

SUBORDINATE LEGISLATION COMMITTEE

Tuesday 26 January 2010

Session 3

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SUBORDINATE LEGISLATION COMMITTEE

3rd Meeting 2010, Session 3

CONVENER

*Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

DEPUTY CONVENER

*Ian McKee (Lothians) (SNP)

COMMITTEE MEMBERS

*Jackson Carlaw (West of Scotland) (Con)
*Margaret Curran (Glasgow Baillieston) (Lab)
*Bob Doris (Glasgow) (SNP)
*Helen Eadie (Dunfermline East) (Lab)
*Rhoda Grant (Highlands and Islands) (Lab)

COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)
Ross Finnie (West of Scotland) (LD)
Christopher Harvie (Mid Scotland and Fife) (SNP)
Elaine Smith (Coatbridge and Chryston) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

Gary Cox (Scottish Government Criminal Justice Directorate)
Rachel Rayner (Scottish Government Legal Directorate)

CLERK TO THE COMMITTEE

Douglas Wands

ASSISTANT CLERK

Jake Thomas

LOCATION

Committee Room 6

Scottish Parliament

Subordinate Legislation Committee

Tuesday 26 January 2010

[THE CONVENER *opened the meeting at 14:15*]

Decision on Taking Business in Private

The Convener (Jamie Stone): I welcome everyone to the third meeting in 2010 of the Subordinate Legislation Committee. We have no apologies. I remind everyone, including myself, to switch off mobile phones, BlackBerrys and that sort of thing.

Under item 1 on the agenda it is proposed that, under item 7, we discuss the content of our draft report on the Marine (Scotland) Bill in private. Is that agreed?

Members *indicated agreement.*

The Convener: I thank you.

Alcohol etc (Scotland) Bill: Stage 1

14:15

The Convener: Item 2 is the Alcohol etc (Scotland) Bill. At our meeting on 12 January, we agreed to invite Scottish Government officials to give oral evidence. It is my very great pleasure to welcome Gary Cox, the head of the licensing team; Rachel Rayner, who is the senior principal legal officer; and the supporting cast.

We will hear what you have to say today in answer to our questions, and we will then consider a draft report at our meeting on 9 February. I have been told that we will dispense with statements and go straight to questions and answers. I will kick off with the first question.

The Scottish Government's explanation for taking a power to set a minimum price for alcohol is brief. It is that

"further consideration of modelling work and other research"

is required before the price is set. First, what evidence is the Scottish Government considering in order to reach a view on the level at which the minimum price per unit should be set initially, and how long has such consideration been on-going? This is about multiplying the strength of the alcohol and the volume by 100 and all that.

Secondly, why was the bill introduced before consideration of the evidence was complete and thus before a minimum price per unit could be included in the bill? We feel that we are going a bit far without knowing the maths of it all.

Gary Cox (Scottish Government Criminal Justice Directorate): We took the view that it would be sensible to invite Parliament to consider the principle of minimum pricing and the formula for setting that price as set out in the bill. Once the principle is accepted and the mechanics of minimum pricing are agreed, we will invite Parliament to consider the merits of a particular price and the research and modelling that form the basis of that price.

In respect of the specific evidence and modelling that was commissioned, members will be aware of the University of Sheffield report that was published last September, which based modelling on a range of different minimum prices per unit of alcohol. Shortly after that work was completed, more up-to-date information became available, in particular the revised Scottish health survey and some new crime data. A number of members raised the issue with us, so we thought that it would be sensible to ask the University of Sheffield to rerun its model, factoring in that more

up-to-date information, and it is doing that at the moment.

The Convener: Can you expand on why we are going on with the bill without having more of that information? You want to give members the opportunity to discuss the proposal in general, but is the fact that we have no data not pertinent to the discussion?

Gary Cox: The data was available. It was Scottish health survey data from 2003. However, while the University of Sheffield was doing its modelling new data became available and it seemed to us to be sensible to ask the university to factor in those data and rerun the model to see what effect the new data would have on the findings. It makes sense for the process of looking at the most appropriate price to be based on the most recent available data.

The Convener: Rachel Rayner, do you wish to add anything to that?

Rachel Rayner (Scottish Government Legal Directorate): No.

The Convener: Colleagues, do you have any supplementary questions?

Jackson Carlaw (West of Scotland) (Con): The modelling was obviously done some time ago. I assume that, the model having been established, it would not be terribly difficult to run it again with the additional data. When do you anticipate that that will happen?

Gary Cox: You are right. The model was developed for the United Kingdom Government and adapted for Scotland. The University of Sheffield is not starting from scratch; it is rerunning an existing model, so we hope to have those data available within the next few months.

Rhoda Grant (Highlands and Islands) (Lab): Given that the minimum price will be set using affirmative procedure, and given the timescale required for an affirmative instrument, is there enough time for you to evaluate the evidence that will come out of the process that you have been talking about?

Gary Cox: As with most bills, the timetable is challenging, but it is achievable. Obviously, we will have to see what emerges from the Sheffield report and we will need to consider the wider impacts of different prices, as well as looking at the evidence and modelling with our lawyers and economists before we come back to Parliament. We certainly intend to get cracking on the process when the University of Sheffield presents its revised findings.

Rhoda Grant: Have you thought about an extended period for consultation, as is used for super-affirmative procedure? I am on the Health

and Sport Committee and went with it to Finland and France. Some of the evidence that we heard seemed to suggest that if a minimum price was going to impact on drinking, it needed to be radical, and an awful lot higher than the 40p per unit that is being discussed. My concern is that the procedure for an affirmative instrument will not give Parliament enough time to scrutinise the suggestions, although you might say that the Government will make a statement.

Future Governments will also use the powers, so we need to make sure that the legislation is future-proofed and that any Government that wants to change the minimum price can be scrutinised by Parliament.

Gary Cox: The intention is that the initial order to set the price and any subsequent order to vary the price will be subject to affirmative procedure. We can take back to ministers your point about super-affirmative procedure but, as it is drafted, the bill proposes using affirmative procedure each time.

Rhoda Grant: So you would not be against using super-affirmative procedure to give Parliament more time to scrutinise the orders and see whether they are competent.

Gary Cox: I am not in a position to answer that today, but I am happy to take the point back.

Rhoda Grant: Fair enough.

The Convener: So the super-affirmative procedure has not been ruled out; it could be laid before ministers as an option. Is that how you read the situation, Rhoda?

Rhoda Grant: Yes, that is how I read it.

Ian McKee (Lothians) (SNP): I would be grateful if the witnesses could help me to get my head around this point. As I see it, the function of the Subordinate Legislation Committee is to decide whether the legislation that will be passed by Parliament is within the Parliament's powers. As I understand it, there could be a problem between the Parliament's duty not to interfere with free trade in Europe under European regulations, and the demonstrable public health benefit that would allow us to set aside the standard EU process in favour of the greater public health good. It will be difficult to know whether there will be a greater health good if we do not know at this stage what the price will be. Can you elucidate?

Rachel Rayner: European law does not ban minimum pricing as such. Whether a particular measure is contrary to European law will depend on whether it interferes with trade between or discriminates against products from member states. If such interference or discrimination can be justified in certain cases, there is no breach of European law. The grounds on which that can be

done include protection of public health and reduction of crime, but it also has to be shown that any interference is proportionate, so that there is a balance between the interference to trade and the protection of health.

Section 1 of the bill enables minimum pricing, and we think that that complies with European law because it does not, in itself, bring minimum pricing into force. The issue hits when the minimum price order is made. At that point, we will have to ensure that the minimum price formula complies with European law. As Gary Cox said, we will have to go through the evidence to ensure that the Scottish ministers consider that any price that they propose complies with European law.

Ian McKee: I understand the second part of your point. However, I am slightly concerned that if we pass legislation to allow minimum pricing we are, in principle, allowing interference with free trade, without being able to demonstrate the benefit of that, because we will not have the sum that would enable us to do the modelling to show it.

Rachel Rayner: No. Minimum pricing is capable of being compliant with European law—there is nothing that says that it cannot be. For that reason, section 1 does not breach European law. Minimum pricing would breach European law only if we introduced a price that did not comply with it. Does that help?

Ian McKee: Yes.

Rhoda Grant: Who is the judge of whether the subordinate legislation that sets a minimum price is compliant with European law? Where is that decided? I understand that when a bill is introduced to Parliament a certificate of competence is obtained. Does that happen with subordinate legislation? Who polices it?

Rachel Rayner: The Scottish ministers will form a view. When the order is laid before Parliament, Parliament will, no doubt, receive advice from its lawyers. Ultimately, the matter will be decided by the European Court of Justice. If a minimum price is set, an order is laid, Parliament approves it, the order comes into force and someone challenges it, it will be for the court to decide whether the evidence base is sufficient to ensure that the order complies with European law.

Rhoda Grant: Is the approach that you propose a way of avoiding scrutiny? It seems to be a truncated way of avoiding having to obtain a certificate of competence, as it involves passing legislation that may not be competent and leaving Europe to decide on the matter. We all know how long processes in Europe take. I would be concerned if the Parliament were to pass legislation that was not competent. It appears that

the Government is using a loophole to avoid scrutiny.

Rachel Rayner: It is the same process that applies to all regulations, whether affirmative or negative. There have been occasions when the Parliament and the Subordinate Legislation Committee have questioned the legality of proposed regulations. No doubt consideration will be given to the matter when the price is proposed. A certificate of competence is not required for regulations. It is not for me to say whether that is appropriate.

Helen Eadie (Dunfermline East) (Lab): That is an interesting point. Perhaps we can discuss the issue, which worries me, with the convener and the clerks later.

Have Rachel Rayner, Gary Cox or any of the other officials who are present today read the report of the European economic and social committee on alcohol policy throughout Europe, which was published at European Union level last October? The report, which I have read, was verified by 134 members. Have you or any other members of the bill team had regard to it?

Gary Cox: I have not read it, but that is not to say that some of our economists who have worked on the issue have not done so; I am happy to check with them. As you would imagine, both health organisations and the alcohol industry have presented a vast amount of evidence on the policy. In the policy memorandum to the bill, we have sought to highlight the key pieces of evidence and research that we used to develop the policy. I cannot comment on the report to which you refer.

14:30

Helen Eadie: The European economic and social committee comprises, I think, 134 members from all member states of the European Union. Its report addresses the issue of alcohol policy throughout Europe. I wonder why we are looking only at a minute part of the whole. I share the concerns of both Ian McKee and Rhoda Grant about competency issues, especially the issue of whether regulations need to have a certificate of competence, which causes me some alarm.

Margaret Curran (Glasgow Baillieston) (Lab): Section 7 amends the power that is currently available under section 60 of the Licensing (Scotland) Act 2005 to vary the mandatory conditions that apply to licences and are set out in schedule 4 to the 2005 Act. The power enables for the first time amendments to be made to those conditions and is, therefore, quite broad. In those circumstances, why do you think that negative procedure remains appropriate? Why have you not adopted an approach similar to that in section

27(2), which requires the use of affirmative procedure?

Gary Cox: The issue goes back to a discussion that we had with the Justice Committee last year and advice that we received from the Subordinate Legislation Committee in respect of regulations that we were making about distillery visitor centres. The 2005 act gave ministers powers to impose new conditions; however, legal advisers at the time took the view that it did not give them powers to delete or remove the application of conditions. In the case to which I refer, the Justice Committee had no problem with the policy, but there remained a difference of legal opinion. We are seeking to put the matter beyond doubt and to make it clear that ministers' powers should include the power to delete, to disapply or to reduce the scope of mandatory conditions, as well as the power to impose new ones, which is set out expressly in the 2005 act. The position seemed to us to be fairly absurd. We have sought to put it right in the Alcohol etc (Scotland) Bill.

The procedure that is to be used in respect of premises licences—licences for shops or pubs—is affirmative procedure; for occasional licences, negative procedure will be used. That is a feature of the 2005 act. I am not aware of the thinking that led Parliament to take that view in the previous session, but there is a difference. The use of the negative resolution procedure is a consequence of the 2005 act, rather than the bill.

Margaret Curran: Nonetheless, is that not still a significant step in terms of legislative procedure? The committee is interested in the principle of the legislative procedures that are proposed. You have given a commonsense answer to my question, but the measure may have implications for the future, given that this is the first time that conditions have been amended. I seek advice on the significance of that.

Gary Cox: We are happy to look into the matter and to try to work out the reasons for the approach that was taken back in 2004 and 2005.

Bob Doris (Glasgow) (SNP): The delegated powers memorandum indicates that the policy intent of section 9 is to give discretion to local authorities to impose an age limit of 21 as a condition for the sale of alcohol at off-sales premises. Given the narrowness of that policy intent, why is it not included in primary legislation? Why are you seeking to apply it via subordinate legislation?

Gary Cox: As you say, section 9 is intended to facilitate the introduction of an age 21 policy, but it has a wider application. The provision is trying to fill a gap. As a result of the 2005 act, ministers have the power to apply conditions on a blanket basis across the country or to certain types of

premises. At the other end, licensing boards are able to apply conditions on a premises-by-premises basis, but there is nothing in the middle that would allow a licensing board to say that there is a problem in its area with X, Y or Z and that a particular condition would be appropriate. They cannot apply such a condition in their area without going through the process of having a hearing in respect of every single premises. The power attempts to fill the gap between those two extremes. The intention was certainly to facilitate the application of the age 21 policy, but the power is not limited to that. Licensing boards will be able to use it in respect of any other subject areas that are prescribed in regulations.

Bob Doris: That seems a reasonable policy intent, but the committee is not here to discuss that. Would there not be the same policy intent had you provided in primary legislation for local authorities to have that discretion? I express no opinion on whether the power should be in the bill or in subordinate legislation. I just want to check that it would have the same policy intent. If it was in the bill, would it still leave licensing boards the local discretion to act in relation to pockets or areas where they believe that there is a specific problem?

Rachel Rayner: The power is narrow in that it does not give licensing boards an unlimited power to vary conditions. They can do so only in relation to prescribed matters. The power is a means of limiting the matters to those that the Parliament considers appropriate. If we did not have the power, a licensing board could do anything. With the delegated power, we are saying, "No, it has to be in relation to these matters." The example that is given of how the power would be used is to restrict the purchase of alcohol at off-sales premises by people who are under 21, but it could also be used for other matters that were of concern.

Bob Doris: We will reflect on that. Although the power is a broad discretionary power, the delegated powers memorandum gives only one specific example—that of off-sales to under-21s. Does the Government have waiting in the wings other proposals in relation to licensing boards or local authorities? If not, I wonder why you have put such a broad power in subordinate legislation. If you do have such proposals, I would be curious to know what they are.

Gary Cox: There is certainly nothing up our sleeves. There is no intention to use the power for anything specific. The power is more about future proofing. It is to allow licensing boards to think about how they might want to respond to particular issues in their area. If a licensing board comes to us and says that it has a problem with pubs or retailers in a particular area and it believes that a

particular condition is appropriate, that will prompt a discussion within Government and it will allow ministers to come back to the Parliament with a regulation. There is certainly nothing in our minds beyond the age 21 policy, but the power will allow licensing boards to come to us with any areas that they want to consider in the longer term.

Bob Doris: I find that interesting, convener. We have different views as a committee about what future subordinate legislation might be, but this is the first time that I have heard the example of future proofing. Maybe we can reflect on that as a committee.

Helen Eadie: The power does not enable the Scottish ministers to specify what conditions are to be imposed. Instead, it enables them to set out the subject matter of such conditions. That is a concern. Will you comment on that, please?

Rachel Rayner: The view is that, if there was one specific condition, licensing boards would only have the choice between imposing that condition and not doing so, whereas situations might vary between different parts of the country. The ways in which licensing boards wish to tailor conditions might vary. The power allows that flexibility, but it limits the scope by limiting the subject matter. It allows licensing boards the flexibility to act in a way that is appropriate for their area.

Helen Eadie: I would have thought that it might be appropriate to specify a range of conditions. You are the experts, but I have a concern about the approach that is being taken.

Ian McKee: The social responsibility levy is a significant revenue-raising measure—some people have even called it a sort of tax—yet the detail of how it is to be calculated and by whom it will be administered is to be left to subordinate legislation. Why did the Government decide not to set out the general principles of the proposal in the bill and to put only the administrative detail in subordinate legislation?

Gary Cox: When we started the debate on the social responsibility levy, we prompted a discussion about the extent to which it should apply. The example that was given was that late-opening pubs and superpubs in city centres should perhaps make an additional contribution to policing costs. The debate was then broadened out and the matter was included in the consultation on the alcohol framework. We hoped to get from that consultation some views from the licensed trade and retailers about how they saw the levy working in practice, but we did not get much information back. The response was more a case of people saying, “Yes, we agree with it” or “No, we don’t.”

With the social responsibility levy, we have taken the view that we do not want to dream up a

particular scheme, present it to ministers and the Parliament, and present it to the licensed trade as a fait accompli. Experience of working on licensing issues has taught us that it is far better to involve the licensed trade and retailers in the development of policy, and that is the view that we took in this case. During the past year, we have met a group that comprises the main licensed trade organisations, some of the supermarkets and representatives of the restaurant and hospitality industry to consider different models and get their contributions on how the levy might work in practice. We are continuing those discussions.

As you would imagine, there are differences of opinion between the pub trade and the retailers and there are a number of ways to skin this particular cat. We want to continue the discussions, go through the process and try to reach a point where we can bring them all together and get an arrangement with which they feel comfortable—one that is fair and reasonable, but which has an impact by raising money for local authorities to use in dealing with the costs of alcohol misuse. It is fair to say that the discussions are still at an early stage and there is a fair amount of work to be done, but we have certainly taken the view that we would rather go through that process with the trade than impose something on it.

Ian McKee: So you are establishing the principle, but the levy is a work in progress. Is that what you are saying?

Gary Cox: Yes.

Ian McKee: Thank you.

Helen Eadie: The delegated powers memorandum states:

“Taking a regulation making power will allow the Scottish Government to discuss further with the licensed trade and other interests the detail of how the levy should be imposed, applied and collected.”

Do you believe that the use of subordinate legislation is a proper substitute for clear policy consideration before legislation? Why do you consider that that is an appropriate use of such powers?

Gary Cox: It comes back to the point that we hope that we will have a better social responsibility scheme at the end of the process. We believe that we will have something that is workable if we have involved the licensed trade and particularly the Convention of Scottish Local Authorities in the process of developing it. I believe that the approach is the right one. We started with almost a blank sheet of paper and we are trying to colour it in as we go through the process. As I said, we hope that the end result will be something to which the licensed trade feels able to sign up.

Helen Eadie: You have described the process. You talked about all the different parties who have been involved in your consultation, but you have not justified why the use of subordinate legislation is a proper substitute for clear policy consideration before legislation. I press you on that technical point. My question is not about the consultation process. Why are you using subordinate legislation instead of having clear policy consideration before legislation?

Gary Cox: I will ask Rachel Rayner to comment, but the bill sets out the principle of a social responsibility levy. We have set out the areas in which it might be used and the fact that local authorities can use money from the levy only in the furtherance of the licensing objectives in the 2005 act. The detail and the principle are set out, and the administrative detail will be contained in the regulations.

14:45

Rachel Rayner: The provision makes clear the purpose for which the levy can be imposed. It is not a completely unlimited power.

Helen Eadie: I am still not entirely sure that you have answered the question. You have told me why you think that it is the right approach, but you need to have a fundamental reason for choosing to use subordinate legislation, rather than the other options that were available to you. I must press you again: exactly why have you chosen to use subordinate legislation, which involves a lesser form of scrutiny?

Gary Cox: It comes back to the point that, had we included more detail in the bill, the chances are that we would have sought to remove it at stage 2 because of on-going discussions with the licensed trade and other interests. We have taken the view that it is right that the principle should be included in the bill and the administrative detail—the arrangements that may apply and the levels at which the levy might be set—should be included in secondary legislation.

Helen Eadie: That still does not really answer my question. The point that I am making is that you have a range of tools in the toolbox and can choose any one of them. Why in this case have you chosen the one that involves the least scrutiny?

Gary Cox: I challenge the view that it involves the least scrutiny. When we come back with the administrative detail, regulations that have been developed with the licensed trade will be subject to the affirmative resolution procedure. If, when the regulations come forward, Parliament is unhappy with the detail of the social responsibility levy, we will have to take that into account. In splitting the

principles from the administrative details, we have taken the right approach.

Rhoda Grant: I share Helen Eadie's concerns. You are discussing the levy and its implications with COSLA and the Scottish Licensed Trade Association, but a large number of small businesses will be affected. If the proposals were included in primary legislation, a committee of the Parliament would be able to call for evidence on them and to scrutinise them. That would give people a voice. The Parliament must make clear that everyone who is involved in and affected by legislation has a voice. Using subordinate legislation silences many of those people, because they do not have the backing of a large organisation that will put forward their views. They do not have the lobbying power to make their thoughts known—they may not even be aware that subordinate legislation that affects them has been introduced. There is a serious point to be made about the need for us to be open and accessible and to ensure that people who are affected by legislation have the ability to respond and be heard.

Gary Cox: That is a fair point. I mentioned some of the organisations that are involved in the process; I did not give an exhaustive list. I imagine that in the longer term, when draft regulations are available, we will issue them for much wider consultation before coming to Parliament.

Jackson Carlaw: I am slightly troubled by all this. How do you react to the proposition that the bill has been introduced prematurely and that, if the various streams of work that we have discussed in this session had been properly worked through, it would not have been necessary to resort to the procedures by which we are troubled and the bill could have proceeded with the appropriate level of scrutiny and authority, on a clear and understood basis?

Gary Cox: The process with the licensed trade started in the middle of last year. We did not feel able to bring forward more detail by the time that the bill was to be introduced. As I said to Dr McKee, there are differences of opinion between different parts of the licensed trade on how the arrangement might work in practice. We need to continue those discussions to get something workable. Had we tried to accelerate the process or pushed the licensed trade in a particular direction, the end result would have been that the proposals were less satisfactory than, hopefully, those that we will bring forward in regulations.

Margaret Curran: I return to the point that Helen Eadie raised. I see the logic in saying that the principle is in the bill and the administrative detail is in subordinate legislation. However, I must challenge that, because before we could vote on the principle we would need to see how it would

operate. Before I would agree to vote on a social responsibility levy, I would want to know whether it was proportionate, effective and fair, how it would affect certain sectors of the trade, and so on. With all due respect, that is a matter for officials to negotiate with the industry, but ultimately MSPs have to make the decision on it. I do not think that the principle and the detail can easily be separated out, because the detail informs whether the principle can be adhered to. As Helen Eadie suggested, we have more work to do on the matter.

The Convener: I do not know whether that was a question.

Margaret Curran: No. It was just a point, I suppose.

The Convener: Would you like to respond?

Gary Cox: No.

Bob Doris: This, too, might turn out to be a comment rather than a question, but perhaps you will find a question in it somewhere. I was trying to form my view on the matter as the discussion went on. I was struck by what Rhoda Grant said. Some small businesses have not been as effective at lobbying and the parliamentary process gives them more of a voice, but the other side of the coin might be that, if the power was in primary legislation and there were unintended consequences, it would not be easy to amend the legislation to take into account, say, the fact that small businesses had been adversely affected by the social responsibility levy. Subordinate legislation would allow for that.

I note that the power is subject to affirmative procedure. You talked about on-going consultation, and it might be good if the Parliament had a view at some point of how robust that consultation has been. Again, that was perhaps part of the point that Rhoda Grant made. If there is on-going consultation, would it not make more sense for the power to be subject to super-affirmative procedure? I do not even know whether that is what I think—I am just saying what was in my head as the discussion went on. Do you want to respond to that?

Gary Cox: On the point about super-affirmative procedure, again, I will take that issue back. The example that you used is a good one, because exactly the same situation arose with the distillery visitor centres issue that we considered last year. A regulation that was imposed on the licensed trade as a whole created particular problems for distilleries. The industry made representations and we were happy to respond to them, which then allowed us to come back with regulations to fix the problem. There is an analogy between that issue and what Mr Doris described.

The Convener: Are we there, colleagues?

Members *indicated agreement.*

The Convener: It remains only for me to thank our witnesses for giving evidence. Not next week but the week after, we will consider our report, which I think will be interesting. I suspend the meeting briefly to give the witnesses time to extricate themselves. Thanks again.

14:52

Meeting suspended.

14:54

On resuming—

Home Owner and Debtor Protection (Scotland) Bill: After Stage 1

The Convener: Let us move swiftly to agenda item 3. We have seen the Scottish Government's response to our stage 1 report on the delegated powers in the bill. I hope that we are all pleased to note that the Government has agreed to make a number of amendments in response to our recommendations.

We are left with one outstanding issue, which is the delegated powers in section 4; we considered that they had been drawn too widely. The powers have been restricted, but perhaps not as far as we might have hoped. At this stage, we are simply asked to note the Government's response. After stage 2, which will happen tomorrow, we can revisit those areas and all the other changes that are made to the powers in the bill at stage 2.

There being no comments on the Government's response, are members content to note the response, as set out in the clerk's paper?

Members indicated agreement.

Forth Crossing Bill: Stage 1

14:55

The Convener: This is our first look at the bill, which contains a number of delegated powers. It is suggested that we deal only with those powers that our legal advisers have proposed we might want to raise with the Scottish Government. The proposal is that we consider the Government's response to points raised today at our meeting on 9 February, when we will also consider our stage 1 report. Is everyone happy to proceed in that way?

Members indicated agreement.

The Convener: Section 11 is on "Special roads". We may wish to ask the Government to explain why it was considered appropriate that an order that could be made by the Scottish ministers by virtue of section 11(4), to vary or revoke a special roads scheme, should be subject to no parliamentary procedure. The roads that are listed in schedule 3 are to be special roads that will serve the new bridge as a national development. Section 143A of the Roads (Scotland) Act 1984 provides that a scheme under section 7 of that act, which authorises the carrying out of a national development, is subject to made affirmative procedure. Is that agreed?

Members indicated agreement.

The Convener: Section 76, on "Ancillary provision", enables ministers by order to make any supplementary, incidental or consequential provisions that are considered appropriate in connection with the bill. Such orders may modify any enactments, including the bill itself, or any instruments, some of which may have been subject to affirmative procedure. Such provisions also appear to be capable of affecting or interfering with private interests that will be affected by the bill. Are we content to ask the Scottish Government to justify why, in relation to some of the ancillary powers in section 76(1), negative procedure is considered to be an appropriate level of parliamentary scrutiny?

Members indicated agreement.

The Convener: Section 77(1) is on "Crown application". It is suggested that we ask the Scottish Government the following questions. First, why does the power in section 77(1) require to be conferred on an "appropriate authority" to agree that any modifications of the bill's provisions can be made in relation to the application of the provisions to Crown interests?

Secondly, given that we assume that any such modifications could be agreed only for the purposes of the bill, which the Government acknowledges in the DPM to be restricted in scope

to the detailed authorisation of the works to achieve the new crossing, could the power to modify be more narrowly drawn?

Thirdly, and finally, given that the effect of section 77(1) would be to allow an “appropriate authority” to modify any provision in its application to Crown interests without further parliamentary scrutiny, with whom is agreement required under the section? Should that be specified and so made clear in the provisions?

Can we agree to ask those three questions?

Members *indicated agreement.*

Instruments subject to Approval

**A90 (Aberdeen Western Peripheral Route)
Trunk Road Order 2010**

**A96 (Aberdeen Western Peripheral Route)
Trunk Road Order 2010**

**A956 (Aberdeen Western Peripheral
Route) Trunk Road Order 2010**

**A90 (Aberdeen Western Peripheral Route)
Special Road Scheme 2010**

**A90 (Aberdeen Western Peripheral Route)
(Craibstone Junction) Special Road
Scheme 2010**

**A956 (Aberdeen Western Peripheral
Route) Special Road Scheme 2010**

The committee agreed that no points arose on the instruments.

14:57

The Convener: The plans are with the papers if we want to see them, but there seems to be no need.

**CRC Energy Efficiency Scheme Order
2010 (SI 2010/Draft)**

The committee agreed that no points arose on the instrument.

Instruments subject to Annulment

National Health Service (Charges for Drugs and Appliances) (Scotland) Amendment Regulations 2010 (SSI 2010/1)

14:58

The Convener: Do we agree to report to Parliament and the lead committee that the Scottish Government's response has been helpful in clarifying the intended effect of regulation 3(a) as permitting payment of the reduced price if applications are received on or after 1 April, regardless of whether they were made before that date?

Members *indicated agreement.*

Official Feed and Food Controls (Scotland) Amendment Regulations 2010 (SSI 2010/5)

The committee agreed that no points arose on the instrument.

14:59

Meeting continued in private until 15:06.

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Wednesday 3 February 2010

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