

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 16 May 2006

Session 2

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# **SUBORDINATE LEGISLATION COMMITTEE**

## **16<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)

Ms Maureen Watt (North East Scotland) (SNP)

### **CLERK TO THE COMMITTEE**

David McLaren

### **ASSISTANT CLERK**

Jake Thomas

### **LOCATION**

Committee Room 5

# Scottish Parliament

## Subordinate Legislation Committee

*Tuesday 16 May 2006*

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

### Delegated Powers Scrutiny

#### Adoption and Children (Scotland) Bill: Stage 1

**The Convener (Dr Sylvia Jackson):** I welcome members to the 16<sup>th</sup> meeting in 2006 of the Subordinate Legislation Committee, and remind members to switch off their mobile phones and put their cards into their consoles.

The committee considered the Adoption and Children (Scotland) Bill two weeks ago and we asked the Executive several questions.

On section 3, "Assistance in carrying out functions under sections 1 and 2", we asked whether the regulations ought to be the subject of prior consultation with the affected bodies. The Executive has stated that they will be.

Are we content with the power and that it is subject to the negative procedure?

**Members indicated agreement.**

**The Convener:** On section 23, "Scottish Ministers' power to amend period of time in sections 21 and 22", we asked the Executive to justify the delegation of the power and to clarify in what circumstances it anticipated that it would be exercised. The committee received a helpful response from the Executive that section 23 simply restates the provision in the Adoption (Scotland) Act 1978, which provision has not been exercised in the intervening 28-year period. The Executive has, however, agreed to consider the matter further at stage 2.

**Mr Stewart Maxwell (West of Scotland) (SNP):** I understand the Executive's argument and I do not have any big problems with it. However, if the provision has never been used in what is effectively three decades, do we need it?

I also note that the Executive concedes that the provision is different to the parallel provision in the Adoption and Children Act 2002, so it is not as straightforward as saying, "This is the way it has always been, so it is right that it should continue in that way." Also, although the Executive has said that it will consider the matter further, it has not

committed itself to any changes. We should therefore keep an eye on the bill at stage 2, as well as making the lead committee aware of our concerns. A number of points are still up for debate.

**The Convener:** So we will report our concerns about section 23 to the lead committee and give it the Executive's response, and we will monitor the matter at stage 2.

**Mr Maxwell:** Yes.

**The Convener:** On section 40, "Disclosure of information kept under section 39", we asked the Executive to clarify the scope of the regulations and say why the power will be subject only to the negative procedure, given that the issue is potentially sensitive. We also asked about plans for consultation.

The Executive has indicated that its intention is broadly to restate the regulations that currently govern the disclosure of adoption information, and has argued that the negative procedure is therefore appropriate.

If members check the legal brief they will see that two issues have been raised. The first is about the possible extension of the scope of the people to whom adoption information can be given, and the second is about the nature of that information. Do members share those concerns?

**Mr Maxwell:** I share both those concerns. I am less concerned about the first point because of the European convention on human rights, which contains restrictions for confidentiality and the protection of private life, but I think that the bill is still slightly unclear.

I am slightly more concerned about the second point. As the legal brief points out:

"The power in section 40 is to disclose information 'kept by virtue of section 39'. Unfortunately, the information in section 39 is itself to be prescribed in regulations",

and we do not know what those regulations will be. The argument is almost circular. It might be all right, but until we see the regulations, we do not know. The question of the nature of the information that can be disclosed is very open.

**Mr Kenneth Macintosh (Eastwood) (Lab):** The Executive makes it clear that the information that it wants to be able to disclose is that which is already covered by existing regulations; that is quite helpful. We should draw the lead committee's attention to the points that the Executive and Stewart Maxwell have made.

**The Convener:** Do you think that we should go a step further and ask whether the negative procedure should be changed to the affirmative?

**Mr Macintosh:** No.

**Mr Maxwell:** I do not know. I am not absolutely sure. It would depend upon the nature of the information. I hear what Kenny Macintosh is saying about the existing regulations, but section 40 is still slightly open-ended on the first point about the people to whom the information can be given, and slightly vague on the second point about the nature of that information. We probably do not need to ask for the negative procedure to be changed to the affirmative, but it is difficult to say either way from the information that we have. As Kenny Macintosh has already said, we should just pass on our concerns to the lead committee. It will be up to that committee whether to take up those points and question the minister.

**The Convener:** Jamie, are you in agreement?

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** I am, yes.

**The Convener:** We will highlight paragraphs 14 and 15 of the legal brief—particularly paragraph 15—to the lead committee. We will leave the question of whether the procedure should be affirmative, but say that we have concerns and would like the lead committee to find out more information about those points.

**Mr Maxwell:** Perhaps we should go back to the issue at stage 2 if we get further information. The minister's evidence to the lead committee might help us.

**The Convener:** Yes.

On section 56, "Care plans: directions", we asked the Executive why the bill does not provide for any directions to be subject to parliamentary scrutiny. The Executive said that the care plan is local authority administrative practice that is not currently in legislation, so it considers that directions are appropriate. Are members happy with that?

**Members indicated agreement.**

**The Convener:** We asked the Executive to clarify the meaning of section 60, "Searches and extracts". It said that the section simply applies current regulations to the new adopted children register. Paragraph 23 of the legal brief says:

"It does appear to us, nevertheless, that the effect of subsection (1) is to extend the existing regulation making power by applying the provisions of the regulations made under it to the new Adopted Children's Register. To that extent, it might have been expected that the Executive would have made some comment about this provision in the DPM."

Paragraph 24 of the legal brief also observes that the drafting technique would have helped with transparency, but that is just an additional point. Should we report to the lead committee just on the legal adviser's first point?

**Mr Macintosh:** I am satisfied with that.

**Mr Maxwell:** It is an administrative matter. Perhaps we should report just that we asked the Executive for clarification.

**The Convener:** We should also report the Executive's response.

**Mr Maxwell:** Yes. That is fair enough.

**The Convener:** On section 64, "Restriction on bringing children into the United Kingdom", we asked why the power given in section 64(8) will be subject to the affirmative procedure only the first time that it is exercised. Stewart Maxwell will remember that he raised that particular issue.

**Mr Maxwell:** I remember the debate that we had on this issue. At that time, it did not seem clear why the first set of regulations should be made under the affirmative procedure and subsequent ones under the negative procedure. The explanation from the Executive is reasonable and has made matters clearer. I still have slight concerns about the issue because, at the end of the day, it means that the Executive could make major and substantive changes in future regulations that would be subject only to the negative procedure. However, given the explanation, I am content with the Executive's proposal.

**The Convener:** Jamie, do you have any further thoughts?

**Mr Stone:** I accept the view of Mr Maxwell, our leader on this particular issue. If he is content, so am I. I am the new boy on the beat, you see.

**The Convener:** We should tell the lead committee that we had concerns about this issue and that, although the response from the Executive has given us some clarification, we have some reservations on the ground that we do not know the magnitude of any issues that may be dealt with by this means on subsequent occasions.

**Mr Maxwell:** It is important that we point that out.

**Mr Macintosh:** The explanation from the Executive is sensible. I thought that we were keen on the idea of using the affirmative procedure in the first instance and using the negative procedure thereafter, as that seemed to get the balance right between scrutiny and Executive action. In this case, the Executive says that the first use of the measure will be not to criminalise parents and it does not intend to make any policy changes after that point, only minor administrative changes. That is a good explanation and a sensible use of the power.

**The Convener:** It is a sensible procedure, but we are unclear about what any subsequent changes might be, which means that we do not

know whether the negative procedure would be adequate. That is the problem.

**Mr Maxwell:** Yes. Effectively, we are just talking about asking a question. I was much more concerned about the issue last week, before I read the explanation. I was in favour of the affirmative procedure being used until I read the Executive's response. Now I accept that its proposal is sensible. However, a question remains about the use of the power. It is not restricted, which means that the Executive could make further substantive changes. I accept that it probably will not do so, but it is worth pointing out to the lead committee that that is the case.

**The Convener:** That sums it up quite well. Do we agree to follow the course of action that I outlined?

*Members indicated agreement.*

**The Convener:** On section 65, "Preliminary order where child to be adopted abroad", the committee asked the Executive to clarify the intended use of the power. The Executive has explained that the power will specify administrative preconditions on the granting of the order by the court. Are we content with the power and that it is subject to the negative procedure?

*Members indicated agreement.*

**The Convener:** The provision in section 66 raises the same question about the level of scrutiny as was raised by section 64(8), which we discussed earlier. In this case, the child is being taken out of the United Kingdom for adoption.

Are we similarly content with the power and that it is subject to the affirmative procedure in the first instance and the negative thereafter?

*Members indicated agreement.*

**The Convener:** On section 67, "Regulations under section 64: offences", we asked the Executive about the scope of the power and how it envisages using it. The Executive has said that the power is intended to extend the time for compliance with the conditions and requirements set out in section 64.

**Mr Maxwell:** The provision is practical and sensible. As the legal brief points out, however, if the issue had been explained in the delegated powers memorandum in the first place, we would not have needed to enter into this discussion.

**The Convener:** Are we content with the power and that it is subject to the negative procedure?

*Members indicated agreement.*

**The Convener:** On section 72, "Power to charge", we asked the Executive to explain why the determination of fees was not to be provided in

a statutory instrument. The Executive has argued in its response that its approach is consistent with that taken in England and Wales and that its intention is to take a unified approach to fees charged in the UK. The legal brief suggests that it would be possible to have an SSI and maintain a unified approach. What are members' views on this issue?

**Mr Macintosh:** I think that we should pass it to the lead committee. The Executive could have taken either route. It chose to take this route and that is fine by me.

10:45

**The Convener:** Is this something that we feel strongly about or should we simply report what the Executive has told us?

**Mr Maxwell:** I suggest that we just report it. I agree with the points that were made in the legal brief about the irrelevance of the Executive's argument. We have had other examples of things being done differently but with the same end in sight. It does not seem to be a reasonable argument that we must have exactly the same process as England and Wales in order to reach the same end. I accept what the legal brief says, but agree with Ken Macintosh that we should just pass on our comments to the lead committee.

**The Convener:** The other thing that our legal advisers have told me is that, in plant health regulations, the Executive has gone down the different route of using an SSI.

**Mr Maxwell:** Ken pointed out that the Executive could have chosen either route. There is not a lot to say beyond that, whether or not you agree with the choice. Perhaps we could inform the lead committee of the point that you have just made.

**The Convener:** I will ask our legal advisers for fuller advice on that.

**Mr Maxwell:** Is it just me or do we always use plant health regulations as an example? They seem to come up rather a lot.

**The Convener:** Are members content to follow the suggested action?

*Members indicated agreement.*

**The Convener:** On section 75, "Section 74: supplementary provision", we asked why this procedural matter was to be determined by ministers in regulations and not by the court itself. In its response, the Executive has indicated that the detail of the annulment application should be amalgamated into the regulations that ministers plan to make.

Are we content with the power and that it is subject to the negative procedure?

*Members indicated agreement.*

**The Convener:** On section 78, “Disclosure of medical information about parents of child”, the concerns that we raised were similar to those that we raised on section 40, which we discussed earlier. We asked the Executive to provide clarification of its decision to delegate the power and why it will be subject only to the negative procedure. It has undertaken to consider the matter further at stage 2.

Are we content to monitor the position at stage 2 and to report our concerns and the Executive's response to the lead committee?

*Members indicated agreement.*

**The Convener:** With regard to the Registrar General, we asked the Executive to confirm whether it intends regulations made by the Registrar General to be exercisable by statutory instrument. The Executive has confirmed that that is its intention and that it intends to bring forward an amendment at stage 2.

Are we content with the response?

*Members indicated agreement.*

### **Police, Public Order and Criminal Justice (Scotland) Bill: as amended at Stage 2**

**The Convener:** We will consider the bill today and next week. The stage 3 debate will be held on Thursday 25 May.

On section 4, “Strategic priorities of the Authority”, members may recall that, last December, we asked the Executive to re-examine its decision not to make the determination on the strategic priorities of the Scottish police services authority in the form of a statutory instrument. Members will have received a copy of the Executive's response with their papers. It gives a number of examples of times when the Executive has followed a route similar to that which it has taken in this instance. With regard to the education example, the Executive points out that that was completely different, as it affected every school.

Are we content to accept the provision as currently drafted, or do we want to pursue the point with the Executive?

**Mr Macintosh:** The Executive makes a good case. Again, this is a situation in which it could have followed various routes and there would have been precedents for doing so. There are acts that deal with police powers and police bodies and leave matters to ministerial direction, while the Standards in Scotland's Schools etc Act 2000 says that the ministers' decisions about national priorities must come before the Parliament. Do we have time to draw that to the attention of the lead committee?

**The Convener:** We will have.

**Mr Macintosh:** We should do that, because the sort of control that is exercised over such bodies really makes which route the Executive goes a matter of policy. The Executive certainly makes a case that what ministers must direct are Executive actions that are mostly administrative.

**The Convener:** According to the clerk, if we pass any points to the lead committee this week it will be unable to consider them. We should report straight to the Parliament.

**Mr Maxwell:** I was not entirely convinced by the argument in the Executive's letter that the example from the 2000 act is about national priorities and that the bill is not. My understanding is that both the bodies referred to—the Scottish crime and drug enforcement agency and the Scottish police services authority—will be national bodies and not localised in any way. They will stand apart from the various police forces. If national priorities in education can be put forward, I do not see why national priorities for those two national bodies cannot be put forward in the same way. The Executive's argument is weak. That said, I do not have any particular problem with the issue; it is just that the Executive's explanation does not really stand up.

**Murray Tosh (West of Scotland) (Con):** I have some sympathy with that, but the Executive makes it clear that it will determine strategic priorities by means that it says will be “consultative and transparent”. That takes care of any practical concerns that we might have.

**The Convener:** You are right. The Executive makes a big thing about being consultative and transparent. I propose that we report to the Parliament that we have got our clarification.

*Members indicated agreement.*

**The Convener:** We move to further and amended delegated powers. On section 21, “Regulations relating to the Agency”, we had no observations at stage 1 on the powers contained in section 21(1). The additional powers simply correct omissions from the original list. Are members content with the powers and that they are subject to the negative procedure?

*Members indicated agreement.*

**The Convener:** On section 37, “Power of Commissioner to discontinue reconsideration” section 37(3)(c) has been amended in relation to the commissioner giving directions to the reconsidering authority to consider a complaint. The change widens the category of people to whom such directions may be given. The committee was content with the power in its original form. Are we content with the power and that it is subject to the negative procedure?

*Members indicated agreement.*



**The Convener:** New section 72B, "Sex offender notification requirements", amends section 83 of the Sexual Offences Act 2003. The amendment provides a general regulation-making power for ministers to extend the range of information relevant to sex offenders that they must notify to the police. This is an important power, which has serious implications for offenders, including under the ECHR. There is quite a bit in paragraph 65 of the legal brief about what information could be notified to the police. I am looking for members' views on that.

**Mr Maxwell:** I do not have any problem with this. There was a wide-ranging discussion in the Justice 2 Committee on the power and a great deal of concern about some of the other areas that it could be used for, but the Executive gave clear policy reasons for including passport and bank details, which were accepted by the lead committee, and reasons why some of the other areas would not be included. There was also a debate about other possibilities in future. It seemed entirely reasonable to the Justice 2 Committee that, on a policy basis, those should be subject to regulation rather than being in the bill.

**The Convener:** Are we agreed that the power should be subject to the affirmative procedure?

*Members indicated agreement.*

**The Convener:** New section 72B(5) amends section 84 of the 2003 act. This power is consequential on the power in section 83(5)(i) of the 2003 act, which we have just discussed. Are members okay with this section?

*Members indicated agreement.*

**The Convener:** New section 72C, "Information about release: power to require giving of specified information", amends section 96 of the 2003 act, "Information about release or transfer". The effect of the amendments is that ministers will have the power to include in the regulations a provision requiring a person to provide notice of any information about a sex offender that is listed in the regulations when giving notice. The question is whether members are content that the power be delegated and, if so, whether affirmative rather than negative procedure is more appropriate. Paragraph 72 of the legal brief outlines some of the issues about how that might work in practice.

**Mr Maxwell:** I had not previously noticed the last sentence of paragraph 72, which says that the power may require

"a responsible person to provide a photograph of any part of the offender."

Is that really what it means?

**The Convener:** Yes.

**Mr Maxwell:** I will say no more on that.

**The Convener:** Is the negative procedure sufficient, or should it be affirmative?

**Mr Macintosh:** Negative is fine.

**Mr Maxwell:** The negative procedure is used because it is mostly information such as a person's address and date of birth. I do not have any problem with it.

**The Convener:** Should we ask for more clarification on how the powers might operate in practice?

**Murray Tosh:** There is scope to ask why the negative procedure is proposed. We have just agreed that quite significant powers with ECHR implications should properly be addressed through the affirmative procedure, given the way in which the power can be extended. While I would not go as far as paragraph 70 of the legal brief and say that a conclusion on one part shall be determined by a conclusion on another part, it strikes me that there is at least an analogy here, which is that the powers are being extended in ways that we cannot imagine at the moment. It would be interesting to know why the Executive does not consider the affirmative procedure appropriate.

**The Convener:** We can ask for clarification on that.

**Murray Tosh:** The legal advisers look deeply concerned.

**The Convener:** They were concerned about the timing, but there is time.

**Mr Maxwell:** Surely there is not time. Stage 3 of the bill is next week.

**The Convener:** It is a week on Thursday, so we could get a response back by next week. Is it agreed that we will ask for a bit more clarification?

*Members indicated agreement.*

**The Convener:** Section 76(1)(b), in section 76, "Assessment following positive test under section 20A of the 1995 Act", has been removed from the bill as the power was regarded as superfluous. Are members content simply to note that?

*Members indicated agreement.*

**The Convener:** Section 86(1) is on the power to make provision in relation to the procedure to be followed in proceedings for sentence review under section 84. Following a query from the committee during stage 1, the power's procedure has been changed from affirmative to negative. I take it that we are content to note that.

*Members indicated agreement.*

**The Convener:** Section 86(3) is on the power to make provision for taking account of time spent in custody, on release on licence or on unconditional

release when a sentence is reviewed under section 84. The provisions to be contained in an order will be of a detailed and technical nature. Are we content with the power and that it is subject to the negative procedure?

**Members** *indicated agreement.*

11:00

**The Convener:** Paragraph 11(5) of schedule 1 will give ministers the power to apply the provisions of the Police (Scotland) Act 1967 to constables who are seconded to the Scottish police services authority to serve as members of its staff. The fact that the new power is not subject to the affirmative procedure is an oversight. The Executive intends to lodge amendments to correct that at stage 3. Do members accept the Executive's undertaking and that the affirmative procedure is appropriate?

**Members** *indicated agreement.*

**The Convener:** Paragraph 8 of schedule 2 will give ministers the power to apply the provisions of the 1967 act to police members of the Scottish crime and drug enforcement agency. The modification provision has been extended to include the director and deputy director of the agency and to allow subordinate legislation that has been made under the 1967 act to be applied to the director and deputy director and to police members of the agency. The Executive has agreed to lodge amendments at stage 3 to make the necessary consequential adjustments to section 93 so that the affirmative procedure is applied. Are members content?

**Members** *indicated agreement.*

**The Convener:** Paragraph 2(1) of schedule 3 will give ministers the power to make a staff transfer order. The changes that were made at stage 2 do not affect the substance of the power and were, in essence, tidying-up amendments. The committee approved the power in its original form at stage 1. Can I assume that we are content with the power, which is subject to the negative procedure?

**Members** *indicated agreement.*

## Executive Responses

### TSE (Scotland) Amendment (No 2) Regulations 2006 (SSI 2006/231)

11:01

**The Convener:** We asked the Executive to explain the reference to the slaughter of animals under section 17 of the Animal Health Act 1981 and not under sections 31 to 34 of that act. The Executive has agreed to make the necessary amendment in consolidation regulations later this year. I ask the clerk to keep an eye on the matter to check that that happens. Are members content to draw the attention of the lead committee and the Parliament to the regulations on the ground of defective drafting, as acknowledged by the Executive, and to mention what the Executive will do?

**Members** *indicated agreement.*

### Avian Influenza (H5N1 in Wild Birds) (Scotland) Amendment Order 2006 (SSI 2006/237)

**The Convener:** We raised several points on the order, to which the Executive has responded. Three further points arise, although members may want to make any points first.

**Murray Tosh:** Do you mean in relation to matters other than those that are in the legal briefing?

**The Convener:** No, I mean on the points that are in the briefing. On point 1, we could take two routes, which is why I asked for members' comments.

**Murray Tosh:** The Executive's explanation for the lack of a transposition note is not good. The Executive had time and opportunity to provide such a note in the order, which revises an earlier order, and it should have done so. We should raise that point, although the issue is not major in that it does not affect whether the legislation is operable. However, there should be a transposition note.

**The Convener:** We will draw attention to the fact that there is no transposition note.

On our points 2 and 6, the further information that we requested has been provided. Are members happy with that?

**Members** *indicated agreement.*

**The Convener:** On our points 3 to 5, the Executive has acknowledged the defective drafting and is moving to correct that, where necessary. Okay?

**Members** *indicated agreement.*

## **Draft Instruments Subject to Approval**

**Electronic Communications (Scotland) Order 2006 (draft)**

11:03

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

**Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Public Transport Users' Committee for Scotland as Specified Authority and Amendment of Specified Authorities) Order 2006 (draft)**

**The Convener:** No substantive points arise on the draft order, although we will raise some minor points with the Executive.

**Student Fees (Specification) (Scotland) Order 2006 (draft)**

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

## **Instruments Subject to Annulment**

**Plant Protection Products (Scotland) Amendment Regulations 2006 (SSI 2006/241)**

**Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2006 (SSI 2006/244)**

**National Health Service (Pharmaceutical Services) (Scotland) Amendment (No 2) Regulations 2006 (SSI 2006/245)**

**National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment (No 2) Regulations 2006 (SSI 2006/246)**

**National Health Service (General Medical Services Contracts) (Scotland) Amendment Regulations 2006 (SSI 2006/247)**

**National Health Service (Primary Medical Services Section 17C Agreements) (Scotland) Amendment Regulations 2006 (SSI 2006/248)**

11:04

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

**Gaming Act (Variation of Fees) (Scotland) Order 2006 (SSI 2006/249)**

**The Convener:** No substantial points arise on the order, although members may have views on the revocation of previous orders.

**Mr Maxwell:** We generally take the view that it is preferable to clear out previous orders. The legal brief points out that, in this case, that was a matter of choice, so it may not be unreasonable to proceed as the Executive has done. However, we normally support clearing out old stuff to prevent clutter.

**The Convener:** If you are not too worried about that, we will just leave it and simply raise with the Executive the minor point that is in the legal brief. Is that agreed?

**Members** *indicated agreement.*

### **Public Transport Users' Committee for Scotland Order 2006 (SSI 2006/250)**

**The Convener:** One minor point and a more substantial point arise. We should ask the Executive to explain the purpose of the words

"from the date of coming into force of this Order"

in article 3. As the legal brief explains, the order specifies two dates for its coming into force, so the purpose of those words is therefore obscure. Shall we ask for clarification on that point and raise the minor point?

**Members** *indicated agreement.*

### **Instrument Not Subject to Parliamentary Procedure**

#### **Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 13) (Scotland) Order 2005 Revocation Order 2006 (SSI 2006/242)**

11:06

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

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

#### **Licensing (Scotland) Act 2005 (Commencement No 1 and Transitional Provisions) Order 2006 (SSI 2006/239)**

11:06

**The Convener:** The legal brief raises a point about the vires of the order. Do members want to raise any issues?

**Mr Maxwell:** We should ask some questions on the order, because there is a question about the vires. The Executive has given a power to the chief constable of Fife, but he does not necessarily have to use that power within Fife. That may be because of a problem with the drafting of the primary legislation, the Licensing (Scotland) Act 2005, but it seems odd that the use of the power is not limited geographically, given that the intention is to allow a pilot scheme within Fife. If a person who is under 18 is given permission from the chief constable to buy alcohol as part of the pilot scheme and then buys alcohol outwith Fife, would that be an offence? I suspect that it probably would not be an offence, because the order does not limit the chief constable's power to Fife. We need to raise several queries with the Executive to clarify what the purpose is and the reason why the order is drafted as it is. If the reason is a drafting problem with the Licensing (Scotland) Act 2005, the Executive should come clean about that.

In practice, it will probably be all right on the night. The chief constable will use the power within Fife. If someone from outside Fife applied to the scheme, he would refuse. If someone used the power outwith Fife, he would rescind his decision to grant his authority. The order will probably be okay in practice, but it seems a bit odd.

**The Convener:** The legal brief suggests that the reason is to do with the drafting of the enabling legislation. Do members agree to raise that issue with the Executive?

**Members** *indicated agreement.*

**Human Tissue (Scotland) Act 2006  
(Commencement) Order 2006  
(SSI 2006/251)**

**The Convener:** No substantive points arise, although we will raise a minor point with the Executive, if members agree.

**Members** *indicated agreement.*

**The Convener:** I thank colleagues for coming. The committee's next meeting will be on Tuesday 23 May.

*Meeting closed at 11:09.*



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