

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 9 January 2007

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

1st Meeting 2007, Session 2

CONVENER

*Dr Sylvia Jackson (Stirling) (Lab)

DEPUTY CONVENER

*Mr Kenneth Macintosh (Eastwood) (Lab)

COMMITTEE MEMBERS

Janis Hughes (Glasgow Rutherglen) (Lab)

*Mr Adam Ingram (South of Scotland) (SNP)

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

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 9 January 2007

[THE CONVENER *opened the meeting at 10:30*]

Delegated Powers Scrutiny

Criminal Proceedings etc (Reform) (Scotland) Bill: as amended at stage 2

The Convener (Dr Sylvia Jackson): I welcome members to the first meeting in 2007 of the Subordinate Legislation Committee. I wish everybody a happy new year. I have received apologies from Janis Hughes, but I do not have any apologies from any other members, so we expect to see those who are not yet here later.

Agenda item 1 is delegated powers scrutiny of the Criminal Proceedings etc (Reform) (Scotland) Bill as amended at stage 2. Some new powers have been added and some existing powers have been substantially altered since we considered the bill at stage 1. The Executive has written to us separately about further amendments that it intends to make to the bill at stage 3. Members have copies of that correspondence.

The first section that concerns us is section 6(2), on the power to determine which police officers have the authority to liberate an accused person on an undertaking. This relates in particular to new section 22(1E) of the Criminal Procedure (Scotland) Act 1995, which section 6(2) of the bill introduces. In its correspondence, the Executive has indicated that it intends, at stage 3, to remove the order-making power that is provided in new section 22(1E) of the 1995 act. That proposed amendment reflects concerns that were expressed by the Justice 1 Committee at stage 2. We did not have any comments on the power at stage 1; do members have any comments on it now?

Members: No.

The Convener: Section 7A contains a power to make provision in relation to various forms of electronic documentation, storage and communication. Section 7A(2) has been amended to make it clear that the order-making powers that are given to ministers to allow further provision to be made for using and keeping electronic complaints and so on include a power to make further provision allowing requirements as to the formality and validity of documents to be satisfied by electronic means. That amendment reflected, in

part, observations that we made in our stage 1 report, which the Executive agreed to look at again at stage 2. Are members content with that amendment and with the power, which is subject to the negative procedure?

Members indicated agreement.

The Convener: Section 29A contains a new power to prescribe the form of warrant to be granted for the apprehension of an accused person for failure to appear at court. It relates to the form that court documents will take. The Executive considers that that is a matter of the kind that is generally dealt with by act of adjournal. Are you content with the new power, which will not be subject to parliamentary procedure?

Members indicated agreement.

The Convener: Section 29C contains a power to prescribe the form of written execution that may be used to evidence notice of an order to participate in an identification parade or other identification procedure. The Executive considers it appropriate to exercise the new power through an act of adjournal, which means, once again, that it will not be subject to parliamentary procedure. Are members happy with the power?

Members indicated agreement.

The Convener: The next matter relates to section 31A and the power to prescribe the form of written execution that may be used to evidence service of bills of suspension, advocacy and petitions to the nobile officium—which I hope I have pronounced correctly. This relates in particular to new section 298A(7)(a) of the 1995 act, which section 31A of the bill introduces. The reasons for delegating legislative power here, as well as the choice of form and procedure for the exercise of the power, are similar to those that were advanced in relation to the powers that we have discussed under sections 29A and 29C. Again, there is no parliamentary procedure in this instance. Are members happy with that?

Members indicated agreement.

The Convener: Subsection (3A) of section 35, “Sheriff summary: other statutory offences”, increases the maximum term of imprisonment to which a person on summary conviction is liable to 12 months. It also effects a consequential alteration to all existing penalty provisions, and it is coupled with a power to make appropriate textual amendments to those penalty provisions. Subsection (4) confers an additional power to ministers to make an order effecting similar consequential changes to powers to create relevant offences.

At stage 1, we indicated that we were content with the powers in section 35, but we suggested that it might be helpful if a generic provision along

the lines of that contained in subsection (2) was included in relation to powers to create relevant offences. Are you content with the amendment that has been made?

Members indicated agreement.

The Convener: We turn now to section 36A, particularly subsection (3), which contains the power to

“amend the specification of a maximum fine in a relevant penalty provision”.

Section 36A(1) provides that the maximum fine that may be imposed on a person following summary conviction shall in future be the statutory maximum.

Section 36A(2) provides that the statutes and subordinate legislation that create the affected offences are to be read subject to the amended maximum financial penalty.

Section 36A(3) allows ministers, by order, to make textual amendment to the maximum level of fine that is specified in the statutory offences to which subsections (1) and (2) apply.

The amendments that have been made are essentially technical, as members can see from the legal brief. Although the powers could be used to amend primary legislation—I gather that that would not be the case in substance—it is suggested that the negative procedure would provide a sufficient level of scrutiny in this instance. Are members content with the power and the procedure?

Members indicated agreement.

The Convener: Good. The reasons for the Executive’s taking the powers in new section 36A(5) are the same as those for taking the powers in subsection (3), which we have just discussed. Are members content with the power and with the fact that it is subject to the negative procedure?

Members: Yes.

The Convener: Section 39(1)(f) of the bill as introduced contained a power to make provision for fixed-penalty discounts through new section 302(7A) of the 1995 act. Comments made by the Justice 1 Committee at stage 1 led ministers to reconsider their position on the provisions. We also had some difficulties with the power, and we agreed to monitor the position at stage 2. An amendment was made by the Executive at stage 2, removing paragraphs (f) and (g) of section 39(1) and, as a consequence, the power under proposed new section 302(7A) of the 1995 act. Are we content with that amendment?

Members: Yes.

The Convener: Good. Section 43 of the bill introduces a power to make detailed provision

relating to the seizure of vehicles through new section 226D(10) of the 1995 act. The bill has been amended at stage 2 to ensure that the power that is provided in section 226D(10) of the act covers those matters that are listed in the new paragraph that was introduced into section 226D(11). Are members happy with that amendment, and with the fact that the power is subject to the negative procedure?

Murray Tosh (West of Scotland) (Con): The possibility is raised of restricting the description in some way, for example by applying the word “reasonable” to fees and charges. If we have time, it might be useful to probe that point a little further with the Executive, given the concerns that might arise about the extent of the fees and charges that are to be introduced.

The Convener: Okay. We have time, so there is no problem with doing that. Are we agreed?

Members: Agreed.

The Convener: The power contained in section 43A(1) of the bill, to make provision in Scotland implementing United Kingdom obligations

“created by or arising under”

the European Union’s framework decision on mutual recognition of financial penalties, was inserted by a stage 2 amendment. It makes provision in relation to the implementation of the framework decision of the Council of the European Union of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.

Section 43A(1) entitles ministers to make provision, by means of an order subject to the affirmative procedure, implementing any obligations created by or arising under the EU framework decision. The power is precedent in other areas. It is fairly sweeping, but the bill contains limitations on its use. It is suggested that the affirmative procedure is appropriate—unless members have any concerns.

Mr Kenneth Macintosh (Eastwood) (Lab): No, although it is worth pointing out a fact that is raised in the legal brief. This sort of EU decision used to be introduced into our law through primary legislation, but it is now being introduced by subordinate legislation. That is perhaps part of a trend towards greater use of subordinate legislation. It is worth noting that in passing.

The Convener: Nothing else, Murray?

Murray Tosh: No.

The Convener: Okay. Section 51(4) contains a power to repeal provisions of the District Courts (Scotland) Act 1975. As a result of our comments at stage 1, section 51 was amended at stage 2 in order to clarify the purpose of the power. The

amendment made it clear that the power is to be used in connection with the disestablishment of district courts. It is subject to the negative procedure.

Members will have seen the Executive's note to us, which says that, on further consideration, it thinks that the provisions require a further change, because of scope for doubt as to whether the section, in its current form, allows ministers to make an order repealing provisions of the 1975 act for the purpose of reform to the system of lay justice. Are members happy with the amendment made at stage 2, and are there any comments in relation to the proposed stage 3 amendment?

Murray Tosh: Yes and no.

Mr Macintosh: Ditto.

The Convener: That is very good. I welcome Euan Robson to the meeting. We are at section 51(5) at the moment, Euan.

Euan Robson (Roxburgh and Berwickshire) (LD): Thank you.

The Convener: Section 51(5) contains the power to apply enactments relating to justice of the peace courts to remaining district courts. The section was amended at stage 2 in order to clarify the purpose of the power. The amendment makes it clear that the section is to be used to facilitate the operation of any remaining district courts, and the power is subject to the negative procedure. Are members content with the amendment and the procedure?

Members indicated agreement.

The Convener: Section 54(7) contains the power to specify the date on which the current appointment of justices of the peace ceases to have effect. The amendment made at stage 2 is similar to the amendment made to section 61(12)—which we will come to in a moment—and reflects a suggestion that we made in relation to that subsection, where we felt that the drafting should be clarified.

Are members content with the amendment and the procedure, which is negative?

Members indicated agreement.

The Convener: Section 56(1) contains the power to make provision for the training and appraisal of justices of the peace. The section was amended at stage 2 to ensure that any order that is made under the section can apply to people who are undergoing induction training prior to their appointment as a JP. It is essentially a policy amendment and we were content with the use of the delegated power at stage 1.

Do members have any further points to make about the power and the procedure, which is negative?

Members: No.

The Convener: Section 61(12) contains the power to specify the date on which the current appointment of stipendiary magistrates ceases to have effect. The section was amended at stage 2, and the effect of that amendment is to put it beyond doubt that the day referred to in section 61(12)(b) is the same as the day referred to in section 61(12)(a). That is similar to the amendment to section 54(7), which I mentioned before.

Are members happy with the amendment and with the negative procedure?

Members indicated agreement.

Legislative Consent Memorandums

Further Education and Training Bill

10:42

The Convener: Agenda item 2 is consideration of two legislative consent memorandums, the first of which is on the Further Education and Training Bill. The Executive has lodged a legislative consent memorandum in terms of rule 9B.3.1 of standing orders. Most of the bill relates to reserved matters and applies only to England. The only provision that has been drawn to our attention is clause 10(4)(f), which relates to the provision by the Learning and Skills Council for England of services to those bodies that require them in connection with the discharge of their education and training functions. It provides that Scottish ministers may, by order subject to the negative procedure, add to the list of bodies. Do members have any points to raise?

Members: No.

The Convener: It might be best just to report to the lead committee on an informal basis. Is that okay?

Members indicated agreement.

The Convener: Before we come to the second legislative consent motion, I welcome Adam Ingram and wish him a happy new year.

Statistics and Registration Service Bill

The Convener: The next item is consideration of the LCM for the Statistics and Registration Service Bill. Again, the Executive has lodged an LCM in terms of rule 9B.3.1 of standing orders, and the committee has a remit to consider powers delegated to Scottish ministers in that bill.

There are several clauses to consider. The first is clause 6, which defines "official statistics" for the purposes of the bill. An order under subsection (1)(b) is to be made by statutory instrument and is to be subject to the affirmative procedure. The power conferred by that clause is a power to extend the statistics referred to in subsection (1)(a) and it cannot be used to amend that subsection. However, there is no restriction on the type of statistics that can be specified under the power. Although ministers are required to consult with the statistics board before making an order, the power is otherwise unrestricted.

Do members have any comments on that power? Do you want to ask the Executive for clarification, or are you happy?

Murray Tosh: I do not think that there is a problem. Given that similar powers are to be conferred on ministers in other parts of the United Kingdom, it is probably important that Scottish ministers have similar powers here. Provision for the affirmative procedure is probably sufficient protection in the circumstances. There is more worrying stuff in the bill that we should concentrate on.

10:45

The Convener: Absolutely. If that is agreed, we will move on to clause 10, "Code of Practice for National Statistics". Are members content that no issues arise here?

Members indicated agreement.

The Convener: Subsection (2) of clause 11, "Pre-release access", provides that the "appropriate authority", defined in subsection (6), may for the purposes of the code, by an order subject to the affirmative procedure, provide for rules and principles relating to the granting of pre-release access. No legal problems have been highlighted.

Are members content with that clause?

Members indicated agreement.

The Convener: Clause 45, "Power to authorise disclosure to the Board: Scotland", confers powers on Scottish ministers in relation to matters that are not reserved equivalent to those conferred on the Treasury by clause 44.

There seems to be a particular problem in relation to subsection (6)(b). Would anybody like to lead off on that?

Mr Macintosh: Any instrument made under clause 45 may contain consequential and supplementary provision. We are dealing with potentially sensitive information. Although clause 45 has enough protection, subsection (6)(b) suggests that consequential and supplementary provision in an instrument could overrule the protections that exist. The legal brief points out that

"Subsection (6)(b) provides that the provision referred to in subsection (5) can include provision 'authorising further disclosure by the Board of such information in circumstances where the disclosure would otherwise be prohibited by a rule of law, this Act or an Act passed before this Act.'"

In other words, the provisions and protections can be suspended, and that is obviously a slightly worrying power. I imagine that that is not the intent of ministers, but I think that, at the very least, we need to raise that query with ministers and find out if that was their intention, and ask them what they can do to reassure us that they will not be taking on such extraordinarily wide powers.

The Convener: Do you want to add anything, Murray?

Murray Tosh: No. I agree that it is probably not intended that the power be used in the way that Ken Macintosh has described, but the fact that it is possible means that we need to ask whether there are ways in which it might be framed so as to give ministers the authority that they need to do that which is within their policy envelope without taking such wide powers as the current wording seems to give.

The Convener: Is that enough information for the clerks?

Ruth Cooper (Clerk) *indicated agreement.*

Murray Tosh: The same point applies to the next clause as well. It is virtually the same.

The Convener: Exactly. That is clause 49. I think that we should ask for justification of that power as well.

The only other thing that I want to say is that the legislation is being drafted in England, and I wonder whether that is the reason why it is not as clear as it could have been.

Murray Tosh: Perhaps, but there is precedent, for bills going through the Westminster Parliament, for amendments promoted from the Scottish Parliament—effectively by the Scottish Executive—being accepted and not causing any undue difficulty. That is unless an amendment to define the use of the powers had some impact on the wider United Kingdom use of the powers; that might have to be negotiated between the two Governments. That is the sort of debate that we should have with the Executive, and the sort of discussion that we should encourage ministers to have with their counterparts at Westminster.

The Convener: Absolutely.

Mr Macintosh: It is worth putting the matter in context. Although we are talking about a possible statutory instrument, rather than a bill, it is the reference to consequential and supplementary provision—which has come up quite often in relation to primary legislation—that has given rise to concern. If we were more reassured about how that would be interpreted, perhaps we would not be so alarmed.

The Convener: We have only one shot at this, and I think that we have covered all the points. We shall see what answer we get next time.

I have no concerns to raise about clause 62, “Orders and regulations”. Is that agreed?

Members *indicated agreement.*

The Convener: No concerns have been highlighted about schedule 1, “Transfer of

functions from Registrar General: amendments”. Do members have any points to raise?

Members: No.

Executive Responses

Scottish Local Government Elections Order 2007 (draft)

10:50

The Convener: Members will recall that Stewart Maxwell raised the point and we asked the Executive to confirm whether, in form 2 of part VI of schedule 1, the term "(see note 3)" is correct when referring to an electoral number. It appeared to us that it should be a reference to note 5. The Executive agreed that it is an error but it does not seem to want to alter it at the moment. It is going to wait and see if the order gets through the lead committee and Parliament.

Murray Tosh: That is a bit of a pity because the defect that we identified could have been corrected readily. However, the Executive has covered the point and I dare say that it might be trying to cover itself against other potentially undetected defects that might surface subsequently. In the circumstances, that might be a reasonable way for the Executive to proceed.

The Convener: Okay. Are we content to report the defective drafting to the lead committee and Parliament?

Members indicated agreement.

Water Services etc (Scotland) Act 2005 (Commencement No 5) Order 2006 (SSI 2006/599)

The Convener: The committee noted that this is the fifth commencement order for the act so we asked how many more commencement orders are expected. The response is that the Executive thinks that it has now more or less covered them all with the fifth one. Are members content with that response?

Members indicated agreement.

The Convener: We will draw the information provided to the attention of Parliament.

Draft Instruments Subject to Approval

Conservation (Natural Habitats, &c) Amendment (Scotland) Regulations 2007 (draft)

10:51

The Convener: There are no substantive points but a few minor points have been raised. Are members content to mention those informally?

Members indicated agreement.

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2007 (draft)

The Convener: Again, no points have been raised on the order, but there are some minor typos that we could raise informally with the Executive. Is that agreed?

Members indicated agreement.

Murray Tosh: Will we also ask about consolidation?

The Convener: Yes, we will. This is the fifth amendment to the order.

Scottish Parliament (Disqualification) Order 2007 (draft)

The Convener: No points have arisen on the order, unless members have anything to ask.

Members: No.

Instruments Subject to Annulment

Personal Injuries (NHS Charges) (General) (Scotland) Regulations 2006 (SSI 2006/592)

10:52

The Convener: No substantive points have arisen, but there is a minor typo that we can raise informally. Is that agreed?

Members indicated agreement.

Personal Injuries (NHS Charges) (Reviews and Appeals) (Scotland) Regulations 2006 (SSI 2006/593)

The Convener: There are no points of substance on the regulations, but there are two styling points on which we can do an informal letter. Is that agreed?

Members indicated agreement.

Less Favoured Area Support Scheme (Scotland) Amendment Regulations 2006 (SSI 2006/601)

The Convener: Are members content that a case has been made for the breach of the 21-day rule? You will all be aware that the regulations needed to be passed fairly rapidly.

Murray Tosh: The explanation given in the legal brief seems to be satisfactory, except that it means that the lead committee now has little opportunity to do anything about the regulations. That is particularly unfortunate, since the lead committee specifically drew the predecessor regulations to the Subordinate Legislation Committee's attention during our inquiry. The lead committee has effectively been denied the opportunity to challenge whether the regulations could be considered under the affirmative procedure and to have more time to scrutinise the Executive's discharge of its responsibilities and policy objectives.

Of course, those are all policy issues, and therefore not for the committee, but it is appropriate for us to comment on how the way in which the regulations have been introduced has effectively stymied any substantive work by the lead committee, and that is to be regretted.

The Convener: Yes, and you have made your point; the important thing for us is the procedure, and that is where there is a difficulty. Are we agreed?

Members indicated agreement.

The Convener: There are also some minor points that we can raise informally, if members agree.

Members indicated agreement.

Prohibition of Fishing with Multiple Trawls (No 2) (Scotland) Amendment Order 2006 (SSI 2006/602)

The Convener: Members can see from the legal brief that we need to seek a bit more clarification. If members are happy, we should ask the Executive whether it is a policy intention to apply the conditions set out in paragraphs (2)(a) to (d) of new article 3 of the principal order to single trawls and, if so, to explain why the prohibition in paragraph (1) of new article 3 is "subject to paragraph (2)". I think it is something to do with mesh size and the number of trawls permitted. Is that okay?

Members indicated agreement.

The Convener: There are also a number of minor points that we can raise informally, if members agree.

Euan Robson: Are we intending to invite officials to discuss the order with us at the next meeting?

The Convener: If you want to make a case for that, we can do it.

Euan Robson: It would be immensely helpful if we could do so because the explanatory note shows—and I know from my own experience—that some people will be quite severely affected by the order. There might not be many, but it would be interesting to ask about a phasing period or what-have-you. The trouble is that I feel that I am straying into a policy area. Are those questions best dealt with outwith the confines of the Subordinate Legislation Committee?

The Convener: We could take one of two possible routes. We could ask officials to come just to discuss the clarifications that we are seeking, because we are concerned that everything should be clear. Alternatively, we could pass our concern on to the lead committee's clerks and the lead committee would decide whether to take it up as a policy matter. We could do either of those.

Murray Tosh: We could do a multiple trawl.

The Convener: We could.

Euan Robson: No, we are banning multiple trawls.

The Convener: Would you like to do a multiple trawl and ask the officials to come before the committee and clarify the situation first? It is an important point.

Euan Robson: It would be useful if they could clarify particularly the numbers involved. I know that there were only 19 responses to the Executive's consultation, but several individuals will be affected by the order.

The Convener: Ruth Cooper has helpfully suggested that we should wait for the Executive's written response. If it clarifies the situation, that will be all well and good. If it does not, we will ask the officials to come to the committee. Is that agreed?

Members indicated agreement.

The Convener: We will also pass a written response on to the lead committee.

Murray Tosh: Yes; it might very well have policy issues to discuss.

The Convener: Yes. Excellent.

Teachers' Superannuation (Scotland) Amendment (No 2) Regulations 2006 (SSI 2006/605)

The Convener: Are members content to ask the Executive why, with reference to regulation 1(a) and (b), it is considered necessary to provide that regulation 4 is to have effect from 2 December 2006 as well as from 14 June 2006. Is that agreed?

Members indicated agreement.

Welfare of Animals (Transport) (Scotland) Regulations 2006 (SSI 2006/606)

The Convener: There are eight points to raise on the regulations that we could put on the record. Do I need to go through them all or are we quite happy to—

Murray Tosh: That is a matter for the *Official Report*. If it is able to read all the points into the record unspoken, then we should be happy for that to happen.

The Convener: I think that we can say that points (a) to (h) have been raised. I will talk about the first point, because it is pretty important. We would like the Executive to explain why, unlike the Department for Environment Food and Rural Affairs, it has chosen to use powers under section 2(2) of the European Communities Act 1972 rather than domestic powers under the Animal Health Act 1981 as the enabling powers for this instrument. Are there any extra comments on that?

Murray Tosh: The thing that struck me as potentially significant for people affected by the regulations is that the penalties, highlighted in paragraph 144 of our legal brief, are different for those who live north and south of the border. That strikes me as strange. Clearly, we have our own legal jurisdiction in Scotland, but given that the

regulations derive from European Council regulations it is peculiar that there is a different range of penalties in England from those proposed for Scotland.

The Convener: Which part of the regulations are you talking about Murray?

Murray Tosh: Well, it is in paragraph 144 of our legal brief, which refers to

"section 75 of the 1981 Act as it applies in England and Wales"

and

"the penalties that may be imposed under section 2(2) powers."

11:00

The Convener: That is fine. I just want to clarify whether that is one of our eight points.

Murray Tosh: I think that it is. As you highlighted the first point as significant, I thought that it was worth highlighting that significant anomaly.

The Convener: Absolutely.

Mr Macintosh: It is worth adding that the time limits within which prosecutions may occur vary north and south of the border. Whereas, south of the border, the limit will be six months from the date of the offence, I think that, in Scotland, it will be three years from the date of the offence.

The Convener: Yes.

Murray Tosh: I hope that our legal advisers will be gratified by the extent to which members carefully scrutinise the detailed brief that we are given in advance of meetings.

The Convener: We are always impressed by that.

Euan Robson: Apologies for interrupting, convener, but I have a concern about the powers of the inspectors. Under regulation 22(1) inspectors will be able to

"serve a notice on the person appearing to the inspector to be in charge of the animals".

The Convener: So the issue is about the definition of the term "inspector".

Euan Robson: No; it is about the phrase "appearing to the inspector". Let us say that the inspector thinks that so and so is in charge, but they are not actually in charge. The inspector has powers to

"prohibit the transport of the animals, either indefinitely or for a period specified in the notice".

To take the provision to its most absurd extension, we could have a situation in which animals were prohibited from being moved indefinitely because

the inspector had chosen the wrong person and that person, wrongly chosen, would be responsible for ensuring that the animals were not moved indefinitely. That is an impossible situation.

The Convener: Are you referring to one of the points in the legal brief, or is that an additional point?

Euan Robson: It is additional.

Mr Macintosh: It is also in the legal brief.

Euan Robson: Sorry, I must have missed it, then.

The Convener: We are talking about regulation 22(1) in part 5, which talks about the inspector serving a notice on a person. Is that correct?

Euan Robson: Yes. The regulation mentions

“the person appearing to the inspector to be in charge of the animals”.

I understand what that means, but the inspector might make a mistake—they might get the wrong person—and then prohibit, indefinitely, the wrong person from transporting those animals. The person might not actually be in charge; they might simply appear to the inspector to be in charge. That is a difficult issue.

The Convener: So you are asking why the term “appearing” is used.

Euan Robson: Yes.

Murray Tosh: That is the key point. What is done with the animals is obviously a policy matter that the lead committee might wish to pursue. However, there might be a remit for us to consider the issue of who the notice is served on. We should ask for clarification on that. Well spotted, Euan.

The Convener: We will double check whether that point is in the legal brief and, if not, it will be our ninth point on the regulations.

Euan Robson: I do not think that it is in the brief, but I may be mistaken.

The Convener: Our legal adviser tells me that the point is not in the brief, although there is a related point, which is what I was thinking about. We therefore have nine points to raise on the regulations and some minor drafting points. We will add those minor points to our letter, rather than raise them informally—we will do it in a oner. I thank members for their points.

**Local Government (Discretionary
Payments And Injury Benefits) (Scotland)
Amendment Regulations 2006
(SSI 2006/609)**

The Convener: No substantive points arise, but there is a minor typo, which we will raise informally if members agree.

Members *indicated agreement.*

Instruments Not Laid Before the Parliament

Registration of Births, Still-births, Deaths and Marriages (Prescription of Forms and Errors) (Scotland) Regulations 2006 (SSI 2006/598)

11:04

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

Murray Tosh: We should ask the question that is raised in the legal brief about the vires for regulation 3.

Mr Macintosh: The issue does not affect the regulations; it is that they came into effect using a power that was annulled on the same day.

The Convener: Right. We will ask the Executive to justify the vires for regulation 3 given the repeal of the enabling power.

Mr Macintosh: The enabling power was repealed on the same day that it was used to justify the new powers. There should be an overlap.

National Health Service (Functions of the Common Services Agency) (Scotland) Amendment (No 2) Order 2006 (SSI 2006/603)

The Convener: There is an omission in the preamble, which fails to cite section 105(6) of the National Health Service (Scotland) Act 1978, which is a relevant enabling power. Are members happy to ask about that?

Members *indicated agreement.*

Police, Public Order and Criminal Justice (Scotland) Act 2006 (Commencement No 2) Order 2006 (SSI 2006/607)

London Olympic Games and Paralympic Games Act 2006 (Commencement) (Scotland) Order 2006 (SSI 2006/611)

The Convener: No points arise on the orders.

The committee's next meeting will be on Tuesday 16 January.

Meeting closed at 11:05.

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