

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 10 January 2006

Session 2

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## SUBORDINATE LEGISLATION COMMITTEE

### 1<sup>st</sup> Meeting 2006, 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 Kenneth Macintosh (Eastwood) (Lab)

\*Mr Stewart Maxwell (West of Scotland) (SNP)

\*Murray Tosh (West of Scotland) (Con)

#### COMMITTEE SUBSTITUTES

Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

Maureen Macmillan (Highlands and Islands) (Lab)

Stewart Stevenson (Banff and Buchan) (SNP)

\*attended

#### THE FOLLOWING ALSO ATTENDED :

Margaret Macdonald (Legal Adviser)

#### CLERK TO THE COMMITTEE

Ruth Cooper

#### SENIOR ASSISTANT CLERK

David McLaren

#### LOCATION

Committee Room 5



## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 10 January 2006*

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

#### Item in Private

**The Convener (Dr Sylvia Jackson):** I welcome members to the first meeting of the Subordinate Legislation Committee in 2006. I have not received any apologies, although Adam Ingram is expected to arrive about 15 minutes late.

Agenda item 1 is to ask members whether they agree that item 7, on our regulatory framework inquiry report, be taken in private. Are we agreed?

**Members indicated agreement.**

**The Convener:** Are members also content that we take all future consideration of our draft inquiry report in private?

**Members indicated agreement.**

**Mr Kenneth Macintosh (Eastwood) (Lab):** I do not think that there will be anything controversial, but holding our discussions in private helps us to have a free discussion with our advisers.

**The Convener:** I welcome Gordon Jackson to the meeting.

## Delegated Powers Scrutiny

### Animal Health and Welfare (Scotland) Bill: Stage 1

10:38

**The Convener:** Item 2 is scrutiny of the delegated powers in the Animal Health and Welfare (Scotland) Bill at stage 1. The Environment and Rural Development Committee will take evidence on the bill from the Minister for Environment and Rural Development at its meeting tomorrow. The clerks will feed in the main points that we make today in advance of that meeting.

The first point to consider is the use of the emergency affirmative 28-day procedure. Members will recall that we wrote to the Executive about a number of points. We asked why that procedure was being followed. The Executive's answer says that, as we had already agreed, some procedure is obviously needed to deal with any fast-spreading diseases. However, it would appear that the Executive has not really answered the question about why another procedure, such as the more usual annulment procedure, was not used instead. I invite members' views.

**Mr Macintosh:** We asked why the Executive opted for the emergency affirmative 28-day procedure, rather than an alternative parliamentary procedure. The procedure that has been chosen provides less scrutiny than the annulment procedure, for example. I do not think that the Executive has fully explained its approach. The bill is at stage 1, so we have plenty of time to address the issue. We should highlight the matter to the lead committee and we should write back to the Executive, asking why the emergency affirmative 28-day procedure was chosen, rather than an alternative emergency procedure.

**The Convener:** Is that agreed?

**Members indicated agreement.**

**Mr Stewart Maxwell (West of Scotland) (SNP):** I agree with that, but the Executive's answer is rather puzzling. We asked why the Executive did not use the annulment procedure and why it chose the 28-day procedure. It has not answered the question but has, instead, given us examples of how that procedure would be used. Given that we asked a specific question about a matter that concerned the committee the last time that we met, it is puzzling that the Executive has not clarified why it chose this procedure rather than the annulment procedure. The annulment procedure is used elsewhere and more commonly than this one, and it provides a greater level of parliamentary scrutiny.

The committee's debate surrounded the fact that an Executive of some sort could, in principle, lay the order, let it fall after 28 days and continue to re-lay it without its ever being subject to proper parliamentary scrutiny. Given that concern and our discussion, I expected a more definitive answer from the Executive. We should write to the Executive again and make it clear to the lead committee that our concerns have not been addressed.

**Murray Tosh (West of Scotland) (Con):** I agree with what has been said. We need to make the point a bit more robustly than simply asking for an explanation. We should make the point more or less as it is made in our legal briefing and say that we believe that this procedure provides less effective scrutiny than the annulment procedure. We should make that point strongly and send the Executive the message that we expect it to budge on this.

**The Convener:** Is that agreed? Gordon?

**Gordon Jackson (Glasgow Govan) (Lab):** Yes, sure.

**The Convener:** Okay. We move on to sections 1, 2, and 10. We were concerned that the powers in those sections are not subject to parliamentary scrutiny. The Executive has acknowledged our concerns and is in the process of producing an amendment for stage 2. I think that the committee will be happy about that.

The next issue concerns section 3, "Biosecurity codes". We were concerned that there could be concern over whether breaking biosecurity codes constituted a criminal offence. The Executive considers that confusion is unlikely to arise because guidance on biosecurity measures and mandatory requirements will form either separate codes or separate parts of a single biosecurity code. Are we happy to accept that reassurance that there will be no confusion?

**Mr Maxwell:** We can only take the Executive at its word. It will have to draft the guidance very carefully to ensure that confusion is avoided and, because we have not seen the guidance, we do not know whether that will be the case. It is worth pointing out to the lead committee that we have concerns about the issue, given the fact that the information has not yet been made available to us. We should point out to the lead committee that that has not happened and that we have received an assurance from the Executive that it will avoid confusion on the matter. We will then just have to wait and see—unfortunately, that is where we are with it.

**The Convener:** Is that agreed?

*Members indicated agreement.*

**The Convener:** On section 5, "Animal gatherings", we sought clarification of whether an animal gathering could include a domestic setting. We asked for the Executive's views on the creation of a duty rather than a power for appeals. The committee also asked for clarification of whether it would be possible for fees to be charged for licences issued under section 5. The committee will, most likely, be happy that the Executive says, in its response, that appeals will be available where appropriate. I do not know whether members have any other points to raise. Are we happy with the Executive's response?

**Mr Maxwell:** Similar to the previous issue, we do not have the full information in front of us, so we do not know the exact nature of what will be brought forward. I am happy with the response, in the sense that the Executive says that it will be all right; however, without having the information in black and white in front of us it is difficult to be fully reassured. I am open to suggestions about what else we can do about it.

**The Convener:** Our legal brief states that

"where a right of appeal is required such a right will be provided. This could take the form of a separate order making only provision for such a right of appeal".

We could say to the lead committee that we have been reassured by the Executive that that will happen. That is all that we can say. Is that agreed?

*Members indicated agreement.*

10:45

**The Convener:** On section 18, "Mutilation", we were concerned that the regulation-making power to allow ministers to permit certain procedures to be carried out is not subject to a statutory duty to consult. The Executive's response indicates that the regulations would be consulted on, as that would be good practice. However, the Executive is prepared to lodge an appropriate amendment, if the committee considers that desirable. As the convener of the cross-party group on animal welfare, I know that this is a sensitive issue and I think that we should ask for that amendment.

**Mr Macintosh:** I am not familiar with the provisions of the Animal Welfare Bill in England and Wales; however, I think that we should flag the matter up to the lead committee. The Executive has made a positive statement and we should pass it on to the lead committee, whether or not we make a recommendation.

**The Convener:** What are other members' feelings on the matter?

**Mr Maxwell:** Again, I am puzzled about why the Executive is resisting on this one. I cannot imagine that the Executive would not consult.

**The Convener:** No, it is saying that it would consult.

**Mr Maxwell:** That is right. However, given the nature of the subject, I would have thought that formalising the consultation would be appropriate. I do not know why the Executive has a problem with that. I would have thought that an amendment to that effect would be generally supported in the Parliament.

**Murray Tosh:** The position is slightly odd, if we are to take the wording in our legal brief at face value. It says that, if the committee thinks that there should be an amendment, the Executive will lodge one. That is not exactly decisive Executive action or direction of policy, is it? If we are offered an amendment, we should not look a gift horse in the mouth.

**The Convener:** I am of the same view.

**Gordon Jackson:** That is probably right. It would set a bad precedent if we turned down a gift horse.

**The Convener:** Okay. We are agreed that we will write back to the Executive, asking for an amendment to be drafted. We will also raise that point in our report to the lead committee.

On section 23, "Provision for securing welfare", we asked for clarification of why the Executive seeks to use secondary legislation here to the extent that it does. In its response, the Executive argues that there will be a lot of detailed rules and that it would be more appropriate for secondary legislation to be used. What are members' views? Are we happy with that response?

*Members indicated agreement.*

**The Convener:** We move on to licensing, which is dealt with in section 24, "Licensing etc of activities involving animals". We asked for comment on the different approaches that have been adopted at Westminster and in the bill to the creation of offences under section 24. I think that Gordon Jackson was involved in our discussion of this. The offences are on the face of the Animal Welfare Bill, whereas in Scotland they will be in secondary legislation, to allow flexibility and to enable some civil as well as criminal penalties to be imposed. The committee's legal brief says that the two approaches might, more or less, come to the same thing; however, the Executive is taking a different approach. Again, the Executive feels that it allows a wee bit more flexibility to leave it to secondary legislation.

**Mr Macintosh:** There is also the big advantage of being able to impose civil rather than criminal penalties. We should not criminalise behaviour where we can avoid that and where it can be dealt with by civil penalties.

**The Convener:** Okay. Does that seem reasonable?

*Members indicated agreement.*

**The Convener:** On section 25, "Prohibition on keeping certain animals", we asked for clarification of why the Executive had taken such a wide power in section 25(1). The Executive has suggested a further limitation to that power. Are we happy with that?

*Members indicated agreement.*

**The Convener:** On section 33, "Animal welfare bodies", the committee asked the Executive how it envisaged that the delegated powers in the section would be used. The Executive has given us information on that. Are we happy with what it has provided?

*Members indicated agreement.*

**The Convener:** We move on to section 34, "Animal welfare codes". The committee wanted to establish how the Executive plans to take account of the consultation responses on a code and how the power to revoke a code will be exercised. Members will see that there is an issue about revocation in the legal brief, which says that a revocation does not have to be laid before the Parliament; it can just happen. Paragraph 59 of the legal brief clarifies the point. I was a little bit tempted to suggest that we might want to write back about it.

**Murray Tosh:** Yes. Is it not a bit bizarre that if there is a code and the Executive changes it, but does not revoke the existing code, there might be two possible codes to which people might have recourse? Primary legislation contains schedules that deal with consequential amendments and repeals, so surely if an instrument is introduced to bring in a new code, it ought to contain all the necessary mechanisms to remove the existing code and take any dubiety out of the position.

**The Convener:** This might be just a technical point; I am not quite sure, Murray, to be honest. I would have thought that if a new code was produced, it would just overtake the old code.

**Murray Tosh:** I would have thought so, but because the legal brief flags up the fact that revocation is not automatic and that the Executive has misunderstood the point that we made, we need to clarify the issue.

**The Convener:** Yes; that might be the way forward. We will seek clarification of the whole area around revocation to make sure that the procedure is straightforward.

## Legislative Consent Memorandum

### Health Bill

10:52

**The Convener:** Members have been sent the legislative consent memorandum on the Health Bill. The first provision is a proposal to amend section 17S of the NHS (Scotland) Act 1978. The provision will confer regulation-making powers on Scottish ministers to allow for the dispensing of medicines by persons other than registered pharmacists.

To look at the bigger picture, the legislative consent memorandum is the new procedure for dealing with Sewel arrangements. This is the first time that we have used the new procedure, although it has been rather rushed. We and the Health Committee have made that point. We therefore hope that, in future, we will have a much longer time to consider legislative consent memorandums; indeed, that longer time has been built into the system. However, on this occasion the procedure has been so rushed that I will have to go the Health Committee this afternoon to report on the various points that we have raised. Luckily, on this occasion it does not look as if there are many such points, but it could have been difficult.

The first point is about the dispensing of medicines other than by registered pharmacists. Are members quite happy with that?

**Members indicated agreement.**

**The Convener:** The second point is about the recovery of NHS costs in cases of personal injury compensation. The provision will extend the powers of Scottish ministers to make regulations prescribing the circumstances in which the amount recovered in respect of NHS costs in personal injury cases is to be reduced in proportion to any reduction in the compensation payable due to contributory negligence.

One of the points that has been raised is that if this is the first set of regulations, the procedure should be affirmative. Are members content with that?

**Members indicated agreement.**

**The Convener:** The final point to make about the memorandum is about commencement. The bill provides for Scottish ministers to commence those parts of the bill within devolved competence. Clause 76 of the bill also confers powers to make any necessary supplementary, incidental or consequential provision. Are we happy with that?

**Members indicated agreement.**

**Mr Maxwell:** Was that point on commencement?

**The Convener:** Yes.

**Mr Maxwell:** I am sorry; I thought that we had moved on to the next point.

**The Convener:** Members will see that—for the committee's information—the legal brief contains an additional point on which we will have to keep an eye. Did you want to raise something on that point Stewart?

**Mr Maxwell:** From my personal political standpoint, it seems to me to be more than odd that the United Kingdom should be able to amend acts of the Scottish Parliament. Obviously I would disagree with that. However, I am very concerned that there is no procedure for the Parliament or the Executive to be informed about it. Clearly, that point will have to be taken up, presumably by the lead committee, to ensure that the proper information comes from Westminster to the Scottish Parliament so that we can know about what is going on and about any changes that have been proposed or made. It seems to be very odd that we do not get that information. Perhaps that is partly to do with the speed of this particular procedure, or maybe it is a fault in the procedure itself—I do not really know.

There are two points. I do not believe that Westminster should be amending acts of the Scottish Parliament, and some sort of procedure should be put in place to inform the Parliament if that is being done.

**The Convener:** In all fairness, the legal brief points out that there is no suggestion that any of those powers relate to devolved matters. However, we do not know that, so we will have to keep a watching brief.

**Murray Tosh:** The supplementary point in paragraph 75 of the legal brief is that there has not been time to carry out any relevant research. Is there a proposal that there should be some research?

Perhaps we should draw this matter to the attention of the Procedures Committee, which recently reported on the Sewel process, and ask if it considered this aspect of the process, in case it might want to consider some kind of supplementary consideration. It would also be appropriate to flag up the issue to the Executive to ask whether the protocols that exist between the Executive and the UK Government provide for the full exchange of information, and to ask how it thinks that the Parliament could officially be made aware. I assume that we might become aware of any such changes informally, but Stewart Maxwell is calling for some kind of procedure so that we are officially made aware. That is important. If we



pursued those courses of action we would be in a better position to judge how serious the matter might be.

**The Convener:** That sums the position up nicely. Is that agreed?

**Members** *indicated agreement.*

## Draft Instrument Subject to Approval

### Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006 (draft)

10:58

**The Convener:** Stewart Maxwell will be interested in these regulations. Do you have any comment, Stewart?

**Mr Maxwell:** I do not have any particular comment. I know that the legal brief says that there is some concern about the regulations and certain definitions in them. My underlying concern is that the regulations should not be invalidated in any way and that no loopholes should be created. I would be quite happy with that. I am just slightly concerned that some problems might have been created; perhaps the legal adviser could clarify whether there is any concern about problems being created by the particular designations and where they are in the regulations, or whether the issue is simply presentational and would have no effect.

11:00

**The Convener:** As I understand it from the legal brief, this is a different way of doing the procedure, so to speak. Another way could have been used, rather than doing it through the definitions. Basically, we must ask why, in relation to the specific terms—"designated hotel bedroom", "designated laboratory room", "designated room" and "detention or interview room"—in regulation 1(2), substantive legislative requirements appear to be included in a definition regulation provision rather than as proper substantive legislative provisions.

On the back of that, we could be asking about the implications of doing it that way rather than another way.

**Mr Maxwell:** Is there time to get that clarified before the regulations come into effect?

**Gordon Jackson:** I hesitate to say this, but I see nothing in it. I do not think that it makes a tuppenceworth of difference, but I might be wrong, so we should ask the question.

I understand Margaret Macdonald's point about an interpretation regulation being more restrictive and so on. However, the definition is clear, so it is hard to see where it would give rise to a problem. The regulations define a designated hotel bedroom as a room: in which people sleep; that has been designated as a smoking room; that is a room in the normal sense; that

“has a ventilation system that does not ventilate into any other part of the hotel”

and

“is clearly marked as a bedroom in which smoking is permitted”.

What could you say might have been able to be interpreted differently if it were in another part of the regulations? Am I missing something, Margaret?

**Margaret Macdonald (Legal Adviser):** It is just regarded as poor drafting practice to do what has been done. The leading writers on this subject say that you should not have what appear to be substantive provisions in a definition section.

**Gordon Jackson:** I am not disagreeing with that; I totally understand that point. However, I just cannot help but feel that, in this case, it is a bit of a non-issue. By all means, though, we can tweak the Executive's tail about it not drafting things correctly.

**The Convener:** We will raise the drafting issue. The bigger question that we should raise, however, relates to Stewart Maxwell's point about the implications of this approach.

**Gordon Jackson:** Ask. I suspect that there are no implications, but I am happy for the question to be asked. I simply record my view that there will be none.

**Mr Maxwell:** I hope that you are right.

**Gordon Jackson:** Whether I am right or not, the Executive will certainly say that I am right. That is the answer that we will get back.

**The Convener:** Do we agree to take the action that has been suggested?

**Members** *indicated agreement.*

**Mr Macintosh:** The Smoking, Health and Social Care (Scotland) Act 2005 is one of the most important acts that the Scottish Parliament has passed, but the regulations are difficult to understand. We are always striving for plain English in our legislation so that there is clear understanding of what we are doing, but what we are dealing with today is not a good example of that. Any member of the public who wanted to find out where and when they could smoke would have to ask for advice as to how they should interpret the regulations. That is unfortunate, given the importance of the legislation.

**The Convener:** The legal advice puts the fact that the regulations are difficult to follow down to difficult wording in the parent act.

**Mr Macintosh:** I am sure that there is a good reason for it; I am just saying that it is unfortunate that reading the explanatory notes and the Executive note is of more benefit than reading the regulations.

**Mr Maxwell:** Maybe it is because I have been totally absorbed in this subject for the best part of three years, but I thought that the act was quite clear. However, perhaps if I had come to it cold I might have found it difficult to understand.

**Gordon Jackson:** Ken Macintosh is right to say that the act and the regulations are difficult to understand. However, anyone who reads the schedule will be in no doubt as to where they can smoke and where they cannot smoke. Basically, you cannae smoke anywhere, unless you can.

## Instruments Subject to Annulment

### Road User Charging (Liability for Charges) (Scotland) Regulations 2005 (SSI 2005/651)

11:04

**The Convener:** No points of substance arise in relation to the regulations, but we could write an informal letter to the Executive about a minor point. Is that agreed?

**Members** *indicated agreement.*

### Road User Charging (Penalty Charges) (Scotland) Regulations 2005 (SSI 2005/652)

**The Convener:** A number of points arise on the regulations. We could ask whether regulation 8(1) should read "purpose specified in section 56(2)(a)" rather than "purpose of section 56(2)(a)". We could ask the Executive to explain the vires for regulation 10(6) and the provisions relating to the contents of a vehicle contained in regulations 11 and 13. In that regard, we could also ask whether it is deliberate that regulation 12 makes no reference to the contents of a vehicle. We could ask the Executive to explain why regulation 13(3) is not drafted as a provision to be included in a charging scheme, as it seems to be inconsistent with the other provisions of regulation 13 and with the enabling powers. Finally, we could ask the Executive to confirm whether any progress has been made with the regulations referred to in regulation 13. Do we agree to do so?

**Members** *indicated agreement.*

### Transport of Animals (Cleansing and Disinfection) (Scotland) Regulations 2005 (SSI 2005/653)

**The Convener:** No substantive points arise on the regulations.

### Road User Charging Schemes (Keeping of Accounts and Relevant Expenses) (Scotland) Regulations 2005 (SSI 2005/654)

**The Convener:** The legal advice suggests that we ask six questions about the regulations. Do we agree to do so?

**Members** *indicated agreement.*

### M77 (Malletsheugh) (Speed Limit) (Scotland) Regulations 2005 (SSI 2005/655)

**The Convener:** On the M77 (Speed Limit) (Scotland) Regulations 2005 (SSI 2005/655), it is suggested that we ask the Executive to explain the

following on a formal basis. What is the purpose of regulation 1(2), and in particular its reference to "regulation 1(1)", given that paragraph (1) is merely a citation provision and does not in any event refer to a "special road"? Why, assuming that paragraph (2) is intended to be an interpretative provision, is the heading to regulation 1 simply "Citation" rather than "Citation and interpretation"? Why, given that breach of regulation 3 is a criminal offence for which the penalty is provided in the parent act, is this information together with a note of the current maximum penalty not included in the explanatory note? Do we agree to ask those questions?

**Members** *indicated agreement.*

**Murray Tosh:** Convener, the committee noted that you did not say the place name in the title of the regulations.

**The Convener:** I did not.

**Mr Macintosh:** "Mallet-shuch", "Mallet-shoe".

**Murray Tosh:** They probably call it "Mallet-shuch" in Ayrshire but, since it is in Renfrewshire, we will allow the more effete pronunciation.

### Criminal Legal Aid (Scotland) (Fees) Amendment (No 3) Regulations 2005 (SSI 2005/656)

**The Convener:** The regulations appear to have the same defect identified by the Committee in its consideration of the Criminal Legal Aid (Scotland) (Fees) Amendment (No 2) Regulations 2005 (SSI 2005/584) at its meeting on 29 November last year. The note on the decision that we came to previously, after we wrote to the Executive, is now being circulated to members.

Given the answer that we got previously from the Executive, do we want to write to it again, or do we accept that, most likely, the answer would be the same, and simply include that in our report?

**Mr Macintosh:** We should flag up the fact that we are still concerned about the matter.

**The Convener:** Last time, we noted that the fact that the retrospective application of a regulation in circumstances in which the parent act did not expressly confer that retrospective effect led to there being doubts as to whether the instrument was *intra vires*. Our legal advice says that the instrument that we are considering today raises exactly the same point.

**Mr Maxwell:** Forgive me if I misunderstand the position, but I have only just read the note on the previous decision. Is the Executive saying that, because reference to the power enabling retrospective is omitted from the parent act, the Executive can do whatever it wants? Is it the Executive's position that the fact that the act does not say that it cannot do it, means that it can do it?

**The Convener:** Possibly. Let me have another read of the note.

**Gordon Jackson:** Perhaps I should interrupt your reading, convener, for the purposes of the record—there are people out there who like to read these things. I have a direct interest in the regulations, so I will take no part in the discussion.

**The Convener:** Okay. It says in our note on the regulations:

“the Executive considers that the powers in the parent Act do not prevent the approach that has been taken”.

As Stewart Maxwell says, the parent act does not contain any express enabling power here.

**Mr Maxwell:** Exactly. It is silent on the matter.

**The Convener:** Yes, it is silent on the matter.

**Mr Maxwell:** My assumption would be that there cannot be a retrospective effect, because a power enabling retrospection is not given. The Executive has taken the opposite interpretation: that, because the act does not say that there cannot be a retrospective effect, there can be. I do not think that that is right.

**The Convener:** We might simply get the same answer if we pursue the matter further.

**Mr Maxwell:** I am not saying that we should raise the issue with the Executive again—I agree that that is exactly what would happen. We should certainly bring the matter to the attention of the lead committee, however. We should convey our strong opinion. There is no point raising it again with the Executive, which has made its view clear.

**The Convener:** Is that okay? I thought that it was useful to discuss that.

**Mr Maxwell:** Yes, it was.

### **Marriage (Approval of Places) (Scotland) Amendment Regulations 2005 (SSI 2005/657)**

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

## **Instruments Not Laid Before the Parliament**

### **Smoking, Health and Social Care (Scotland) Act 2005 (Commencement No 2) Order 2005 (SSI 2005/642)**

11:11

**The Convener:** A few points have been raised about the order in the legal brief.

**Mr Maxwell:** I would express the same concern that I expressed when we were dealing with the draft Prohibition of Smoking in Certain Premises (Scotland) Regulations 2006: as long as the concerns that are expressed in the legal brief do not undermine the legislation, I am happy. I accept, however, that there is concern about the failure to commence sections 4(4) and 4(5) of the parent act. My understanding is that all the provisions will come into effect in March, and that there will not be a problem. As long as we can be reassured that that is the case, that is fair enough.

**Mr Macintosh:** There is some concern about the failure to mention the name of the act itself in the commencement order. That is a fairly obvious omission. It might not be all that serious, in effect, but we should draw attention to the matter and ask whether it can be addressed.

**The Convener:** Okay. We have three points to raise. First, there is the point about why sections 4(4) and 4(5), to which sections 4(6) and 4(8) are related, are not also commenced by the order. That was Stewart Maxwell's point. Secondly, as Ken Macintosh said, why does article 2 omit to include a reference to the act containing the sections to be brought into force by the order? Thirdly, why has a reference to section 43(4) been omitted from the preamble? Are we agreed on those points?

*Members indicated agreement.*

### **Adoption and Children Act 2002 (Commencement No 1) (Scotland) Order 2005 (SSI 2005/643)**

**The Convener:** No points arise on the order.

### **Charities and Trustee Investment (Scotland) Act 2005 (Commencement No 1) Order 2005 (SSI 2005/644)**

**The Convener:** Although the explanatory note for the commencement order states that all the order-making and regulation-making powers in the parent act are brought into force by the order, section 99, which contains an order-making power, is not commenced. I propose that we write to ask whether or not that is deliberate.

Are there any other points on the order? I have not missed out any words, have I?

**Murray Tosh:** If that decision was deliberate, we will ask the Executive for its reasons.

**The Convener:** Absolutely. We have a good schoolteacher here.

**Murray Tosh:** That is an oxymoron.

**Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2005 (SSI 2005/648)**

**Act of Sederunt (Rules of the Court of Session Amendment No 10) (Proceeds of Crime: External Requests and Orders etc) 2005 (SSI 2005/663)**

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

11:14

*Meeting continued in private until 12:47.*



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