

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 13 March 2007

Session 2

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SUBORDINATE LEGISLATION COMMITTEE

10th 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 13 March 2007

[THE CONVENER opened the meeting at 10:30]

The Convener (Dr Sylvia Jackson): I welcome members to the 10th meeting in 2007 of the Subordinate Legislation Committee. I am sure that members have noted our long agenda today—it is the longest agenda that we have ever had, with 69 instruments plus three Executive responses for the committee to consider. I place on record our thanks to the clerks and our legal advisers for their work on this enormous agenda.

I have received apologies from Adam Ingram and Euan Robson.

Mr Kenneth Macintosh (Eastwood) (Lab): And from Janis Hughes.

Delegated Powers Scrutiny

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

The Convener: We are looking at the bill today for the final time—the stage 3 debate on the bill will be on Thursday. Members who, unlike me, were here last week will recall that we asked the Executive to write to us on the points that we raised. The first of those was about section 6B, which confers a power to alter the proportion of sentence forming the custody part, previously section 6(10). At stage 1, the Executive undertook to make the power subject to affirmative procedure. That was not done, but officials confirmed last week that they would lodge an amendment, which they have now done. Are we content with the amendment and the use of affirmative procedure?

Members indicated agreement.

The Convener: On section 6C, which provides for a judge's power to prescribe the form of a judge's report, the Executive confirmed last week that the Lord President had been consulted and that the need for a form to be prescribed by an act of adjournal should be removed. The form of reports will now be left to the discretion of the sentencing court. Are we content with the deletion of the power?

Members indicated agreement.

The Convener: An Executive amendment at stage 3 will insert a new section after section 42 to deal with the cross-border transfer of prisoners.

The new power will be subject to affirmative procedure and enables provision to be made for the transfer of prisoners out of and into Scotland. Have members any comments?

Members: No.

The Convener: Section 43 inserts into the Civic Government (Scotland) Act 1982 new section 27Q, which confers a power to provide exceptions to certain offences under the 1982 act. In light of comments last week on whether the power is correctly drawn and negative procedure is appropriate, the Executive undertook to reconsider the procedure. It has lodged a stage 3 amendment to make the power subject to affirmative procedure. Are we content?

Members indicated agreement.

The Convener: At stage 1, we were content with section 45, "Sale etc of weapons". The Executive's stage 3 amendment proposes certain exceptions. Do members have any comments?

Members: No.

The Convener: At stage 1, we were content with the power in section 46, "Sale etc of swords". The power will be amended at stage 3 with a view to simplifying the drafting. Have members any comments?

Members: No.

The Convener: Following comments made last week on section 47, "Ancillary provision", the Executive undertook to look again at the procedure where acts may be modified and it has lodged a stage 3 amendment that will make the power subject to affirmative procedure in those circumstances. I assume that we are content with that.

Members indicated agreement.

The Convener: The committee did very well last week. Let us move on to agenda item 2.

Murray Tosh (West of Scotland) (Con): What about the supplementary paper with the additional Executive amendment?

The Convener: Sorry about that. Thank you for reminding me about it.

The amendment inserts a new schedule on sentences framed to run concurrently. The power conferred in paragraph 6 of the new schedule is subject to affirmative procedure. As it will enable modification of the bill, including the power to amend, add to or remove text, affirmative procedure is consistent with the procedure that the committee considered appropriate for other similar powers in the bill, namely, the cross-border transfer of prisoners. Are we satisfied with the use of affirmative procedure?

Members indicated agreement.

Executive Responses

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

10:34

The Convener: Last week, we asked the Executive why no Executive note was provided with the order. The Executive considers that the effect of the order is fully explained in the explanatory note. However, given the committee's comments, it has now prepared an Executive note.

Murray Tosh: That is a welcome precedent that we should encourage the Executive to follow at every opportunity.

The Convener: Does everyone agree with that?

Members indicated agreement.

The Convener: We will therefore draw the order and the Executive's response to the attention of the lead committee and Parliament on the ground that we did not have the Executive note, and point out that we now have it.

Mr Stewart Maxwell (West of Scotland) (SNP): It is also worth pointing out that the information that is provided in the Executive note is additional to that which was provided in the explanatory note, but the explanation for not providing the former was that there was no additional information. The Executive made the right decision in this case, although the decision that it made in the first place is odd, given that there is new information.

The Convener: I am sure that we will remember the order so that it will set a precedent. Well said.

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

The Convener: We asked the Executive to explain why the order, unlike previous ones, does not contain a savings provision for the purposes of prosecution of offences under the order that it revokes. Members have a copy of the Executive's response, saying why it considers a savings provision to be unnecessary in view of the provisions of the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc of Acts of the Scottish Parliament) Order 1999 (SI 1999/1379).

Are members content with that explanation?

Members indicated agreement.

The Convener: Shall we draw the order to the attention of the lead committee and Parliament?

Members indicated agreement.

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

The Convener: Members will recall that we asked the Executive to explain who is to chair an appointment panel where an acting head has been deemed to be "inappropriate". The Executive takes the view that the regulations do not preclude the appointment of a chairperson from among the members of the panel. The Executive has suggested that it will proceed with guidance on that.

Mr Maxwell: That is a bit odd. The regulations do not preclude lots of things, but that is rather a strange argument for what can or cannot be done. The Executive has been very specific about the appointment process, so it is a bit strange to say that, if there is a problem with the process, the panel can do whatever it wants, because what it should do is not mentioned in the regulations. I suppose that, technically speaking, that does not cause any problems, but it is a bit odd to have ended up in this position. I would have thought that there was time for the Executive to withdraw the regulations and resubmit them with specific regulations for what to do in such an event.

The Convener: There is time, as the regulations do not come into force until 1 August.

Murray Tosh: Such proceedings are open to challenge—and sometimes they are challenged, although probably only ever informally. It would have been better to have had the process spelled out fully in the first place, but it might well be that the guidance will be sufficient, in practice, to defend any authority against a formal or informal challenge.

The Convener: Shall we therefore report to the lead committee and Parliament that there is defective drafting in that a gap has been left and there is no specific provision?

Members indicated agreement.

Instruments Subject to Annulment

Queen Margaret University, Edinburgh (Scotland) Order of Council 2007 (SSI 2007/116)

10:38

The Convener: If members have looked at their legal brief, they will have seen that there are several points on the order. I will read them out for the record, if that is all right, unless anyone has a burning point that they want to make first.

The first point is to ask why article 2 has a paragraph (1) when there are no subsequent paragraphs in that article.

Secondly, is the Executive satisfied with the transitional provisions to be put in place by article 17, given that existing governors will become members of the newly established court for the remainder of their term of office, and that there shall not be more than 24 members of the new court in total, including members who have been appointed or elected under article 4?

Thirdly, does the reference to "any governors in office" in article 17(1) include staff governors appointed under article 4(1)(c) of the Queen Margaret College, Edinburgh (Scotland) Order of Council 1994 (SI 1994/2371)?

Fourthly, we seek an explanation of the purpose and meaning of the words

"for a term to be approved by the Court",

in article 6(9), given that article 6(1) provides that a member's term of office shall be three years.

Finally, we seek clarification of what is meant by

"in the opinion of the Court",

in articles 6(7)(c) and (g), particularly how it will be formed or constituted and recorded.

So, we are asking for quite a bit of clarification. Is that agreed?

Members indicated agreement.

Town and Country Planning (General Permitted Development) (Avian Influenza) (Scotland) Amendment Order 2007 (SSI 2007/135)

The Convener: Are members agreed that no points arise on the order?

Members indicated agreement.

Charities Accounts (Scotland) Amendment Regulations 2007 (SSI 2007/136)

The Convener: Are members agreed that we ask the Executive why no Executive note has been included with the regulations, as is normal drafting practice?

Members indicated agreement.

Murray Tosh: We should expect to see one next week.

The Convener: Yes. There is also a minor drafting point that we can raise informally.

Plant Health (Export Certification) (Scotland) Amendment Order 2007 (SSI 2007/137)

The Convener: Are members agreed that, although no substantive points arise on the order, there are minor points that can be raised informally?

Members indicated agreement.

Plant Health (Import Inspection Fees) (Scotland) Amendment Regulations 2007 (SSI 2007/138)

The Convener: Are members agreed that, although no substantive points arise on the regulations, there is a minor point that can be raised informally?

Members indicated agreement.

National Health Service (Charges for Drugs and Appliances) (Scotland) Regulations 2007 (SSI 2007/139)

Pesticides (Maximum Residue Levels in Crops, Food and Feeding Stuffs) (Scotland) Amendment Regulations 2007 (SSI 2007/142)

Colours in Food Amendment (Scotland) Regulations 2007 (SSI 2007/143)

The Convener: Are members agreed that no points arise on the regulations?

Members indicated agreement.

Meat (Official Controls Charges) (Scotland) Regulations 2007 (SSI 2007/144)

The Convener: Are members agreed that, although no substantive points arise on the order, there is a minor point that can be raised informally?

Members indicated agreement.

Tuberculosis (Scotland) Order 2007 (SSI 2007/147)

The Convener: I have three points to raise on the order, two of which are to do with definitions. The first is the question why the Executive has failed to follow proper legislative procedure by using a combination of enabling powers that are subject to different procedures—namely, negative procedure and no parliamentary procedure. The issue is on-going. If I remember correctly, the Executive has argued that it cannot see a problem with that.

Mr Maxwell: I disagree with that, and I hope that the committee does, too. We should, at the very least, be slightly concerned about the mixing of procedures in that way. As we have said in previous weeks, the issue seems to have come upon us all of a sudden. It did not seem to be an issue before but, all of a sudden, we are receiving on a regular basis instruments in which the enabling powers are subject to a combination of different parliamentary procedures. That has happened every week for the past few weeks.

I think that we should write to the Executive again, asking why it has used a combination of procedures. We should point out that that could cause problems in the future, even if the combination is of the negative procedure and no parliamentary procedure—for example, if a member moved against a negative instrument but some of the powers in the instrument were not subject to parliamentary procedure. That would be a strange situation, and I am not sure what the outcome would be if we voted against such an instrument.

The Convener: We will ask that question.

Murray Tosh: It is important that we continue to challenge the Executive on this, as we have agreed that we will put the issue in the legacy paper for our successor committee. It is important that that committee considers the matter and thrashes it out fully with the Executive. In the interim, we should defend the line that we have taken.

Mr Macintosh: The matter has come up for three weeks running. Can we ask the Executive specifically why this is a new development? The Executive has been using the procedures in subordinate legislation over the past eight years, but it is only this year that the matter has come up. Why did the Executive not mix the procedures before? What stopped it before, and why does it think that that is acceptable now? We should ask specifically whether a conscious policy change has been made to start drafting instruments in that way. If it is not a policy change, it is an oversight. If it is a policy change, it is a matter of importance of which we should have been informed.

The Convener: Off the top of my head, I think that the Executive said that it was deliberate, giving the reason for it as bringing certain regulations together. However, we could look back and get the exact reason.

Mr Maxwell: I think that the Executive said that it was being done to make the regulations easier to use.

The Convener: Yes, that is right. It was about grouping them together.

Mr Macintosh: That was given as a reason two weeks ago, I think. It was a post hoc justification. I am not saying that it is not a good reason, but it is strange that, in the past seven years, there have not been circumstances similar to those that have suddenly emerged in the past six months, which have required the use of a combination of procedures in the same instrument.

10:45

The Convener: I gather that there were a couple of instruments in 2003.

Mr Maxwell: We had forgotten those. The point is that having had a couple of such instruments over many years, we have had lots within a few weeks. I agree with Ken Macintosh that for the Executive to have started doing this regularly would seem to indicate a deliberate shift in policy. I would still like the Executive to tell us what would happen if a negative instrument was voted down under the circumstances that I outlined.

The Convener: It is a question of balance. The advantages are perhaps not worth having if there are disadvantages such as those you outline.

Mr Macintosh: But if it is not a deliberate change, then clearly this is just a blip and we will go back to normal practice.

The Convener: We can live in hope.

Murray Tosh: Unless it is founded on the assumption that the Executive will never lose a vote on any of the instruments. That may be the case in fact, but it should never be presumed in drafting instruments.

The Convener: Absolutely. We will raise that point.

Moving on, two issues of definition arise in relation to the order, the first of which is whether the term “inspector”, which is used in articles 21, 24 and 25, is to be construed differently from the term “veterinary inspector”, which appears to be the term used throughout the rest of the order. The second issue is to clarify whether there is a difference between a person

“who has possession of or is in charge of”

an animal within the meaning of articles 4 and 5 of the order, and a “keeper” of an animal, which is a term used throughout the rest of the order. Do members agree that we should raise those points?

Members indicated agreement.

Education (Graduate Endowment, Student Fees and Support) (Scotland) Revocation Regulations 2007 (SSI 2007/148)

The Convener: This and the following 10 instruments—excluding the Welfare of Animals (Slaughter or Killing) Amendment (Scotland) Regulations 2007 (SSI 2007/150)—are part of a package of consolidation, amendment and revocation instruments relating to graduate endowment, student fees and student support. Most of the instruments refer to the European Economic Area agreement and the EEA states. However, the Executive has decided not to include definitions of those terms, despite definitions being included in the original instruments. We might like to ask the Executive for its comments on that. Are members happy for us to raise that point?

Members indicated agreement.

The Convener: No points arise on the revocation regulations.

Education Authority Bursaries (Scotland) Regulations 2007 (SSI 2007/149)

The Convener: The point about the terms “EEA agreement” and “EEA states” relates specifically to these regulations. There are also some minor points relating to the regulations.

Welfare of Animals (Slaughter or Killing) Amendment (Scotland) Regulations 2007 (SSI 2007/150)

Mr Maxwell: We do not have this instrument.

Murray Tosh: It is on page 23 of the brief.

The Convener: We had so many instruments.

The issue is about consolidation, as this is the ninth amendment of the regulations. What would members like to do? Do we just add the regulations to the consolidation working group’s list?

Murray Tosh: Has the group ever met?

Ruth Cooper (Clerk): The group has not met. It was waiting for the committee’s recommendations in the inquiry report, but it can get up and running now and be taken forward at official level, if members are content.

The Convener: Do members recall that this was one of the issues that we were going to discuss with the Minister for Parliamentary Business? I can

give you more of an update next week, when we consider our legacy paper. Shall we add the regulations to our list, so that we make it as comprehensive as possible?

Mr Maxwell: I agree that we should add the regulations to the list. However, we talked previously about ease of use as one of the reasons for the Executive doing what it was. There have been nine sets of amendment regulations, but I note that only four sets have been listed in the footnote. It must make the regulations difficult to use if five sets of amendment regulations are missing from the footnote.

The Convener: I am advised that only the relevant amendment regulations need to be listed, so the Executive has followed the right practice.

Mr Maxwell: It was just that the Executive talked about the usability of regulations—

The Convener: You are very sharp, Stewart.

Mr Maxwell: No, no. I was just struck by that point about ease of use. However, that is fair enough.

The Convener: Are members content that we add the regulations to our list?

Members indicated agreement.

Nursing and Midwifery Student Allowances (Scotland) Regulations 2007 (SSI 2007/151)

The Convener: No substantive points arise in relation to the regulations, but there are a couple of minor points that we should raise. Are members content that we do so?

Members indicated agreement.

Education (Fees and Awards) (Scotland) Regulations 2007 (SSI 2007/152)

The Convener: We should possibly ask the Executive whether it intends to correct the error that is contained in paragraph 11 of schedule 1, given its response to the committee on the Education (Graduate Endowment, Student Fees and Support) (Scotland) Amendment Regulations 2006 (SSI 2006/323). I think that the Executive said that it would correct the error, but it did not and the error has now reappeared.

Mr Macintosh: Although the error is quite minor, the Executive’s failure to make the correction feeds our anxiety—I was going to say paranoia—that recommendations that we make and which are accepted by the Executive just disappear into the ether. We have very little way of tracking what happens to our recommendations. This is a perfect example of a recommendation that the Executive accepted and said it would address but

which it has not addressed. That is probably due to oversight rather than deliberate omission, but it emphasises the need for some sort of tracking mechanism so that we can track whether our recommendations are implemented.

The Convener: Stewart Maxwell will recall that, when we visited the Joint Committee on Statutory Instruments in Westminster, we saw that it kept a log of all its recommendations so that, at the end of the year, it could check whether they had been implemented.

Mr Maxwell: The issue is mentioned in the report of our inquiry into the regulatory framework in Scotland. That report recommended that the committee should produce an annual report on our recommendations and how the Executive has reacted to them. Such an annual report would show up such anomalies. It is entirely reasonable for us to take the Executive at its word when it says that it will take the next legislative opportunity to sort out an error. However, if it subsequently fails to do so, that is a bit problematic. It would help if we published the suggested annual report.

The Convener: Absolutely.

Some minor points also arise in relation to the regulations, but we can raise those points informally.

Students' Allowances (Scotland) Regulations 2007 (SSI 2007/153)

The Convener: No points arise.

Education (Student Loans) (Scotland) Regulations 2007 (SSI 2007/154)

The Convener: No substantive points arise in relation to the regulations, but there are some minor points.

Graduate Endowment (Scotland) Regulations 2007 (SSI 2007/155)

The Convener: Three points arise. First, we should ask the Executive why the definition of "European Economic Area" that is used in the regulations differs from that used in Scottish statutory instruments 2007/149, 2007/151, 2007/152 and 2007/153. Secondly, we should ask the Executive to explain how the requirement that a United Kingdom national insurance number be included in a completed application sits alongside the exception to the requirement that a UK NI number be provided if requested, which is granted in regulation 9(5). There is a bit of confusion on that point. Thirdly, we should ask whether the Executive is content that the cross-references that are contained in paragraph 2(4)(b) of schedule 2 are correct. Are members content that we raise those points?

Members indicated agreement.

Education Maintenance Allowances (Scotland) Regulations 2007 (SSI 2007/156)

The Convener: We should possibly ask the Executive to explain why the definition of "employed" that is given in regulation 2 differs from the definition of "employment" that is used in, again, SSIs 2007/149, 2007/151, 2007/152 and 2007/153.

Civil Partnership Act 2004 (Modification of Subordinate Legislation) (Scotland) Revocation Order 2007 (SSI 2007/157)

The Convener: No points arise.

Education (Student Loans for Tuition Fees) (Scotland) Amendment Regulations 2007 (SSI 2007/158)

The Convener: No substantive points arise in relation to the regulations, but there are some minor points.

Repayment of Student Loans (Scotland) Amendment Regulations 2007 (SSI 2007/159)

The Convener: I think that we need clarification on why new regulation 11(2) of the Repayment of Student Loans (Scotland) Regulations 2000 (SSI 2000/110)—which is inserted by regulation 6 of the amendment regulations—appears to sub-delegate to Scottish ministers powers to specify and require information. Are members content that we ask for that clarification?

Members indicated agreement.

The Convener: There are also two minor points that we should raise.

Disabled Persons (Badges for Motor Vehicles) (Scotland) Amendment Regulations 2007 (SSI 2007/162)

The Convener: We should possibly ask the Executive why it has not amended the definition of "disabled person" in regulation 2(1) of the principal regulations—the Disabled Persons (Badges for Motor Vehicles) (Scotland) Regulations 2000 (SSI 2000/59)—given the amendment to regulation 4 of those regulations by regulation 5(2) of these amendment regulations to include persons below the age of two years. If members followed that, they are good.

Mr Maxwell: I did not follow that initially—it took me several readings to understand that recommendation in our legal brief, but I now think it is particularly clear.

The Convener: There is also a minor point that can be raised informally.

Land Reform (Scotland) Act 2003 (Path Orders) Regulations 2007 (SSI 2007/163)

The Convener: No substantive points have been identified on the regulations but we will raise a minor point informally.

Individual Learning Account (Scotland) Amendment Regulations 2007 (SSI 2007/164)

The Convener: I have no points to raise on the amendment regulations. Do members?

Members: No.

Registered Social Landlords Accounting Requirements (Scotland) Order 2007 (SSI 2007/165)

The Convener: No substantive points have been identified on the order but some minor points arise.

Building (Scotland) Amendment Regulations 2007 (SSI 2007/166)

Building (Procedure) (Scotland) Amendment Regulations 2007 (SSI 2007/167)

Building (Forms) (Scotland) Amendment Regulations 2007 (SSI 2007/168)

Building (Fees) (Scotland) Amendment Regulations 2007 (SSI 2007/169)

Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007 (SSI 2007/170)

The Convener: No points have been identified on any of these regulations.

Bell College of Technology (Transfer and Closure) (Scotland) Order 2007 (SSI 2007/171)

The Convener: No substantive points arise on the order but a minor point does.

Waste Management Licensing Amendment (Waste Electrical and Electronic Equipment) (Scotland) Regulations 2007 (SSI 2007/172)

The Convener: This is the 21st time that the principal regulations—the Waste Management Licensing Regulations 1994 (SI 1994/1056)—have been amended.

Mr Maxwell: Can we ask the Executive whether that is a record?

The Convener: We can—why not? We can ask, “Is this a record?” and we can put the regulations on our list.

Members indicated agreement.

Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 (SSI 2007/173)

The Convener: No points have been identified on the regulations.

Cattle Identification (Scotland) Regulations 2007 (SSI 2007/174)

The Convener: No substantive points have been identified on the regulations but there is a minor drafting point.

Town and Country Planning (Marine Fish Farming) (Scotland) Regulations 2007 (SSI 2007/175)

Planning etc (Scotland) Act 2006 (Consequential Provisions) Order 2007 (SSI 2007/176)

The Convener: No points arise on the instruments.

Town and Country Planning (General Development Procedure) (Scotland) Amendment Order 2007 (SSI 2007/177)

The Convener: No substantive points have been identified on the amendment order but a minor point arises.

Surface Waters (Fishlife) (Classification) (Scotland) Amendment Regulations 2007 (SSI 2007/178)

The Convener: No points have been identified on the amendment regulations.

Radioactive Contaminated Land (Scotland) Regulations 2007 (SSI 2007/179)

The Convener: An issue arises to do with the vires of regulation 17, because the power at section 78YC(b) of the Environmental Protection Act 1990 appears to allow for the modification only of “any other Act” rather than of subordinate legislation. Shall we ask the Executive about that?

Members indicated agreement.

**Criminal Legal Aid (Scotland) (Fees)
Amendment Regulations 2007
(SSI 2007/180)**

**Civil Legal Aid (Scotland) (Fees)
Amendment (No 2) Regulations 2007
(SSI 2007/181)**

The Convener: No points have been identified on these regulations.

**Air Quality Standards (Scotland)
Regulations 2007 (SSI 2007/182)**

The Convener: No substantive points arise on the regulations but a minor one does.

**Local Governance (Scotland) Act 2004
(Remuneration) Regulations 2007
(SSI 2007/183)**

The Convener: We should ask the Executive to explain the purpose of the definition of “the 2004 Act” in regulation 2(1). The definition does not appear to be used in the regulations.

**Seeds (Fees) (Scotland) Amendment
Regulations 2007 (SSI 2007/184)**

**Inshore Fishing (Prohibited Methods of
Fishing) (Loch Creran) Order 2007
(SSI 2007/185)**

**Inshore Fishing (Prohibited Methods of
Fishing) (Firth of Lorn) Order 2007
(SSI 2007/186)**

**Debt Arrangement Scheme (Scotland)
Amendment (No 2) Regulations 2007
(SSI 2007/187)**

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

**Curd Cheese (Restriction on Placing on
the Market) (Scotland) Revocation
Regulations 2007 (SSI 2007/188)**

The Convener: Curd cheese? We have seen this before, have we not? Members will note that the Executive has given an explanation for the breaching of the 21-day rule. Are we happy with it?

Mr Maxwell: Yes—it is entirely reasonable.

**Teachers’ Superannuation (Scotland)
Amendment Regulations 2007
(SSI 2007/189)**

The Convener: Regulation 29 introduces new regulation E7A into the Teachers’ Superannuation

(Scotland) Regulations 2005 (SSI 2005/393). We should ask the Executive whether the reference in regulation 29 to paragraph (5) should be a reference to paragraph (6). The numbering has gone wrong somewhere.

**Prisons and Young Offenders Institutions
(Scotland) Amendment Rules 2007
(SSI 2007/190)**

The Convener: No points have been identified on the amendment rules.

**National Health Service (General Dental
Services) (Scotland) Amendment
Regulations 2007 (SSI 2007/191)**

The Convener: No points arise on the amendment regulations but this is the 10th amendment to regulation 2. The Executive note indicates that the Executive is currently preparing a consolidation instrument. A draft will be consulted on later this year.

**National Health Service (Optical Charges
and Payments) (Scotland) Amendment
Regulations 2007 (SSI 2007/192)**

11:00

The Convener: No points have been identified on the amendment regulations, but this is the 15th amendment to the principal regulations. This time, the Executive note indicates that the Executive has no plans for consolidation because it is allocating its resources elsewhere.

We asked about consolidation when we considered the most recent set of amending regulations—the National Health Service (Optical Charges and Payments) (Scotland) Amendment Regulations 2006 (SSI 2006/138)—and we were given the same answer.

Mr Maxwell: Such cases are just part of the overall discussions that we need to have with the Executive about how to deal with the amendment of subordinate legislation more constructively. We do not exactly stagger from instrument to instrument, but no long-term planning seems to be involved in the process. We have called for that for a while and we should take up the issue with Executive officials through the group that will consider such matters, so that we come to a solution that helps both us and the Executive.

**National Health Service (General
Ophthalmic Services) (Scotland)
Amendment Regulations 2007
(SSI 2007/193)**

The Convener: A number of issues arise, the first of which is why, given its response to the

committee on the National Health Service (General Ophthalmic Services) (Scotland) Regulations 2006 (SSI 2006/135), the Executive has not taken the opportunity to amend the reference to paragraph 11 in paragraph 11(1) of schedule 1 to those regulations. Secondly, we want to know whether the reference to “sub-paragraph (3)” in regulation 2(12)(a) is intended to be a reference to paragraph (3) or, alternatively, to subparagraph (3)(a). There are also some minor points to raise.

Disability Discrimination (Public Authorities) (Statutory Duties) (Scotland) Amendment Regulations 2007 (SSI 2007/195)

The Convener: No points arise.

Gambling Act 2005 (Premises Licences and Provisional Statements) (Scotland) Regulations 2007 (SSI 2007/196)

The Convener: There is a minor point to raise.

Charities References in Documents (Scotland) Regulations 2007 (SSI 2007/203)

The Convener: Are members content to ask the Executive to explain the vires for regulation 3, which, as drafted, covers only documents

“wholly in a language other than English”,

when the terms of the enabling power in section 15(2)(b) of the parent act—the Charities and Trustee Investment (Scotland) Act 2005—refer to documents

“wholly or mainly in a language other than English”?

Mr Maxwell: It is worth seeking clarification because that seems odd. It looks as if a mistake has been made, but perhaps not—the Executive might be able to provide an explanation.

Charities Reorganisation (Scotland) Regulations 2007 (SSI 2007/204)

The Convener: We should ask the Executive whether it is intended that the Office of the Scottish Charity Regulator’s obligation in regulation 6(3) to send a copy of its decision to

“any person that has sent it a notice of objection”

extends to those objectors who have sent such a notice that arrives at OSCR after the latest date for receipt of objections. We want to clarify the timing.

Valuation Appeal Panels and Committees (Scotland) Amendment Regulations 2007 (SSI 2007/212)

Council Tax (Discounts) (Scotland) Amendment Regulations 2007 (SSI 2007/213)

Council Tax (Discounts) (Scotland) Amendment Order 2007 (SSI 2007/214)

The Convener: No points arise on the instruments. I can see the end in sight.

Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2007 (SSI 2007/215)

The Convener: There are three points for us to ask about. First, we seek information on the vires for inserting in schedule 1 to the Council Tax (Exempt Dwellings) (Scotland) Order 1997 (SI 1997/728) a new paragraph 25, which prescribes a class of exempt dwelling. Secondly, we want to know why section 72(5) of the Local Government Finance Act 1992 has been cited as an enabling power. Thirdly, we would like the Executive to clarify the meaning of “exclusive right to use” in newly inserted paragraph 25(3) of schedule 1 to the principal order, given that the exemption and its exception can apply to residences with more than one tenant or licensee. Is it “exclusive” only of non-residents, or is it “exclusive” of other residents, too?

Mr Macintosh: The order is important; it is about ensuring that Abbeyfield homes are exempt from council tax.

Non-Domestic Rates (Levying) (Scotland) Regulations 2007 (SSI 2007/216)

Horse Passports (Scotland) Amendment Regulations 2007 (SSI 2007/217)

Water Environment (Controlled Activities) (Scotland) Amendment Regulations 2007 (SSI 2007/219)

The Convener: No points arise on the regulations.

Instruments Not Laid Before the Parliament

Legal Profession and Legal Aid (Scotland) Act 2007 (Commencement No 2) Order 2007 (SSI 2007/140)

11:04

The Convener: We move on to agenda item 4. No substantive points arise on the order, but there are some minor points that we can raise informally.

Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (Commencement No 16) Order 2007 (SSI 2007/141)

Transport (Scotland) Act 2005 (Commencement No 2) Order 2007 (SSI 2007/161)

Smoking, Health and Social Care (Scotland) Act 2005 (Commencement No 5) Order 2007 (SSI 2007/218)

The Convener: No points arise on the orders.

The committee's next meeting will be next week, on 20 March. As well as scrutinising instruments—we do not know how many of them there will be—we will consider our draft legacy paper and our draft annual report.

Meeting closed at 11:05.

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