask about that?

Members *indicated agreement*.

Individual Learning Account (Scotland) Amendment Regulations 2004 (SSI 2004/270)

National Health Service (Tribunal) (Scotland) Amendment (No 2) Regulations 2004 (SSI 2004/271)

The Convener: No points have been identified in relation to the regulations.

Common Agricultural Policy (Wine) (Scotland) Amendment Regulations 2004 (SSI 2004/272)

The Convener: No points have been identified in relation to the regulations.

Alasdair Morgan: I wondered exactly which wines we had in mind in Scotland, but perhaps we should not pursue that issue.

Mike Pringle: Do we actually make any wine?

Christine May: We do indeed. It is a successful industry.

Mike Pringle: From grapes?

Christine May: No. They are fruit wines, from which an extremely good profit is made.

Murray Tosh: Given global warming, the instrument might be relevant in the future, of course.

The Convener: You are correct.

Christine May: We shall follow you in to trample the grapes.

Education Maintenance Allowances (Scotland) Regulations 2004 (SSI 2004/273)

The Convener: It is recommended that we ask the Executive whether the reference to the Scottish ministers in paragraph 6(a)(i) of schedule 1 is correct, given that the function to which reference is made appears to be one that is reserved to the United Kingdom Government. Is that agreed?

Members *indicated agreement*.

Glasgow Metropolitan College (Establishment) Order 2004 (SSI 2004/274)

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

Waste Management Licensing Amendment (Scotland) Regulations 2004 (SSI 2004/275)

The Convener: We may wish to consider asking the Executive what plans it has for consolidating waste management licensing regulations, as this appears to be the 17th amendment to the principal regulations.

Christine May: There is no transposition note. As the regulations have been amended so many times as to render them extremely complex, a transposition note would have been helpful.

The Convener: That is right. Do members agree that we should write to the Executive in those terms?

Members *indicated agreement*.

Inshore Fishing (Prohibition of Fishing and Fishing Methods) (Scotland) Order 2004 (SS1 2004/276)

The Convener: Two points arise in relation to the order. First, we are advised to ask the Executive why article 12(2) is thought necessary, given sections 16(1) and 17(2)(b) of the Interpretation Act 1978. Secondly, it is suggested that we query the wording of the exclusion in article 10(3), given the amendments that were made to the parent act by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999 (SI 1999/1820) and the effect of the Scottish Adjacent Waters Boundaries Order 1999 (SI 1999/1126). Is that agreed?

Members *indicated agreement*.

Common Agricultural Policy Non-IACS Support Schemes (Appeals) (Scotland) Regulations 2004 (SSI 2004/278)

The Convener: Three points have been raised by our legal adviser. The first point concerns the citation of powers and, in particular, whether

section 56(1) of the Finance Act 1973 should also have been cited as an enabling power. The second is that we ought to seek an explanation of what is meant by "specified" in regulation 4(4). The third is that the committee should consider whether it is appropriate to seek an explanation for the specific reference in regulation 8(1) to a member of staff of the Scottish ministers and what effect that will have on regulation 5.

Are members happy with those three points?

Members *indicated agreement*.

Beef Carcase (Classification) (Scotland) Regulations 2004 (SSI 2004/280)

The Convener: It is suggested that we ask the Scottish Executive for an explanation of the term "specified premises", as it is not clear what that means in regulation 7(2). Is that agreed?

Members *indicated agreement*.

Instruments Not Laid Before the Parliament

River Findhorn Salmon Fishery District (Baits and Lures) Regulations 2004 (SSI 2004/259)

11:20

The Convener: No points arise in relation to the regulations, but it is suggested that we might ask when the Salmon and Freshwater Fisheries (Consolidation) (Scotland) Act 2003 will come into force. Is that agreed?

Members *indicated agreement*.

Assynt - Coigach Area Protection Order 2004 (SSI 2004/260)

The Convener: No points have been identified in relation to the order, but we have had correspondence from Dennis Canavan, who cites an instance in which he believes that the necessary consultation has not taken place. I suggest that we write to the Executive and ask about the consultation process and the responses that it received. Is that agreed?

Members *indicated agreement*.

The Convener: That brings us to the end of the agenda. I thank colleagues for their attendance.

Meeting closed at 11:22.

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