SUBORDINATE LEGISLATION COMMITTEE

Tuesday 28 March 2006

Session 2

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SUBORDINATE LEGISLATION COMMITTEE
11th 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 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 28 March 2006

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

Delegated Powers Scrutiny

Planning etc (Scotland) Bill: Stage 1

The Convener (Dr Sylvia Jackson): I welcome members to the 11th meeting in 2006 of the Subordinate Legislation Committee. Gordon Jackson plans to attend the meeting, but he will arrive a little late. I remind members to switch off all mobile phones.

Under item 1, we continue our delegated powers scrutiny of the Planning etc (Scotland) Bill at stage 1. When we considered the bill at our meeting of 14 March, we agreed to raise a number of points with the Scottish Executive. We have now received its response.

Section 2 of the bill inserts new section 4(1) into the Town and Country Planning (Scotland) Act 1997. New section 4(1) confers a power to designate a group of planning authorities to prepare a strategic development plan. Members will remember that, although we were broadly content with the power, we asked the Executive about its consultation on such orders and why the bill does not include a statutory requirement to consult.

The Executive has confirmed that it will consult planning authorities on the proposed strategic development plan areas. It cited a couple of consultation papers from 2001 and 2004 where proposed geographical areas were set out and comments received. Are we content with the Executive's response and also that the power is subject to the negative procedure?

Members *indicated agreement*.

The Convener: On new sections 7(1) and 7(2), "Form and content of strategic development plan", we were concerned that the first regulations made under the power, which set out the framework for development plans, may merit the use of the affirmative procedure, although subsequent regulations will probably be suitable for the annulment procedure.

As members will see from the response, the Executive says that the negative procedure is appropriate because the provisions in such regulations

"are likely to be focused more on matters of form than on the substance of plans".

Does any member have a comment on the response?

Murray Tosh (West of Scotland) (Con): I agree that the new section is more about the process than it is about the substance and content of plans. Some quite significant issues are wrapped up in the regulations, however. For example, our legal adviser has observed that the drafting of the power in proposed new section 7(1)(d) leaves it open to the Executive to prescribe more substantive matters for inclusion in strategic development plans.

I am not sure of the exact point in the process at which the Executive will produce the draft regulations, but I think that it has committed to producing some of them before stage 3. When we see the draft regulations, I am sure that we will find little of concern. However, at the moment, the powers seem to be significant. I propose that we keep on the table the notion of pressing for the use of the affirmative procedure for the first set of regulations. Given that any changes thereafter are likely to be fine tuning, I accept that the Executive should have the flexibility to introduce subsequent regulations by way of the annulment procedure.

The Convener: Would you also like us to ask the Executive when the draft regulations will be made available?

Murray Tosh: Yes. I think that I have that information in an answer to a parliamentary question, but that is not a reason why we should not ask to be made aware of that as a committee. That would be appropriate.

The Convener: We will ask the Executive when the draft regulations will be made available; say that we are looking for the first set of regulations to be made under the affirmative procedure and that we are content for the negative procedure to be used for later regulations. Is that agreed?

Members *indicated agreement*.

The Convener: We move to the points that we raised on proposed new section 12 of the 1997 act, "Examination of proposed strategic development plan". We sought clarification of what is to be set out in regulations and what is to be left to the examiner's discretion. The Executive has said that regulations will be used to set out the procedures for examinations. It has also confirmed that the examiner will have a choice over the form that the examination will take. Again, much will depend on the content of the regulations; the Executive's response gives only an outline of what we might expect them to include.

Murray Tosh: Nonetheless, the Executive's response has made the position much clearer and we can be less concerned about what is proposed. That said, if the Executive can clarify the situation in response to our questions, perhaps it could have drafted the bill more clearly. In the interests of clarity, the Executive might care to reconsider some of the wording in the bill to clarify the precise difference between the two measures. At present, it appears that it is both prescribing the form of hearings and leaving it to the reporter's discretion—I use "reporter" as shorthand for all those who may be asked to preside over such hearings—to decide how the procedure will work in practice. That is what gives rise to uncertainty. The Executive could clarify the situation on the face of the bill, without changing in any way the substance of the provision.

The Convener: We will write to the Executive, suggesting that that change would give the bill more clarity. We will also put that in our report.

Murray Tosh: It is not necessary for us to tell the Executive what should be done. The very fact that we have had these exchanges indicates our uncertainty over the drafting. In effect, we are inviting the Executive to do the work by means of a stage 2 amendment.

The Convener: Yes. The final point that we raised concerned the use of the negative procedure. Are we content with the response?

Murray Tosh: Yes; I think that we are. At this stage, the issue is more one of seeking clarification of how the procedure will work than any concern about what may be in the regulations.

The Convener: Right. So, we will seek clarification of how the procedure will work; say that we are looking for an Executive amendment at stage 2 to achieve clarity in the drafting; and confirm that the use of the negative procedure is sufficient. Are we agreed?

Members *indicated agreement*.

The Convener: We move to proposed new section 19 of the 1997 act, "Examination of proposed local development plan". We sought clarification from the Executive on two powers under this section. Our first point was on the power at section 19(5). It mirrors our earlier point on proposed new section 12(3); the response from the Executive is also the same. I propose that we reply, using the same comment that we agreed to make on proposed new section 12(3).

Mr Stewart Maxwell (West of Scotland) (SNP): I am slightly more concerned about this power than I was about the previous one. I am concerned that a local authority can depart from a reporter's recommendations.

The Convener: Does that not relate to the next point on proposed new section 19(10)(a)(i)?

Murray Tosh: It does. Our first point is on the same procedural point that we raised on proposed new section 12(3).

Mr Maxwell: I apologise, convener.

Murray Tosh: The substance of the comment is fine, convener.

The Convener: Our comment on the power in proposed new section 19(5) mirrors that which we agreed to make on the power under section 12(3). Shall we repeat the comment?

Members *indicated agreement*.

The Convener: We move to our second point on proposed new section 19. We said that the significant change of policy that is brought about by the power at section 19(10)(a)(i) is not reflected in sufficient detail on the face of the bill. Stewart Maxwell has a comment to make.

Mr Maxwell: Given the importance of the provision, annulment is not the correct procedure to use. The ability of a local authority to depart from a reporter's recommendation is of crucial importance to individuals in our communities. I am not comfortable with the power being subject only to annulment.

The Convener: Is that the general feeling?

Murray Tosh: I agree with Stewart Maxwell. The legal brief makes a useful point about the Executive's response. Some specified criteria have been offered and the brief asks why those criteria will not be in the bill. That is a good question because, later in this meeting, we will see the Executive's response to a fairly similar question on business improvement districts in relation to section 39 of the bill. That response says that the Executive will consider including some of the relevant criteria in the bill. That seems sensible, so I wonder why the Executive has not given the same response on this issue.

As normally happens, not all the criteria would necessarily be defined in the bill, but the most significant and obvious ones would be. It would then be possible to amend them by regulation.

Some fairly significant restrictions could be placed on the independence of local authorities, so, as well as the currently specified criteria being included in the bill, any subsequent amendments to those criteria should be made under the affirmative procedure.

The Convener: Do we agree? Did you want to say something Adam?

Mr Adam Ingram (South of Scotland) (SNP): No—Murray made my point when he said that

there appears to be no reason why the criteria should not be in the bill.

The Convener: So we will say that the criteria should appear in the bill and that any subsequent amendments should be subject to the affirmative procedure.

Members *indicated agreement*.

The Convener: The Executive has explained the purpose of new section 22 of the 1997 act, "Supplementary guidance", and how statutory supplementary guidance will differ from non-statutory guidance. The Executive is reconsidering the drafting of the section—in particular, it is reconsidering the balance between planning authority discretion and ministerial regulation. We can keep an eye on this provision, and we are likely to have another opportunity to consider it at stage 2.

Do members have any comments?

Members: No.

The Convener: Are we content that the Executive will reconsider the provision and that we will come back to it at stage 2?

Members *indicated agreement*.

The Convener: On new section 23D, "Meaning of 'key agency'", the committee had concerns about the power to specify the meaning of "key agency". We sought clarification of which bodies were likely to be covered and whether it would be possible to identify any characteristics of such agencies in the bill.

We have received a very helpful response from the Executive, listing the bodies that it intends to include in any list of key agencies. However, the Executive would not consider it "helpful or meaningful" to include a description of key agencies in the bill, although it does give some general indications.

Murray Tosh: I note that the Executive does not consider it "helpful or meaningful" to include a description of key agencies in the bill, but that it clearly did find it helpful and meaningful to advise us that it considers key agencies to be bodies

"that hold information or provide services that are essential to preparation or delivery of development plans".

That sort of advice is precisely what we were asking for. So, if we have an adequate working definition, why is it not in the bill? The definition would make it clear what sort of bodies could be added to or taken away from any list of key agencies. The definition would clarify the whole of new section 23D and would give the Executive sufficient flexibility.

The Convener: This issue is similar to the one that arose earlier. Is it okay that any future changes should be subject only to the negative procedure?

Murray Tosh: I do not think that there is a problem with that. The issue of whether the affirmative procedure was more appropriate only arose because of the total lack of certainty about what was to be included. Now that the Executive has clarified that, all that we would want is for the Executive to share that clarification with the rest of the world by putting it in the bill. If that happened, we could accept that the annulment procedure was appropriate.

The Convener: Are we all agreed?

Members *indicated agreement*.

10:45

The Convener: We move now to section 4 of the Planning etc (Scotland) Bill, "Hierarchy of developments for purposes of development management etc". We asked the Executive to clarify the scope of the meaning of "local" and "major" and, in particular, to clarify whether regulations will be made in such a way as to take account of the differing impact of developments in local and urban contexts. We also asked about consultation plans.

The Executive has said that the major projects will deal with the small number of large and complex applications in respect of which it is considered that the current two-month determination period is insufficient. The rest will be local developments. We are also told that the Executive is currently working on the thresholds for major developments and intends to consult on draft regulations setting the proposed thresholds.

Do members have any further points to raise on the matter? Try to keep away from policy issues, if possible.

Murray Tosh: This may be a policy issue, but it relates to the definition. The legal brief informs us that the Executive's response is founded on

"applications in respect of which it is considered the current 2 month determination period is insufficient."

What does that mean in practice? The Executive sets a target for local authorities to determine planning applications within two months and produces league tables that show performance, ranging from 50-ish to 80-ish per cent. An awful lot depends on whether, by that, the Executive means applications that councils should determine within two months because that is the target or applications that, in practice, councils take much longer to determine.

Virtually every housing application and industrial application will, in practice, take longer than two months to determine. If the Executive is applying

the two-month period that is stated in its response as a way of measuring what it thinks will be classified as major applications, and if it envisages those applications being subject to independent appeal and all the rest of it, that does not concern me too much. However, I would be concerned if the Executive was saying that councils should try to determine those applications within two months—in which case they would be classified as local and there would be no right of appeal and all the rest of it. It is important how the determination period is applied in practice.

Ultimately, the decision of what goes in and what goes out might be a policy decision; however, for us the issue is how the Executive interprets the determination period and what status it will have. Will that be the official status, and what does the two months apply to? Is it the target, or is it the achievement in practice? If it is the target, it is an impossibly high hurdle for an awful lot of planning applications. If it is the actuality, I do not know how a hierarchy of applications will be established. It cannot be known how long a planning application will take until it is submitted and determined; therefore, one can only guess how long it will take to implement in practice. That is difficult to set out in regulations, and it is potentially worrying that the Executive would try to set that out in regulations that will be subject only to annulment.

We might ask for greater clarification of how the Executive will apply the two-month determination period in practice, and we might suggest that the regulations are potentially of such import that the first set of regulations should be subject to the affirmative procedure, accepting that any subsequent changes might represent the fine tuning of practice in the light of experience. That might be worth running past the Executive for its consideration.

The Convener: Okay. We will state in our report that we need more clarity about the two-month determination and that, until we get that, it is difficult for us not to suggest that the first set of regulations should be subject to the affirmative resolution procedure. Is that a fair summary?

Members *indicated agreement*.

The Convener: We noted that section 10, "Pre-application consultation", confers a Henry VIII power that is subject to annulment and asked why the 21-day time limit had been included in the bill.

The Executive says that it believes that that period strikes the correct balance between giving time for the planning authority to come to a view and not unduly delaying the application. The Executive is prepared to amend the period if it becomes evident in practice that some other period is appropriate. That would be done by regulations that, at the moment, would be subject to the negative resolution procedure.

Murray Tosh: I was happy with that the last time the matter was raised, and the Executive has explained why it has opted for 21 days in terms that I anticipated. The negative resolution procedure is all right for the regulation.

The Convener: So, we welcome the response, which gives us clarity.

Members *indicated agreement*.

The Convener: Section 12 is entitled "Keeping and publication of lists of applications". We were unclear about the extent to which the obligation to keep lists of applications, and proposal of application notices, departs from the current position. In its response, the Executive has explained the current and future legal position with regard to publishing lists.

Are members content with the Executive's response? Is it appropriate that amendments to the time intervals under the new statutory requirement should be made through instruments that are subject to annulment, or should the affirmative procedure be used? Are we content with what the Executive has told us?

Members *indicated agreement*.

The Convener: We considered that the provision in section 15, "Manner in which applications for planning permission are dealt with etc", seemed to represent a significant increase in ministerial power and asked for justification of the use of the negative procedure and some indication of its intended exercise.

There are concerns about the Executive's response, because although it gives an explanation of why the Executive wants to avoid having a call-in procedure, it provides no justification for the fact that the regulations will be subject to the negative procedure and fails to explain why the prescription of classes of development will be sub-delegated to directions that are subject to no parliamentary procedure. Those are the issues that the legal advisers have flagged up.

Murray Tosh: I could not improve on the way in which the legal advisers have set out their arguments in paragraphs 51 and 52 of the legal briefing. Correspondence along those lines would express our concerns on the issue.

The Convener: Is it agreed that we include those concerns in our report?

Members *indicated agreement*.

The Convener: Section 16 is entitled "Local developments: schemes of delegation". We were concerned about the apparent downgrading of the

system of decision making that would result from decisions being made by officials rather than by planning authorities; we were careful not to stray too far into policy areas. We asked the Executive to clarify its understanding of the operation of the new system and, in particular, how compatible it would be with the European convention on human rights. In particular, we were concerned about the role of elected members in any review proceedings.

The Executive states that regulations that are made under new section 43A of the Town and Country Planning (Scotland) Act 1997 will provide a framework for a fair hearing, which, combined with the right of challenge to the courts, will provide a procedure that is compliant with article 6 of the convention. Legal advice suggests that it will be possible to asses whether the review system is ECHR compatible only when the detail of the regulations that are made under new section 43A becomes available.

Do members think that the negative procedure, which is usually used for regulations that deal with administrative matters, will provide the correct level of scrutiny, or should the affirmative procedure be used instead?

Murray Tosh: I am still inclined to think that there are aspects of the proposed system that will require careful scrutiny. We would want to see the regulations quite early on.

I am particularly concerned about the role that councillors will play in relation to their officers. Elected members will act as the appeal court for decisions that are made by officials, even though both groups are part of the same corporate body. That is where the concern about ECHR compliance arises.

It is a bit funny to say that the proposed system is all right because people will have the right to go to the Court of Session. In effect, the Executive is leaving the law to be established by legal judgments instead of getting the regulations to establish it up front. It is not clear to me that the relationship between councillors and officials will be dealt with in the regulations. From reading all the subsections of proposed new section 43A, I have worked out that that could be the case, but it is not obvious that it will be the case, and we do not have the regulations yet.

It might be that the Convention of Scottish Local Authorities, for example, will be relied on to produce codes of guidance for councillors. If we knew that the issue would be covered somehow and that someone would have responsibility for dealing with it, that would make our scrutiny more straightforward, but we simply do not have enough information. As we do not have the regulations, we do not know whether they will attach to the issue the importance that I think they should attach to it, which means that I would not feel comfortable to say that I was happy with the use of the negative procedure. We might want to come back to the issue at stage 2, if the regulations have been produced by then and we have greater clarity on how the Executive proposes to proceed.

The Convener: I suggest that we say in our report that clarity is still needed on the matters that Murray Tosh outlined and that it would therefore be useful if we could see a draft of the regulations when they are available. We can say that, in the light of that, we continue to advocate the use of the affirmative and not the negative procedure. Do members agree?

Members *indicated agreement*.

The Convener: Section 35, "BID Revenue Account", will give the Scottish ministers the power to

"make further provision in relation to the BID Revenue Account."

We asked the Executive about the width of the power. In its response, the Executive outlined the likely content of regulations made under section 35 and confirmed that they would be similar in nature to regulations in England that make provision on equivalent matters. Are members happy that the regulations would be subject to the negative procedure, as they would be technical and administrative?

Murray Tosh: The Executive's response clarified all the issues.

The Convener: Section 39 is on the power of veto. The committee asked why the criteria for veto were not set out in the bill. We were worried that section 39 contains a Henry VIII provision. The Executive explained that it has not yet finished consulting on the scope of the criteria, but indicated the likely nature of the criteria and expressed willingness to amend the bill to reflect the stated criteria. The Executive also indicated that it wants to retain a delegated power to amend and add to the criteria. We welcome that response, but we might have to revisit the matter at stage 2.

Murray Tosh: By all means. We can be satisfied if the Executive amends the bill along those lines. The issue relates to the committee's discussion about key agencies; a similar approach would have added a degree of clarity in that regard.

Mr Maxwell: We do not take issue with the Executive's having the power to amend or add to the criteria through delegated powers, which is reasonable.

The Convener: Do members agree that the negative procedure would be sufficient?

Mr Maxwell: No. We should wait to see the amendment that the Executive lodges at stage 2 before we take a view on that.

Murray Tosh: As an incentive to the Executive, we can say that it is distinctly possible that we will be satisfied if the amendment makes matters sufficiently clear. As we form an overall impression of the bill we will probably evaluate how certain sections are handled differently from others. If the Executive creates the appropriate climate by providing greater clarity, it might get more agreement from us.

Mr Maxwell: Can the Executive be tempted?

Murray Tosh: The committee has always shown a practical and intellectual flexibility—

The Convener: We should stop there.

Murray Tosh: The committee has always extended a welcome to the Executive to engage on that basis.

The Convener: Quite so. That concludes consideration of the Executive's responses to our questions on the Planning etc (Scotland) Bill.

Executive Responses

Joint Inspections (Scotland) Regulations 2006 (draft)

10:58

The Convener: We have the Executive's response to our questions on the regulations. In relation to regulation 11, the committee asked whether it is the Executive's intention that failure of a person to comply with regulation 5(2) is to be a criminal offence. The Executive confirmed that that is not the intention. However, as members can see from the legal briefing, that would be the effect of the regulation. I suggest that we draw the attention of the lead committee to the instrument on the ground of defective drafting.

Mr Maxwell: I agree. We should make it clear to the lead committee that a mistake has been made.

The Convener: Do members agree that we should do that?

Members *indicated agreement*.

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

The Convener: We asked four questions about the regulations. First, we asked about the reference in regulation 7(1)(b) to a definition provision, which appears to be a minor point. Unless members want to comment, I suggest we just note the Executive's response to our query. Is that agreed?

Members *indicated agreement*.

The Convener: Our second point related to why the reference to convictions for murder is restricted to those obtained in the British isles. The Executive has given us a full and helpful background on the matter. I propose to draw the attention of the lead committee and the Parliament to the instrument on the ground that clarification was requested from and supplied by the Executive. Are we agreed?

Members *indicated agreement*.

11:00

The Convener: Thirdly, we asked the Executive to explain the reference to paragraph 11 in schedule 1. The Executive has acknowledged that this is a typographical error and has said that it will correct it at the next appropriate opportunity. The Executive considers that the error does not affect the validity of the regulations. I propose to draw the attention of the lead committee and the

Parliament to the instrument on the ground of defective drafting. Do you want to come in on this one, Stewart?

Mr Maxwell: I am happy to come in, convener, but if I did that every time we made the point, I would be doing so constantly. The fact is that typographical errors are a fairly common occurrence. We have made the point strongly. I will leave it there, convener.

The Convener: Okay. Our last point was to ask the Executive to explain the provision to which the words "paragraph 9(1)(a) to (i)" refer. The Executive seems to agree that the provision is defectively drafted. I propose to draw the attention of the lead committee and the Parliament to the instrument on those terms. Are we agreed?

Members *indicated agreement*.

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

The Convener: We asked the Executive to clarify three related points on the regulations which, as drafted, are confusing for the reader. The points relate to regulations 2(2)(d) and 7(4). The Executive seems to admit that the regulations are defectively drafted, although it does not consider that the failure to define a term that is used in the regulations will affect their operation. The Executive has said that it will clarify the wording at the next available opportunity. Again, I propose to draw the attention of the lead committee and the Parliament to the instrument on the ground of defective drafting. Are we agreed?

Members *indicated agreement*.

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

The Convener: We put three questions to the Executive on the regulations. First, we asked about the definition of "principal regulations" in regulation 1(2). The Executive accepts that the inclusion of the title of the instrument was an error.

Secondly, we asked which enabling power authorises regulation 2(6). The Executive has indicated that section 25(5) provides the relevant enabling power. It also said that, although that section ought to have been specifically cited in the preamble, the validity of the instrument is not compromised. I propose to draw the attention of the lead committee and the Parliament to both points on the ground of failure to follow proper legislative practice. We should also acknowledge that, in the latter case, the validity of the instrument is not affected.

Thirdly, we asked about consolidation. The Executive has indicated that it hopes to achieve that later this year. Again, I propose to draw the attention of the lead committee and Parliament to the instrument on the ground that clarification was requested from and supplied by the Executive. Are we agreed?

Members *indicated agreement*.

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

The Convener: Again, we put three questions to the Executive on the regulations. On the first point, the Executive has accepted that references to regulations in the principal regulations should have been removed following the revocation of part III of the principal regulations. It also said that, although the inclusion of the redundant references does not affect the validity of the instrument, it will amend it at the first available opportunity. I propose to draw the attention of the lead committee and the Parliament to the instrument on the ground of defective drafting.

Secondly, the Executive accepts that the reference in the explanatory note to regulation 2(4)(b)(ii) and to a date for the instrument coming into force of 6 April 2006 should have been removed. Again I propose to draw the attention of the lead committee and the Parliament to the instrument on the ground of the defective drafting of the explanatory note, as acknowledged by the Executive.

Thirdly, the Executive accepts the need for consolidation. It has said that it is taking steps towards consolidating a number of instruments as soon as time and resources permit. I propose to draw the attention of the lead committee and Parliament to the instrument on the ground that clarification was requested from and supplied by the Executive. Are we agreed?

Members *indicated agreement*.

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

The Convener: We put two questions to the Executive on the regulations. First, we asked for an explanation of the reference in regulation 2(3) to paragraph 10 of schedule 1. The Executive response is that the intention was to refer to paragraph 11 only; it will ensure that the reference is removed when the 1992 regulations are consolidated later this year.

I propose to draw the attention of the lead committee and the Parliament to the instrument on

the ground of defective drafting, acknowledged by the Executive, which it will correct in due course. Are we agreed?

Members *indicated agreement*.

The Convener: We also expressed regret that the regulations broke the 21-day rule, which could have been anticipated with better planning. The Executive explains why it chose a particular commencement date for the regulations but has still not explained why, with that in mind, it was necessary to break the 21-day rule. Are we content to draw the unjustified breach of the 21-day rule to the attention of the lead committee and the Parliament?

Mr Maxwell: I am happy for us to do that, but it is rather disappointing. It has happened before that we ask a specific question and get back an answer to a question that we did not ask. I do not want to be flippant about it, but the Executive should answer the question that we ask and it is rather unfortunate that we sometimes get back letters that do not do so. The point about which we asked is fairly straightforward, so I would have thought that a straightforward answer would be available and forthcoming. I am happy with the suggestion that you make, convener, but I make the point that the Executive's responses should be a bit better.

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

The Convener: We asked the Executive for an explanation of the purpose of the definition of "the Act" in regulation 1(2)(a). The Executive has admitted that the definition is unnecessary. We also drew to the Executive's attention the omission of the words "of the principal Regulations" from regulation 3. The Executive accepted our comments on that point. Are members content to draw the instrument to the attention of the lead committee and the Parliament on the ground of defective drafting?

Members *indicated agreement*.

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

The Convener: The Executive confirms that the word "claims" in regulation 3 is intended to refer to claims to ministers under the regulations and accepts that the transitional provision in that regulation should also apply to payments under regulation 11(7). It will amend the regulations before 1 April 2006, which is very near. It also accepts that the definition of "the Income Support Regulations" in regulation 1(2) is unnecessary, as the term, which appears in regulation 2(6) and (7), is already defined in the principal regulations—the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Regulations 2003. Are members happy to draw the instrument to the attention of the lead committee and the Parliament on the ground of defective drafting?

Members *indicated agreement*.

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

The Convener: We asked why the term "principal Regulations" is defined in regulation 2, given that it is used only once in the regulations thereafter. The Executive accepts that the definition could have been avoided but does not consider that it causes any confusion to the reader. I suggest that we report to the lead committee and the Parliament that the approach is not in accordance with drafting guidance.

Members *indicated agreement*.

The Convener: We also asked 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. The Executive has explained the reasoning behind the drafting and considers that the legal effect is clear. Are we content that clarification was requested from and supplied by the Executive on its approach to the drafting of the regulations?

Members *indicated agreement*.

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

The Convener: We asked the Executive whether the sections of the Gambling Act 2005 to which the regulations relate and the enabling power would be brought into force on or before the coming into force of the regulations. Are we content that the Executive has confirmed that they will be?

Members *indicated agreement*.

Draft Instruments Subject to Approval

Maximum Number of Part-Time Sheriffs (Scotland) Order 2006 (draft)

11:09

The Convener: No points arise on the order.

Planning and Compulsory Purchase Act 2004 (Commencement No 2 and Consequential Provisions) (Scotland) Order 2006 (draft)

The Convener: No substantive points arise on the order, but there is one point that we will raise with the Executive informally.

Instruments Subject to Annulment

National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2006 (SSI 2006/149)

11:09

The Convener: No substantive points arise on the regulations, but there is one point that we can raise with the Executive informally. Is that agreed?

Members *indicated agreement*.

Sewerage Nuisance (Code of Practice) (Scotland) Order 2006 (SSI 2006/155)

The Convener: Do we want to question the Executive further on its justification for breaching the 21-day rule?

Mr Kenneth Macintosh (Eastwood) (Lab): The order is the first of several that breach the 21-day rule. It might be worth while to make a general point to the Executive about that. If there was only one, that would not be particularly worrying, but there are several.

The Convener: Yes.

Mr Maxwell: To be fair, there are reasonable explanations for some of the other breaches.

Mr Macintosh: Yes, but in this case, there is no explanation.

The Convener: We can make the general point that a number of instruments breach the 21-day rule. As Stewart Maxwell says, we should highlight the fact that we need more explanation in this case. There is a minor point on the explanatory note, but we can raise that informally. Is that agreed?

Members *indicated agreement*.

Products of Animal Origin (Third Country Imports) (Scotland) Amendment Regulations 2006 (SSI 2006/156)

The Convener: No substantive points arise on the regulations, but there is a minor point that we can raise informally.

Erskine Bridge (Temporary Suspension of Tolls) Order 2006 (SSI 2006/157)

The Convener: No points arise on the order but, again, it breaches the 21-day rule.

Mr Maxwell: I have no problem with the Executive breaching the 21-day rule for this particular instrument. That is welcome. I just wish that the Executive had suspended the collection of tolls earlier.

Non-Domestic Rates (Levying) (Scotland) (No 2) Regulations 2006 (SSI 2006/158)

The Convener: The regulations correct a defect in regulation 2 of SSI 2006/124, which we considered and reported on last week. The Executive accepts that the provision is defectively drafted. It has chosen to revoke and remake the instrument in a rectified form. However, it does break the 21-day rule. Are we content?

Murray Tosh: Although four instruments that break the 21-day rule have come together, they are not in any sense linked. They come from different departments and, in three cases, there is either an explanation or a policy reason that we are happy with. It is only the Sewerage Nuisance (Code of Practice) (Scotland) Order 2006, on which there is not an adequate explanation, that we should raise with the Executive.

Mr Macintosh: I was thinking about that instrument rather than the other ones.

The Convener: We are quite happy about the breach in respect of the Non-Domestic Rates (Levying) (Scotland) (No 2) Regulations 2006.

Mr Maxwell: It emphasises our point about—

The Convener: Amendment.

Mr Maxwell: Yes, and the fact that there have been complaints from committee conveners that things go around twice.

The Convener: Yes—there is double handling.

Building (Forms) (Scotland) Amendment Regulations 2006 (SSI 2006/163)

Register of Sasines (Methods of Operation) (Scotland) Regulations 2006 (SSI 2006/164)

Serious Organised Crime and Police Act 2005 (Specified Persons for Financial Reporting Orders) (Scotland) Order 2006 (SSI 2006/170)

Mental Health Tribunal for Scotland (Practice and Procedure) (No 2) Amendment Rules 2006 (SSI 2006/171)

Mental Health (Relevant Health Board for Patients Detained in Conditions of Excessive Security) (Scotland) Regulations 2006 (SSI 2006/172)

The Convener: No points arise on the instruments.

Instrument Not Subject to Parliamentary Procedure

Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 18) (Scotland) Order 2005 Revocation Order 2006 (SSI 2006/169)

11:13

The Convener: No points arise on the revocation order.

Instruments Not Laid Before the Parliament

Serious Organised Crime and Police Act 2005 (Commencement No 2) (Scotland) Order 2006 (SSI 2006/166)

11:14

The Convener: No substantive points arise on the order, but there are some minor points that we can put to the Executive informally.

Water Services etc (Scotland) Act 2005 (Commencement No 3 and Savings) Order 2006 (SSI 2006/167)

The Convener: No points arise on the order.

Criminal Justice (Scotland) Act 2003 (Commencement No 8) Order 2006 (SSI 2006/168)

The Convener: No substantive points arise on the order, but there is a minor point that we can put to the Executive informally.

Legislation Committee of the National Assembly for Wales

11:14

The Convener: We move on to agenda item 7. The chair of the Legislation Committee of the National Assembly for Wales has invited us to give evidence on our role in scrutinising subordinate legislation on Tuesday 2 May. The meeting would take place via video link and would involve a later start time for our weekly meeting. What are members' views on our giving evidence? I cannot remember which members went to Wales, apart from Stewart Maxwell and me.

Mr Maxwell: Gordon Jackson also went.

The Convener: I do not think that Murray Tosh went.

Murray Tosh: I was not able to go. It would probably be burdensome to the receiving committee for more than three members to appear on the video link.

The Convener: I may not be here that day, so Gordon Jackson would have to convene our meeting. Would it be sufficient for him and Stewart Maxwell to take part?

Mr Maxwell: It would be helpful if there were more cross-party representation.

The Convener: Murray Tosh might like to represent the Conservative group.

Murray Tosh: In the spirit of what Mr Maxwell said, I suggest that Mr Stone might find it an educative experience.

The Convener: I am sure that Mr Stone would say that you have far greater expertise, because you have been a member of the committee for longer.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): Absolutely. I defer to a more senior member.

Murray Tosh: That does not mean that I understand the process any better.

The Convener: We can work something out between us to ensure that three members are available. The meeting will take place on 2 May. Nearer the time, we will receive more details of possible questions from the clerk.

Accountability and Governance Inquiry

11:16

The Convener: In their pack of materials for today's meeting, members have information about the Finance Committee's inquiry into accountability and governance, to which we have been invited to make a submission. The closing date for doing so is 18 April. It is suggested that the issues and questions raised by the inquiry are policy related. I have looked through them with the clerk. Do members wish to raise particular issues today? There will be a workshop on 24 April that members may attend.

Mr Maxwell: The inquiry has already been discussed by the Justice 2 Committee, which took the view that most of the issues are policy related. The committee commented where it could, but it believed that many of the issues are finance related and found it difficult to answer some of the questions, even as a policy committee. In my view, it would be difficult for the Subordinate Legislation Committee to respond to any of the bullet points.

The Convener: I agree.

Mr Macintosh: There is a sort of circular argument. I suspect that in the report on our inquiry into the regulatory framework in Scotland we will make the point that the system for scrutinising the financial implications of subordinate legislation is not entirely satisfactory. There is some overlap, because subordinate legislation sets up bodies such as the new Scottish civil enforcement commission that will be created under the Bankruptcy and Diligence etc (Scotland) Bill. When we scrutinise the subordinate legislation aspects of bills, we do not usually consider the financial implications. We have indicated that that is something of a gap. In the end, it is a question for the Finance Committee and we cannot really answer it. That is why the Finance Committee is holding its inquiry.

The Convener: Absolutely. I think that it is aware of the issue, because the convener of the Finance Committee made a point in the chamber about the additional financial burdens that come with subordinate legislation. I reiterate the point that members may attend the workshop on 24 April, if they are interested.

11:19

Meeting continued in private until 12:58.

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