

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 21 March 2006

Session 2

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## **SUBORDINATE LEGISLATION COMMITTEE**

### **10<sup>th</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)

\*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**

David McLaren

#### **ASSISTANT CLERK**

Jake Thomas

#### **LOCATION**

Committee Room 4

## Scottish Parliament

### Subordinate Legislation Committee

*Tuesday 21 March 2006*

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

### Delegated Powers Scrutiny

#### Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

**The Convener (Dr Sylvia Jackson):** Welcome to the 10<sup>th</sup> meeting in 2006 of the Subordinate Legislation Committee. I have received apologies from Gordon Jackson and Adam Ingram. I remind members to switch off their mobile phones and insert their cards into their consoles.

Members will recall that the committee wrote to the Executive about a number of issues on the bill. We received a helpful response and there now appears to be less difference between the Executive and the committee in a number of important areas.

Before we move on to the detail, I will make a few general comments about the Executive's letter. The first is about negative versus affirmative procedure. The Executive has outlined to us its general approach, in which there is little or nothing with which the committee would disagree. The second point is about when we should use regulations and when we should use orders. The Executive has set out its understanding of the position, which seems acceptable. It also looks as though we have reached an understanding on Henry VIII powers. Members will note the Executive's general comments on the provision of information, which are helpful. Those are the four main areas on which I wanted to comment.

On section 1, "Discharge of debtor", the Executive has acknowledged that there is an issue about primary legislation versus subordinate legislation. It confirms that it will consider further whether an amendment at stage 2 would be appropriate. We welcome that, but will monitor the situation closely.

**Mr Stewart Maxwell (West of Scotland) (SNP):** I was going to say exactly what you said, convener. I welcome the fact that the Executive has decided to rethink the matter in the light of discussions that have taken place in this committee and elsewhere. It is important, however, that we pay attention to the bill at stage 2, because I expect a number of changes to be

made then. Given the amount of secondary legislation in the bill, it is important that we keep a close eye on it.

**The Convener:** I am sure that the clerk will do so.

On section 5, "Orders relating to disqualification", we raised concerns and asked the Executive to expand on its justification for taking the powers. Are we happy with the Executive's response?

**Members indicated agreement.**

**The Convener:** Section 17 is on the debtor's home and family. We considered that the negative procedure did not provide the correct level of scrutiny. The Executive has conceded that the debtor's home is of particular importance. It confirms that it will reconsider whether the negative procedure is appropriate in all circumstances and might lodge an amendment at stage 2. The points are similar to those raised on section 5.

**Mr Maxwell:** The points are similar, but I sound a slight note of caution. The Executive says only that it will reconsider and that it might lodge an amendment at stage 2. I do not think that it has conceded the point fully. It is incumbent on us to pay attention to what the Executive decides to do at stage 2.

**The Convener:** Ken, did you want to add to that?

**Mr Kenneth Macintosh (Eastwood) (Lab):** No.

**The Convener:** On section 18, "Modification of provisions relating to protected trust deeds", we expressed concern about the shift from primary to secondary legislation and the use of the negative procedure. The committee will wish to note that the draft regulations are out for consultation. It would appear that much of the content is likely to be technical and procedural, for which the negative procedure would seem appropriate. We have to consider whether we want to press our suggestion that the first set of regulations be subject to the affirmative procedure, with subsequent regulations subject to the negative procedure. It depends how strongly members feel about that.

**Mr Maxwell:** We should continue down that road. Although the Executive says that the regulations will be largely technical, they will not be exclusively technical. At the very least the first set should be subject to the affirmative procedure.

**The Convener:** Is that agreed?

**Mr Macintosh:** Yes. I do not feel particularly strongly about it, but it is worth making the point again.

**The Convener:** Similar points arise on the technical and procedural provisions in section 19, "Modifications of composition procedure". Are we content with the Executive's response that the negative procedure is appropriate?

*Members indicated agreement.*

**The Convener:** We were concerned that the provision in section 22, "Modification of offences under section 67 of the 1985 Act", allows ministers, by order subject to the negative procedure, to amend the limits on borrowing by a debtor and that there is no restriction on the use of that power. The Executive does not consider the approach in the bill to be different from that in other legislation and gives the example of a power in the Debt Arrangement and Attachment (Scotland) Act 2002. Are we happy with the Executive's response and do we agree that the negative procedure is appropriate?

**Mr Macintosh:** The legal brief accurately points out that the Executive is following precedent, but that does not make it right.

**Mr Maxwell:** The legal brief also points out that although the approach is used in the 2002 act, the power in that act is much more limited than the power in the bill. The 2002 act is not a particularly good example. We should definitely draw the matter to the attention of the lead committee. I do not know whether we want to take further action. I am not entirely convinced by the Executive's argument that changes in circumstances would include social factors as well as variation in the value of money. I was not quite sure where it was going with that.

**The Convener:** Why do we not report to the lead committee that we still have concerns, because the power in the 2002 act is more limited in its extent? The other issue, which Stewart Maxwell raised, is that the power is not limited to borrowing.

**Mr Maxwell:** The Executive has said that there are other reasons why it would want to bring the power into play. I am not entirely convinced. Perhaps our having more information would have made the position clearer. The lead committee could consider the matter further.

**The Convener:** We do not have time to ask the Executive for more information, so we will pass on the matter to the lead committee.

On section 23, "Creditor to provide debt advice and information package", the Executive indicated in its original response that it did not intend to use the power, so we asked why it was necessary. We now have a bit more explanation. Are members happy with section 23?

**Mr Macintosh:** The Executive says that it expects debt advice to be given before

sequestration. However, it is considering the issue and once the bill has been passed it may need to evaluate whether a time period should be introduced. The power is there for that reason.

**The Convener:** Is that okay?

*Members indicated agreement.*

**The Convener:** Members will recall that we had quite a few questions on section 43, "Scottish civil enforcement commission". The committee considered that the powers conferred in section 43 are very wide and questioned the use of the negative procedure and the absence of a statutory duty to consult. The Executive has undertaken to review the procedures for regulations under the section. Is the committee content with the Executive's response? Do we agree to recommend that the affirmative procedure is appropriate and to monitor any changes at stage 2?

*Members indicated agreement.*

**Mr Macintosh:** I am pleased that the Executive has recognised the importance of that matter.

**The Convener:** The other issue is consultation. The Executive provided reassurance that it would consult, but the question is whether we want that to be a statutory duty.

**Mr Maxwell:** I thought that that was perhaps going too far and that it was not necessary to make it a statutory duty. The Executive has made it clear that it intends to consult—we will take its word on that.

**The Convener:** So that reassurance is okay.

Sections 47 and 48 bring us to the code of practice. The committee considered that it could not take a view on those provisions without further information. Now that we have quite a good response on that, are we happy with those two sections? Are there any further points?

**Mr Macintosh:** The information is of particular interest to the lead committee. The Executive's explanation on many of the next few sections is predicated on the fact that the new commission will be an independent body. That is why some of the detail is missing from the bill. That makes sense, but we should really be drawing the attention of the lead committee to what is quite an important policy issue.

**The Convener:** Apart from passing our comments on to the lead committee, we shall leave those sections.

On section 49, "Publication of information relating to debt collection", the committee asked for more information on the code or guidance, why it should not be laid before the Parliament and why the bill contains no requirement to consult. Are members content with the Executive's response?

**Mr Macintosh:** It is excellent that the Executive has agreed to lodge an amendment on that.

**The Convener:** Yes. The amendment at stage 2 will introduce a requirement that the code be laid before the Parliament. However, the Executive does not agree that a requirement to consult should be contained in the bill, so the situation is similar to before. Are we happy with the reassurance that the Executive will consult?

**Mr Maxwell:** Generally speaking, yes. It is only a mild concern, and I know that there is a balance to be struck, but I would like the Executive to have been a bit stronger on the expectation that the independent commission will consult. We should perhaps say that there is a straightforward expectation that it will do so. I am slightly concerned about whether there might be enough room for the commission to say, "It was agreed that the requirement to consult would not be in the bill and there is no demand from the Parliament or the Executive for consultation, therefore we do not have to consult." I would like to have heard an unequivocal message from the Executive on that—there is still room for such a message. We should pass it on to the lead committee that we would expect there to be consultation.

**The Convener:** Is it agreed that we should pass it on to the lead committee that we would expect the commission to consult?

*Members indicated agreement.*

10:45

**The Convener:** On section 52, "Appointment of messenger of court", the Executive was asked to comment on the fact that the rules made under section 52(4) will not be incorporated in a statutory instrument. Are members content with the Executive's response?

**Mr Macintosh:** Yes. Basically, the Executive is saying that that has never happened before.

**The Convener:** On section 53, "Annual fee", the committee asked the Executive to explain the reasoning behind the requirement that ministers should approve the exercise of the commission's power to make rules under section 53(1) requiring every messenger of court holding a commission to pay an annual fee. Are members content with the Executive's response? Are they content that the rules in that section are to be made by the commission rather than the Executive, and not by way of statutory instrument subject to procedure?

*Members indicated agreement.*

**The Convener:** On section 55, "Regulation of messengers of court", the Executive was asked to comment on the power to make regulations relating to functions of messengers of court,

subject to a negative resolution. The Executive considers that the choice of the negative resolution procedure is appropriate. Any ideas to the contrary? Are we satisfied with the consultation requirement?

*Members indicated agreement.*

**The Convener:** Members will see the comment about the regulatory impact assessment in the Executive response. The response says:

"The Committee will however note that subsection (3) imposes a duty on Scottish Ministers to consult the Commission, which is intended to be representative of the persons and bodies with an interest."

Are we happy with that?

*Members indicated agreement.*

**The Convener:** The committee asked the Executive how it intends to deal with the timing difficulties that arise on the commencement of section 56, "Messengers of court's professional association". Are we content with the Executive's response and that the provision should be subject to the negative procedure?

*Members indicated agreement.*

**The Convener:** On section 62, "Disciplinary committee's powers", the committee was concerned that the Executive has proposed to take a power to amend the level of a fine by statutory instrument, subject only to the negative procedure. The Executive has responded that it will reconsider the power and decide whether to lodge an amendment. We will keep an eye on that.

**Mr Maxwell:** As has been discussed, in relation to previous, similar provisions.

**The Convener:** The committee asked the Executive about the use of the power in section 70, "Land attachment", and why the affirmative procedure was not considered appropriate. Are members happy with the response? Paragraph 45 of the Executive's response says that it

"considers it imperative that a delegated power is taken to enable the period relating to the creation of a land attachment to be altered quickly, to reflect any future change in conveyancing practice."

I do not know how that compares with the affirmative procedure.

**Mr Maxwell:** My problem with that section is not that I necessarily disagree with the Executive—or agree with it for that matter—but that I do not know what sudden, emergency change in conveyancing practice would cause the Executive to have to use the negative rather than the affirmative procedure. I do not know enough about conveyancing practice to say whether that would be the case, but it seems a weak reason for using the negative procedure. I am not convinced by it.

**The Convener:** We cannot do any more about it at the moment, but we could raise it with the lead committee that, apart from the Executive's argument that it may need to act quickly, we have no further information. It is difficult for us to know whether the situation referred to by the Executive would be the case. The lead committee might want to take that further by finding out a bit more about how the situation would work in practice.

**Mr Maxwell:** Yes. I would hope that the lead committee would take note of what we are saying and would find out more background from the Executive. It could question the minister on the point and ask him for a practical example of what emergency conveyancing practice change is likely to occur that would result in the need for such speedy changes elsewhere.

**The Convener:** We should possibly keep an eye on the matter for stage 2. I hope that we will get a bit more information and find out whether we need to consider the use of the affirmative procedure.

**Mr Maxwell:** Yes.

**The Convener:** Is that okay?

**Members indicated agreement.**

**The Convener:** The Executive now agrees that the power in section 79, "Effect of debtor's death after land attachment created", is somewhat wider than may commonly be seen, but it hopes that the committee can accept it. The rules under the section will be made as statutory instruments not subject to a procedure. The matter is essentially considered to be appropriate for court rules, as the committee will remember.

**Mr Macintosh:** A similar point is raised a couple of sections later. In effect, we are asking the courts to consider these complicated matters. The question is whether we are happy to leave them in the hands of the courts rather than have them brought before the Parliament. Bearing in mind the fact that the question is one of technical court procedures, I am happy with the explanation that we have been given.

**Mr Maxwell:** I agree. I am content that that is a sensible way to proceed.

**The Convener:** Okay. We will leave that matter there.

Section 81 is headed, "Application for warrant to sell attached land". The committee asked why the power was not exercisable by the affirmative procedure or limited in some way. Are we content with the response that we have got back from the Executive?

**Mr Macintosh:** We should draw the lead committee's attention to it.

**The Convener:** To the Executive's explanation, yes.

**Mr Macintosh:** It is debatable whether the affirmative procedure should be used, rather than the negative. We should draw the matter to the lead committee's attention, and it can make a decision about how much importance we should place on the power.

**The Convener:** Yes, I think we should do that. We will report the Executive's explanation to the lead committee and see whether it wishes to follow up any issues.

Section 86 is entitled, "Full hearing on application for warrant for sale". We questioned the appropriateness of the negative procedure. We thought that there was a Henry VIII power here, if members recall. The Executive made a case to retain the negative procedure

"because it takes the view that the regulations will make a relatively minor alteration to a prescribed amount in the Bill".

Are we happy with that explanation?

**Mr Macintosh:** To be honest, I cannot remember what our original comments were.

**The Convener:** It was very technical.

**Mr Macintosh:** Assuming that the Executive is right and that it is indeed just a matter of

"modifying the upper limit of the net proceeds of sale of the attached land",

that is fine.

**The Convener:** All the explanations that we have got back from the Executive about the various powers raise policy matters. We will be leaving it to the lead committee to take up some of those points now.

**Mr Maxwell:** Like Ken Macintosh, I cannot remember the exact point that we made, but the Executive's explanation seems reasonable on the face of it. The only potential question that I had was about regulations making alterations

"to reflect movement in the value of money or the value of land."

If regulations are to concern not just the value of money but the value of land, they could make quite a significant change. That is probably where our original concern lay. We tend to accept the negative procedure when it comes to matters relating to the value of money. I cannot remember the exact point that we made.

**The Convener:** The response definitely says:

"or the value of land."



**Mr Maxwell:** Yes. Perhaps that is more the focus of our concern, rather than the point about the

“movement in the value of money”.

**The Convener:** Let us raise that concern with the lead committee. We can suggest that it might pursue that aspect—the value of land—in particular and ensure that it is happy with it, because you are correct: it is also included.

**Mr Maxwell:** Yes.

**Mr Macintosh:** We should say that, if it is just a matter of the movement in money that is to be considered, without any policy change—in other words, the power cannot be used to change the actual limit substantively—that is fine. We would be concerned if it were otherwise. The Executive is saying that the power will be used only to reflect inflationary pressures, fluctuations in land values and whatever else. That is appropriate. However, I get the impression that the power could be used to alter fundamentally the value that is ascribed. That is why we might be worried about it. I cannot remember the details of our initial discussion, but if that is indeed the case, we should perhaps seek a little more reassurance from the Executive that there are limits on the use of the power.

**The Convener:** We cannot get anything further from the Executive at this stage, so we must pass the matter on to the lead committee so that it can double-check that point.

**Mr Maxwell:** We do not usually have a problem with matters concerning the value of money. However, questions around the value of land might turn out to be slightly different. It might be the same thing, but it is odd that the two aspects have been separated out in that way. It is important for the lead committee to take that up.

**The Convener:** The response says:

“The Executive has chosen negative resolution procedure here because it takes the view that the regulations will make a relatively minor alteration to a prescribed amount in the Bill, for instance, to reflect movement in the value of money or the value of land.”

It is a bit unclear how that will work.

**Mr Maxwell:** That is the question. Perhaps a fuller explanation from the Executive in the first place would have dealt with the matter.

**The Convener:** Yes.

**Mr Maxwell:** We need to pass that point on and draw the lead committee’s attention to it.

**The Convener:** We can advise the lead committee that it would be useful to get further explanation on the matter.

**Mr Maxwell:** Yes.

**The Convener:** Are you happy with that, Ken?

**Mr Macintosh:** Yes. The point is that the provision concerns the

“prescribed amount in the Bill”.

The Executive is saying that it could make only “a relatively minor alteration”. Could it make a major alteration? We should ask the Executive that question.

**The Convener:** Yes. It is also a question of what “relatively minor” means. We should say that we have doubts about various parts of that answer from the Executive.

We will move on to section 97, “Appointed person”. The committee questioned whether the negative procedure was appropriate in this instance. Are we happy with the response? The issues in this section seem to be a bit more straightforward. The Executive response says:

“The appointed person is not a permanent post but is appointed, like a judicial factor, on a case-by-case basis. The powers in subsection (8)(b) and (c) can only be used to remove or modify functions which have been conferred by means of regulations made under section 97(8).”

As I said, I think that the issue is a bit more straightforward. We do not seem to have any problems there.

We now move on to section 116, “Interpretation”. We asked the Executive why it considers the negative procedure appropriate here. The amendment of definitions can have a substantial effect on the operation of a statutory provision, and the power is not limited in any way. We have raised that matter before. There is an issue here with respect to a change in definition. Are we happy with the Executive’s response? I refer to paragraph 50 in particular.

**Mr Macintosh:** The Executive is arguing that it wishes to

“modify definitions ... by means of subordinate legislation”

rather than primary legislation. That is not the point that we are raising. We are saying that the power to change definitions in a bill is quite an important one, and that the affirmative resolution procedure might be more appropriate.

**The Convener:** The Executive states in its response:

“We can explain that there is a need to be able to alter the definition of ‘decree’ and ‘document of debt’ quickly, so as to ensure that the diligences created or reformed in the Bill continue to be effective in respect of all relevant debts.”

That is not really the point that concerns us. It is more a matter of how any alterations are going to impact.

**Mr Maxwell:** This is a bit like our earlier discussion on conveyancing. I do not know

enough about this area of law, but does an affirmative instrument delay procedure so much as to cause problems? I cannot see that; I do not see that as an argument. The Executive's argument is weak on that point. We also have to bear in mind what the legal brief says on the matter:

"the power could be used not simply to keep the definitions up to date but to remove or vary the description of certain existing forms of decree or document which could have significant implications for a creditor's rights."

That is not just a minor power; it could be used in quite a significant way. I do not accept that the Executive has a strong argument about the speed required to make a change. I do not think that the use of the affirmative procedure would change that or create problems. In summary, I am not convinced by the Executive's arguments.

**The Convener:** We should pass on to the lead committee our remaining concerns about the powers in section 116, as they involve the changing of definitions. We are not convinced by the quickness argument with regard to negative instruments. As the legal advisers have told us, an affirmative resolution does not take all that long.

**Mr Maxwell:** It does not. I can understand the argument with regard to primary legislation, but we never argued that. I just do not understand where the Executive is going with this need for speed.

11:00

**The Convener:** Do we agree to say to the lead committee that we think that the affirmative procedure should be used rather than the negative procedure?

*Members indicated agreement.*

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** May I just say, convener, I am sure that it will be clear to members that the reason why I am being quiet today is that I am on a learning curve?

**The Convener:** A steep one.

**Mr Stone:** Indeed. However, do not take my silence to mean that I am not paying attention. I am trying to pick this up as I go along.

**The Convener:** We will question you later.

**Mr Stone:** I expect to be given a short exam that I will fail with flying colours.

**The Convener:** The committee asked the Executive to explain why subordinate legislation rather than primary legislation is appropriate with regard to section 117, "Residual attachment". The Executive has explained why it considers subordinate legislation to be appropriate and has undertaken to reconsider the appropriate form of

procedure with a view to deciding whether to lodge an amendment in that regard at stage 2.

Obviously, we are still keen on the affirmative procedure being used. Do we want to keep an eye on that at stage 2?

*Members indicated agreement.*

**The Convener:** The power in section 130, "Effect of death of debtor", is similar to the powers that are conferred under section 79, in relation to which the same issue was raised. In essence, the issue is how many powers are being given to the Court of Session.

Are we content with the power and happy that the rules will be made as a statutory instrument that is not subject to procedure?

**Mr Maxwell:** My feelings on this issue are similar to my feelings about section 79. We agreed that the suggested way of proceeding was relatively sensible.

**The Convener:** Are members content with the situation with regard to section 130?

*Members indicated agreement.*

**The Convener:** The issues that are raised with regard to section 133, "Interpretation" and section 134, "Certain decrees and documents of debt to authorise inhibition without need for letters of inhibition" are the same as those that were raised about section 116. Shall we say, therefore, that we have concerns about the issue?

**Mr Macintosh:** We suggested that it might be worth using an affirmative procedure in section 116 rather than a negative procedure. If the argument is that the reason for the Executive's decision is, as Stewart Maxwell said, the need for speed, we should say that our argument is not about that. We are concerned with the appropriate procedure.

**The Convener:** Do we agree to give the same response on this issue as we gave in relation to section 116?

*Members indicated agreement.*

**The Convener:** The committee asked why powers are conferred on ministers in section 135, "Registration of inhibition", rather than on the Court of Session. The Executive says in response:

"the registering and recording of inhibitions is a complex issue. Ministers wish to take an active role in ensuring that the schedule and certificates of execution of inhibitions are user-friendly, clear and simple enough for use in a public register".

**Mr Maxwell:** I do not have a big problem with this section. My only problem is that I thought that complexity was the reason for the Executive arguing that the matter should go to the Court of Session. It seems as if the same argument is

being used, but that the opposite outcome has been reached as a result.

**Mr Macintosh:** I think that the argument that was used in relation to section 79 and section 130 is that those rules apply only in court. In this case, however, we are talking about a public register. It will not only be lawyers who will read these things; it will be us poor mugs.

**The Convener:** To be fair, we want the documents to be as clear, user-friendly and simple as possible.

**Mr Maxwell:** I would want the other stuff to be as clear and user-friendly as possible, too.

**Mr Macintosh:** Obviously, lawyers do not need that protection.

**Mr Maxwell:** I accept the argument that we are talking about a public document and not rules of court. However, I thought that it was curious that the same argument, which related to the complexity of the issues, led to a different outcome. As I said, however, I do not have any real problem with the issue.

**The Convener:** Are we agreed on the power in section 135?

*Members indicated agreement.*

**The Convener:** I welcome Murray Tosh to the meeting.

With regard to section 151, "Power to prescribe forms in the 1868 Act", the committee is referred to the Executive's responses on section 135, which we have just discussed, and section 156, which raised the same point.

Do we agree with the suggested way of proceeding in relation to section 151?

*Members indicated agreement.*

**The Convener:** Section 156 is similar to section 151 and section 135. Do we agree to proceed in the same way on section 15D(2)(d) of the Debtors (Scotland) Act 1987, "Application for diligence on the dependence"?

*Members indicated agreement.*

**The Convener:** Also in section 156, section 15H of the 1987 act relates to the sum that is attached by arrestment on the dependence. The committee asked the Executive to comment on the choice of procedure in relation to the power that is set out at subsection (2)(b), as it considered affirmative procedure to be more appropriate for this power, which amends a figure in primary legislation.

The Executive has agreed to consider the issue with a view to deciding whether an amendment should be lodged at stage 2. Do we agree to keep an eye on that at stage 2?

*Members indicated agreement.*

**The Convener:** We move to section 160, "Interim attachment" and proposed new section 9C(2)(d) of the Debt Arrangement and Attachment (Scotland) Act 2002, "Application for a warrant for interim attachment". The committee questioned the form of the instrument. In response, the Executive refers to its general comments on the topic at paragraphs 6 to 9. We covered this issue under the general point on regulations versus orders.

Are we happy with that?

*Members indicated agreement.*

**The Convener:** Members will remember that the Executive explained in detail why it was using regulations in some parts and orders in others. A rationale had been arrived at, which seemed acceptable.

**Mr Maxwell:** I bow to your greater knowledge, convener.

**The Convener:** I am going only on what the reasoning seemed to be and the fact that our legal advisers seemed to think that the position was reasonable.

Section 162, "Meaning of 'money' and related expressions", raises points that are similar to those that were raised in relation to section 116 and others. The committee asked why the power to amend definitions required only negative procedure and whether an open procedure might be more appropriate.

The Executive has explained that this is a modification that is relatively minor in substance. Are we happy with that response or do we want to press for the affirmative procedure to be used? Members should bear in mind that section 162 could involve the amendment of definitions and that, if we want to be consistent in our approach, perhaps we should say that the affirmative procedure should be used.

**Mr Macintosh:** Given that we said that the affirmative procedure would be appropriate in such a circumstance, we should say so again at this point. However, we should also say that we accept the other part of the argument, which is to do with tailored procedure.

**Mr Maxwell:** We discussed the issue in relation to section 116 and I do not think that I would change my opinion in the light of what the Executive has said. The Executive has mentioned that the use of the open procedure should be confined to constitutional acts; that has been

mentioned before and clearly we do not agree. We did not agree with that point the last time that it arose either. The open procedure might have been used in constitutional acts, but that does not mean that it must be confined to such use.

**The Convener:** Okay. We will continue to recommend the use of the affirmative procedure in this case.

In section 172, "Release of money where attachment unduly harsh", we asked the Executive to comment on the choice of the negative procedure in section 172(4).

The Executive has replied that it

"does not consider the effect of this power to be sufficiently important to merit affirmative procedure. Rather, negative procedure provides the appropriate balance between expedition and convenience but at the same time enables a summary level of scrutiny to be applied".

Section 172(4) will enable ministers to set a cap on the amount of money that can be released on the ground of undue hardship to the debtor.

**Mr Maxwell:** I can understand the Executive's argument. If we look at it one way, the change is relatively simple. However, it could have a fairly substantial impact on the individuals who will be affected by it. On balance, we should stick with the original recommendation. That would give parliamentarians more of an opportunity to question the minister on the reasoning behind the change that the Executive is suggesting, especially given the impact that it might have on individual constituents.

**The Convener:** Is that agreed?

**Members indicated agreement.**

**The Convener:** It might be better to be cautious.

**Mr Macintosh:** Absolutely. We should draw the argument to the attention of the lead committee.

**The Convener:** Okay. We will recommend the use of the affirmative procedure.

The committee suggested that the power in section 184, "Liability for expenses of money attachment", to modify schedule 3, which determines the liability for expenses, should be subject to the affirmative procedure. The Executive takes the view that such provision is standard and that the negative procedure is appropriate.

**Mr Macintosh:** The Executive says that there are precedents.

**The Convener:** Yes. Section 39 of the Debt Arrangement and Attachment (Scotland) Act 2002 provides ministers with an identical power over expenses of attachment.

The legal advice seems to be that there is nothing in section 184 that is not okay. It is reasonable. Is there anything further?

**Members:** No.

**The Convener:** We will accept the Executive's explanation.

The committee considered that the power in section 192, "Arrestment in execution", should be subject to the affirmative procedure. The Executive maintains that the negative procedure is consistent with other provisions in the bill that enable modification of definitions.

Do we want to be consistent with the earlier decisions that we made about definitions?

11:15

**Mr Maxwell:** I do not think that it is a matter of consistency. There are differences. Rather than saying that we will always choose the one way, there seems to be more of a case this time for the Executive's argument. The argument and points raised do not seem to me to be unreasonable.

Being consistent about adding to or taking away from the list is reasonable. Bank accounts and institutions can change quite rapidly; I accept that argument. On balance, perhaps we should accept the Executive's argument for using the negative procedure.

**The Convener:** The legal advice certainly says:

"This power does not relate to highly detailed matters of great importance."

Are we therefore agreed that we are happy with the explanation for the use of negative procedure in this case, and that we will forward it to the lead committee?

**Members indicated agreement.**

**The Convener:** Under the power in section 198, "Information disclosure", the first set of regulations is subject to the affirmative procedure, while subsequent regulations are subject only to the negative procedure. Due to the sensitivity of the powers, the committee thought that all regulations should be subject to the affirmative procedure.

The Executive thinks that its approach is correct, especially as the subsequent regulations will be of vastly lesser importance than the first set of regulations, which will set up the information disclosure system. The argument is that the first set of regulations will be the important ones.

**Mr Maxwell:** I am trying to think back. We agreed that the first set of regulations will be important and that the regulations should be agreed using the affirmative procedure. However, we did not necessarily accept that all future

changes would be minor. The second set of regulations, which could be completely new, could be equally as important as the first one; as a result, the affirmative procedure should always be used. That is what I remember of the discussion, and I do not think that the Executive has said anything that changes my opinion.

**The Convener:** That is exactly what we said—you are correct—and our legal advice is exactly the same. The subsequent regulations might be minor, but that might not always be the case. Perhaps we should err on the side of caution.

**Mr Maxwell:** The legal brief suggests that some kind of open procedure might be suitable. Some of the earlier debate was about changes to the regulations and how a lot of them might be very minor—we are not trying to bind the Executive's hands on that point—but we were concerned that major changes could be made and that using the negative procedure every time would not be appropriate. Perhaps this should be a case of horses for courses and the Executive should choose the correct procedure for the changes.

**The Convener:** We will go with that and suggest that an open procedure might be appropriate. We are not convinced that all subsequent regulations will be minor. Is that agreed?

*Members indicated agreement.*

**The Convener:** In section 202, "Ancillary provision", the committee was concerned that the Executive appeared to be seeking to extend the effect of such provision. The Executive has confirmed that the power is not as open-ended as the delegated powers memorandum seemed to suggest. Are we happy with the reassurances that the Executive has given us?

*Members indicated agreement.*

## Executive Responses

### Prisons and Young Offenders Institutions (Scotland) Rules 2006 (SSI 2006/94)

11:17

**The Convener:** In relation to rule 165, the committee noted that there is no specific power to amend or revoke any direction that is issued under the rules and we sought an explanation for that. The Executive says that it does not consider it necessary to include express provision that enables ministers to amend or revoke directions under the rules.

We could just draw that explanation to the attention of the lead committee and the Parliament.

**Mr Macintosh:** Yes. Our point is about the definitions of rules, acts and regulations. Whether the Executive is right is another matter, but we should draw the Executive's explanation to the attention of the lead committee.

*Members indicated agreement.*

### Smoking, Health and Social Care (Scotland) Act 2005 (Consequential Amendments) Order 2006 (SSI 2006/95)

**The Convener:** The committee asked the Executive why it chose to use powers under the 2005 act as the vires for the order rather than powers under the Town and Country Planning (Scotland) Act 1997. Members will recall that the issue was about whether a general or a specific power should be used. Members have the explanation that we asked for in front of them. Are we reassured by the Executive's explanation?

**Mr Macintosh:** The explanation, which is fairly brief, just says that the power is specific to the policy and is therefore appropriate. I am interested to know whether there might be a more appropriate power in our view. In the end, we should just report the point to the lead committee.

**Mr Maxwell:** Our point was general rather than specific. We did not question the vires of the order, although the Executive seemed to think that we did. The order is clearly fine—there is no problem with it. The issue is the more general one of whether the Executive should choose a general power when a specific one is available. We have come across several instances in which the Executive has used a general power when a specific one was available. We should take up the issue more directly with Executive officials to find out why that is happening. The Executive may have good reason for doing that—it has explained

why it has done so in the order—but we should raise the general issue.

**The Convener:** Okay. We will pass on the Executive's explanation to the lead committee, which is the Health Committee. We must do so quickly, as it will consider the order at its meeting this afternoon.

On the general point, as there seem to be more and more cases of the use of general powers, perhaps we should draft a letter to the Executive that contains several examples of that practice. Is that acceptable?

**Mr Maxwell:** I do not know how many examples there have been, but we certainly should write to the Executive on the issue.

**The Convener:** There have certainly been a few. We will ask the clerk and legal advisers to list them.

**Mr Maxwell:** Yes, although the issue is not, in essence, one of volume. The number of cases has increased, which is a trend that concerns most of us, but the point is one of principle, about why the Executive chooses general powers when specific ones are available. We must get to the nub of the problem and find out why the Executive does that.

**The Convener:** I could draft a letter and circulate it at a later meeting or, alternatively, members could delegate the task to me.

**Mr Maxwell:** We will delegate it to you, convener.

**Mr Macintosh:** Yes.

**The Convener:** Excellent. We will pass on the explanation to the Health Committee.

**Mr Maxwell:** We should make it clear to the Health Committee that we are not questioning the vires of the order.

**The Convener:** Absolutely. We could even say that a more general issue arises and that we are taking it up.

**Mr Maxwell:** Yes.

### **Police Act 1997 (Criminal Records) (Scotland) Regulations 2006 (SSI 2006/96)**

**The Convener:** We asked the Executive to explain the purpose and effect of the words

"For the purposes of section 113B(2)(b)"

and the words

"For the purposes of section 119(7)"

in regulations 9 and 17 respectively. Are members happy to give the Executive's response to the lead committee and the Parliament, with a comment on the failure to follow proper legislative practice?

*Members indicated agreement.*

### **Police Act 1997 (Criminal Records) (Registration) (Scotland) Regulations 2006 (SSI 2006/97)**

**The Convener:** We asked the Executive about the definition of the term "statutory office holder" in regulation 2(1) and about the purpose and effect of words used in regulations 7 and 10. We also asked for an explanation of the reference to "appropriate police authority" in regulation 7. Given the Executive's response, the best thing would be to draw three issues to the attention of the lead committee and the Parliament. The first is the defective drafting in relation to point 1 of the three that I mentioned; the second is the failure to follow proper legislative practice in relation to point 2; and the third is defective drafting in relation to point 3, which the Executive has acknowledged. Is that agreed?

*Members indicated agreement.*

**Mr Maxwell:** I think that we should emphasise point 1 above points 2 and 3. I am not saying that you skimmed over the points, convener—

**The Convener:** It was just to save time.

**Mr Maxwell:** I am sorry, convener, but point 1 is very important, while points 2 and 3 are relevant but lesser points. Point 1 may well be a serious drafting error, so it is important that we highlight that to the lead committee, rather than simply give the three points with the three answers and say that we disagree with the answers.

**The Convener:** You are right. The legal brief states:

"Legal advisers suspect that it is in fact not possible to extend the definition of 'statutory office holder' in the Regulations to apply to officeholders under asps because of the limitations of the parent Act."

We really want to highlight the first of the three points.

**Mr Maxwell:** Yes. We should include extra information so that the lead committee knows exactly what we are talking about. The legal advice is that the defect is in the parent act, with the result that it specifically excludes acts of the Scottish Parliament. It is worth pointing out that problem to the lead committee.

**The Convener:** It might be useful if we included in the letter to the lead committee paragraph 153 of the legal brief.

**Mr Maxwell:** Good idea. Could we include paragraph 154, too?

**The Convener:** I read that out, so it will be included in our report anyway, but we can put the two paragraphs together.

### **Strathclyde Passenger Transport Area (Variation) Order 2006 (SSI 2006/112)**

**The Convener:** We asked the Executive to explain why it did not narrate, in the preamble to the order, that consultation was carried out. The Executive response seems in order—it has basically accepted what we said. The legal advisers are happy with the explanation.

### **Diligence against Earnings (Variation) (Scotland) Regulations 2006 (SSI 2006/116)**

**The Convener:** We asked the Executive why it chose not to revoke the regulations that are superseded by these regulations. The Executive's response is that the prior regulations are not entirely redundant. Do members want to report the fact that we asked for further explanation and got it?

**Mr Maxwell:** The previous regulations are probably redundant but, if there is any risk or possibility that they might not be, we should leave well alone and accept the Executive's argument.

**Murray Tosh (West of Scotland) (Con):** I do not disagree with that, but it strikes me that, on other occasions, Executive responses have more or less implied that, because new regulations are in place, the old ones are automatically revoked. That strengthens the argument for having a specific statement on the matter in every new set of regulations if there is no revocation of the previous regulations on the type of grounds that the Executive has given in this case. Such a statement would significantly enhance our understanding of regulations and the understanding of any potential users or people who were affected by them. Without it, people might assume that previous regulations had been cancelled.

**The Convener:** That is a good point. We could include that general point in the letter that we agreed to send to the Executive on another general point. Do members agree to include that issue?

*Members indicated agreement.*

### **Dairy Produce Quotas (Scotland) Amendment Regulations 2006 (SSI 2006/119)**

**The Convener:** We asked the Executive a couple of questions on the regulations. The big one was whether anyone will be disadvantaged under the regulations. The Executive response reassures us that no one will be disadvantaged, as no penalty will be applied in respect of statements that are submitted before the date when the regulations come into force. Are members content

to pass that on to the lead committee and the Parliament?

**Mr Stone:** I am very content, given my brother's interest in the matter.

**The Convener:** A declaration. Are we agreed that all the issues were dealt with in the explanation?

*Members indicated agreement.*

### **Provision of Water and Sewerage Services (Reasonable Cost) (Scotland) Regulations 2006 (SSI 2006/120)**

11:30

**The Convener:** We asked the Executive to explain the policy intention behind regulation 3, as there were concerns about whether or how far it is intra vires. The Executive has supplied the detailed policy background that we requested. However, the meaning of the regulations might have been clearer if the items to which the Executive refers in its response had been described as matters not to be taken into account when calculating reasonable expense. Basically, the whole thing could have been clearer. We will make that point to the lead committee and the Parliament, and we will pass the Executive's response to the lead committee.

### **Non-Domestic Rates (Levying) (Scotland) Regulations 2006 (SSI 2006/124)**

**The Convener:** We asked the Executive to explain why it chose not to cite the Non-Domestic Rates (Levying) (Scotland) Regulations 2005 (SSI 2005/126) by the title given in that instrument, which provides that the SSI is to be cited as an order rather than regulations. The Executive has accepted that there is a mismatch between the citation and the title. I suggest that we draw the attention of the lead committee and the Parliament to the regulations on the ground of defective drafting.

**Mr Maxwell:** The Executive has accepted our point about the mismatch and has said that it intends, as soon as possible, to make and lay a fresh set of regulations that contain the correct reference. That is great, but this is an example of a point that we raised in our inquiry, and a point that conveners have raised specifically. Conveners have been annoyed by having to go through things twice just because of minor errors. This is a perfect example of when laying an instrument in draft form would have prevented the problem, so that lead committees and this committee did not have to go through the process twice.

**The Convener:** I think that we all agree on that.

**Water Environment (Consequential Provisions) (Scotland) Order 2006 (SSI 2006/127)**

**The Convener:** We asked the Executive to explain why it chose to use the powers under the Water Environment and Water Services (Scotland) Act 2003 as the vires for the order. The issue of general and specific powers arises again. The Executive has explained that all the provisions revoked or amended by the order are purely consequential on measures legislated for elsewhere. The Executive considers that the powers in section 37 of the 2003 act clearly envisaged instruments of this kind and intended their use for this purpose.

**Mr Macintosh:** I suggest that we add something to the letter that is already going to the Executive. We are concerned that this issue could arise again. We should be clear about what we can expect from the Executive.

**The Convener:** Do you mean something about general and specific powers?

**Mr Macintosh:** Exactly—something about the use of general powers rather than specific powers.

**The Convener:** Our legal adviser recommends that we highlight the Executive's explanation to both the lead committee and the Parliament.

**Mr Maxwell:** The legal advisers seem to suggest that in this case it was appropriate to use the particular powers. This case is slightly different from the previous one, but it is in the same vein. There is no reason why we should not mention it.

**The Convener:** Again, we come back to the point that the Executive should explain more why particular powers are used.

**Waste Management Licensing (Water Environment) (Scotland) Regulations 2006 (SSI 2006/128)**

**The Convener:** We asked the Executive whether it had any proposals for consolidation. The Executive has said that it is undertaking a review, in stages, of the Waste Management Licensing Regulations 1994 (SI 1994/1056). It hopes later this year to introduce measures that will codify the provisions to which most amendments have been made. Do members agree that we should draw that to the attention of the lead committee and the Parliament?

*Members indicated agreement.*

**Planning and Compulsory Purchase Act 2004 (Commencement No 1) (Scotland) Order 2006 (SSI 2006/101)**

**The Convener:** The committee considered that the commencement order was too limited and that there was a need to commence certain other provisions of the Planning and Compulsory Purchase Act 2004. We asked the Executive why it had not commenced sections 90(4) and 117(8). The Executive does not consider it necessary to commence those sections. It takes the view that, in the event of any doubt, under section 13 of the Interpretation Act 1978 anticipatory exercise of powers would enable the provisions as commenced to have full force and effect. Do we want to report this order on the ground of unduly limited use of the power?

*Members indicated agreement.*

**Antisocial Behaviour etc (Scotland) Act 2004 (Commencement and Savings) Amendment Order 2006 (SSI 2006/104)**

**The Convener:** There is an issue with the order. The committee asked the Executive to confirm that all necessary consequential changes would be made to the coming-into-force dates of instruments brought fully into force by the order. The committee felt that if that did not happen doubt might arise as to whether the instruments in question were intra vires.

Members will remember that issues arose to do with dates. What do members think of the Executive's response? The Executive does not accept that doubt will arise as to whether the instruments in question are intra vires, but our legal advice is slightly different. Members might want to read paragraph 221 of our legal brief.

**Mr Maxwell:** There is obviously a difference of opinion. However, if there is any doubt—and it seems that there is—would it not have been more sensible just to change the dates? Then there would be no argument from anybody and no possibility of anybody challenging the order on the basis of there being different dates. It is strange to defend the present situation rather than just change all the dates. If the dates were all in line, there would be no argument. The Executive takes a different view, so I suggest that we report that to the lead committee.

**The Convener:** We can draw the attention of the Parliament to the order—it would not normally go to the lead committee. However, we should write a letter to the Communities Committee, as well as to the Executive.

**Mr Maxwell:** Yes, we should make the point that it would have been sensible to change the dates. I apologise for my confusion, convener; I did not



realise that this was a commencement order and that we would report to the Parliament rather than to the lead committee. However, it would be helpful to mention the issue to the lead committee by letter.

**The Convener:** Does anyone disagree with the suggested course of action?

**Members:** No.

## Draft Instrument Subject to Approval

### Joint Inspections (Scotland) Regulations 2006 (draft)

11:38

**The Convener:** We come now to item 3. I hope that we will make quicker progress.

The regulations provide for the sharing of information for the purposes of joint inspections. Are members happy that we ask the Executive to clarify whether it is the intention, as regulation 11 seems to suggest, that a person's failure to comply with regulation 5(2) is to be a criminal offence?

**Members** *indicated agreement.*

## Instruments Subject to Annulment

### Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments) (Scotland) Order 2006 (SSI 2006/129)

### Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment (No 2) Order 2006 (SSI 2006/130)

11:39

**The Convener:** No substantive points arise on the orders, but minor points do arise, which we can mention in an informal letter.

**Members** *indicated agreement.*

### National Health Service (Dental Charges) (Scotland) Amendment Regulations 2006 (SSI 2006/131)

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

**Mr Maxwell:** Convener, did we cover the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment (No 2) Order 2006?

**The Convener:** We did.

**Mr Maxwell:** Did I miss it?

**The Convener:** We can go back.

**Mr Maxwell:** No, it is all right. I apologise—I was still reading about the previous order and I did not realise that we had covered it.

### Functions of Health Boards (Scotland) Amendment Order 2006 (SSI 2006/132)

### Water Environment (Oil Storage) (Scotland) Regulations 2006 (SSI 2006/133)

### Sight Testing (Examination and Prescription) Amendment (Scotland) Regulations 2006 (SSI 2006/134)

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

**Members** *indicated agreement.*

**National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 (SSI 2006/135)**

**The Convener:** We now come to a few instruments with which there are problems. One must ask whether that is because a large number of instruments are coming through before the Easter recess.

The first such instrument is SSI 2006/135, on which four main points arise. We might ask the Executive to clarify why, under regulation 7(1)(b), the applicant must undertake to comply with paragraph 1 of the terms of service. We might also ask it to clarify why the reference to conviction for murder in regulations 8(1)(b) and 12(1)(c) is restricted to convictions that were obtained in the British isles. We might also ask the Executive to explain the reference to paragraph 11 in paragraph 11(1) of schedule 1, which does not seem quite right, and to explain to which provisions the words “paragraph 9(1)(a) to (i)” in regulation 9(6) are intended to refer. There are also minor points that we can raise with the Executive informally. Is that agreed?

*Members indicated agreement.*

**National Health Service (Primary Medical Services Performers Lists) (Scotland) Amendment Regulations 2006 (SSI 2006/136)**

**The Convener:** There appear to be serious errors in the regulations relating to definitions in the regulations and in the National Health Service (Primary Medical Services Performers Lists) (Scotland) Regulations 2004—the principal regulations. There is also a concern that the regulations will not achieve their intended purpose. The legal advisers suggest that we ask the Executive to give further consideration to the regulations. As the errors are so substantive, I do not know whether I should say in the same breath that there are also minor points that we can take up with the Executive informally. Do we agree to raise those points?

*Members indicated agreement.*

**National Health Service (General Dental Services) (Scotland) Amendment Regulations 2006 (SSI 2006/137)**

**The Convener:** Three main points arise on the regulations. It is suggested that we ask the Executive why “principal Regulations” is defined in regulation 1(2) when the term is used only once and the title of the instrument so defined is narrated in full in regulation 3. It is suggested that we also ask which enabling power authorises regulation 2(6) and why the Executive has chosen

not to pursue consolidation, given the number of amending instruments. Is that agreed?

*Members indicated agreement.*

**The Convener:** There are also a few minor points that we can deal with in an informal letter.

**National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2006 (SSI 2006/138)**

**The Convener:** Two points arise on the regulations. It is suggested that we ask the Executive why references to regulations 5(2) and 6 in regulations 21(2) and 22 respectively of the principal regulations—the National Health Service (Optical Charges and Payments) (Scotland) Regulations 1998—have not been removed following the revocation of part III of the principal regulations, and why the final sentence of the explanatory note refers to regulation 2(4)(b)(ii) and to a coming-into-force date of 6 April 2006 when neither of them appears in the regulations. Is that agreed?

*Members indicated agreement.*

**The Convener:** The committee might also note that although the Executive has acknowledged the desirability of consolidating this series of regulations, it has no immediate plans so to do.

**National Health Service (Service Committees and Tribunal) (Scotland) Amendment Regulations 2006 (SSI 2006/139)**

**The Convener:** It is suggested that we ask the Executive to explain the reference in regulation 2(3) to paragraph 10 of schedule 1 of the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006, which does not appear to be relevant. Is that agreed?

*Members indicated agreement.*

**The Convener:** Do members have any comments on the Executive’s explanation for breaking the 21-day rule? The principal reason appears to be delay on the part of the Scottish Committee of the Council on Tribunals, which might have been anticipated. The Executive also intends to consolidate the principal regulations—the National Health Service (Service Committees and Tribunal) (Scotland) Regulations 1992—by the summer. Are there any comments on those points?

**Mr Macintosh:** Not on the consolidation.

**The Convener:** What do members think about the Executive’s reason for breaking the 21-day rule?

**Mr Maxwell:** It takes us back to the point about advance planning that we discussed before. The delay could have been anticipated. I do not understand why it has led to a breach of the 21-day rule. It has happened, but the explanation is not particularly strong.

**The Convener:** Perhaps we should say that it is regrettable because it looks as though the delay could have been anticipated.

*Members indicated agreement.*

### **Children (Protection at Work) (Scotland) Regulations 2006 (SSI 2006/140)**

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

### **National Health Service (Charges to Overseas Visitors) (Scotland) Amendment Regulations 2006 (SSI 2006/141)**

11:45

**The Convener:** It is suggested that we ask the Executive to explain the purpose of the definition of “the Act” in regulation 1(2)(a). Is that agreed?

*Members indicated agreement.*

**The Convener:** There is another point. Do members wish to write to the Executive formally or informally on the omission of the words “of the principal regulations” from regulation 3? We might as well do it in the same letter.

*Members indicated agreement.*

**The Convener:** There are also a couple of minor points that we can raise with the Executive informally.

**Mr Maxwell:** There are more than a couple.

**The Convener:** Are there? I was being optimistic.

### **National Health Service (Travelling Expenses and Remission of Charges) (Scotland) Amendment Regulations 2006 (SSI 2006/142)**

**The Convener:** Two points arise on the regulations. Should we ask the Executive whether “claims” in regulation 3 is intended to refer to claims to the Scottish ministers or to applications to boards for payment and, if the former, why the transitional provision in regulation 3 does not apply to payments under regulation 11(7) as well as to payments under regulations 6 and 7 of the principal regulations—the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Regulations 2003? Should we also ask the Executive to explain why regulation

1(2) defines “the Income Support Regulations”, a term that does not appear in the regulations?

*Members indicated agreement.*

**The Convener:** There are also a couple of minor points—well, some—that we can raise with the Executive informally.

### **National Health Service (Pharmaceutical Services) (Scotland) Amendment Regulations 2006 (SSI 2006/143)**

### **National Waiting Times Centre Board (Scotland) Amendment Order 2006 (SSI 2006/144)**

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

**Mr Maxwell:** Before we move on to the next instrument, I will make a general point. We have been through a substantial number of national health service instruments, many of which relate to the Smoking, Health and Social Care (Scotland) Act 2005, and all of them have errors. Some of the instruments have quite a lot of minor errors—such as typographical errors—and some have more serious errors. How we got to the point at which all these instruments are rushing through at this late stage is a planning issue, but I return to the point that I made earlier about the desirability of laying instruments in draft so that they are much closer to being completely correct when they come into force, rather than coming into force when they have so many errors. The Executive says that they are minor matters that can be sorted out the next time the instruments are amended but, yet again, we have pages and pages of examples that show exactly why instruments should be laid in draft and changes should be allowed during the process.

That is a general point that is not to do with any one of the instruments specifically, but we should mention the lack of planning on the Executive's part and the fact that we cannot make changes to instruments as they are subjected to parliamentary scrutiny.

**The Convener:** Most of us agree. Your suggestions would make the process much simpler. Did you raise your points to get them on the record or do you think that we should do something else?

**Mr Maxwell:** We should do something else in the report on our regulatory framework inquiry. I am not saying that we should do anything now, but I wanted to put the points on the record before we moved on to the next regulations. We have just considered a series of NHS instruments that demonstrate the need for advance planning and the laying of instruments in draft. If the Executive

had done that, it would have made quite a difference to the outcome of our discussion.

**Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuff) (Scotland) Amendment Regulations 2006 (SSI 2006/151)**

**The Convener:** Two main points arise on the regulations. Should we ask the Executive to explain why it has defined “principal Regulations” in regulation 2 when the term is used only once, and why the words “Subject to” have been used in regulation 3 when it appears that the provisions that are referred to do not qualify regulation 3?

**Members** *indicated agreement.*

**The Convener:** There is also a minor point that can be raised with the Executive informally.

**Gambling Act 2005 (Licensing Authority Policy Statement) (Scotland) Regulations 2006 (SSI 2006/154)**

**The Convener:** It is suggested that we ask the Executive to confirm that the sections of the Gambling Act 2005 to which the regulations relate and the enabling power will be brought into force on or before the coming into force of the regulations. There is also a minor point that we should raise. If there are no other comments, is that agreed?

**Members** *indicated agreement.*

**Instrument Not Subject to Parliamentary Procedure**

**Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 16) (Scotland) Order 2005 Partial Revocation Order 2006 (SSI 2006/145)**

11:50

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

11:50

*Meeting continued in private until 12:41.*

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