

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 24 May 2005

Session 2

£5.00

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SUBORDINATE LEGISLATION COMMITTEE

17th 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

CLERK TO THE COMMITTEE

Ruth Cooper

ASSISTANT CLERK

Bruce Adamson

LOCATION

Committee Room 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 24 May 2005

[THE CONVENER *opened the meeting at 10:31*]

The Convener (Dr Sylvia Jackson): I welcome members to the 17th meeting in 2005 of the Subordinate Legislation Committee. I have received apologies from Gordon Jackson, so I expect the remaining members—Murray Tosh and Adam Ingram—to arrive shortly.

We are sorry to be losing one of our clerking team, Bruce Adamson, who is to be the legal and parliamentary officer with Scotland's commissioner for children and young people. We all wish him well.

Christine May (Central Fife) (Lab): I wish to raise a general point about Henry VIII powers and the committees' view—which the Executive has agreed with on numerous occasions—that the exercise of a Henry VIII power should be subject to the affirmative procedure, rather than the negative. There are a number of instances where the Executive has agreed with the committee and has lodged amendments accordingly. There has also been one occasion when that did not happen. Could we raise the issue with all bill teams? It would seem to make more sense to do things the other way round: the Executive should accept the affirmative procedure as the norm and should explain why it chooses to use the negative procedure on those occasions when it does that instead.

The Convener: Yes. Are we all agreed on that?

Members indicated agreement.

The Convener: I welcome Murray Tosh to the meeting. We have just been wishing Bruce Adamson well in his new role as legal and parliamentary officer with Scotland's commissioner for children and young people. This is his last meeting with the committee.

Murray Tosh (West of Scotland) (Con): Good for him.

Members: Congratulations and well done, Bruce.

Delegated Powers Scrutiny

Housing (Scotland) Bill: Stage 1

10:33

The Convener: Members will recall that we took up a number of issues with the Executive. The first one is to do with section 11(3), which provides a power to issue guidance on how references to the tolerable standard shall be construed. The Executive considers that guidance is appropriate, as it might relate to issues such as electrical safety, which are likely to be defined by reference to industry standards and norms. The guidance will cover a variety of things, and we need to be flexible. Do members wish to report that the Executive has provided the clarification that we sought on that point?

Members indicated agreement.

The Convener: Section 20(2) provides a power to issue guidance on written information to be provided by a landlord to a tenant at the start of a tenancy. The section puts landlords under a legal duty to provide written information to tenants about the landlord's repairing obligation. The committee considered that the guidance should perhaps be subject to parliamentary scrutiny, and asked for comment on why the Executive felt that the power should be exercised by guidance rather than by regulations.

The Executive has clarified that landlords will not be bound to follow the guidance, and that they need only have regard to it, which means that it is not legislative in character. On the lack of enforcement powers, the Executive explains that it envisages that the requirement will be enforced through the Antisocial Behaviour etc (Scotland) Act 2004. Are members happy to report that we have received the necessary clarification from the Executive?

Members indicated agreement.

The Convener: Section 50(8) provides a power to issue guidance to local authorities on their exercise of a new power to contribute to the maintenance costs of private owners. The Executive has explained that local authorities will have discretion under section 50(3) to decide whether to make payments towards maintenance costs. I think that Murray Tosh was concerned about that. There is no intention to direct local authorities on when they must make a payment. Is that okay?

Murray Tosh: The matter still rests on a declaration by the Executive. I asked whether the wording of section 50(8) allowed the Executive to make mandatory things that are discretionary. A

statement that the Executive will not do so is not the same as saying that that cannot be done. However, I presume that this will now form part of the written record and part of the body of information upon which people seeking to interpret the law will depend. Therefore, I am happy to accept the Executive's statement of what it intends and does not intend to do as sufficient.

The Convener: The Executive has said of the guidance:

"There is no compulsion to follow it if other factors in particular circumstances make it reasonable not to follow it."

Murray Tosh: So it comes back to reasonableness, which is all about legal interpretation and so on.

The Convener: Absolutely. Is what the Executive has given us sufficient? What is the committee's opinion?

Christine May: I think that it probably is.

Members *indicated agreement.*

The Convener: We will report that we have received the clarification that we sought.

Section 51(3) is on the right to adapt rented houses to meet the needs of disabled occupants. Members will recall that the committee asked about how reasonableness would be assessed in relation to the provision. We wondered whether the Executive might issue guidance on the matter. We also asked how a tenant might challenge a landlord's refusal of consent.

The Executive draws the committee's attention to section 52(1) of the bill, which is a list of considerations to which the landlord should have regard when considering consent. The Executive's letter gives some practical examples of when it considers that it might be reasonable for the landlord to withhold consent under the terms of section 52(1). Section 52(4) provides that it is reasonable for consent to be withheld if the landlord would face some legal sanction were the proposed work to be carried out. The Executive intends to issue guidance on the matter, although it would seem that it does not intend to do so under a delegated power in the bill. Is that all the clarification that we need?

Murray Tosh: I asked whether case law was involved and was adequate to help tenants to obtain redress. The response is that there is case law. Therefore, the decision that it is inadequate is primarily a policy response, which would be addressed by the lead committee if it felt that the matter needed to be investigated.

The Convener: Are we reasonably satisfied with the clarification that we have received?

Members: Yes.

The Convener: Section 88(4) is the power to make regulations amending a definition and setting terms for loans. The committee considered that the regulations should be subject to the affirmative procedure, to which the Executive has agreed.

Christine May: We should watch out for the amendment at stage 2.

Mr Stewart Maxwell (West of Scotland) (SNP): Has the Executive actually agreed to change the procedure, or is it just considering doing so? The brief states:

"The Executive has agreed to consider changing the procedure from negative to affirmative."

The Convener: Okay—I was perhaps being optimistic.

Murray Tosh: Should we ask the Executive to advise us of its decision, rather than simply waiting to find out whether an amendment is lodged? We might miss it in all the to-ing and fro-ing. I am sure that the Executive will accept that it is reasonable to give us the courtesy of a final decision, both on this matter and on a similar issue that is coming up.

Members *indicated agreement.*

The Convener: I agree that we should ask the Executive to give us more detail and keep us updated about how the matter is progressing.

Section 91(1) provides a power to issue directions to local authorities in relation to the provision of assistance under part 2. The power is very wide and we put various options to the Executive, which were: exercising the power by issuing guidance; limiting the direction-making power; or exercising the power by making regulations or orders subject to parliamentary scrutiny. The Executive points out that a power of guidance on those matters has been provided at section 91(4) of the bill. A more limited power of direction is rejected on the basis that it would not enable the Executive to achieve its aims. Regulations, according to the Executive, would not provide the flexibility and speed that would be required to tackle matters, if necessary at local level.

Christine May: I think that we should welcome the response and accept the reasons for the Executive's decision. However, I think that we should also comment on the fact that the original justification was contained in only two lines of text, which did not give us sufficient information. Nevertheless, we should report that we are content now that we have received the explanation.

The Convener: The explanation really shows how the Executive is trying to be consistent between and within local authorities.

Mr Maxwell: I agree, but it is yet another example of something that comes up virtually every week. If the Executive had just given us proper and adequate information in the first place, there would not have been the to-ing and fro-ing of correspondence. That was another good example of the problem. I am quite happy with the explanation that has been given, but the two lines of text were not adequate at all.

The Convener: I also ask for members' views on the width of the power, and I seek comments on whether you consider that the Executive's memorandum on delegated powers provided an adequate explanation of the power.

Christine May: No, it did not. It is a wide power, and I think that we should send back a message to say that we will be paying specific attention to the adoption of such wide powers in the future.

The Convener: Is that agreed?

Members indicated agreement.

The Convener: Section 102 concerns the power to make regulations setting out exemptions and exceptions from the general duty on persons marketing houses for sale to hold and provide certain documents to potential buyers under part 3. The committee felt last week that such exemptions should either be in the bill or in regulations subject to the affirmative procedure. The Executive has said that it does not want the exemptions in the bill because of flexibility, but it has said that it undertakes to consider changing that. Again, that is the issue that we discussed previously.

Murray Tosh: I think that it is stronger in this case, because we felt that that example showed that the Executive had really not done the policy work and had not developed its thinking to show clearly what it intended to do. It has come up with some further examples of circumstances where it might not want a single seller survey, and it seems that the more it thinks about the area the more potential exemptions there are likely to be. There is therefore a strong argument that the Executive should certainly let us know what it intends to do. It may well be that, even if the Executive does not want to lodge an amendment, we might want to do so.

The Convener: Absolutely. That is a similar point to the one that we made previously.

Mr Maxwell: I agree with Murray Tosh up to a point. The Executive has given us a single example of where an exception might be made, with reference to new properties.

Murray Tosh: I gave some examples in the course of our discussions.

Mr Maxwell: I am sorry. The Executive had given other examples, but it has given only one example here, which is that of new properties. I am not sure that I agree with that. We may be straying into policy, which is an issue for the lead committee, but it does not seem to me that a buyer of a new property has less of a right to a structural report on it than a buyer of any other property. There have been plenty of examples of new build properties with severe structural problems, and people have bought those properties in good faith. The specific example given may not be a good example of the sort of property that might be exempt. That is not necessarily to do with us, but it might be a policy issue for the lead committee. I just wanted to put on the record my view that that is not a good example of how the power should be used and I do not think that the Executive has given an adequate explanation of why there could be exemptions.

The Convener: That is a good point. In relation to sections 88(4) and 102, we shall write to the Executive about keeping us involved as it moves to stage 2 and considers amendments. It would also be useful to write to the lead committee with the points that Stewart Maxwell has made.

10:45

Mr Maxwell: The point is, effectively, that we asked for examples to show what the thinking behind the power was. The Executive has given us one example, which I do not think explains in any way the thinking behind the power. However, that is an issue for the lead committee to take up.

The Convener: Is that agreed?

Members indicated agreement.

The Convener: Section 120(1) provides a power that enables ministers to make an order, subject to the negative procedure, that local authorities may exempt certain types of HMO from the requirement to be licensed. The Executive undertakes to consider changing the procedure on that power from the negative to the affirmative by way of amendment at stage 2. That is exactly the same point that we mentioned before.

The Executive also explains that it intends to use this power to enable a local authority to remove the burden of licensing from landlords

"where it is satisfied that the tenant is sufficiently protected by other means".

The Executive confirms that exempting a category of HMO from licensing will mean that fire safety requirements under the Fire (Scotland) Act 2005 will no longer apply.

Mr Maxwell: Your final point touches on the concern that I raised last week. I was concerned that it seemed to be the case that using the Antisocial Behaviour etc (Scotland) Act 2004 would exempt premises from the fire safety requirements under the Fire (Scotland) Act 2005, and the Executive has confirmed that, which I am quite surprised about. That is not what I expected. Again, I think that that is an issue for the lead committee, but I would certainly like to flag up for that committee the need to question the minister, if it has not already done so, in a quite detailed manner on that point. I have serious concerns about exempting anybody from the requirements of the Fire (Scotland) Act 2005 and particularly HMOs.

The Convener: That is how the issue came to light, is it not?

Mr Maxwell: Yes, indeed.

Mike Pringle (Edinburgh South) (LD): I entirely agree with Stewart Maxwell. That is a serious concern.

Christine May: It is a matter for the lead committee.

The Convener: We shall obviously be writing to the Executive, and now we shall also be writing to the lead committee.

I ought to confirm that members want the affirmative procedure to be used. I had taken that as read. Is that agreed?

Members indicated agreement.

The Convener: In relation to sections 88(4), the previous sections that we discussed and section 120(1), we want to be kept informed of developments with the affirmative procedure.

Section 126(2) concerns the power to order local authorities to include certain conditions in HMO licences. The Executive expects that it will consult relevant bodies before using that power and does not consider it necessary to put the consultation requirement in the bill. Are members happy about that?

Members indicated agreement.

The Convener: We shall therefore report to the lead committee that the Executive has provided the clarification that we sought.

Section 155(3) amends the Antisocial Behaviour etc (Scotland) Act 2004 to provide for a code of practice for landlords. Again, we asked for clarification. The Executive explains that the consequence of a person being deemed not fit to be a landlord is that the local authority may refuse to register them as a landlord under the Antisocial Behaviour etc (Scotland) Act 2004. Are there any

comments on the feedback that we have received from the Executive?

Christine May: It seems adequate.

The Convener: We shall pass on the message that we have got the clarification that we sought.

Paragraph 3(5) of schedule 4 provides a power to direct local authorities regarding the requirement to display HMO applications on premises. We asked for more clarification and have been given examples of situations in which a notice might not be displayed. Examples included women's refuges and accommodation for ex-prisoners, and that seems perfectly reasonable. Are members content to report that we now have examples and that the point has been clarified?

Members indicated agreement.

Licensing (Scotland) Bill: Stage 1

The Convener: The next item under delegated powers scrutiny is the Licensing (Scotland) Bill. Again, we put a number of questions to the Executive. Our first question was on section 81(2), which provides a power to specify which licensing board is to exercise functions under part 6. We asked the Executive to explain the need for the power at section 81(2), why it is not subject to the affirmative procedure, and whether the Executive considered that the policy aim could be achieved by an order under section 135.

The Executive has responded that it considers it to be appropriate to reflect any determination under section 81(1) in the text of the legislation itself, and that is why the power at section 81(2)(a) has been taken. The Executive does not consider that it would be appropriate to use the power at section 135, as that is a power to make ancillary provision. The Executive also explains that it chose the negative procedure because it considers that the powers that will be taken at section 81 will not change the function that is to be carried out.

Christine May: Was that last piece of information provided after the Executive sent its response? I am not sure that that was in the original response.

The Convener: We received a further written response.

Do we think that the power is relatively narrow and that we could agree to the use of the negative procedure now that we have more information?

Members indicated agreement.

The Convener: We will report that we have received the information.

Section 91 provides a power to make regulations about closure orders. The committee

drew the Executive's attention to the ambiguity of the drafting in section 91(a). That has been acknowledged and the Executive will lodge a correcting amendment at stage 2. We will keep an eye on that. Are we happy to report that?

Christine May: Our report should make it clear that we cannot comment on whether our concerns have been addressed until we see the stage 2 amendment. I suspect that it would be helpful for the lead committee to know that.

The Convener: As we went through the Housing (Scotland) Bill we came across similar instances where we do not know exactly what will happen; we will have to wait for that.

On section 91(c), the committee was concerned about licensing boards holding hearings before making closure orders, which was being left to subordinate legislation. The Executive will lodge an amendment at stage 2 that will set out all rights of appeal. Obviously there is a lot more information to come. Again, as Christine May pointed out, we do not have sight of the amendment so we will have to keep an eye out for it.

Christine May: I think that the Executive enjoys keeping us in suspense.

Murray Tosh: At least for this bill we know that amendments are coming, whereas in considering the Housing (Scotland) Bill we knew only that the Executive was going to consider making amendments. There is an element of progress.

The Convener: We ought to point out to the lead committee the general point that there is a lot that we have to see at stage 2. We are moving in the right direction, but there is a lot to check out.

Section 115(3)(b) is on the modification of an order-making power in section 8 of the Roads (Scotland) Act 1984. The committee queried whether it is necessary to modify that order-making power given the power that will be conferred under section 115(5) to modify the definition of "excluded premises". Members will recall that we talked about motorway service stations.

It appears that the Executive is taking the long way round to do this, but that it is technically okay. Are members satisfied with the response?

Christine May: This is where I considered pulling the covers over my head as I tried to read the brief, but I accept it.

Mr Maxwell: We could argue with the Executive until the cows come home about the desirability of doing it one way or the other but that seems not to have any purpose. Given that the Executive has said that it is going to go a certain way and that

there is nothing technically wrong with that, that is really an end to the matter.

The Convener: So we can report that we are satisfied with the response.

Members indicated agreement.

The Convener: Section 115(5) provides a power to modify the definition of "excluded premises". The Executive agrees that this Henry VIII power should be subject to the affirmative procedure and it will lodge an amendment at stage 2.

Mr Maxwell: A definite commitment.

Christine May: Absolutely. The issue was considered and decided.

The Convener: We will report that to the lead committee.

Christine May: Section 130 will be the same.

The Convener: Yes, section 130 is exactly the same. Are there any further points on that?

Members indicated disagreement.

The Convener: We move on to paragraph 8(4) of schedule 3 and paragraph 7(4) of schedule 4. Members will recall that these provide powers to modify the list of irresponsible drinks promotions. Stewart Maxwell made a point about recognising that the Executive has to be sufficiently flexible so that it can meet all eventualities. We have to decide whether we are happy with the reasons that the Executive has given for using the negative procedure.

Mr Maxwell: I stick with the comments that I made last week and I agree that, in such circumstances, it is important that the Executive is able to move quickly to deal with any attempts to get around the legislation. It is appropriate that the Executive is able to clamp down on irresponsible promotions as quickly as possible so, in this case, I accept that the negative procedure is all right.

The Convener: Are we agreed?

Members indicated agreement.

The Convener: We will report to that effect.

Section 25(2) confers the power to amend schedule 3. The Executive has undertaken to amend the bill at stage 2 so that the power at section 25(2) to amend the mandatory conditions set out in schedule 3 will be subject to the affirmative procedure. Although the Executive does not mention the power at section 57(2) to modify the mandatory conditions applicable to an occasional licence, we presume that it will make the same change in respect of that power. Maybe we should ask.

Christine May: We should ask; we should not presume.

The Convener: Okay. We will ask and we will leave it to the lead committee to respond.

The committee sought comments from the Executive as to why, given that it has undertaken to continue its extensive consultation on the content of the subordinate legislation in the bill, it has not put a consultation requirement in the bill itself. Do we accept that there has been a huge amount of consultation on the legislation and that it is not necessary to include an express consultation requirement in the bill?

Members indicated agreement.

Protection of Children and Prevention of Sexual Offences (Scotland) Bill (Correspondence)

10:57

The Convener: Agenda item 3 is on the correspondence that we have received from the Deputy Minister for Justice, Hugh Henry, about the Protection of Children and Prevention of Sexual Offences (Scotland) Bill. The letter indicates that the Executive is to lodge an amendment at stage 3 that will remove from the bill schedule 1, together with the related power. The committee will remember that we were concerned about that Henry VIII power being subject to the negative procedure. The Executive will look at the “relevant offence”. Instead of listing particular sexual offences—or using that phrase—the Executive will look more generally at a sexual offence, which will make the whole thing easier for the procurator fiscal to interpret.

We should welcome the information that we have received from the minister because it addresses our concern and it seems to be a useful way of proceeding.

Christine May: I agree that we should welcome the correspondence and I am sure that the committee does welcome it. It looks as if the proposed amendment will make the bill workable and that it addresses some legal concerns. However, we have not seen the text of the amendment and we would want to flag up that fact. We also do not know that the amendment will be accepted, but if the text of the amendment deals with the matter in the way in which the minister has described, the committee will argue for the amendment to be accepted, assuming that it is appropriate for members of this committee to do that.

I think that I am going around in circles but you will know what I mean. We have to flag up that, although we are content that this amendment should be made, we have not seen the text and so we cannot say whether it addresses our concerns.

The Convener: We will not be reporting to the lead committee because of the timing. We will have to be alert to when the amendment comes up in the stage 3 debate in the chamber.

Prohibition of Female Genital Mutilation (Scotland) Bill (Correspondence)

10:59

The Convener: Members have a letter from Hugh Henry that highlights the issues that we raised and those that the Equal Opportunities Committee raised as the lead committee. The minister outlines proposals that are designed to ensure that the Prohibition of Female Genital Mutilation (Scotland) Bill will be able to cover the issues related to elective genital surgery, because there would obviously be complications if those issues were not addressed in the bill. Just as important, the World Health Organisation is reconsidering its definition of female genital mutilation and that information will have to be incorporated into the bill. The Executive's proposed amendments will contain powers that are connected with those two issues but, as Christine May said in relation to the previous item, we will not see the amendments until nearer the stage 3 debate.

Christine May: That debate is scheduled to take place reasonably soon, so the committee should remember the issue. Even my powers of memory are likely to last that long.

The Convener: The draft amendments are, in fact, attached to the letter, so we can consider them closely. The stage 3 debate is scheduled for 26 May, so we will be able to have a further look at the amendments before the debate.

Draft Instruments Subject to Approval

Criminal Justice (Scotland) Act 2003 (Amendment of Police (Scotland) Act 1967) Order 2005 (draft)

11:01

The Convener: No substantive points have been raised on the order.

Christine May: I am sure that deputy chief constables will be delighted that they will now be remembered if they go away to another police force for a period.

Fire (Scotland) Act 2005 (Consequential Modifications and Amendments) Order 2005 (draft)

The Convener: No substantive points arise on the order.

Mr Maxwell: I presume that we will deal with the minor points that arise in an informal letter as usual.

The Convener: Yes.

Mental Health (Safeguards for Certain Informal Patients) (Scotland) Regulations 2005 (draft)

The Convener: The regulations prescribe the conditions that must be satisfied before certain types of medical treatment may be given to patients who are under 16 years of age and who are not receiving medical treatment under the Mental Health (Care and Treatment) (Scotland) Act 2003. The draft regulations are subject to the affirmative procedure.

Two points arise on the regulations. First, in regulation 1(2), the term "the 2003 Act" is defined, but the regulations refer to "the Act". The drafting is not consistent; do committee members agree that we should raise that point with the Executive?

Members indicated agreement.

The Convener: Similarly, the references to regulations in the explanatory note do not match the provisions that are described. We need to ask about that, too.

Instrument Subject to Approval

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 4) (Scotland) Order 2005
(SSI 2005/260)**

11:03

The Convener: No points arise on the order.

Instruments Subject to Annulment

**Common Agricultural Policy Single
Farm Payment and Support Schemes
(Scotland) Amendment Regulations 2005
(SSI 2005/257)**

11:03

The Convener: The regulations breach the 21-day rule. Committee members might remember that we agreed recently to send a letter asking about liaison between the Scottish Parliament and the Westminster Government on European Union directives. We have not yet had a response to that letter, so the matter will arise at a later meeting. On this occasion, the Executive states that, "due to an oversight", the adoption and publication of European Commission regulation 606/2005, which entered into force on 20 April 2005, did not come to light until 9 May 2005.

The fact that the regulations breach the 21-day rule means that the usual sufficient time will not be available for representations to be made on the changes that they introduce. One or two committee members might be aware that constituents have raised concerns about that, so perhaps we should write to the Executive to ask a little more about what "due to an oversight" means.

Christine May: We should write. My understanding is that, although farmers generally welcome the flexibility that the regulations provide, those who might lose money or not be paid as much as they were previously are very concerned, as they had no time to make representations. We learned of those concerns only through media reports in the past few days and, given the level of concern, it is appropriate that the committee ask further questions.

The Convener: I agree. Farmers have approached MSPs on the issue, so there is obviously strong feeling on it.

Is it agreed that we ask for further information?

Members *indicated agreement.*

**Mental Welfare Commission for Scotland
(Appointment of Medical Commissioners)
Regulations 2005 (SSI 2005/261)**

The Convener: No points arise on the regulations.

Mental Health (Conflict of Interest) (Scotland) Regulations 2005 (SSI 2005/262)

The Convener: No points arise on the regulations.

Additional Support for Learning (Appropriate Agency Request Period and Exceptions) (Scotland) Regulations 2005 (SSI 2005/264)

The Convener: The meaning and practical effect of regulation 2 may be unclear. It provides that an appropriate agency must comply with a request

“within a period 10 weeks starting on the date when the request was made by the authority”.

A “request” is defined in section 28(1) of the Education (Additional Support for Learning) (Scotland) Act 2004 as a request that is in writing and which

“contains a statement of the reasons for making the request.”

It is not clear what “made” means in that context: it is not clear whether the 10-week period will commence only when the appropriate authority receives the request or, alternatively, as soon as the written request is signed or posted.

Christine May: Given the fairly well-publicised Royal Mail delivery results, it might be important for recipients to know whether the date on which a request became effective was the date on the postmark or the date when they received the letter. Clarification would be welcome.

Mr Maxwell: I would think that the relevant date would be the date on which the request was received. That would be in line with the Freedom of Information (Scotland) Act 2002, under which time limits apply from the date on which an authority receives a freedom of information request. As the point is not absolutely clear, we should seek clarification on it, but the relevant day must be the day that the request is received; I cannot imagine that it would be the day on which it was posted in the high street.

The Convener: I hope that that is the case.

Murray Tosh: Should there not be standard practice throughout the governmental machinery and ought the same rule not to apply in every circumstance?

Christine May: No. I can think of some emergency situations—perhaps the closure of a dangerous operation—in which an order becomes effective as soon as it is made, regardless of whether the subject of that order has received the paperwork.

Murray Tosh: In that case, there might be a graded policy that provides for the date of issue to be the relevant date, but there ought to be a presumption that the date of receipt is the relevant date unless there is a justifiable reason for treating some circumstances differently.

The Convener: We will write to the Executive to ask for clarification on that point. I gather that the same issue arises in regulation 3(3). In addition, we will ask what the standard practice is.

Mr Maxwell: If there is one.

The Convener: Indeed. We will also ask what exemptions there might be from that standard practice, as we accept that there may be exemptions. Is that agreed?

Members indicated agreement.

Additional Support for Learning (Changes in School Education) (Scotland) Regulations 2005 (SSI 2005/265)

The Convener: The regulations set out actions that education authorities must take when changes occur in the school education of children and young persons who have additional support needs. The introductory wording to regulation 3(2)(b) includes the words:

“where the authority seek advice and information under paragraph (a)”.

That appears to amount to a qualification that an authority will be required to seek and take account of the views of children as set out in subparagraph (b) only when it seeks such advice and assistance under subparagraph (a). It is not clear why that wording was added.

Do we agree to seek clarification on regulation 3(2)(b)?

Members indicated agreement.

Additional Support for Learning (Co-ordinated Support Plan) (Scotland) Regulations 2005 (SSI 2005/266)

The Convener: Regulation 3(1)(b)(iv) specifies that the matters that are contained in section 9(2)(a) to (d) of the Education (Additional Support for Learning) (Scotland) Act 2004—the parent act—must be included in a plan. However, under section 9(2) of that act, it is already required that such information be included in a plan. Do we agree to ask for further clarification on that point?

Members indicated agreement.

The Convener: Regulation 5 provides for the time limit for reviews of a plan under section 10 of the 2004 act, and includes several cross-references to sections 10 and 11 of the parent act. Regulation 5(a) provides that, where an education

authority completes a review of the plan, the copy of the plan, as amended, must be given to the persons mentioned in

“subsection 5(a) of that section”.

The reference to “that section” is not clear, because the preceding wording refers to both section 10 and section 11 of the parent act.

Christine May: I agree that that is unclear. I also have a question. The legal briefing notes:

“there are 5 separate cross references in this regulation”.

For the sake of good practice, is there an alternative way of drafting that to make the regulations clearer and easier to use? The wording seems unnecessarily complicated.

The Convener: We can ask about both those points. We will write to the Executive. Is that agreed?

Members *indicated agreement.*

**Additional Support for Learning
(Publication of Information) (Scotland)
Regulations 2005 (SSI 2005/267)**

**St Mary's Music School (Aided Places)
(Scotland) Amendment Regulations 2005
(SSI 2005/269)**

**Education (Assisted Places) (Scotland)
Amendment Regulations 2005
(SSI 2005/270)**

The Convener: No substantive points arise on the regulations.

**Instruments Not Laid Before
the Parliament**

**Water Environment and Water Services
(Scotland) Act 2003 (Commencement No
3) Order 2005 (SSI 2005/256)**

**Education (Additional Support for
Learning) (Scotland) Act 2004
(Commencement No 2) Order 2005
(SSI 2005/263)**

**Act of Sederunt (Rules of the Court of
Session Amendment No 7)
(Miscellaneous) 2005 (SSI 2005/268)**

11:11

The Convener: No substantive points arise on the instruments.

International Conference

11:12

The Convener: Item 9, the final item today, is on a proposal to host an international conference on the scrutiny of delegated legislation. The proposal is set out in a paper from the clerk. It would be possible for the conference to take place in 2006, which would mean that it would fall between our completed inquiry and the eventual bill. Alternatively, we could choose 2008, in which case we would be considering the entire process.

Mr Maxwell: I appreciate what you said about possible dates and the fact that 2006 would come between our inquiry and the bill, but I do not think that that is strictly correct. We would face a problem if we chose to bid for 2006 because that would actually come in the middle of our scrutiny of the bill, rather than before it. It would be too late for the conference to advise our work on the bill, but it would be too early for us to reflect on the completed bill. We will be in the middle of the whole process, so I am not sure that the choice of 2006 would be the best. Perhaps 2008 would be better for that reason.

Also, substantial resources might be required. We might need to give more lead time to the Parliament before we can get agreement on such a large conference coming here. I do not know how quickly resources are allocated for such things. Perhaps we would be more likely to succeed in a bid for resources if we opted for 2008 rather than 2006.

The Convener: I gather that we would first have to approach the Presiding Officer to find out about the resource implications.

To put the counterargument to what Stewart Maxwell has been saying about 2008 being a better choice, an international conference with a high calibre of people attending could inform and help us in the final stages of the forthcoming bill. Also—God willing—in 2006 we will all be here. We are accumulating a wee bit of expertise over the inquiry and compilation of the bill. If we were not all here, there would be some discontinuity, so I can see points for and against both dates.

11:15

Mr Maxwell: I am not sure that the success or otherwise of individual members and their selection chances should necessarily come into the equation, but I feel that it would be a distraction or a hindrance, rather than a help, to hold the conference in 2006. It is just bad timing, which is rather unfortunate, but my personal feeling is that 2008 might be a more useful date than 2006 would be.

Christine May: The most important thing is whether resources are available, either in 2006 or in 2008. Perhaps that is the first piece of information that we should look for, and then perhaps we should consider whether 2006 would be too early. I have some sympathy with Stewart Maxwell's point of view that that would be the wrong time. Nevertheless, I see the logic of the suggestion that it could inform what we do. However, if we have no resources for it, the question is academic no matter when it happens, so let us ask about resources first.

Murray Tosh: Is it perhaps too close to the previous spat about resources for us to think it tactically wise to raise such issues right now?

Christine May: As a Deputy Presiding Officer, Murray Tosh should know.

Mike Pringle: The resources in question here are different, are they not? We are talking about resources for staffing, not for paying air fares. If we get the answer that few resources will be available, the conference will not happen in 2006 or 2008, so I entirely agree with Christine May that we need to find out whether the Parliament would be prepared to provide the resources. Have we done some sort of estimate of what resources would be required in terms of staff time, costs and so on? Perhaps we should do that first, so that we can say, "We're going to need two full-time members of staff at this level, and it's going to cost us that." If the Parliament says, "No, you can't have that," we cannot go ahead at all.

The Convener: The clerks are going to work up a paper on resources. I am tempted to think that we should put the proposal to the Presiding Officer, and that the sooner we have a decision with regard to 2006 or 2008 the better.

Christine May: Unless, of course, Murray Tosh, as Deputy Presiding Officer, is privy to the views of the Presiding Officer on requests from this committee in general.

Murray Tosh: If I were, I would be most unlikely to tell you.

Mike Pringle: Breaching confidence, I think, is the phrase for that.

The Convener: Are we agreed, then, that the clerks should prepare a paper on the resources required?

Members indicated agreement.

The Convener: Do you want to see that paper before it goes to the Presiding Officer? Should we do that first and then consider where to go from there?

Members indicated agreement.

Mike Pringle: How long do you think that that will take?

The Convener: We should be able to do it within two weeks.

Murray Tosh: Before the recess, anyway.

The Convener: Before I close the meeting, I should pass on apologies from Adam Ingram. I thank all members for attending.

Meeting closed at 11:18.

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