

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 6 March 2007

Session 2

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2007.

Applications for reproduction should be made in writing to the Licensing Division,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by RR
Donnelley.

CONTENTS

Tuesday 6 March 2007

Col.

DELEGATED POWERS SCRUTINY	2357
Custodial Sentences and Weapons (Scotland) Bill: as amended at Stage 2	2357
EXECUTIVE RESPONSE	2367
National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2007 (SSI 2007/102)	2367
INSTRUMENTS SUBJECT TO ANNULMENT	2368
Local Government (Allowances and Expenses) (Scotland) Regulations 2007 (SSI 2007/108)	2368
Police Grant (Scotland) Order 2007 (SSI 2007/109)	2369
Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2007 (SSI 2007/112)	2369
Education (Assisted Places) (Scotland) Amendment Regulations 2007 (SSI 2007/114)	2369
St Mary's Music School (Aided Places) (Scotland) Amendment Regulations 2007 (SSI 2007/115)	2369
Dairy Produce Quotas (Scotland) Amendment Regulations 2007 (SSI 2007/118)	2369
Plant Protection Products (Scotland) Amendment Regulations 2007 (SSI 2007/119)	2369
Supervised Attendance Order (Prescribed Courts) (Scotland) Order 2007 (SSI 2007/120)	2369
Divorce etc (Pensions) (Scotland) Amendment Regulations 2007 (SSI 2007/122)	2369
Town and Country Planning (Prescribed Date) (Scotland) Regulations 2007 (SSI 2007/123)	2369
Valuation Appeal Committee (Electronic Communications) (Scotland) Order 2007 (SSI 2007/124)	2370
Football Banning Orders (Regulated Football Matches) (Scotland) Order 2007 (SSI 2007/125)	2370
Conservation of Seals (Scotland) Order 2007 (SSI 2007/126)	2370
Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Scotland) Order 2007 (SSI 2007/127)	2370
Licensing (Appointed Day and Transitional Provisions) (Scotland) Order 2007 (SSI 2007/128)	2371
Testing of Arrested Persons for Class A Drugs (Prescribed Area) (Scotland) Order 2007 (SSI 2007/131)	2371
Parental Involvement in Headteacher and Deputy Headteacher Appointments (Scotland) Regulations 2007 (SSI 2007/132)	2371
Marketing of Vegetable Plant Material Amendment (Scotland) Regulations 2007 (SSI 2007/133)	2371
Police (Scotland) Amendment Regulations 2007 (SSI 2007/134)	2372
INSTRUMENTS NOT LAID BEFORE THE PARLIAMENT	2373
Act of Sederunt (Registration Appeal Court) 2007 (SSI 2007/113)	2373
Charities and Trustee Investment (Scotland) Act 2005 (Commencement No 4) Order 2007 (SSI 2007/117)	2373
Licensing (Scotland) Act 2005 (Commencement No 3) Order 2007 (SSI 2007/129)	2374
Planning etc (Scotland) Act 2006 (Commencement No 2) Order 2007 (SSI 2007/130)	2374

SUBORDINATE LEGISLATION COMMITTEE

9th 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

THE FOLLOWING GAVE EVIDENCE:

Barry McCaffrey (Scottish Executive Legal and Parliamentary Services)

Gery McLaughlin (Scottish Executive Justice Department)

Annette Sharp (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Ruth Cooper

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 4

Scottish Parliament

Subordinate Legislation Committee

Tuesday 6 March 2007

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

Delegated Powers Scrutiny

Custodial Sentences and Weapons (Scotland) Bill: as amended at Stage 2

The Deputy Convener (Mr Kenneth Macintosh): I welcome members to the ninth meeting in 2007 of the Subordinate Legislation Committee. We have received apologies from the convener, Sylvia Jackson, who cannot be with us this morning, and from Euan Robson, who is stuck in the Borders.

Agenda item 1 is consideration of the Custodial Sentences and Weapons (Scotland) bill, as amended at stage 2. I thank the Executive officials for joining us this morning at short notice. I welcome Barry McCaffrey, from the office of the solicitor to the Scottish Executive; Gery McLoughlin, the bill team leader; and Annette Sharp, the custodial sentences policy manager. I remind members that we have the option of considering the bill again next week, should we choose to do so. Stage 3 will take place a week on Thursday, so the deadline for us to seek to amend the bill is this Friday. If we wish to suggest amendments, we should do so today, so that they can be lodged by Friday.

The Executive has told us that there is at least one further amendment to be lodged before stage 3. Can the officials indicate whether there are other amendments that have not yet been laid, or of which the Executive has not notified us in advance?

Annette Sharp (Scottish Executive Justice Department): There may be two further amendments relating to subordinate legislation. We are waiting for the minister to clear an amendment in relation to section 6C, on the judge's report. The amendment would negate the need for the power to make an act of adjournal. We corresponded with and consulted the Lord President on the issue, but there now appears to be no need for that power, because of the amendment that we intend to lodge at stage 3.

Barry McCaffrey (Scottish Executive Legal and Parliamentary Services): There will also be

another power to deal with the transfer of prisoners. Once the minister has cleared the amendments, we will write to the committee with more detailed information. We intend to do that at the earliest opportunity—over the next day or two.

The Deputy Convener: We will have the opportunity to discuss those amendments at our meeting next Tuesday.

Gery McLoughlin (Scottish Executive Justice Department): We are also considering lodging amendments on the weapons side that might include a subordinate power. As Barry McCaffrey said, we will write to the committee with an explanation of the amendments.

The Deputy Convener: We will return to the issue of the judge's report and the act of adjournal.

As members know, at stage 1 the committee had concerns about section 4(2), which confers a power to amend definitions of "custody and community sentence" and "custody-only sentence". We were slightly concerned about the width of the power that we were giving to the Executive to move the demarcation point or threshold of 15 days. The Executive responded to the committee that it would consider limiting the power, but it has not yet done so. What consideration has the Executive given to the matter? Why has it decided not to lodge any amendments to limit the power for which the bill currently provides?

Annette Sharp: I hope that I will be able to explain that. It may be helpful if, first, I say a little about the underlying policy. The bill delivers on the minister's commitment to end automatic and unconditional early release. Since receiving the committee's letter, we have looked at the demarcation point and come to the view that 15 days is the absolute bottom end, below which it cannot be reduced. It is considered the shortest possible period within which the necessary arrangements for risk and needs assessment could be put in place and the conditions for the community part of the licence could be set for a prisoner, on release. After considering the matter further, we have decided that we are content that we need the power as it stands, without any threshold, because we need to be able to change our policy in line with different trends. Members will be aware that over the past few years there have been many changes to non-custodial disposals; who knows what may happen in future. At the top end of the range, one could make the case for having a threshold of a year or two years, but we need the flexibility that the power currently gives us.

The Deputy Convener: Was the issue debated with the policy committee?

Annette Sharp: Yes.

The Deputy Convener: I seek members' views on the issue. Were members present when it was raised at stage 1? Are members concerned that the Executive has decided to retain the flexibility that the power offers, despite the fact that we were looking for it to be limited?

Murray Tosh (West of Scotland) (Con): The case that has been stated is a policy case that impacts on subordinate legislation. The points that we have made and the concerns that we have expressed are on the record. The Executive has seen the matter differently, and there is nothing more that we can do.

The Deputy Convener: Are members content with the power and for it to be subject to affirmative procedure?

Members indicated agreement.

The Deputy Convener: On section 6, "Setting of custody part", the committee had concerns at stage 1 about the ambiguity of subsection (1), but the Executive has amended the provision. Are members content with the amendment and the section?

Members indicated agreement.

The Deputy Convener: Section 6B provides for a power to alter the proportion of sentence forming the custody part. The power is new, but it is substantially the same as the power that was previously included in section 6(10). There are two issues. First, at stage 1 we were concerned that the power was at the limit of what we regard as acceptable for subordinate legislation; we were certainly concerned by the proposal that it be subject to negative procedure. I believe that the Executive has agreed to lodge an amendment to make it subject to affirmative procedure, but has not yet done so. Is that correct?

Barry McCaffrey: That is right. We have to lodge all amendments by close on Thursday, so that is in the process of being done.

The Deputy Convener: Secondly, we were concerned about an ambiguity here, which I will précis. The bill provides for a default custody part of the sentence, which would be "one-half of the sentence". However, the bill also sets a maximum period for custody of three quarters of a sentence. If ministers are able to vary the proportion of the sentence that forms the custody part, there is nothing to prevent that from being ramped up to beyond 75 per cent of the sentence. That could easily be addressed by an amendment at stage 3. Is that something that the Executive has looked at and is considering?

Barry McCaffrey: From a legal perspective, the conclusion that we reached—which is reflected in our correspondence with the committee at stage 1—was that, in the context of the bill as a whole,

taking the custody part beyond the upper limit of 75 per cent of the sentence would not only be unworkable, but would circumvent the clear intention of Parliament in having the bill specify, as it does, that a court may not order a custody part in excess of three quarters of a sentence. We concluded that that context was sufficient to put the brakes on any attempt to exercise that power in a way that would circumvent the intention that Parliament was trying to ventilate through the bill.

The Deputy Convener: There is another interpretation that our legal advisers have raised with us. Although, in theory, section 6(6) limits the custody part of a sentence to 75 per cent, meaning that the provision in section 6B cannot go beyond that, the fact that we could take the opportunity to clarify whether there is any ambiguity about the new power but are not doing so could leave the matter open to interpretation. It could be interpreted that, by not choosing to clarify the matter, we are not restricting the power in section 6B to the 75 per cent maximum period that is stated in section 6(6).

Barry McCaffrey: That interpretation could be drawn. However, with respect, I think that the better legal view is that, if the power was exercised in a way that circumvented other key provisions in the bill, of which the provision in section 6(6) is one, that would clearly be contrary to the intention of the power in the first place. Ministers would be hard pushed to justify the exercise of the power in such a way.

Even from a practical perspective, given the fact that the upper threshold of three quarters is stated in the bill, if Scottish ministers exercised the power—assuming that they could—in a way that made the custody part more than three quarters of a sentence, that would give rise to severe difficulties in the operation of the legislation.

Annette Sharp: That is right. Once a prisoner has served 75 per cent of his sentence, ministers are obliged to release him. Difficulties would be caused if the custody part could exceed 75 per cent. In effect, ministers would have to release the prisoner before any assessment or suchlike had been made.

It is clear to us that 75 per cent of the sentence is the maximum period for which an offender will remain in custody. We see the sentence as being very much about rehabilitation as well as punishment, and the minimum period that was thought to be required for rehabilitation was 25 per cent of the sentence being served in the community.

The Deputy Convener: That is fine. I think that the policy intention is clear; we are just concerned that there is a slight ambiguity.

Mr Stewart Maxwell (West of Scotland) (SNP):

It is less than clear to me what the problems would be. Assuming that ministers could order more than 75 per cent of a sentence to be served in custody—although there is some debate about that—you say that difficulties would arise. Perhaps, for my sake, you could clarify what those difficulties would be. You say that the policy intention is for the custody part of a sentence not to go beyond 75 per cent of the sentence, but what practical difficulties would arise if the power was used to shift the upper limit?

10:45

Annette Sharp: As Mr McCaffrey said, we feel that, from a legal point of view, things are fine. If there were a loophole that meant that the custody part could be fixed at a period longer than 75 per cent of the sentence, but the bill—in section 14, I think—still stated that the Scottish ministers were under a duty to release a prisoner when he had served 75 per cent of his sentence, that would lead to difficulties.

Mr Maxwell: I am sorry. I apologise if I am in error, but section 6B confers a power to alter the proportion of the sentence that forms the custody part. If the proportion of the sentence that formed the custody part was altered, why would any other section cause difficulties?

Barry McCaffrey: Section 6(1A) states that

“the court must make an order specifying the custody part of the sentence.”

Section 6(6) then states:

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

The order-making power in section 6B, as it now is, is purely to amend the power in section 6(3)(a) to set the custody part at more than “one-half of the sentence”. There would clearly be a difficulty in ministers being able to exercise that power standing the terms of section 6(6), so I am struggling to see a legal justification for the exercise of the power in a way that would circumvent section 6(6). I read the power in section 6B as enabling ministers to do something in a way that does not cut across section 6(6), which is the ultimate brake on the exercise of the power. Ministers could not exercise the power to set a custody part greater than three quarters of a sentence, as section 6(6) makes it absolutely clear that the custody part of a sentence cannot exceed three quarters of the sentence.

Murray Tosh: Does that mean that, even if an assessment of the prisoner's conduct and attitude in custody indicated that he would be a danger to the public for the remaining 25 per cent of his sentence, he could not be required to serve 100

per cent of his sentence in custody in any circumstances?

Annette Sharp: That is correct.

The Deputy Convener: We are straying into policy matters, but that is worth noting.

We raised the issue to clarify whether there is ambiguity in relation to section 6B. The Executive officials take the clear view that there is no ambiguity in relation to the provisions in section 6B, section 6(6) and section 14, to which Annette Sharp referred us. Furthermore, we have received assurances that an amendment that will introduce an affirmative procedure will be lodged in the next couple of days; therefore, Parliament will have the reassurance that it has affirmative procedure to fall back on as another backstop. Are members, therefore, content with the power as drafted?

Members indicated agreement.

Murray Tosh: It is clear from the discussion that any difficulties with the legislation are policy and political matters, rather than procedural issues about the operation of subordinate legislation.

The Deputy Convener: I am sure that members are fully capable of exercising their views on those policy matters in other committees.

Section 6C confers a power on judges to prescribe the form of a judge's report. In answer to an earlier question, Annette Sharp said that the issue is being addressed. We have two questions. First, has the Lord President been consulted on the need for the power? Secondly, do existing powers to make acts of adjournal mean that the new power is unnecessary? I believe that you are saying that you have not made a decision, but that it is likely that you will revisit the section.

Annette Sharp: That is correct. There has been further consultation between officials and the judiciary about what would be required and in what format the information would be made available to the Scottish ministers. For that reason, it is likely that an amendment will be lodged that will remove the need for a form prescribed by act of adjournal. As I said earlier, we consulted the Lord President on the matter and it was thought, at that stage, that a power was necessary; however, that view has now been negated.

The Deputy Convener: So you might lodge an amendment on that.

Annette Sharp: Yes.

The Deputy Convener: Are members content with that? We will have a chance to revisit the matter next week. By then, we will know whether the Executive has lodged an amendment.

Members indicated agreement.

The Deputy Convener: Section 43 inserts into the Civic Government (Scotland) Act 1982 new section 27A(7), which gives the Scottish ministers a power to modify the definition of a “dealer” and to specify

“descriptions of activity which are not to be taken to be businesses”.

The power is new, but it is similar to other powers in section 27A that we discussed at stage 1. It is subject to negative procedure even though it is a Henry VIII power. At stage 1, we decided that the Executive had struck the right balance between the flexibility that is required and the parliamentary procedure that is needed to cover the matter.

Are members content with the new power and the fact that it is subject to negative procedure?

Members indicated agreement.

The Deputy Convener: New section 27Q of the 1982 act contains a power to provide exceptions to certain offences under that act. The power has not been amended and is subject to the negative procedure. The policy intention is specific and narrowly defined. It is clear that the power was included to allow test purchasing. It will perhaps avoid some of the difficulties that were experienced recently with the test purchasing of alcohol in Fife.

However, our legal adviser is concerned that, although the policy intention is narrow, the power is wide. It could be used not just to allow test purchasing but to make other exceptions from criminal offences. Have you considered restricting the scope of the power, perhaps by limiting the persons who may be exempted to “persons commissioned by the relevant local authority”, or by limiting the actions that may be exempted to, for example, actions “for the purpose of ensuring compliance with the licensing scheme”?

Gery McLaughlin: We considered limiting the scope of the power, but, as the committee said previously, there is a desire for flexibility in the operation of the licensing scheme, and that applies to all the delegated powers that are taken in relation to it. We want to ensure that the system is effective and does not exceed the purposes for which we intend it. In practice, the operation of the scheme frequently throws up examples of problematic issues or hard cases. We envisage that the power could be used to address such problems. You certainly have the Deputy Minister for Justice’s assurance that the power is not designed to make wide, sweeping exceptions. However, there is a need for flexibility in the operation of the licensing scheme to ensure that it does not interfere in the course of business other than for the intended purposes.

Murray Tosh: I understand what Gery McLaughlin says, but I would have thought that, in those circumstances, it may be preferable to use the affirmative procedure to allow greater scrutiny of any variations that the Executive might introduce in the light of the hard cases that were mentioned. Have you considered that?

Gery McLaughlin: We did not consider that. If I remember correctly, the committee did not raise the matter at stage 1, but I would need to check on that.

Murray Tosh: With respect, it is almost implicit in asking you to restrict the use of the power that, if you were unable to do so, we might wish to insert the affirmative procedure. As the power is in a new section, we would not have been in a position to raise the matter with you before.

Gery McLaughlin: The section is not new at stage 2.

The Deputy Convener: Our position was that we were content with the power but that some definitions should be included. As there are no definitions to limit the power, members might be concerned about the use of the negative procedure. We did not raise the matter, but that was because we addressed the concern in another way.

Gery McLaughlin: I understand that. We will reconsider the point and address it in the letter that we send the committee soon. We will confirm the Executive’s position on the matter before stage 3.

The Deputy Convener: Thank you.

Murray Tosh: I note from our briefing that the power is in a new section of the 1982 act. It is not a new power in the bill. I misread that. However, it might be appropriate for the committee to consider an amendment on the matter that we could lodge before the end of the week if the Executive’s position is different from ours, or withdraw if the Executive lodges its own amendment. That would get around the manuscript amendment problem if, after our discussions, we still think that it would be appropriate for the affirmative procedure to be used. It would safeguard us.

The Deputy Convener: Do other members have views? The Executive has not considered using the affirmative procedure, but it is not hostile to the idea and the officials have agreed to consider it. Because the matter has not been raised before, I suspect that there will be no difficulty. We should never lodge manuscript amendments if we can avoid it, but I think that lodging an amendment this week might be unnecessary.

Do other members feel strongly about the matter?

Mr Maxwell: I disagree with you, convener. The only way to deal with the matter is for us to lodge an amendment this week. That will avoid the need for a manuscript amendment later. If the Executive lodges an amendment, we can withdraw ours. Given that there might be an issue, we should lodge an amendment and decide next week whether we wish to press or withdraw it.

Murray Tosh: We could decide to withdraw it on the basis of the further response from the Executive. We are giving it an opportunity to reflect on the issues and to make a case to us that we can accept. I am not being combative in any sense. I am simply trying to suggest that we do the minimum that is necessary, then next week we can decide what to do with the amendment that we have lodged.

The Deputy Convener: Last time we discussed the matter, we decided that the negative procedure was sufficient but that we wanted further definitions. Those definitions have not materialised. Do other members have strong views one way or the other?

Members: No.

The Deputy Convener: In that case, given that Murray Tosh and Stewart Maxwell feel that it would be sensible to lodge an amendment, we will draft an amendment that proposes the use of the affirmative procedure. We will lodge the amendment by Friday. We will note whether the Executive lodges an amendment or whether its response is that it does not agree that the affirmative procedure should be used in this case. The committee will debate the matter again next week.

Gery McLaughlin: Our objective is to lodge amendments by Thursday, so you will know by then whether we have lodged an amendment on the matter. You have until Friday to lodge amendments.

The Deputy Convener: Right, so the clerks could leave it until Thursday night. [*Laughter.*] I am not suggesting that they would do that.

Murray Tosh: That would be sensible. If the Executive lodges an amendment on Thursday, there will be no need for us to proceed.

The Deputy Convener: Absolutely.

Are members content for the clerks to decide whether to lodge an amendment, depending on the Executive's response?

Members indicated agreement.

The Deputy Convener: Section 47 is on ancillary provision. This is familiar territory for the committee. Section 47(1) states:

"The Scottish Ministers may by order make such incidental, supplementary, consequential, transitory, transitional or saving provision as they consider appropriate for the purposes of ... giving full effect to this Act".

Section 47(2) provides that such an order may modify any enactment, but under section 48(3) the order would be subject to the negative procedure. We would normally expect an order that modified an act to be subject to the affirmative procedure.

Does the Executive have any thoughts on that?

Gery McLaughlin: I think that you are more familiar with such provisions than we are. Having considered the terms of the bill and taken advice on normal practice, we accept the point that the affirmative procedure should be used where acts may be modified. We will lodge an amendment on the matter at stage 3.

The Deputy Convener: Are members content with the provision?

Members indicated agreement.

The Deputy Convener: That ends our consideration of the Custodial Sentences and Weapons (Scotland) Bill. I thank the officials for coming along at short notice and for their willingness to accept several of the points that were made today.

Executive Response

National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2007 (SSI 2007/102)

11:00

The Deputy Convener: Item 2 is consideration of an Executive response. Are we content to draw the attention of the lead committee and Parliament to the response, which explains that the Executive will consider consolidating at some point in the future?

Murray Tosh: It does so without a timescale. However, we can do no more than bring that to the attention of the lead committee.

The Deputy Convener: The point is noted. We will add the matter to our list for the consolidation working group, which is already under way.

Instruments Subject to Annulment

Local Government (Allowances and Expenses) (Scotland) Regulations 2007 (SSI 2007/108)

11:01

The Deputy Convener: No substantive points have been identified on the regulations, but there is one minor point, which will be included in an informal letter.

I was not here last week, but I note that we have previously expressed concern about instruments that use a mixture of affirmative and negative procedures. Last week, the draft Local Governance (Scotland) Act 2004 (Allowances and Expenses) Regulations 2007 were relaid; those regulations contained only the powers that are subject to affirmative procedure. The regulations that we are now considering are the second part of the process and contain only the powers that are subject to negative procedure. Last week's instrument was accompanied by a letter from the Executive that explained its thoughts on the matter. The Executive accepts that negative and affirmative procedures should not be used in the same instrument, but takes the view that powers subject to negative procedure or not subject to any procedure may be used in the same instrument. At the moment, we need only note that comment. The issue will arise the first time that such an instrument comes our way.

Mr Maxwell: We agreed to suggest in our legacy paper that the next Subordinate Legislation Committee look at the mixture of powers.

Murray Tosh: We also recommended that our successor committee look closely at the procedure that the Joint Committee on Statutory Instruments uses down south and probe further with the Executive why procedures that are clearly accepted as flawed at Westminster should even be considered here.

**Police Grant (Scotland) Order 2007
(SSI 2007/109)**

**Police Act 1997 (Criminal Records)
(Scotland) Amendment Regulations 2007
(SSI 2007/112)**

**Education (Assisted Places) (Scotland)
Amendment Regulations 2007
(SSI 2007/114)**

**St Mary's Music School (Aided Places)
(Scotland) Amendment Regulations 2007
(SSI 2007/115)**

**Dairy Produce Quotas (Scotland)
Amendment Regulations 2007
(SSI 2007/118)**

The Deputy Convener: No points have been identified on the instruments.

**Plant Protection Products (Scotland)
Amendment Regulations 2007
(SSI 2007/119)**

The Deputy Convener: No substantive points have been identified on the regulations, but there is a minor point that we could raise informally. Are members content that we do so?

Members indicated agreement.

**Supervised Attendance Order
(Prescribed Courts) (Scotland) Order 2007
(SSI 2007/120)**

The Deputy Convener: No Executive note was provided with the order; a minor point has also been identified. Are members content that we write formally to the Executive to ask why there is no Executive note and that we raise the minor point informally?

Members indicated agreement.

**Divorce etc (Pensions) (Scotland)
Amendment Regulations 2007
(SSI 2007/122)**

**Town and Country Planning (Prescribed
Date) (Scotland) Regulations 2007
(SSI 2007/123)**

The Deputy Convener: No substantive points arise in relation to the regulations, but in each case there is a minor point that could be raised informally. Are members content that we do that?

Members indicated agreement.

**Valuation Appeal Committee (Electronic
Communications) (Scotland) Order 2007
(SSI 2007/124)**

The Deputy Convener: No substantive points arise on the order, but there is a minor point that can be raised informally. Are members content with the order?

Members indicated agreement.

**Football Banning Orders (Regulated
Football Matches) (Scotland) Order 2007
(SSI 2007/125)**

**Conservation of Seals (Scotland) Order
2007 (SSI 2007/126)**

The Deputy Convener: No points arise. Are members content with the orders?

Members indicated agreement.

**Sea Fishing (Enforcement of Community
Quota and Third Country Fishing
Measures) (Scotland) Order 2007
(SSI 2007/127)**

The Deputy Convener: Do members have any concerns about the fact that this measure seems to lack a savings provision?

Murray Tosh: It is clear from our legal briefing that we would ordinarily expect an instrument of that nature to contain such a provision. It is speculated that there may be none here because no prosecutions are on-going. However, we do not know that and there is no detail on that in the Executive note. Also, I would have thought that, even were that to be the case, it would still be good form for there always to be a savings provision in such an order. We should, therefore, put that point to the Executive and seek an explanation.

Mr Maxwell: It seems logical for us to do that. We should be safe rather than sorry. It seems odd, as it is normal for such provisions to be included in these orders. I am curious to know why the order does not contain one. I am sure that the Executive can provide an explanation.

The Deputy Convener: If members are content, we will write to the Executive, querying why, unlike previous orders, the order contains no explicit savings provision for the purposes of prosecution of offences under the order that it revokes.

Members indicated agreement.

Licensing (Appointed Day and Transitional Provisions) (Scotland) Order 2007 (SSI 2007/128)

Testing of Arrested Persons for Class A Drugs (Prescribed Area) (Scotland) Order 2007 (SSI 2007/131)

The Deputy Convener: No points arise. Are members content with the orders?

Members *indicated agreement.*

Parental Involvement in Headteacher and Deputy Headteacher Appointments (Scotland) Regulations 2007 (SSI 2007/132)

The Deputy Convener: The regulations provide for parental involvement in the process of the appointment of head teachers and deputy head teachers. However, there appears to be a gap in the regulations. Do members have any concerns over that?

Murray Tosh: The matter is quite important. Appointments require to be carried out properly and in accordance with the procedures, but there seems to be a lacuna in the arrangements. No provision is made for circumstances in which the deputy head teacher, who might be the temporary chairman of the appointment panel, is ruled to be unacceptable or inappropriate for any of a range of reasons. Just as our procedures provide for you, deputy convener, to replace the convener in her absence and, in the absence of both of you, for the oldest member present to convene, it is important that the regulations define carefully who will chair the appointment panel in the event that the specified chairman is not an appropriate person. We need to ask the Executive to look at the matter again and clarify what should be done.

The Deputy Convener: As with this committee, I am sure that it would be almost inconceivable that the deputy head teacher would be unacceptable.

Murray Tosh: Well, you might be inappropriate in certain circumstances.

The Deputy Convener: Thank you, Murray. We will ask the Executive to explain the practical effect of the regulations and explain who would chair the proceedings if the deputy head teacher was deemed inappropriate.

Members *indicated agreement.*

Marketing of Vegetable Plant Material Amendment (Scotland) Regulations 2007 (SSI 2007/133)

The Deputy Convener: No points arise. Are members content with the regulations?

Members *indicated agreement.*

Police (Scotland) Amendment Regulations 2007 (SSI 2007/134)

The Deputy Convener: No points arise. Members may wish to know that the regulations address a number of points that the committee raised in relation to the Police (Scotland) Regulations 2004.

Instruments Not Laid Before the Parliament

Act of Sederunt (Registration Appeal Court) 2007 (SSI 2007/113)

11:09

The Deputy Convener: No points arise. Are members content with the instrument?

Members *indicated agreement.*

Charities and Trustee Investment (Scotland) Act 2005 (Commencement No 4) Order 2007 (SSI 2007/117)

The Deputy Convener: No substantive points arise on the order, but there is a minor typo that can be raised informally. Are members content for us to do so?

Members *indicated agreement.*

Licensing (Scotland) Act 2005 (Commencement No 3) Order 2007 (SSI 2007/129)

Planning etc (Scotland) Act 2006 (Commencement No 2) Order 2007 (SSI 2007/130)

The Deputy Convener: No points arise. Are members content with the orders?

Members *indicated agreement.*

The Deputy Convener: The next meeting of the committee will be on Tuesday 13 March.

Meeting closed at 11:10.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Tuesday 13 March 2007

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by RR Donnelley and available from:

Blackwell's Bookshop

**53 South Bridge
Edinburgh EH1 1YS
0131 622 8222**

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Blackwell's Scottish Parliament Documentation
Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers