

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 28 February 2006

Session 2

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CONTENTS

Tuesday 28 February 2006

Col.

INTERESTS	1577
DELEGATED POWERS SCRUTINY	1578
Bankruptcy and Diligence etc (Scotland) Bill: Stage 1	1578
EXECUTIVE RESPONSES	1579
Risk Assessment and Minimisation (Accreditation Scheme) (Scotland) Order 2006 (draft)	1579
Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland) Regulations 2006 (SSI 2006/45)	1579
TSE (Scotland) Amendment Regulations 2006 (SSI 2006/46)	1580
Management of Offenders etc (Scotland) Act 2005 (Commencement No 1) Order 2006 (SSI 2006/48)	1580
DRAFT INSTRUMENTS SUBJECT TO APPROVAL	1582
Advice and Assistance (Financial Conditions) (Scotland) Regulations 2006 (draft)	1582
Charity Test (Specified Bodies) (Scotland) Order 2006 (draft)	1582
Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2006 (draft)	1582
Community Justice Authorities (Establishment, Constitution and Proceedings) (Scotland) Order 2006 (draft)	1582
Further and Higher Education (Scotland) Act 1992 Modification Order 2006 (draft)	1582
Non-Domestic Rating (Electronic Communications) (Scotland) Order 2006 (draft)	1583
Protection of Charities Assets (Exemption) (Scotland) Order 2006 (draft)	1583
Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Amendment) (Scotland) Order 2006 (draft)	1584
Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2006 (draft)	1585
Valuation and Rating (Exempted Classes) (Scotland) Order 2006 (draft)	1585
Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (draft)	1585
INSTRUMENTS SUBJECT TO ANNULMENT	1586
Advice and Assistance (Scotland) Amendment Regulations 2006 (SSI 2006/60)	1586
Civil Legal Aid (Scotland) Amendment Regulations 2006 (SSI 2006/61)	1586
Management of Offenders etc (Scotland) Act 2005 (Designation of Partner Bodies) Order 2006 (SSI 2006/63)	1586
Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2006 (SSI 2006/64)	1586
Council Tax (Electronic Communications) (Scotland) Order 2006 (SSI 2006/67)	1586
Seeds (Fees) (Scotland) Amendment Regulations 2006 (SSI 2006/70)	1586
Water Services Charges (Billing and Collection) (Scotland) Order 2006 (SSI 2006/71)	1586
Water and Sewerage Charges (Exemption and Reduction) (Scotland) Regulations 2006 (SSI 2006/72)	1586
INSTRUMENTS NOT SUBJECT TO PARLIAMENTARY PROCEDURE	1587
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 17) (Scotland) Order 2005 Revocation Order 2006 (SSI 2006/66)	1587
Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 6) (Scotland) Order 2005 Revocation Order 2006 (SSI 2006/69)	1587

SUBORDINATE LEGISLATION COMMITTEE

7th 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)

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*Murray Tosh (West of Scotland) (Con)

COMMITTEE SUBSTITUTES

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

Maureen Macmillan (Highlands and Islands) (Lab)

*attended

CLERK TO THE COMMITTEE

Ruth Cooper

SENIOR ASSISTANT CLERK

David McLaren

LOCATION

Committee Room 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 28 February 2006

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

The Convener (Dr Sylvia Jackson): I welcome members to the seventh meeting in 2006 of the Subordinate Legislation Committee. I also welcome Andy Proudfoot, a new member of our clerking team. This is our last meeting with Ruth Cooper for a while and I am sure that we all wish her well in the next weeks and perhaps months in getting to grips with what I am sure will be the happy new member of her family.

I have received apologies from Adam Ingram, Gordon Jackson, Stewart Maxwell and Jamie Stone. I remind members to switch off their mobile phones.

Interests

10:32

The Convener: Today would have been Jamie Stone's first meeting, but I gather that snow in Orkney has prevented his aeroplane from leaving. We will expect him next week. As the first item was to have been a declaration of interests by Jamie Stone, we will defer it until next week.

Delegated Powers Scrutiny

Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

10:33

The Convener: The next item is delegated powers scrutiny of the Bankruptcy and Diligence etc (Scotland) Bill at stage 1. I am sorry to say that I was not at last week's meeting as I was returning from Malawi. We received a letter from the Executive in response to the points that members raised at that meeting. Do members have any comment on the letter? I suggest that we defer further consideration of the bill until next week, as we have to get to grips with several items and we have time to leave it.

Murray Tosh (West of Scotland) (Con): I am sure that it would be wise to leave all the issues until next week.

Mr Kenneth Macintosh (Eastwood) (Lab): I suggest in passing that the convener should make an informal approach to the relevant minister to stress the importance of a constructive approach to the bill. The tone of the letter is not in keeping with that of the letters that we normally receive from the Executive. I am sure that the Executive wants to pursue the same course of action as we do to scrutinise the bill and its powers effectively and constructively. Could we mention that informally to the minister?

The Convener: That is fine.

Murray Tosh: I suggested that we should not respond but, since Ken Macintosh has done so, I will say that his comments were very measured.

The Convener: I was not at last week's meeting but, given the tone of the letter, I agree with members. Do members agree to send a letter to the minister?

Members *indicated agreement.*

Executive Responses

Risk Assessment and Minimisation (Accreditation Scheme) (Scotland) Order 2006 (draft)

10:35

The Convener: Last week, the committee asked whether the order ought to be consistent in relation to the notification of decisions and the provision to applicants of the reasons for decisions. Although specific provision on the giving of reasons is perhaps not strictly necessary, there is inconsistency in the regulations in that regard.

Are members content to report the order to the lead committee and the Parliament on the ground of failure to follow proper legislative practice due to inconsistent drafting?

Mr Macintosh: Yes. The fact that guidance is being considered will help, but we should report the order in those terms.

The Convener: The Executive says that the order would be “unduly cumbersome” if a requirement to give reasons for every decision was stated at every relevant point.

Members are content to report the instrument. Is that okay, Murray? You were here last week.

Murray Tosh: Yes.

Foot-and-Mouth Disease (Slaughter and Vaccination) (Scotland) Regulations 2006 (SSI 2006/45)

The Convener: The committee asked the Executive four questions on the regulations. First, the committee asked for confirmation that, in regulation 7(b), “the 1978 Order” is intended to refer to the order that is cited in regulation 7(a). The Executive confirms that that is the case.

Secondly, the committee sought clarification of the purpose of regulations 8(2)(a) and 9(1)(a)(i). The Executive has provided an explanation.

Thirdly, the Executive confirms that there is a drafting error in regulation 9 and that it will lodge an amendment to correct it.

In response to the committee’s fourth question, on regulation 10(3), the Executive has provided an explanation.

Do members agree that we should draw the regulations to the attention of the lead committee and the Parliament? The regulations are on an important matter so I think that we should include in our report the questions that we asked and the explanations that the Executive has given. Is that agreed?

Members indicated agreement.

The Convener: We should also point out the defective drafting on all four points. Is that agreed?

Members indicated agreement.

TSE (Scotland) Amendment Regulations 2006 (SSI 2006/46)

The Convener: Again, the committee asked four questions about the regulations. First, we asked whether the Executive has any plans to consolidate the regulations. The Executive has explained the reasons for the delay in consolidation. It has not been possible to match the timetable for consolidation that was set in England and Wales, but the Executive intends to undertake a consolidation exercise in 2006.

In response to the second question, the Executive agrees that there is ambiguity in the new regulation 7 and states that that will be clarified in the next set of transmissible spongiform encephalopathy regulations.

The Executive has provided an explanation in response to the committee’s third question and, as far as the fourth question is concerned, it accepts that there is duplication.

I suggest that we report the regulations on the ground of defective drafting. The meaning of regulation 5(3) could have been clearer and there is confusing duplication in regulation 5(7). We acknowledge that those factors do not materially affect the interpretation of the regulations, but I suggest that we draw attention to those matters and to the other two responses as well. Is that agreed?

Members indicated agreement.

Mr Macintosh: We should also mention that the Executive plans to consolidate the regulations.

The Convener: Absolutely. It says that it will do so in 2006. Consolidation is an on-going issue that we have raised before and we want to keep a check on the various examples. One of the Westminster committees that deals with such matters is particularly good at checking these things.

Management of Offenders etc (Scotland) Act 2005 (Commencement No 1) Order 2006 (SSI 2006/48)

The Convener: I ask members for their views on the Executive’s explanation of the effect of sections 15(5) and 15(10) of the Management of Offenders etc (Scotland) Act 2005. Previously, the committee has remarked that it is desirable—and probably essential—that when any provision in legislation is commenced, all relevant provisions,

such as definitions and conditions, should also be commenced. Should we draw the Executive's explanation to the attention of the lead committee and the Parliament? We should certainly say that there will be no adverse effect, but do members want to say anything else?

Mr Macintosh: We should state that we do not consider that the order is an example of good practice.

Murray Tosh: I take it that what you have just recommended subsumes the recommendation that we draw attention to the unusually limited use of the power.

The Convener: That is right. I missed that little bit out. I should have said that. Thank you.

Draft Instruments Subject to Approval

Advice and Assistance (Financial Conditions) (Scotland) Regulations 2006 (draft)

10:40

The Convener: No points arise on the regulations.

Charity Test (Specified Bodies) (Scotland) Order 2006 (draft)

The Convener: Members should note that the order will have no effect until the charity test and section 7(4) of the Charities and Trustee Investment (Scotland) Act 2005 are commenced. The obvious thing to do is to ask the Executive when it intends that section 7 of the 2005 act will be commenced in full.

Murray Tosh: There is also the question whether there is to be any consultation about the order. I think that we should pursue that.

The Convener: The Executive note states that there has been some limited consultation with specified departments, if I remember correctly.

Mr Macintosh: There was certainly some consultation with the Executive, and the matter was widely debated during stage 1 consideration of the bill, but there was no formal consultation. I suppose that there is always the chance that there are bodies that wish to be included but have not been included, and a formal consultation exercise would have made that less likely.

The Convener: I think that we should ask why consultation has not taken place. Is that agreed?

Members indicated agreement.

Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2006 (draft)

Community Justice Authorities (Establishment, Constitution and Proceedings) (Scotland) Order 2006 (draft)

The Convener: No points arise on the instruments.

Further and Higher Education (Scotland) Act 1992 Modification Order 2006 (draft)

The Convener: Issues similar to those arising on the draft Charity Test (Specified Bodies) (Scotland) Order 2006 also arise on this order, particularly with regard to consultation. The first issue that arises is when it is intended that section

7 of the Charities and Trustee Investment (Scotland) Act 2005 is to be commenced. However, consultation is particularly important, and the clerk has received notes of interest about the order. Although it may be a policy issue rather than one of subordinate legislation, such notes may indicate that wider consultation was needed. Do members agree that we should ask about consultation in the light of that?

Mr Macintosh: Particularly given the fact that we have had correspondence about it.

The Convener: Absolutely.

Non-Domestic Rating (Electronic Communications) (Scotland) Order 2006 (draft)

The Convener: No substantive points arise on the order, although members will note from our legal brief that the preamble to the order is lengthy and not in the normal bullet-point or list format, which may be a point of interest for us. I gather that another procedure is being used elsewhere, down south, to get over some of those problems, but perhaps we should raise that informally with the Executive. Is that okay with members?

Murray Tosh: Given that we briefly considered a letter that stressed the importance that the Executive attaches to its documentation not being intimidating, perhaps we should suggest that the bullet-point approach might be less intimidating.

The Convener: It was also suggested that some of the punctuation makes getting through the preamble even more complicated.

Murray Tosh: O tempora! O mores!

Protection of Charities Assets (Exemption) (Scotland) Order 2006 (draft)

The Convener: No points arise on the order. However, members will note that, again, there is no statutory requirement to consult on the order and that the Executive has not done so. I wonder whether members would like to raise the same question about consultation in relation to this order as we agreed to raise with regard to earlier instruments.

Murray Tosh: There is an issue with consultation and external consultation. We tend to assume that consultation means external consultation, but it may be that the Executive will want to find another term for internal consultation.

Mr Macintosh: I am conscious that we should not consult unnecessarily. People complain about being overly consulted, but there is a formal process that you need to go through to alert people who may be affected or who would wish to be included. We need to give them a formal

opportunity to make their views known. It is slightly worrying that that has not been built in.

10:45

Murray Tosh: There will undoubtedly be circumstances in which the Executive will decide, for sustainable reasons, not to consult on a proposal. I intended to make that point earlier. In such circumstances, it should explain its decision, so that we are clear about what level of consultation is appropriate. That would allow us to dispute the decision, if we disagreed with it. At least it would then be clear that the Executive had considered the matter.

The Convener: That may be one of the feedback points that we received in our review. There is no difficulty in our making the point.

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Amendment) (Scotland) Order 2006 (draft)

The Convener: No substantive points arise on the order, but there are a few minor points.

Murray Tosh: I thought that the next instrument to be considered was the Scotland Act 1998 (Transfer of Functions to Scottish Ministers) (No 2) Order 2006 (draft). Do you have a document that we do not have?

The Convener: It may be the result of my returning to the original brief. Has the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Amendment) (Scotland) Order 2006 (draft) been taken out?

Murray Tosh: We are working from the partial legal brief.

The Convener: I think that, for once, I am right. The next instrument for consideration is the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Amendment) (Scotland) Order 2006 (draft).

Murray Tosh: It is not included in the legal brief.

The Convener: Members will be pleased to know that no substantive points arise on the order.

Murray Tosh: That is reassuring.

The Convener: There are a few minor points that I suggest we raise informally with the Executive.

The legal advisers are sure that a briefing on the order was provided. It is possible that the copy of the legal brief that we have is not up to date. I know that it was supplied quite late.

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2006 (draft)

Valuation and Rating (Exempted Classes) (Scotland) Order 2006 (draft)

The Convener: No points arise on the orders.

Water Environment (Consequential and Savings Provisions) (Scotland) Order 2006 (draft)

The Convener: No substantive points arise on the order, but there are minor issues that we may raise informally with the Executive. Is that agreed?

Members *indicated agreement.*

The Convener: We will double-check to ensure that members have all relevant information.

Instruments Subject to Annulment

Advice and Assistance (Scotland) Amendment Regulations 2006 (SSI 2006/60)

Civil Legal Aid (Scotland) Amendment Regulations 2006 (SSI 2006/61)

Management of Offenders etc (Scotland) Act 2005 (Designation of Partner Bodies) Order 2006 (SSI 2006/63)

Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2006 (SSI 2006/64)

10:48

The Convener: No points arise on the instruments.

Council Tax (Electronic Communications) (Scotland) Order 2006 (SSI 2006/67)

The Convener: No substantive points arise on the order, but members will see that the preamble is again rather lengthy and not in the normal bullet-point or list format. We can raise that issue informally with the Executive, as we have agreed to do for a previous instrument.

Members *indicated agreement.*

Seeds (Fees) (Scotland) Amendment Regulations 2006 (SSI 2006/70)

The Convener: No substantive points arise on the regulations, but there are minor issues that we can raise with the Executive informally.

Water Services Charges (Billing and Collection) (Scotland) Order 2006 (SSI 2006/71)

Water and Sewerage Charges (Exemption and Reduction) (Scotland) Regulations 2006 (SSI 2006/72)

The Convener: No points arise on the instruments.

Instruments Not Subject to Parliamentary Procedure

Meeting closed at 10:50.

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 17) (Scotland) Order
2005 Revocation Order 2006 (SSI 2006/66)**

**Food Protection (Emergency Prohibitions)
(Amnesic Shellfish Poisoning)
(West Coast) (No 6) (Scotland) Order 2005
Revocation Order 2006 (SSI 2006/69)**

10:49

The Convener: No points arise on the orders.

We hope that Jamie Stone will be present for the committee's next meeting, which will take place next Tuesday. I thank colleagues for their attendance today.

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