SUBORDINATE LEGISLATION COMMITTEE

Tuesday 22 March 2005

Session 2

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CONTENTS

Tuesday 22 March 2005

SUBORDINATE LEGISLATION COMMITTEE
10th Meeting 2005, Session 2

CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

DEPUTY CONVENER

Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Mr Adam Ingram (South of Scotland) (SNP)
*Mr Stewart Maxwell (West of Scotland) (SNP)
Christine May (Central Fife) (Lab)
*Mike Pringle (Edinburgh South) (LD)
*Murray Tosh (West of Scotland) (Con)

COMMITTEE SUBSTITUTES

Alex Johnstone (North East Scotland) (Con)
Maureen Macmillan (Highlands and Islands) (Lab)
Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Jane Ryder (Office of the Scottish Charity Regulator)

CLERK TO THE COMMITTEE

Ruth Cooper

ASSISTANT CLERK

Bruce Adamson

LOCATION

Committee Room 5

Scottish Parliament

Subordinate Legislation Committee

Tuesday 22 March 2005

[THE CONVENER *opened the meeting at 10:45*]

Regulatory Framework Inquiry

The Convener (Dr Sylvia Jackson): I welcome members to the 10th meeting in 2005 of the Subordinate Legislation Committee. I have received apologies from Christine May, but I expect Mike Pringle to attend the meeting later.

Murray Tosh (West of Scotland) (Con): I note that I missed last week's meeting. However, I came in during the course of it to give my apologies to the clerk.

The Convener: I think that that has been noted, but we will check.

Item 1 on our agenda is our on-going inquiry into the regulatory framework in Scotland. I welcome Jane Ryder, the chief executive of the Office of the Scottish Charity Regulator, and I invite her to give a brief introduction, before we move to questions.

Jane Ryder (Office of the Scottish Charity Regulator): I would be delighted to do that. Thank you for the invitation to give evidence today. I hope that what I say will assist the committee.

As I said in my written submission, OSCR is a new regulator, so we are in a relatively unusual position. We were established as an executive agency in December 2003, so we have been in operation for only about 15 months. We are in the unusual position of developing a new regulatory regime under current statutory powers at the same time as being closely involved in the development of new legislation, which has given us an interesting perspective.

We have aimed to build the principles of better regulation into our operations from the outset. It is much easier to start with a relatively clean sheet than to try to turn around a tanker. That has given the civil servants, especially the Charities and Trustee Investment (Scotland) Bill team, which is responsible for the policy framework, an increasing evidence base for policy development. However, because all the evidence was not available at the outset, I highlight the exceptional consultation process that the bill team led when developing the new legislation. The Communities Committee has commented on that process, which I regard as a critical element of regulation.

I understand that the Subordinate Legislation Committee has not received many submissions from the voluntary sector, so it may help if I give a one-minute profile of the regulated constituency as I currently understand it. There are about 20,000 active charities in Scotland. Over the past six months, we have dealt with almost 5,000 changes of detail to the information that the Inland Revenue holds. I say that there are about 20,000 active charities, because the information from the Inland Revenue that we currently publish is not as up to date as one might expect it to be. That is one of the key challenges that we face.

We will have an even better picture by the autumn, once we have rolled out our first annual return, which we plan to do in the last week of April. However, we are fairly clear that approximately two thirds of the 20,000 charities in Scotland have an income of less than £25,000—they are real microbusinesses, in the terms that the committee has discussed. OSCR is also a microbusiness. We have only 17 staff at the moment, although by the end of the year we should have about 30. The figures that I have provided give the committee some idea of the scale of the regulated constituency.

There is an extraordinary variety of charities, from large national cultural institutions such as universities, further education colleges and the National Trust for Scotland, through care providers and medical research organisations, to girl guides and scouts. The sector also includes churches, schools and animal welfare and human rights organisations.

The extraordinary variety of organisations means that an extraordinary variety of other regulators is involved. For example, Communities Scotland deals with registered social landlords. For business activity, charities also engage with the Scottish Further Education Funding Council and the Scottish Higher Education Funding Council. That is not to mention the wealth of regulation that accompanies charities' activities as employers. I know that one or two of your other witnesses have touched on the United Kingdom and European dimensions. Cross-border activity is certainly a concern, but I think that it is possibly less of a concern than people had thought it would be at the outset.

We have just made a freedom of information request to all 32 local authorities asking to whom they grant rates relief on the basis of charitable status. We have identified approximately 250 organisations that are English—foreign, as it were—charities that operate in Scotland. We also know, from the website of the Charity Commission for England and Wales, of around 400 other organisations that have a contact address in Scotland, although that may be no more than a

correspondence address. We may be talking about only 250 organisations, although some of them will obviously be significant—the 13 largest operate across 10 or more local authority areas.

There is cross-border interest in dual regulation between OSCR and the Charity Commission for England and Wales. There is also considerable interest, not only among cross-border charities but among Scottish charities, in the interplay between reserved and devolved matters, because tax is a reserved matter. I do not think that the European dimension is yet a large factor, except in so far as the European convention on human rights gives rights to organisations, including charities, including rights within the regulatory process. However, there is not a great drive for European standards and European regulation in the same way as there has been with the Food Standards Agency Scotland and the Scottish Environment Protection Agency, from which you heard evidence. I hope that that is a useful introduction.

The Convener: It is very useful. Thank you for outlining those linkages for us.

Mr Stewart Maxwell (West of Scotland) (SNP): I was interested in something that you mentioned in your opening remarks and to which you refer in your submission. In paragraph 1.4, you state:

"We have come afresh to existing regulation and have been able to identify within a relatively short time what are the benefits and disadvantages of the current system."

It would be helpful if you could tell us what those are. In general, what do you believe can be done to improve the quality of regulation in Scotland, given that you have a fresh pair of eyes?

Jane Ryder: We have a fresh pair of eyes. In particular, we can see the advantages and disadvantages of the current statutory powers, which means that we have been able to feed into the new legislation what we hope will be improvements to the regime of charity regulation. If we take a step back and consider what would improve the regulatory process, we may think about the importance of resource impact assessments, an essential part of which—particularly where there is the information gap that a number of witnesses have identified—is the consultation process. The work that the bill team has done—and some of the operational work that we have done—on consultation and reaching out to the regulated constituency is probably the key.

Mr Maxwell: You also said that regulation must be proportionate and that there must be a light touch. Do you believe that better regulation necessarily means less regulation, or did you mean something else by that comment?

Jane Ryder: In our context, better regulation means more regulation, because there has not been any hitherto. We must strike the right balance. For us, proportionate regulation means regulation in relation to legitimate and identified risk. In particular, it is about not bearing too heavily on smaller organisations, given that the profile of our sector is about microbusinesses.

We have just carried out extensive consultation on how we should introduce a monitoring programme. As a result—having made proposals, received responses to the consultation and piloted the scheme in 300 charities—we have pulled back from some of our original proposals. We are now asking the smaller charities—those with an income of under £25,000—to fill in only a very simple form and to send us a copy of their accounts. In essence, we then do the work. We are asking the larger charities—those with an income of more than £25,000—some questions, which means that they are doing some of the work for us.

Mr Maxwell: In your comments on consultation, you touched on the need for improved regulation. In the 15 months that you have been around, what lessons—apart from those to do with the gap in consultation—have you learned from examining the existing regulations in the field?

Jane Ryder: I think that it is universally acknowledged that the existing regulations are overly detailed and prescriptive. Some of them are almost impossible to follow and some of them have quickly become out of date because of considerable advances in accounting, auditing and technical practices. Because of issues to do with parliamentary time before devolution, the regulations have not kept pace with those advances.

From a regulator's perspective—and you might expect me to say this—the more flexibility and the more legitimate discretion that the regulator can have, the better. Problems have arisen because the regulations are incredibly prescriptive of process—down to, for example, prescribing the style of advertisement that has to be published when one wants to reorganise a trust with an income of under £5,000 a year.

Mr Maxwell: That is fairly detailed.

Jane Ryder: Yes.

Mr Maxwell: Is there any particular reason for the difficulty of microbusinesses—if I may use that term—in following the regulations? You said that some of the regulations were out of date, but are there any other reasons for the difficulty? For example, is there no clear guide to the regulations in plain English?

Jane Ryder: There is no clear guide in plain English and that is a gap that we seek to address. Due to arrive from the printers tomorrow is a simple guide to accounting regulations. We regard the provision of general advice on compliance—in

plain English, as far as we can—as a key role for the regulator.

Through the consultation on the bill, there has been interesting debate about the role of the regulator in giving advice. Does, for example, the giving of advice compromise the regulator's role as regulator? I do not think that it does; I think that the regulator has a spectrum of roles.

It is certainly not appropriate for the regulator to give one-to-one detailed advice from individual legal advisers, but it is the role of the regulator to give general advice and to offer signposts to other sources of advice, if available. However, not a huge amount of specialist advice on charity regulations is currently available. Such advice will build up over time and we are working on that with the sector—with umbrella groups such as the Scottish Council for Voluntary Organisations.

A good route to take—although it was originally by accident rather than design—has been the secondment of staff from the sector. We work with them on a commission basis; we get the benefit of their expertise and, in time, they take knowledge of OSCR and its processes back out to the sector.

The Convener: It sounds as if you are making some important starts. That is to be welcomed. I will move on to the regulatory impact assessments. How can the RIAs be integrated into policy making and influence policy?

11:00

Jane Ryder: Because we were not the policy arm, our input into the RIA system was primarily about the resources that we needed to carry out our functions rather than the impact. That is an important element: Equitable Life and other cases show that it is counterproductive to set up a system of regulation if it is not resourced appropriately.

On how the RIA can best be integrated with policy, again we might be slightly unusual—I do not know—in that, because the bill team consists of only two or three people and OSCR is a small organisation, we have had an extremely good and close dialogue with the bill team. Another extremely good thing that the bill team did, which enabled it to integrate policy thinking and to evolve policy, was to set up a bill reference group of stakeholders and to have intensive discussions through the group. That enabled the bill team to develop policy in light of contributions from the sector, which were in a sense informal impact assessments as we went through the process. Again, that comes back to consultation. The process should be about the evolution of policy and dialogue between policy and evidence rather than, as several witnesses and members have mentioned, a one-off exercise in which an RIA simply sits there or is tagged on to a bill.

The Convener: I think that your submission suggests that RIAs should be carried out for all regulations. Is that the frequency with which you think they should be done?

Jane Ryder: Now that I have read so much more information from other witnesses, I think that that suggestion is perhaps overly ambitious. An RIA does not necessarily need to be done for minor technical regulations, but the difficulty is that what one person may think of as a minor technical regulation may have a disproportionately large impact on someone else. The principle is right, but the difficulty lies in the practicalities.

The Convener: Finally, should there be independent scrutiny of the RIAs and, if so, what might it examine?

Jane Ryder: I would have thought that such scrutiny was an essential part of the parliamentary process. If your question is about whether there should be an independent unit within, let us say, the Executive, I think that that would be quite a challenge; it would have quite a resource implication for the Executive, which is hard pressed even to provide draftsmen to produce the regulations. That scrutiny function probably lies within the parliamentary process.

The Convener: Do you think that, within the parliamentary process, the Subordinate Legislation Committee and the lead committee should have a role?

Jane Ryder: Yes. Those committees should have a dialogue, as they do. The Finance Committee gave us a suitable grilling.

The Convener: I welcome Mike Pringle to the committee. Murray Tosh will ask about consultation.

Murray Tosh: Good morning. I have a couple of questions. Paragraph 2.4 of OSCR's submission states

"that there should be a general requirement to consult the public".

Should that general requirement be put on a statutory basis or should it be covered by policy guidance?

Jane Ryder: To be honest, I do not have a particular view on that. In relation to charities, there is the compact with the voluntary sector, so the requirement is perhaps a bit more than policy, although it is obviously less than statutory. I think that that is a good interim position for the voluntary sector.

Murray Tosh: Given what you have just said about the charitable sector being very much in the

voluntary sector and your earlier comments on charities as microbusinesses, what needs to be taken into account when there is consultation with charities about regulations? There is perhaps a lack of professional or other resources to engage fully in the way that some of the more substantive, perhaps UK-wide charities do.

Jane Ryder: The key to that is two-pronged consultation. One aspect is outreach work by those who are consulting; considerable effort has to be put into that. During the consultation on the Charities and Trustee Investment (Scotland) Bill, we and the bill team are organising information seminars throughout the country—indeed, the reason why I am alone today is that one of my senior colleagues is giving a presentation in Glasgow; another is in Dumfries and will be in Aberdeen tomorrow. The second aspect is the key role of intermediaries and umbrella bodies such as the SCVO and the sub-sector-specific bodies. Many microbusinesses are grouped together under umbrella bodies, which can be the most effective way of reaching businesses.

Murray Tosh: Do you think that the existing umbrella bodies are sufficiently broadly based to be able to capture the attention and awareness of the whole sector?

Jane Ryder: I cannot tell you that yet, but it is a good question.

Mr Adam Ingram (South of Scotland) (SNP): Good morning. What steps is OSCR taking to ensure fairness and consistency of enforcement in the work that it undertakes?

Jane Ryder: We inherited the previous complaints-based regime and powers of the Scottish Charities Office. One of the first things that we did was to develop and publish an inquiry and intervention policy. When someone makes a complaint about a charity, they get a copy of the policy so that they know what OSCR can and cannot do. The charity that is being investigated also gets a copy, so that it knows what to expect from OSCR. That is our approach to what was our first function.

Secondly, on monitoring, I explained about the consultation on the proposals. We are at an early stage with that work, but we have tried to build in consistency. Another function is trust reorganisation. We have issued guidelines on that and we have a user panel to review them. The key is to ensure transparency and to give appropriate reasons for decisions without getting involved in detailed explanation, because there are huge resource implications for us in that. Essentially, we are conscious of the need to build in quality assurance.

Mr Ingram: What feedback have you had on your new regime?

Jane Ryder: We have had relatively little feedback on the inquiry and intervention policy, but I regard that as a good thing. Where a complainant is dissatisfied with our decision in relation to an investigation, one of the ways in which the quality of the decision—if not the consistency—is interrogated is through freedom of information inquiries; one or two complainants have been adept at using such inquiries as a formal appeals mechanism. Under the bill, a three-tier statutory review is built in. OSCR can be asked to review a decision and must do so. At that point, the matter can go to the new charity appeals panel and then to the Court of Session. Furthermore, as we are a public authority, any complaint can go to the ombudsman and is amenable to judicial review.

Mr Ingram: Could you say more about the idea of an external appeals mechanism that is not as formalised or resource intensive as the present situation?

Jane Ryder: The bill proposes having not a free-standing tribunal but a panel that can be drawn on. The idea behind that was that there should be something that is relatively cheap and quick and is not as intimidating or resource intensive as a formal tribunal. Time will tell, because we do not know how many appeals there will be. One of the main factors that will affect that is whether there are third-party rights and third-party costs. At the moment, only OSCR and the charity or the person against whom a decision is made can appeal. There is some discussion about whether any interested third-party should have a right of appeal. However, that would add considerably to time and cost.

The Convener: One of the important areas that we have been examining is that of periodic review. Given what your submission says about the changes that have taken place over the years in the environment in which charities operate, I assume that that issue is important to you. Mike Pringle has a couple of questions to ask in that regard.

Mike Pringle (Edinburgh South) (LD): In your submission, you talk about the requirement that regulations be subject to review. I agree with you that the Scottish Parliament has not been good at looking back at the legislation that it has passed and I think that we should perhaps do more of that. How could we examine the legislation, post-implementation, and how would that be useful to the charities sector?

Jane Ryder: I confess that I have not thought through in detail quite how we might review the situation on an on-going basis. However, OSCR has started to think about how we measure our impact. The answer to your question relates to the objectives of the regulation and whether the

outcome achieves those objectives. A number of your witnesses have been understandably concerned about the impact of the regulation in terms of the burden of compliance. However, as the regulator, I am interested in what the regulation has achieved, which is much more difficult to quantify and establish.

Mike Pringle: Who should be quantifying that? The Executive? OSCR? This committee? An entirely independent person? I agree that, once the legislation has been passed, someone must consider its effects.

Jane Ryder: To start with, the regulator should do so. All public authorities have a duty of providing best value and of ensuring continuous improvement, so we should be conducting our own on-going internal reviews. That duty is subject to scrutiny by the Parliament and the Executive. Therefore, you have a right and a duty to call each regulator to account. The regulators can contribute to the overview, but there must be assessement by somebody who sits outside the regulator. An analogy would be the supposedly quinquennial review of non-departmental public bodies, which is conducted by the sponsor departments. It might be worth looking at that process to find out how it works and whether it successfully assesses impacts and achievements.

11:15

Mike Pringle: Your submission refers to sunset clauses. When should sunset clauses be used?

Jane Ryder: The submission says that the use of sunset clauses would provide "some assistance", but the criteria are a difficulty. I support the principle of reviewing; indeed, I have thought of introducing such a principle for charities, under which they would justify their existence at the end of 10 or 15 years. However, that would be extremely difficult to frame in legislation. The issue is more to do with policy than one that involves a statutory requirement.

The Convener: We will now consider consolidation. Obviously, we are keen to consolidate as much as is humanly possible, but resources are an issue. Stewart Maxwell will talk about something that might help.

Mr Maxwell: We are clear about your views on consolidation from your submission, and there is a great deal of sympathy in the committee for those views. However, there is an issue beyond that. If we did what you have suggested and the Parliament consolidated to, effectively, the n^{th} degree, there would be resource and cost implications. Your submission mentions the use of modern technology to allow website links and access to all the current and up-to-date regulations and amendments. Are you arguing that access for organisations to consolidated legislation should be publicly funded?

Jane Ryder: I am not sure that a huge amount of additional resources would be needed. Regulators should make available details of regulations on their websites—I think that most regulators do so.

Mr Maxwell: I am sorry—I may have misled you. On access for those who are trying to—

Jane Ryder: Access is a broader policy issue. Digital Scotland is about access to digital facilities. That said, that so many microbusinesses have access to technology in our sector, for example, is surprising—indeed, perhaps the smaller businesses have such access, but the medium-sized businesses are not as geared up as we might expect. Investment is needed, which is a policy decision.

I will give members some background information on me. I come from the museums sector and I was the Scottish board member on Resource, the UK quango for museums, libraries and archives. A vast amount of lottery funding has just been put into digital access in public libraries and we are reaching a critical point at which the expectation is that people will have such access.

Mr Maxwell: Where should the line be drawn between the Government's responsibility to provide information—obviously, the Government has a responsibility to do so—and ensuring that everybody who must work with the regulations has free and equal access to them? A balancing act is obviously involved.

Jane Ryder: A balancing act is involved, but that is a policy issue for the Scottish Executive rather than an issue for OSCR as the regulator. I would certainly welcome such access. One question that we threw out at the outset was whether we should expect or require electronic submissions of reports to OSCR. It was thought that such an expectation would be premature just now, but that it would become a reasonable expectation at some point in the future. That is one of my long-term aims.

The Convener: My next question follows on from that. In your submission, you mention the importance of technology in providing access to

"simple and user-friendly explanation and guidance on the meaning … of regulation."

Earlier on, you mentioned an organisation that was to be giving you some information about a certain piece of legislation—I might have picked that up wrongly, so do not worry about it too much. Could guidance be provided in formats other than, and in addition to, those that are available through information technology? What are your general views about guidance? It is often an interpretation

of regulation; do you perceive any difficulties with that?

Jane Ryder: There is a spectrum of approaches for regulators from simply pointing to the law and telling people that they must comply with it and should find out themselves how to do that, through to the approach of the McFadden committee's original proposal for an all-singing, all-dancing body—charityScotland—that would do everything, including the provision of detailed advice. The University of Strathclyde has just done a baseline survey of user expectations for us. That survey showed that the expectation of, and the appetite for, guidance from OSCR is somewhere in the middle: we must do more than merely point to the legislation, but we must be careful not to give detailed legal advice, which is for legal advisers to do.

You are right that we need to provide guidance through a variety of media, depending on the sector and sub-sector. So far, we have produced written material that is available in printed form and on our website—that is probably true of a number of regulators. I spend quite a lot of time talking to groups of charities—such events are often organised by an intermediary. If we talk to 50 or 60 charities at one time, that maximises our reach; we do not have the resources to talk to all 20,000 charities one to one.

The Convener: Do you use examples or scenarios to explain legislation?

Jane Ryder: Yes. For example, the guide to accounting regulations that we are publishing gives an example of how a charity's accounts might look. However, the sector is not at all backward in coming forward with what-if questions. It is proactive and reactive.

The Convener: Thank you very much. Murray Tosh will ask a few questions on overseeing the regulatory reform process.

Murray Tosh: I turn your attention to paragraph 4.1 of your submission, where you say that you

"are not clear there is a need for an independent advisory body in Scotland … to advise on matters relating to regulatory reform. … it might be more effective to extend and strengthen the UK remit of the BRTF."

Will you clarify whether you are saying that there should not be an independent advisory body and that it would be better to extend and strengthen the better regulation task force's remit? If that is what you are saying, will you explain why you think that?

Jane Ryder: I can speak only from OSCR's perspective; I am not sure how far my comments can be extended. I found the better regulation task force's work to be immensely helpful, but I note that the task force does not include a Scottish representative. I think that I am right in saying that it has a notionally UK-wide remit, although, as in so many situations—I speak as one who was the sole Scottish board member of a UK quango—it is quite difficult to put across the Scottish perspective in achieving an understanding of the UK dimension.

Murray Tosh: Is that an argument for a separate Scottish advisory body?

Jane Ryder: Well, yes, but—

Murray Tosh: I speak as a unionist—the question is to satisfy my nationalist colleagues.

Mr Maxwell: If you had not asked the question, I would have.

Jane Ryder: The answer depends on whether regulation is purely domestic or is Europe driven, as it increasingly is.

Murray Tosh: I will stop to allow either of my SNP colleagues to ask a supplementary question.

Mr Maxwell: Given your comments today and in your paper, including your comment about Europe, and the fact that Scotland has a separate legal system and a Parliament to deal with the issues, what is the argument for a UK body? Why do we not have a European body or a Scottish body? It is illogical to argue for a UK body.

Jane Ryder: I hear what you say.

Murray Tosh: You are correct not to be drawn.

Paragraph 4.2 of your submission mentions

"interesting challenges in the interface between devolved and reserved powers."

That is a bit Sir Humphreyesque for simple people such as MSPs. Will you give examples of how "interesting challenges" were addressed and say whether you can draw any lessons from that experience to suggest how the process could be improved?

Jane Ryder: I touched on a great feature throughout the consultation on the bill, which is the fact that tax is a reserved matter, but charity is devolved. Under the present system in Scotland, which will remain, being a charity is a feature of the tax regime and many benefits of being a charity, such as tax relief, gift aid and corporation tax and income tax benefits, are delivered through the UK tax system, whereas many other benefits are domestic, such as rates relief and the protection of the charity brand.

The relationship between the Office of the Scottish Charity Regulator and the Inland Revenue is interesting. Scottish legislation cannot bind the Inland Revenue, so we will have to agree an operational concordat with it. I am comfortable that we can do that. I think that framing in the bill

requirements to co-operate has been difficult, but you would have to ask the bill team about that. I have described as one-handed clapping the fact that Scottish legislation cannot bind non-Scottish regulators.

Mr Ingram: Your submission does not mention the Executive's improving regulation in Scotland unit. Should it be given wider powers to support better regulation?

Jane Ryder: I confess that we have had no dialogue with IRIS. The bill team would have had dialogue with IRIS about policy, but we have had no dialogue about operations.

Mr Ingram: You obviously do not wish to comment until you have had that dialogue.

Do you have views on the Parliament's role in establishing recognised standards of regulation?

Jane Ryder: If that question is about whether standards should be statutory, I have not addressed it. If the question is whether Parliament should take cognisance of good standards, the answer is yes—of course it should.

Mr Ingram: What about ensuring that the Executive complies with standards?

Jane Ryder: As I said, the Parliament has the right and the duty to hold us all to account, to ensure that we apply standards.

The Convener: Let us move on to co-operation with other regulators. You have mentioned the links with the rest of the UK and said that you will possibly have an operational concordat with the Inland Revenue and so on. How systematic will that be? Could that working relationship be more systematic?

11:30

Jane Ryder: Are you talking about a more systematic relationship between England and Scotland rather than just between OSCR and the Charity Commission? It is quite difficult to find a model that fits all regulators and all dimensions of regulation, especially given the detail that is involved in operational mode.

The Convener: I am talking about the best working relationship. You seem to be saying that the operational concordat would be a way of moving forward. It would give you quite a bit of flexibility and establish certain key principles about how you work together and exchange information. I am trying to get a bit more information about the degree of flexibility that exists in that exchange.

Jane Ryder: Both sides have flexibility within the context of the legislative framework. The issue could be addressed on a case-by-case basis; I find it difficult to imagine how it could be more systematic beyond the principle that Scottish regulators should co-operate with English/UK regulators, when appropriate. I would like a mutual principle in the Scottish legislation—that is the suggestion that we made. At the moment, the statutory duty is not on other regulators to co-operate with OSCR; it is on OSCR to co-operate with other regulators to allow them to fulfil their functions. If a principle of mutuality could be introduced, that would be helpful.

The Convener: Any further information that you could give us about how you work with other regulators and how that reduces the burden would be useful.

Jane Ryder: We are attempting to do such work. As you can imagine, at this early stage we are still discussing how the process might work. We are in discussions with Communities Scotland, which is the lead regulator of registered social landlords, and the Charity Commission, which regulates the English charities. The feeling is quite strong within the sector and—as you can imagine—within OSCR that, although the new legislation was intended to address a fragmented landscape, we would end up with a differently fragmented landscape if OSCR delegated its duties to other regulators. It is a matter more of co-operating than of delegating.

On the burden of regulation, there is a strong feeling in the charity/voluntary sector that there should not be dual regulation. I have made this point a few times. Of course there should not be burdensome regulation; however, often what looks like regulation, feels like regulation and involves filling in forms is not regulation but the funding relationship that bodies have with the multiplicity of funders. The application process for grants, the monitoring and the post-grant evaluation are just as burdensome as true regulation, and that is one of the key challenges for us in the regulation context.

The Convener: That is helpful. Any further information that you can give us about how you are trying to make regulation as easy as possible for charities would be very welcome.

Jane Ryder: The principal ways in which we try to do that are by issuing simple guidance where that does not exist, ensuring accessibility and setting appropriate thresholds so that we do not bear too heavily on small businesses.

We are also attempting to make the transition from our current set-up to OSCR 2 as easy as possible. I describe that as leading people up a gentle incline rather than letting them face a steep cliff in April 2006. We are gradually phasing in the monitoring programme so that people become accustomed to, and more aware of, their current roles and responsibilities and how those will

change. As I said, we are aiming for a gradual transition rather than a sudden scramble up a steep cliff-face.

The Convener: I thank Jane Ryder both for her written submission and for the useful answers that she has given us today.

Delegated Powers Scrutiny

Smoking, Health and Social Care (Scotland) Bill: Stage 1

11:35

The Convener: We move on swiftly to agenda item 2 because we have quite a heavy agenda today. Item 2 is delegated powers scrutiny of the Smoking, Health and Social Care (Scotland) Bill at stage 1. As members will have seen, the bill has a large number of subordinate legislation powers. Obviously, we will address that point very soon.

The first section that is brought to our attention by legal advice is section 3, which deals with the display of warning notices in and on no-smoking premises. Section 3(3) will give Scottish ministers powers to make regulations on no-smoking signs. It is suggested that the negative procedure would be suitable for regulations made under section 3(3), but because the power is grouped with powers in section 4—we assume that the regulations will appear in the same instrument at the end of the day—it obviously requires at least the affirmative procedure rather than the negative procedure. Do members agree?

Members *indicated agreement*.

The Convener: More substantive issues arise in section 4, which deals with the meanings of "smoke" and "no-smoking premises". The provisions in sections 4(2) and 4(7) are very much linked because of section 34(4), as members will have seen. The question is whether the bill strikes the correct balance between primary and secondary legislation and whether those matters should be dealt with in secondary legislation. If we want them to remain in secondary legislation, we must also consider whether the bill affords Parliament sufficient scrutiny of the regulations. Should Parliament be able to change the regulations if that is necessary? At the moment, the bill requires the regulations to be laid under the affirmative procedure. Do we need to go further than that and think about requiring a super-affirmative procedure? I seek members' ideas.

Mr Maxwell: On the initial question, I think that it is reasonable that the issues be dealt with in regulations rather than in the bill. Certainly, section 4(2) simply makes provision for a list of premises in which the ban would be in effect. Given that any such list will require to be changed—I hope that it will be added to, but others might want items to be removed—it seems to be absolutely right that the issue be dealt with in regulations rather than in the bill.

On whether the affirmative procedure is sufficient, I believe that the affirmative procedure

is certainly the minimum that we should require. Given the contentious nature of the subject and the amount of interest that will be generated, it is fair to say that many organisations and individuals will want to be involved in consultation on such matters. Therefore, any draft regulations should be a matter for full debate and discussion before they come into effect. It would be reasonable to go one stage further by recommending the use of a super-affirmative procedure in this case.

The Convener: Are there other views?

Murray Tosh: My view is not another view because, essentially, I agree with what Stewart Maxwell said. There will obviously be a debate about the principles of the bill, but once the bill has been passed, its implementation will—to quote a phrase—be a process rather than an event. At this stage, we probably cannot anticipate how its application will be extended. The extension of the bill to deal with matters such as the nature of premises is bound to raise all sorts of detailed debates about where it is fair to draw the line. It is clear that it is appropriate to do that by regulation and to be prepared for regulations to be amended and updated as time passes.

I suspect that there will be huge controversy every time that happens, so it would be appropriate to use a procedure that requires consultation and that gives Parliament, which represents the public, an ability to shape the regulations. As we know to our cost from other areas, the trouble with the affirmative procedure is that regulations that are subject to that procedure must be passed or rejected; they cannot be amended. We want to build in a procedure that will allow full democratic involvement in extension of the legislation and its adaptation and amendment in years to come. Although the Executive once said to us that it had never come across a particularly compelling case for the adoption of such a procedure, I think that it has now supplied us with one.

Mike Pringle: Murray Tosh has said it all; I agree entirely. In this case, the affirmative procedure would not be appropriate because that procedure means that we must take an instrument or leave it. It should not be a case of, "Take it or leave it." The Executive should tell us what it proposes and ask Parliament what we think. A super-affirmative procedure would be the way forward, because it would give Parliament the chance to consider draft instruments.

Mr Ingram: I agree with my colleagues.

Mr Maxwell: I seek clarification on timing. I understand that the minister is due to speak to the Health Committee this afternoon. Where does that leave us? I presume that we have to decide now what our view is. Is that the case?

The Convener: There are two issues, the first of which, as Stewart Maxwell has said, is timing. We must write a letter to the Executive to say that we are a little concerned about the speed with which we must react. Secondly, we must convey our points to the lead committee by this afternoon.

Mr Maxwell: I ask because I would like to have heard the Executive's arguments on the matter before coming down firmly on the side of either a super-affirmative procedure or the affirmative procedure. Given the nature of the subject, I have a great deal of sympathy with the suggestion that we use a super-affirmative procedure. We probably do not have time for that—or perhaps we do.

Ruth Cooper (Clerk): We have time to write to the Executive and get a response. The problem is to do with how early we raise the point with the lead committee. We could raise the point with the lead committee and then report after the Executive has responded, if that would be useful.

Mr Maxwell: That would make sense. We could make our points to the lead committee. I would like to hear the Executive's arguments on the subject before we make a decision.

The Convener: The suggestion is that we make our points to the lead committee and hear from the Executive. If, at the end of the day, we go for the super-affirmative procedure, will we want section 4 to be amended? Do members see that as a way forward? [*Interruption.*] I hope that that is not my phone.

Mike Pringle: Mine is switched off.

Mr Maxwell: It is not mine.

The Convener: By members' silence, I take it that, at this stage, you do not want to make specific suggestions for amendments to the bill.

Mr Maxwell: It would be appropriate for us to raise all the issues for the Health Committee's benefit, but I am not sure that I want at this stage to make a specific recommendation on which procedure it would be better to use, because I would like to hear the Executive's arguments. There is an issue about whether there should be consultation on section 4 or whether that should be left to section 34. If we could get across our points on the affirmative and super-affirmative procedures to the Health Committee before this afternoon, that committee might be able to raise them with the minister, which would be great. I am not prepared to come down heavily on one side or the other until we hear the Executive's arguments.

The only slight concern that I still have, which I should have mentioned, relates to what we said earlier about section 3(3) and the display of warning notices. You said that normally the negative procedure would be appropriate to deal

with instruments under the power, but there might be reasons for using the affirmative procedure, such as the sensitivity of the issue and the fact that the Executive might wish to combine in the same instrument regulations under the power in section 3(3) with regulations under section 4. That seems to suggest that we will have a super-affirmative procedure that will cover display of warning notices, which would normally be dealt with through the negative procedure. I understand that the regulations will be linked, but we will go from a situation in which normally the negative procedure would deal with the display of warning notices to our recommending the use of a super-affirmative procedure, which seems to be a bit strange.

11:45

The Convener: Perhaps we could suggest that the regulations be kept separate. With the first set, it might be more appropriate to go for the negative procedure, which would be the normal route. Is that what you are saying?

Mr Maxwell: I just wanted to raise the point for discussion.

The Convener: We can raise the point. The conclusion is logical, especially if after receiving an explanation from the Executive we decide to go for the super-affirmative procedure. Is that agreed?

Members *indicated agreement*.

The Convener: Ruth Cooper can put all those points together for the lead committee. Is that okay?

Members *indicated agreement*.

The Convener: Section 9 is on free oral health assessments and dental examinations and will make necessary amendments to existing regulation-making powers. It is suggested that there is no problem with this section. Is that agreed?

Members *indicated agreement*.

Mike Pringle: It is a good suggestion and an excellent policy.

The Convener: Section 11 is on charges for certain dental appliances and general dental services. The existing powers are subject to the negative procedure. Our legal advice is that it is questionable whether that is the correct procedure, given that it will be the first time that such regulations have been introduced. The negative procedure would normally be appropriate, but members might think that we need something more.

Murray Tosh: We have come across recent examples in which the Executive has proposed in respect of a bill that the first substantive use of powers be subject to the affirmative procedure, but that the negative procedure be used thereafter. Perhaps this is another case in which that would be appropriate.

The Convener: I tend towards that view. Is Murray Tosh's suggestion agreed?

Members *indicated agreement*.

The Convener: Section 15 is on lists of persons undertaking to provide or assist in the provision of general dental services. Section 16 is on lists of people performing personal dental services and so on. The lists are modelled on the lists for general practitioners. We do not foresee any undue problems with those sections. Section 17 deals with lists of persons undertaking general ophthalmic services. Is it agreed that no further comment is necessary?

Members *indicated agreement*.

The Convener: Section 18 deals with health boards' functions in relation to provision and planning of pharmaceutical care services. A typographical error was mentioned in the memorandum that has been submitted. The Executive has accepted that there is an error, so that has been cleared up. We have to consider whether, in relation to proposed new sections 2CA and 2CB of the National Health Service (Scotland) Act 1978, direction is sufficient or there should be a more formal process.

Murray Tosh: There is an argument for a more formal document that would be subject to parliamentary scrutiny, but I hesitate to specify at this stage what that might be.

The Convener: Yes. Our legal advice is that there might be a case for that, but it is not that important. It is up to the committee to decide. What is your view, Adam?

Mr Ingram: Maintenance of the status quo would probably offer the best approach. I am loth to suggest any beefing up of the document.

Mike Pringle: Would it be appropriate to draw the matter to the lead committee's attention and to ask for its view?

Murray Tosh: With respect, the difficulty is that it is being argued that the directions would be regarded as having a general application and might amount to more than simple matters of administration, which raises procedural points for the Subordinate Legislation Committee, rather than policy points for the lead committee.

Mike Pringle: Okay.

Murray Tosh: So that we are consistent with how we handle similar issues, we should seek some form of procedure. I think that that case has been made.

The Convener: We should err on the side of safety. Is Adam Ingram happy with that?

Mr Ingram: Yes.

The Convener: We can take the approach that we have taken in the past and argue that there should be more parliamentary scrutiny. Do members agree?

Members *indicated agreement*.

The Convener: Section 19 is on pharmaceutical care services contracts. Are we content that proposed new sections 17T and 17U(6) of the 1978 act will make provision for Scottish ministers to give directions, or should those matters be dealt with by regulation? It could be argued that the proposed new sections would deal predominantly with administrative matters and that therefore directions would be sufficient—I think that the provisions are more administrative than are the provisions in section 18.

Murray Tosh: I am happy to go with the convener's judgment.

Mike Pringle: I agree.

The Convener: Okay. That is agreed.

Do members agree that section 20, on persons performing pharmaceutical care services, does not appear to pose problems?

Members *indicated agreement*.

The Convener: Section 22, on disqualification by the NHS Tribunal, also seems to be okay.

Members *indicated agreement*.

The Convener: Section 23, on corresponding provisions in England, Wales and Northern Ireland, would bring the system in Scotland into line with the UK system and provide for reciprocal arrangements. Are members happy with section 23?

Members *indicated agreement.*

The Convener: Section 24 is on payments to certain persons who have become infected with hepatitis C as a result of national health service treatment. There would be no parliamentary input to what I think is a sensitive issue. Should not the proposed scheme at least be laid before Parliament?

Murray Tosh: It is strange that the Executive did not comment on the power in section 24. We should at least raise the matter with the Executive and seek to understand its thinking. When we know the Executive's reasons, we might be able to take a view on the matter.

The Convener: Do members agree that, because of the shortage of time, we should also inform the lead committee that we are asking the Executive about section 24 and that, depending on the Executive's answer, we might have concerns about the matter?

Members *indicated agreement*.

The Convener: Section 25, on independent health care services, seems to be okay. If members have no comments on section 25, we will move on to section 28, on the registration of child care agencies and housing support services, which contains a Henry VIII-type provision, although instruments would be subject to the negative procedure. The issue might not be serious, but if we are to take a consistent approach we should perhaps suggest that instruments be subject to the affirmative procedure. How should we proceed? A balance must be struck and the matter is perhaps not the major issue in the bill—there are many other issues.

Mr Ingram: If we are to be consistent, we will have to go for the affirmative procedure.

Murray Tosh: It is always the case that we would set an unfortunate precedent if we agreed to the use of a Henry VIII power by negative procedure. That said, the provision would be a relatively minor abuse, although if colleagues feel that the affirmative procedure should be used, I will go along with that.

The Convener: Okay. We can discuss the matter again. Is that agreed?

Members *indicated agreement*.

The Convener: We move to section 30, which concerns authorisation of medical treatment, specifically with regard to amendment of the Adults with Incapacity (Scotland) Act 2000. At the moment, only general practitioners are covered by the act and the amendment extends the provisions of the act to a range of health professionals. Are members agreed on the amendment?

Members *indicated agreement*.

The Convener: Section 33 concerns ancillary provisions and the amendment follows standard practice for such provisions, as does the amendment to the short title and commencement date. Are members agreed on the amendments?

Members *indicated agreement*.

The Convener: We move to schedule 1, which is on fixed penalties for offences under sections 1, 2, and 3. Members will have observed that paragraph 13(b) contains a Henry VIII power to

amend certain other provisions in the schedule. The amount of the fixed penalty is not specified in the bill but is left to subordinate legislation. It is unlikely that the penalty will go above level 3 on the standard scale. Are members content with the amendment or do we want to question whether the provision should even be in the bill?

Murray Tosh: I am inclined to think that we should go with precedent. It is argued that special circumstances apply in this case, which may mean that there is little to gain by questioning the use of the power. However, given that we tend to follow precedent and that those who read and follow the law also tend to look for rational and logical patterns, I am inclined to think that we should ask for that in this instance, too.

Mike Pringle: I agree.

The Convener: Are you suggesting that the affirmative procedure be used?

Murray Tosh: Yes.

The Convener: Are you agreeable to the suggestion, Adam?

Mr Ingram: Yes.

The Convener: To be fair, if we ask for the affirmative procedure to be used, it keeps us consistent on the use of the powers. Are members agreed?

Members *indicated agreement*.

The Convener: We move to schedule 2, which concerns minor and consequential amendments. Are members agreed on the amendments?

Members *indicated agreement*.

The Convener: I thank members. We got through the item more quickly than I had anticipated. [*Interruption.*] Our adviser is indicating that we may have missed something; I ask members to allow me a moment to consider the point at issue.

Murray Tosh: I am sure that members would be happy to delegate the power to adjust the detail of our representations to you, convener. Given the timescale, I am happy to give you that authority.

The Convener: I am sorry—in what respect?

Mike Pringle: In other words, if you want to make the decision, we are happy for you to do so.

Murray Tosh: Given the timescale, if any fine tuning needs to be done, we are happy for you to do that, convener. You know broadly how we think.

The Convener: The adviser and I are just clarifying one point that we want to be totally clear in the *Official Report.* The point is that the Henry VIII power to which we referred in schedule 1 is already subject to the affirmative procedure. I may have given the impression that we had to move to make the provision subject to the affirmative procedure. Our adviser has confirmed that that procedure is already in place.

Executive Responses

Civil Legal Aid (Scotland) Amendment Regulations 2005 (SSI 2005/112)

11:59

The Convener: We move to item 3, which is consideration of Executive responses. The first response concerns the Civil Legal Aid (Scotland) Amendment Regulations 2005. We asked the Executive to confirm whether the provisions of section 26 of the Asylum and Immigration (Treatment of Claimants etc) Act 2004 would be brought into force on 4 April 2005. Are members content with the response?

Members *indicated agreement*.

The Convener: We will therefore pass the response to the lead committee and to Parliament.

Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2005 (SSI 2005/113)

The Convener: We move to the second Executive response. The committee asked whether progress has been made towards consolidation. The Executive explained that it is awaiting the outcome of the current strategic review, which it told us about previously. Are members content with that response?

Members *indicated agreement*.

Community Care (Direct Payments) (Scotland) Amendment Regulations 2005 (SSI 2005/114)

12:00

The Convener: We raised two points on the regulations, which related to the citation of the enabling powers in the preamble. Do members want to report the regulations on the basis that they fail to comply with the proper legislative practice?

Members *indicated agreement*.

The Convener: We asked why section 12B(6) of the Social Work (Scotland) Act 1968, which seems to be the relevant enabling power, had not been cited in the preamble. The Executive does not think that the power in section 12B(6) is used in the regulations. Given that there is a debate about the issue and that the regulations may not comply with proper legislative practice, do members agree to report the regulations?

Members *indicated agreement*.

Feeding Stuffs (Establishments and Intermediaries) Amendment (Scotland) Regulations 2005 (SSI 2005/116)

The Convener: The committee asked the Executive why it had chosen to use the powers in section 2(2) of the European Communities Act 1972 as the enabling power, rather than section 56 of the Finance Act 1973. From the legal advice, I gather that that power should be cited, but that as we do not need the consent of the Treasury, the matter is perhaps not so important.

Murray Tosh: Our approach might reasonably be influenced by the view that the Joint Committee on Statutory Instruments has taken—we, too, might wish to comment on the unexpected use of the enabling power.

The Convener: Do members agree to report the matter to the lead committee and to the Parliament?

Members *indicated agreement*.

National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 2005 (SSI 2005/118)

The Convener: As the principal regulations, which date from 1992, have been amended more than 10 times, we asked about consolidation. The Executive explains that it intends to review the operation of the principal regulations during the year and to carry out consolidation. Do members agree to pass on those comments to the lead committee?

Members *indicated agreement*.

NHS Quality Improvement Scotland (Establishment of the Scottish Health Council) Regulations 2005 (SSI 2005/120)

The Convener: The reference to paragraph 2(b) in regulation 3 should have been to regulation 2(b). The Executive confirmed that that is an error and stated that it will amend the relevant cross-reference when the regulations are amended. Do members agree to report that matter to the lead committee?

Members *indicated agreement*.

National Health Service (General Ophthalmic Services) (Scotland) Amendment Regulations 2005 (SSI 2005/128)

The Convener: The committee asked the Executive what, if any, progress had been made towards consolidation of the regulations. The Executive stated that there is no immediate plan to

consolidate the regulations, but referred to the Smoking, Health and Social Care (Scotland) Bill, which the Parliament has started to consider, part 2 of which will make changes to ophthalmic services. It may be sensible to leave the matter until the consideration of that bill is completed, after which the consolidation can be considered. Do members agree to pass on that explanation?

Members *indicated agreement*.

Intensive Support and Monitoring (Scotland) Regulations 2005 (SSI 2005/129)

The Convener: Several points arise on the regulations. It is suggested that we draw the attention of the lead committee and the Parliament to the regulations. We would want to cover the doubt as to whether regulations 4 and 6(e) are intra vires; the defective drafting of regulation 6(f) and regulation 5(1)(c); the fact that we requested and received an explanation from the Executive in relation to regulation 5(1); and the failure to follow proper legislative practice in relation to the drafting of regulation 2 and the explanatory note. Is it agreed to pass on those points?

Members *indicated agreement*.

Antisocial Behaviour (Fixed Penalty Notice) (Additional Information) (Scotland) Order 2005 (SSI 2005/130)

The Convener: The committee raised two points on the order. It questioned whether paragraph (e) of article 2 was sufficiently specific to adhere to the enabling power at section 130(3)(f) of the Antisocial Behaviour etc (Scotland) Act 2004 and it asked the Executive for its views. In response, the Executive stated that it considers that the reference to

"information connected with the administration of the notice"

in article 2(e) is sufficiently specific because it is clear that it relates to and must be linked to the sort of information that is required to enable proper processing of the form and operation of the scheme.

What are members' views? Should we pass on that explanation to the lead committee and the Parliament or should we make the point to the Executive that article 2(e) of the order should be clearer?

Murray Tosh: I agree that article 2(e) could be clearer. It is not so clear to me that we should query whether the article is intra vires, but we could certainly make that first substantive point to the Executive.

The Convener: We will pass on the Executive's response. Is that agreed?

Members *indicated agreement*.

Murray Tosh: We should also put to the Executive the second question that is raised in the legal brief about failure to follow proper legislative practice.

Common Agricultural Policy Single Farm Payment and Support Schemes (Scotland) Regulations 2005 (SSI 2005/143)

The Convener: Two points were raised. Members will remember that regulation 2(1) contained two definitions of "farmer". The Executive explains that the inclusion of a definition of "farmer" in regulation 2(1) was an oversight that will be remedied at the earliest opportunity. The Scottish Executive Environment and Rural Affairs Department is considering further amendments in relation to recently agreed European Commission regulations that are due for publication. We should report these regulations as being defectively drafted in that regard.

We also asked why it was considered necessary for regulation 2 to include a generic provision relating to the interpretation of European Community instruments at paragraph (5), in addition to the definition of various Community instruments at paragraph (1), which also contained detailed citations of amendments to those instruments. The Executive has explained that there were a number of amendments to European Commission regulation 795/2004 that had been agreed by the Commission but not yet published, and the policy intention was to provide for the implementation of these EC rules as fully as possible.

Our legal advisers have told us that it is quite difficult to follow some of the Executive's arguments. The Scottish regulations specify the amendments and intend to further amend the regulations as required to add references to future amendments. Regulation 2(5) is thought to be contradictory and generally misleading.

We need to report to the lead committee and the Parliament that the regulations are defectively drafted and we will include the explanation from our legal advisers. Is that agreed?

Members *indicated agreement*.

Instruments Subject to Annulment

Home Energy Efficiency Scheme Amendment (Scotland) Regulations 2005 (SSI 2005/144)

12:08

The Convener: The regulations seek to make a sixth amendment to the principal regulations.

Some years ago, in response to criticism by the committee of amendments made to the Great Britain regulations, the Executive indicated that it intended to prepare fresh regulations for Scotland. The Executive has written to the committee to explain why it has decided not to consolidate on this occasion, despite its previous undertakings. Should we take note of the explanation or do we want to draw the attention of the lead committee and the Parliament to the Executive's letter about the lack of consolidation?

Murray Tosh: The lead committee might express interest in this, so we should refer the explanation to it for its attention, as well as to the Parliament. We should cover the minor points by informal letter.

The Convener: Yes.

Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment) 2005 (SSI 2005/149)

Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2005 (SSI 2005/150)

Pensions Appeal Tribunals (Scotland) (Amendment) Rules 2005 (SSI 2005/152)

The Convener: No points have been identified on the instruments.

Additional Support Needs Tribunals for Scotland (Appointment of President, Conveners and Members and Disqualification) Regulations 2005 (SSI 2005/155)

The Convener: There is a problem with the regulations. Paragraphs 2(2), 4(2) and 3(1)(b) of schedule 1 to the Education (Additional Support for Learning) (Scotland) Act 2004—the enabling act—provide that the convener of a tribunal should be a tribunal member and that the president may be a member, and the definition of tribunal member in paragraph 1 does not distinguish between conveners and other members. Regulation 5 as drafted appears to contradict regulations 2 and 3 by forbidding persons who hold the qualifications that are specified in those regulations from being tribunal members. It is thought that that is ultra vires of the act.

Regulation 5 goes on to disqualify as members of a tribunal other than the convener persons having legal qualifications, but that is expressed as additional to the general disqualification, which further confuses the interpretation of the regulation.

Do members agree to ask the Executive for clarification of the points that have been raised?

Members *indicated agreement*.

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment (No 2) Regulations 2005 (SSI 2005/156)

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

Instruments Not Laid Before the Parliament

Act of Sederunt (Rules of the Court of Session Amendment No 2) (Fees of Solicitors) 2005 (SSI 2005/147)

Act of Sederunt (Rules of the Court of Session Amendment No 3) (Fees of Shorthand Writers) 2005 (SSI 2005/148)

12:11

The Convener: No points have been identified on the acts of sederunt.

Act of Sederunt (Rules of the Court of Session Amendment No 4) (Prevention of Terrorism Act 2005) 2005 (SSI 2005/153)

The Convener: The Lord President's private office has agreed that rule 89.5(3)(a) of the regulations is defectively drafted. The word "before" should have been omitted and steps are being taken to make the necessary amendment. Do we agree to report that?

Members *indicated agreement*.

Gender Recognition (Prescription of Particulars to be Registered) (Scotland) Regulations 2005 (SSI 2005/151)

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

Education (Additional Support for Learning) (Scotland) Act 2004 (Commencement No 1) Order 2005 (SSI 2005/154)

The Convener: Minor drafting points have been identified on the order. Do members agree to raise those in an informal letter?

Members *indicated agreement*.

The Convener: Before I close the meeting, I thank our legal advisers, who in a very short timescale have dealt with a massive amount of work relating to the bill and the instruments that we have considered. I also thank members for bearing with me as I went through the instruments.

Murray Tosh: That is our job. We appreciate that our legal advisers thrive on the challenge that is presented by such workloads and we are in awe of their thoroughness and competence.

The Convener: We will see you after the Easter recess, refreshed.

Meeting closed at 12:13.

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