SUBORDINATE LEGISLATION COMMITTEE

Tuesday 31 October 2006

Session 2

£5.00

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SUBORDINATE LEGISLATION COMMITTEE
29th 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)
*Euan Robson (Roxburgh and Berwickshire) (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)

*attended

THE FOLLOWING ALSO ATTENDED:

Mairi Gibson (Legal Adviser)

CLERK TO THE COMMITTEE

Ruth Cooper

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 31 October 2006

[THE CONVENER *opened the meeting at 10:34*]

Interests

The Convener (Dr Sylvia Jackson): I welcome members to the 29th meeting for 2006 of the Subordinate Legislation Committee. I have received apologies from Ken Macintosh, and we wish him well.

We are joined this morning by Euan Robson, who is attending his first meeting. I invite him to declare any interests.

Euan Robson (Roxburgh and Berwickshire) (LD): I have no interests to declare other than those that are declared in the register of members' interests.

The Convener: We wish to put on record our thanks to Jamie Stone for his contribution on the committee.

Gordon Jackson (Glasgow Govan) (Lab): I missed that bit.

Delegated Powers Scrutiny

Custodial Sentences and Weapons (Scotland) Bill: Stage 1

10:35

The Convener: As the committee will be aware, the bill covers two broad policy areas—custodial sentences and new controls on the sale of non-domestic knives and swords.

Section 2, "Parole Board rules", confers powers on ministers to make Parole Board rules. Such a power is precedented, and the approach mirrors that taken in previous acts. The question is whether we want to ask the Executive why it opted to take the approach of applying the provisions of section 210 of the Local Government (Scotland) Act 1973, rather than inserting a tailor-made power into the bill. Members will also see that the power to make the rules is subject to the negative procedure.

Mr Stewart Maxwell (West of Scotland) (SNP): I agree that that is a question worth asking. For simplicity for the reader, it might have been easier if there had been a tailor-made power in the bill rather than a reference to other legislation. I do not have any particular problem with that, but it is worth asking the question.

The Convener: Do members agree to do that?

Members *indicated agreement.*

The Convener: Section 4(2) includes the power to amend definitions of certain sentences. Members will see from the legal brief that it is similar to the powers in sections 6(10), 36(1)(b) and 36(9)(b), the last two of which refer to time limits. One issue is that if we change one provision, we might have to change the others, although I do not know.

With that in mind, we come to the next point, which is about something that pervades the bill—the number of Henry VIII powers. The power in section 4(2) is extremely wide, although it is subject to the affirmative procedure. I am looking for the committee's view on that and whether we want to ask the Executive for further clarification.

Murray Tosh (West of Scotland) (Con): From the general point that runs through the briefing, it is clear that our legal advisers are unhappy with the scope of the Henry VIII powers.

We seem to have had quite a journey in the past three to four years with Henry VIII powers. We started with modest and barely objectionable proposals. We occasionally expressed the fear that there would be a ratchet at work and that, if the door was opened, it would be pushed wider

and wider, but in both formal and informal discussions with the Executive and officials, we were assured that that would not be the case. The powers in this bill, however, seem to be a significant widening, not necessarily of the scope of what each provision covers but of the principle that they establish and the precedent that they set. Every time that we expand a power significantly sets a precedent. It lays a marker that the committees and Parliament have accepted a little more, and the Executive comes back and takes more the next time.

I should not underestimate the interests of the lead committee, but it will be concerned with the bill's content rather than its procedures. We may appear a bunch of anoraks, and if it gets sticky, somebody might come along in full John Reid mode and suggest that we are trying to get in the way of dealing with crime and dangerous weapons. However, the principles are important. They strike at the heart of what we do and the balance between the Executive and Parliament, as well as the balance between subordinate and primary legislation. The briefing suggests valid, relevant and pertinent questions to ask and justifications to seek. We should make all the approaches and treat them as a matter of gravity.

Euan Robson: Forgive my ignorance, but what is a Henry VIII power? I have heard of Henry VIII and his wives, but not the power.

The Convener: It is where the Executive is given power basically to do many things. It is difficult to pinpoint exactly what it might do.

Murray Tosh: It is the power to amend primary legislation by regulation—often subject to the negative procedure—that the Parliament cannot amend. Parliament, in its broadest sense, has chosen not to challenge that since about 1967.

Once the need for regulations to be passed and put in place in order to implement bills gains momentum and the steam-roller of party whipping and so on begins, it cannot be stopped. In the past few years, more and more use has been made of Henry VIII powers—which, I assume, were given that name because Henry VIII was regarded as someone who was not fully sensitive to proper procedures and practices in implementing his decisions. I suppose that it is quite a deadly insult, but increasingly it appears to be justified.

Euan Robson: Is the term used only by the committee, or is it used more broadly?

Mr Maxwell: It is a broader term.

The Convener: I should add that, when we took evidence last week from two academics, we had a lot of discussion about problems associated with Henry VIII powers, particularly, as Murray Tosh has pointed out, on the increasing use of regulation to implement provisions in framework bills. We are well aware of the issues.

Euan Robson: It used to be called government by statutory instrument.

Mr Maxwell: That is different.

Euan Robson: Is it?

Mr Maxwell: I am sure that Gordon Jackson can explain it better than I can.

The Convener: Before things disintegrate, I wonder whether we can return to the power in section 4(2). Paragraph 16 of our legal brief pinpoints this particular issue in saying that the power

"enables Scottish Ministers to determine the cut-off point between custody-only and custody and community sentences. This power could have a huge impact on the number of prisoners who will be entitled to unconditional release, and those who are brought into the scheme for community licence and curfew orders".

Obviously, that will have a profound effect on the bill's operation.

Mr Maxwell: Although I understand the Executive's argument that, because it is focused on one particular aspect, the scope of the power is narrow, I believe that its impact will be extremely wide. Of course, we often debate whether a power's scope is wide or narrow, but this could well change the definitions of the terms of imprisonment set out in section 4(1) and other provisions in the bill. After all, the crux of this part of the bill is the balance in custody and community sentences and various cut-off points such as the 15-day cut-off in custody-only and custody and community sentences and the point at which the custody part forms 50 per cent, 75 per cent or 100 per cent of a sentence. As a member of the Justice 2 Committee, I know a bit about this bill, and I think it crucial to flag up the fact that Henry VIII provisions are being used to change such cut-off points. First, however, we should ask the Executive why it thinks that such powers are necessary or, in fact, desirable.

The Convener: We will ask the Executive about the scope of these powers and, indeed, seek further justification for the use of Henry VIII provisions on what, as Stewart Maxwell pointed out, is a fundamental part of the bill. Are members agreed?

Members *indicated agreement.*

The Convener: The power in section 6(10), which alters the proportion of the sentence forming the custody part, is similar to the power that we have just discussed. Section 6(1) does not use the term "custody and community sentence". As a result, if the power in section 4(2) to vary definitions is exercised, any such variation will not

affect section 6(1). We should write to the Executive to clarify that point. It might well be a slip, but I am not sure how the two subsections interrelate.

Gordon Jackson: That aside, I think that this power is fiercely—indeed, ridiculously—big. At the moment, the bill says:

"An order specifying a custody part must specify that the custody part is one-half of the sentence".

We will come later to how one works out the custody part, because it can be more than one half of the sentence. Unless I am wrong, under this power, you could use a statutory instrument to amend that figure to, say, 98 per cent.

Mr Maxwell: Or 2 per cent.

Gordon Jackson: I have to say that in the real world the figure is more likely to be amended to 98 per cent.

Mr Maxwell: In effect, you can do whatever you want.

10:45

The Convener: I gather that the maximum length of the custody part is three quarters of the sentence.

Gordon Jackson: But how?

The Convener: Well, I will ask the legal adviser to—

Gordon Jackson: I suppose that it could be. As you say, section 6(6) will prevent anyone from increasing the custody part to more than three quarters of the sentence. However, what if the proportion in section 6(3) were to be increased?

The Convener: I will ask the legal adviser to clarify the point.

Gordon Jackson: I see what you mean, convener. However, let me explain to the legal adviser what is on my mind. Section 6(10) can amend section 6(3), which says:

"An order specifying a custody part must specify that the custody part is one-half of the sentence".

In other words, the sheriff must make the custody part at least half of the sentence. However, if it suits him or if he has good reason under section 6(6), he can increase the length of the custody part, but to no more than three quarters of the sentence. What if the Executive decided to amend section 6(3) so that the order must specify that the custody part is 98 per cent of the sentence? Some might say that, in that case, section 6(6) would simply fly off. However, others might feel that there is a tension in the section—given that, after all, one subsection stipulates that a custody part must be more than nine tenths of the sentence and another subsection says that the custody part cannot be more than three quarters of the sentence. What if the Executive were to amend section 6(3) to say that, from now on, the custody part must be, say, 99 per cent of the sentence?

Murray Tosh: Could the Executive do that under section 47?

Gordon Jackson: The power is very big.

The Convener: Shall I put that question to the legal adviser?

Gordon Jackson: Yes—I want to understand the point.

Mairi Gibson (Legal Adviser): I took it that the power to amend in section 6(10) has to be read alongside the provision in section 6(6), which operates as a restriction on it.

Gordon Jackson: That might well be right but, even so, a sheriff can make the custody part three quarters of a sentence only in exceptional circumstances. It is not the norm. On the other hand, the Executive could amend the custody part to make it up to three quarters of a sentence, which is a big difference. If a particular Government decided in its wisdom to follow a very punishment and law-and-order led agenda— although it appears that every Government is trying to outdo the other in that respect—it could use the power to amend in that way. I am not saying that that would be wrong, but it is a fierce amendment to make in an SSI. We are always very strict with—and, indeed, frown on—SSIs that give people the jail or change the punishment that they suffer. To be blunt, I think that, in this case, an SSI could be used to increase the term of imprisonment that people serve. At the moment, in handing down a four-year sentence, a judge would take into account early release and specify two years as the punishment part of the sentence. The Executive could, through an SSI, tell the judges to make it three years. It just seems to be a very big power to exercise in subordinate legislation.

The Convener: What was your earlier point, Murray?

Murray Tosh: I was wondering whether section 47, which is the now statutory section giving ministers the power to

"make … incidental, supplementary, consequential, transitory, transitional or saving provision"

including modifying primary legislation, could be used to amend the 75 per cent maximum in section 6(6) if it were argued that, say, 80 per cent would achieve the policy aim instead.

Gordon Jackson: I do not think so.

The Convener: We can ask the Executive that question.

Murray Tosh: It would be useful to get its answer on the record.

Gordon Jackson: I agree that we should ask the question, but I do not think that the Executive could use section 47 to amend section 6(6). It would be hard-pushed to call such a provision "incidental"; after all, we are talking about a real change.

That said, I still think that the power in section 6(10) is fierce as far as penal statutes are concerned.

Murray Tosh: I am not suggesting that we dilute in any way the force of that question or the supporting legal analysis.

Mr Maxwell: During the first oral evidence session on the bill in the Justice 2 Committee, we focused on the provision in section 6(6), which says:

"The court may not make an order specifying a custody part which is greater than three quarters of the sentence."

We discussed why the decision had been made to draw the line at 75 per cent and not 60 per cent or 80 per cent. I suspect that—at the very least—amendments will be lodged at stage 2 to move the line. As the bill progresses, the custody part could therefore be made much greater—regardless of the power in section 6(10).

Gordon Jackson: Such amendment could make section 6(10) even more powerful.

Mr Maxwell: That is absolutely right.

Gordon Jackson: Whether the bill specified that the custody part could be 60 per cent or 80 per cent of the sentence, I would be concerned about the principle of using a statutory instrument to change penal sentences in such a way. We have never approved of such a use of subordinate legislation, which would be very bad.

The Convener: In summary, we are concerned about the relationship between sections 6(10) and 4(2), given that section 6 does not use the term, "custody and community sentence". We also want to flag up Gordon Jackson's point about the power in section 6(10) and Murray Tosh's point about how the Executive might use the power in section 47 in a way that would impact on the provisions in section 6. We should also remember that an order made under section 6(10) would be subject to the negative procedure—

Gordon Jackson: That makes the provision even worse.

The Convener: We will make those four points to the Executive.

Gordon Jackson: For the record, my objection is not just to the use of the negative procedure. Even if the Executive decided that the affirmative procedure would be used, I would not be at all happy about the power in section 6(10) to amend by statutory instrument the approach to penal sentencing.

I should explain for Euan Robson's benefit that meetings of the Subordinate Legislation Committee are not usually this exciting.

The Convener: It does not get any more exciting than this.

Section 30(5) contains a Henry VIII power to amend, add or remove licence conditions while a person is detained in prison. An order made under section 30(5) would be subject to the negative procedure. The justification offered by the Executive in the delegated powers memorandum refers to "future developments", which is rather vague. I suggest that we ask the Executive to elaborate. Perhaps the Executive's reply will tell us whether any restriction of the power is warranted.

Mr Maxwell: We want to ask the Executive what "future developments" it envisages, given that it does not specify what it means by the term.

The Convener: That is fair enough.

Sections 36(1)(b), 36(9)(a) and 36(9)(b) raise an issue that is similar to the issue that we considered in relation to sections 4(2) and 6(10). Does Gordon Jackson want to comment on the provisions, which are to do with curfew licences?

Gordon Jackson: The issue is the same as in sections 4(2) and 6(10).

Murray Tosh: It is curious that the Executive has accepted that an order made under section 36(1)(b) would be subject to the affirmative procedure, whereas an order made under section 6(10) would be subject to the negative procedure, although such an order would be equally if not more substantive.

Gordon Jackson: It would be more substantive.

The Convener: We can add weight to our argument by making that point in our comments on section 36.

Murray Tosh: I would be more inclined to make the point in our comments on section 6(10).

The Convener: That is what I meant.

Gordon Jackson: I am probably saying this at the wrong moment, but I expect the Executive to agree to change the procedure for orders made in exercise of the power in section 6(10), given that the power is so big. I am very surprised that such orders would not be subject to the affirmative procedure. To be fair to the Executive, it usually requires such wide powers to be subject to the affirmative procedure. We will see what it does on this occasion.

The Convener: On section 36(1)(b), our legal adviser suggests that we ask the Executive to provide further information on the types of prisoner to be specified, to enable us to assess the delegated power, and to explain further why a delegated power is required in relation to section 36(9)(a)—we should get that on the record. Are members content to ask the Executive about those matters?

Members *indicated agreement.*

The Convener: Section 38(2) will confer on the Scottish ministers a power to make regulations to specify devices for the remote monitoring of curfew conditions. In the legal brief, our adviser notes that such regulations would be likely to be technical. The provision seems straightforward.

Section 43 will insert new sections into the Civic Government (Scotland) Act 1982. Proposed new section 27A will make provision on knife dealers' licences. Orders made under the Henry VIII power in proposed new section 27A(6) of the 1982 act would be subject to the negative procedure.

Murray Tosh: In paragraph 65 of the legal brief, it is suggested that the Executive could have considered an alternative approach. It might be useful to probe the Executive's thinking on the matter. The alternative approach would achieve the flexibility that is required without involving the use of statutory instruments to modify primary legislation. I hope that the Executive will see the wisdom and value of such an approach.

The Convener: Given that we are talking about a Henry VIII power, are members content that the negative procedure would be used?

Murray Tosh: If we are forced to have such a power in the bill, we would rather that orders were subject to the affirmative procedure. However, that does not mean that we would be content that the power would be exercised by statutory instrument subject to the affirmative procedure. We might have expected the Executive to have built in concessions to sweeten the pill—as it might have done in relation to section 6(10) of the bill.

The Convener: We will consider what the Executive says about the alternative approach.

Are members content with the power in proposed new section 27C of the 1982 act? It seems straightforward.

Members *indicated agreement.*

The Convener: We move on to proposed new section 27K of the 1982 act. I think that members, like me, became a little confused when we considered this part of the legal brief. New section 27K will confer on the Scottish ministers powers to prescribe by act of adjournal the manner of application for a recovery order. I refer members to the points made in the legal brief about proposed new sections 27K(3) and 27K(4). We should ask the Executive why no mention is made of the powers in the DPM and, more important, whether it consulted the Lord President of the Court of Session on the need for the powers.

Mr Maxwell: I agree. We recently discussed the failure to mention certain delegated powers in DPMs, although chapter 9 of the standing orders of the Scottish Parliament requires that each such power in a bill should be included in the DPM. We should make the point again to the Executive.

The Convener: Okay.

Exercise of the power in proposed new section 27K(4) of the 1982 act would be subject to the negative procedure.

Proposed new section 27K(7) of the 1982 act will confer on the Scottish ministers a power in relation to the disposal of forfeited property. The provision is straightforward.

Proposed new section 27Q of the 1982 act will confer on the Scottish ministers a Henry VIII power by order to provide that certain offences under the 1982 act and the bill shall be subject to exceptions as specified in the order. The order would be subject to the negative procedure. Our legal adviser suggested that the power might have been drawn more widely than is necessary. In the DPM, the Executive suggested that the power might be used to except a test purchasing scheme, but gave no further explanation for the power. Shall we press the Executive on the matter?

Mr Maxwell: The power is not the same as other powers about which we are concerned, but we should ask the Executive for a fuller explanation of how it intends to use it. We can then consider the Executive's response.

The Convener: Okay, that is agreed.

Section 45 will confer on the Scottish ministers another Henry VIII power, to create exceptions from the offence created in section 141 of the Criminal Justice Act 1988. Exercise of the power would be by order subject to the affirmative procedure. Are members content to press the Executive for more explanation of the justification for the power?

Members *indicated agreement.*

11:00

The Convener: Section 46 will insert proposed new section 141ZA into the 1988 act and confer on the Scottish ministers a power to modify section 141(1) of that act, to require that section to apply to swords. The power is fairly straightforward.

We come now to a point that Murray Tosh has raised. Section 47 of the bill is on the power to make

"incidental, supplementary, consequential, transitory, transitional or saving provision",

including the modification of primary legislation. The power is subject to negative procedure. Do we want to ask the Executive why it is necessary to extend the power so as to enable amendment of the bill itself? Murray, do you want to add anything?

Murray Tosh: No—you have posed the pertinent question. It will be interesting to hear the Executive's reasons.

The Convener: I gather that the issue is similar to one that arose with the Protection of Vulnerable Groups (Scotland) Bill, which we discussed last week.

Section 50 of the Custodial Sentences and Weapons (Scotland) Bill contains the power to commence the bill's provisions. As paragraph 98 of our legal brief reminds us, the issue came up in our discussions last week with the two academics. Do members wish to add anything?

Members: No.

The Convener: Paragraphs 3(1) and 3(2) of schedule 1 were straightforward. Paragraph 17 is on regulations for the tribunal, its procedure and suspension of its members. Issues arise over the right of appeal.

Murray Tosh: Our legal advice is that it is not clear whether a right of appeal is intended. We should therefore ask the Executive about its intentions in relation to the right of appeal and the other points that are identified in paragraph 105 of our legal brief.

The Convener: Are you referring to

"consultation with the Scottish Committee of the Council on Tribunals"?

Murray Tosh: I am interested in whether placing an appeal in regulations would strike the right balance between primary and subordinate legislation. The brief highlights two points—but I am not ruling out asking the Executive about the point that you have raised.

The Convener: Are we content that the power in paragraph 17 be subject to affirmative procedure?

Members *indicated agreement.*

The Convener: When we write to the Executive, should we make any general comments on the balance in the bill or on its use of Henry VIII powers?

Murray Tosh: We have been making such points throughout this morning's discussion. I made some comments at the beginning, and other members have chipped in. The gist of our opinions should be fairly clear. We might send the people at the Executive the *Official Report* as well, in case they do not read it.

Gordon Jackson: When will we get answers back? When will the bill next be on the agenda?

The Convener: In a fortnight.

Gordon Jackson: I will be away in a fortnight.

The Convener: The clerk is telling me that we could speed things up.

Gordon Jackson: Could that be done for next week?

The Convener: We cannot promise, but we will try.

Murray Tosh: If that is not possible, would anything be lost in deferring our consideration for a further week, depending on the timetable of the Justice 2 Committee?

The Convener: We will consider our timetable and the clutch of bills that are coming up. We will have to consider our workload.

Gordon Jackson: I do not want things to be arranged just for me, but I do have a particular interest in these issues. I feel strongly about them.

The Convener: We welcome your expertise. I am being advised that we could consider the issue in three weeks' time.

Executive Responses

Land Registration (Scotland) Rules 2006 (SSI 2006/485)

11:03

The Convener: Agenda item 3 is Executive responses, of which we have a number. On the Land Registration (Scotland) Rules 2006, we asked the Executive why part A of schedule 2 includes the words "select option from list" when the schedule does not contain any relevant list. Members will have seen from the Executive's letter that it is talking about a form of drop-down menu.

Mr Maxwell: Is that what it was talking about?

The Convener: Yes, although it was not terribly clear. Do we want to report to the lead committee with the further information that has been supplied to us?

Members *indicated agreement.*

Curd Cheese (Restriction on Placing on the Market) (Scotland) Regulations 2006 (SSI 2006/512)

The Convener: We asked the Executive what was meant by the word "product" in regulation 5(1). The Executive has replied that it usually means food products. However, the letter also mentions "receptacles"—

Mr Maxwell:—or anything that an inspector may have to inspect.

Gordon Jackson: I am smiling because there is a wonderful word in paragraph 117 of our legal brief. "Altenraitvely" is a great word.

The Convener: Yes—I am glad it amused you.

We also asked the Executive about the unduly limited use of the power in relation to regulation 7(2). We felt that the meaning could have been clearer. According to our legal brief, it was intended that

"authorised officers should have all the pow ers … as conferred by section 32 of the Food Safety Act 1990."

Shall we report to the lead committee and the Parliament on the information that we asked for, pointing out that things could have been clearer?

Members *indicated agreement.*

Murray Tosh: It is a great pity that Jamie Stone could not be at the committee to deal with these regulations, given his expertise.

Euan Robson: I will gladly give way to him.

Murray Tosh: You have worked that out already.

The Convener: A drafting point also arises, but we can raise that in an informal letter.

Assynt - Coigach Area Protection Variation Order 2006 (SSI 2006/488)

The Convener: I am sure that members will make a few comments on the letter that we have received from the Executive on this order. We asked what complaints had been received and how they were dealt with.

Mr Maxwell: Only two complaints were received, and they were deemed insignificant or frivolous. I do not know whether they were, but the Executive has decided that they were.

The Convener: We have received the information that we requested; we have also received the results of the consultation. I assume that we will pass that on to the Parliament. Is that okay?

Members *indicated agreement.*

Draft Instruments Subject to Approval

Budget (Scotland) Act 2006 Amendment Order 2006 (draft)

11:07

The Convener: No points arise on the draft order.

Personal Injuries (NHS Charges) (Amounts) (Scotland) Regulations 2006 (draft)

The Convener: Our legal brief suggests that we ask the Executive to confirm that the provisions of the Social Care (Community Health and Standards) Act 2003 to which the regulations relate will be commenced substantively before 29 January 2007—that being the date specified for the coming into force of the draft regulations. It is just a case of tying the draft regulations up with the English legislation.

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 3) Order 2006 (draft)

The Convener: No points arise on the draft order.

Draft Code of Practice Subject to Annulment

Environmental Protection Act 1990: Code of Practice on Litter and Refuse (Scotland) Act 2006 (SE/2006/164)

11:07

The Convener: No substantive points arise on the draft code of practice, but minor points arise to do with the citation of powers and the laying power. We can mention those minor points informally.

Instruments Subject to Annulment

Local Government Pension Scheme (Scotland) Amendment (No 3) Regulations 2006 (SSI 2006/514)

11:08

The Convener: Do members have any points to raise on the regulations?

Members: No.

Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2006 (SSI 2006/515)

The Convener: Does Gordon Jackson have to declare an interest in relation to these regulations?

Gordon Jackson: The briefing paper that I have in front of me indicates that the regulations make provision for increases in the legal aid rates payable to solicitors. I am not a solicitor.

The Convener: Okay.

Increases are to be backdated by 11 months, and we must report if an instrument purports to have retrospective effect but the parent statute confers no such express authority. No such power has been found in the Legal Aid (Scotland) Act 1986. It is therefore suggested that we ask the Executive what power in the parent act authorises the retrospective effect.

Members *indicated agreement.*

Euan Robson: Excuse my asking, but what is "trite" law?

The Convener: I have not got a clue.

Gordon Jackson: Trite law is law that, if you do not know it, you should. It is like saying that two and two is four. For example, there is a presumption of innocence in Scotland. That is trite law—something that everybody knows.

The Convener: Thank you. You will be needed at every single committee meeting.

Does Murray Tosh want to add something?

Murray Tosh: No, I was only going to be frivolous and—

The Convener: Frivolous and insignificant.

Murray Tosh: No, I would never admit to that.

Gordon Jackson: A colleague of mine once made a submission in court saying that the point he was making was trite, to which the judge replied, "Close." [*Laughter.*]

The Convener: We will move swiftly on.

Feeding Stuffs (Scotland) Amendment Regulations 2006 (SSI 2006/516)

The Convener: No points arise on the regulations.

Plastic Materials and Articles in Contact with Food (Scotland) (No 2) Regulations 2006 (SSI 2006/517)

The Convener: A number of minor points arise on the regulations but we can raise them in an informal letter.

Instrument Not Laid Before the Parliament

Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Equality Act 2006 etc) 2006 (SSI 2006/509)

11:09

The Convener: No substantive points arise on the act of sederunt, but there is a minor point that we can raise informally in a letter.

The next meeting of the committee will be on Tuesday 7 November, when we will take evidence from the Minister for Parliamentary Business in relation to our inquiry into the regulatory framework in Scotland.

Gordon Jackson: Oh good.

Mr Maxwell: That will be interesting.

Meeting closed at 11:10.

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