

ENTERPRISE AND LIFELONG LEARNING COMMITTEE

Wednesday 22 January 2003
(Morning)

Session 1

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ENTERPRISE AND LIFELONG LEARNING COMMITTEE

† 3rd Meeting 2003, Session 1

CONVENER

*Alex Neil (Central Scotland) (SNP)

DEPUTY CONVENER

*Miss Annabel Goldie (West of Scotland) (Con)

COMMITTEE MEMBERS

*Rhona Brankin (Midlothian) (Lab)
Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab)
*Mr Adam Ingram (South of Scotland) (SNP)
*Gordon Jackson (Glasgow Govan) (Lab)
*Marilyn Livingstone (Kirkcaldy) (Lab)
Mr Kenneth Macintosh (Eastwood) (Lab)
*David Mundell (South of Scotland) (Con)
Tavish Scott (Shetland) (LD)
Andrew Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Mr David Davidson (North-East Scotland) (Con)
Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)
John Farquhar Munro (Ross, Skye and Inverness West) (LD)
Elaine Thomson (Aberdeen North) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Alastair Clyde (Scottish Executive Legal and Parliamentary Services)
Iain Gray (Minister for Enterprise, Transport and Lifelong Learning)
Mr Lloyd Quinan (West of Scotland) (SNP)

CLERK TO THE COMMITTEE

Simon Watkins

SENIOR ASSISTANT CLERK

Judith Evans

ASSISTANT CLERK

Jane Sutherland

LOCATION

Committee Room 3

† 1st and 2nd Meetings 2003, Session 1—held in private.

Scottish Parliament

Enterprise and Lifelong Learning Committee

Wednesday 22 January 2003

(Morning)

[THE CONVENER *opened the meeting at 10:04*]

The Convener (Alex Neil): We are a few minutes late. Now that we have a quorum, I suggest that we start the meeting.

On item 2, the Minister for Enterprise, Transport and Lifelong Learning is at a Cabinet meeting this morning and will not be able to join us until 11.30 am. I imagine that, as a result, we will have a fairly substantial break-out between the first and second items. I ask the members who are present to return for item 2 to ensure that we have a quorum. After all, it would be a bit embarrassing if the minister turned up and not enough committee members were present to continue with the meeting.

I have received apologies from Tavish Scott, Rhona Brankin, Brian Fitzpatrick and Andrew Wilson. David Mundell is tied up with the Transport and the Environment Committee. The other members who have not yet arrived might join us later.

Legacy Paper

The Convener: I will ask Simon Watkins to introduce the committee's legacy paper, after which I will throw the item open to members for their comments and questions.

Simon Watkins (Clerk): The paper summarises the committee's views on the work that it has undertaken over the past four years, although I am aware that not all the current members have been members of the committee for that length of time.

The idea behind the paper is to leave something for a successor committee or committees—depending on the committee structure of the next Parliament—that provides a starting point in two ways. First, the paper suggests items that the committee might want to inquire into and, secondly, it outlines procedures and ways of carrying out business. I am sure that most members feel that, over the past four years, we have learned quite a lot about what does and does not work and about what constitutes the most effective use of the committee's time.

The paper begins by summarising the core of the committee's activity over the past four years, including scrutiny of bills. It then lists potential future inquiry topics, most of which are specific issues that have spun out of other work and that we have not had the time to pursue. Basically, I have prepared a menu or shopping list for a successor committee. Of course, it will be entirely up to a successor committee to choose what it wants to do, but we thought that the list would provide a more helpful starting point than a blank sheet of paper.

The issues in question have emerged under a set of headings. The committee has already examined some of those issues, but, five or six years into the life of the Parliament, there will be an opportunity for a successor committee to return and find out whether any progress has been made. The list in the paper contains short explanations of why particular issues have been highlighted.

Early in its life—and probably before most of the present members had joined—the committee agreed a paper on how to select topics for inquiry, highlighting the various issues that should be taken into account. That subject is covered in section 4 of the legacy paper, which in effect reproduces the paper that was agreed back in 1999. Members might want to find out whether its points are still relevant. However, that paper has probably been helpful to us in selecting particular issues and, if you like, choosing in a positive way not to select others.

In section 5 onwards, the paper considers the committee's procedures and means of operation. That part of the paper is extensive, because the committee has tended to choose more informal ways of operating—for example, by having not entirely formal meetings. Those sections also cover various mechanisms that the committee has used, including case-study visits, away days and larger events such as the business in the chamber event and the lifelong learning convention.

Buried within the paper are several recommendations to the successor committee, one of which is that it should hold an away day very early on. We held one about 18 months into the life of the committee because, before then, we were probably just establishing ourselves. We were the first to have such an event. Although there was some scepticism about whether it would be valuable, the members who participated felt it to be quite useful in setting a medium-term strategy for the committee and in helping us not to be blown off course by subsequent events.

The Convener: All our critics in the other committees then pursued the strategy.

Simon Watkins: The Conveners Group will consider whether, after the election, it wants to recommend to the next wave of committees that they should all undertake early away days. We have suggested that a successor committee should consider that question immediately, at its first meeting. It can have an away day early in the process—we did not have that opportunity. That is probably as much as it is worth saying on that issue.

We have tried in the paper to be reasonably fair and to admit that we have not been able to undertake our scrutiny as well in some areas as we have in others. There is a section on the budget, which is the one area in which members have felt unhappy about the ability to get to grips with things. There is also a short section on legislation. The committee has been largely free of legislation, so perhaps we do not have much advice to offer to the successor committee.

The Convener: Thank you for the paper, which is comprehensive.

David Mundell has now popped out to the Transport and the Environment Committee, but he will be popping back again later. He has a constituency issue to deal with.

I would like to make three general comments to supplement what Simon Watkins said. Two of the issues have been discussed in the Conveners Group, which is now a statutory committee of the Parliament and has been built into standing orders.

First, this committee, particularly in the past couple of years, has suffered from a rapid turnover

of members. I am not suggesting that we can expect every member of an 11-strong committee to remain with the committee for four years. However, compared with the first two years, when there was relative stability, there has been a fairly rapid turnover in the past couple of years in all parties. We have not been as bad as some committees, but I have certainly felt at times, particularly during a long inquiry such as the one into lifelong learning, that the turnover was detrimental to the committee's work. I hope that the powers that be, in all the parties, will address that issue in the new session of Parliament. It has certainly been a subject for discussion at the Conveners Group.

My second point emphasises what Simon Watkins said. The paper contains recommendations to our successor committee, but we clearly cannot bind it to what we recommend. The successor committee will ultimately decide its priorities and what recommendations it wants to accept or reject.

Thirdly, although we talk about a successor committee, we perhaps should be talking about successor committees. There is a distinct possibility that the enterprise and lifelong learning functions will no longer be in the same department after the election, so those functions may no longer be covered by the same committee. The paper that we are now considering may therefore go to at least two successor committees instead of just one. That will depend on who the First Minister is after the election and how the Government decides to structure its departments, but it is worth bearing that point in mind.

As there are only three other members here, I shall go round each and every one of you for comments and questions.

Miss Annabel Goldie (West of Scotland) (Con): The paper is excellent—I did not make any response to Simon Watkins because it seemed to me to encapsulate everything that was relevant. As you said, a balance should be struck between giving a light touch to the successor committee and laying down great tracts of material for it to churn through. I thought that the paper was helpful and there is nothing further that I want to add.

Marilyn Livingstone (Kirkcaldy) (Lab): The same goes for me. The paper is really good. I agree with the possible future topics, which are the important things for a successor committee to note. The only thing that I would like to say—and this is not in any way a criticism—is that we have always talked about parity between further and higher education in funding. Would that be covered under the lifelong learning strategy, or should we make specific reference to further education? FE is a big plank of lifelong learning and the paper does not mention it, so it might be

worth including a caveat with regard to the lifelong learning strategy. The Executive has made an effort to equalise funding. We are all pleased about that, so perhaps it is worth emphasising. As I read through the paper, I liked the balance between business and the lifelong learning strategy. However, the FE funding situation could be elaborated on.

The Convener: I am happy to build in that additional emphasis.

Marilyn Livingstone: The paper mentions the implementation of the Scottish Higher Education Funding Council review, so we should also say that we are interested in considering the continued growth of the FE sector, although I am not suggesting that we give priority to it.

The Convener: Okay.

10:15

Miss Goldie: I slightly demur. One issue that I have been interested in is the funding of the further education sector. Had we time, I might well have made a decision to consider that further.

The Convener: We are suggesting that an early inquiry should be into the governance of the further education sector. Perhaps that should be extended to include funding as well. Is that agreeable?

Marilyn Livingstone: That would be great. That was all that I had to add.

Mr Adam Ingram (South of Scotland) (SNP): I reiterate what my colleagues said about the paper. It would have been interesting to have had an evaluation of the committee's work, but I do not know who would undertake that.

The Convener: Last week, the Conveners Group approved a research project—a scoping exercise—to consider the impact of all the committees, particularly on Executive policy.

Mr Ingram: That would be interesting. I note that the paper refers to reviewing and scrutinising Scottish Executive strategies and the impact of Executive policy. I think that the successor committee will be much more engaged in that type of activity. I understand that, because the committee and Executive were just starting up, there was not enough time properly to evaluate Executive policies. I imagine that our successor committee will be heavily engaged in, for example, reviewing the strategy “A Smart, Successful Scotland: Ambitions for the Enterprise Networks”.

I reckon that there might be less scope for the committee to go off in the directions that it wants to, particularly in terms of inquiries. Perhaps the committee's core work should be scrutiny of what the Executive is doing and achieving. I think that

committees have a particular role in scrutinising what the Executive does and in criticising that—constructively, of course. That is what I envisage the successor committee doing.

I have to say that I have enjoyed being on this committee. I have been on four or five parliamentary committees and in my view the Enterprise and Lifelong Learning Committee is one of the better ones.

The Convener: The best one.

I will just throw my tuppenceworth in. I think that the paper is excellent and sums up the almost unanimous view of the committee on our *modus operandi* and the areas where much work has still to be done. Inevitably, the consequences of the possible introduction of top-up fees in the higher education sector have to be a top priority for the committee. I think that it would be inappropriate for us to tackle that issue this side of the election because it requires thorough discussion and investigation. In any case—I have double-checked this—top-up fees require primary legislation south of the border and that is not likely to happen until much later this year, or even next year.

The successor committee will have time to look at the consequences of top-up fees for Scotland. I think that we all agree that the last thing that we want is to place Scottish universities at a competitive disadvantage to those south of the border. We do not want to have to go down the road of putting quotas on Scottish or English students—although there are already quotas on foreign students in most of the universities.

Miss Goldie: Can you clarify whether the Executive has made any comment on the developments down south? I might have missed that.

The Convener: No—not that I have seen.

Simon Watkins: The white paper was published only 17 or 18 minutes ago, so there has been no formal opportunity to comment on it.

Miss Goldie: It has not been in the formal milieu for comment.

Marilyn Livingstone: For the committee's information, I have lodged a parliamentary question on the issue, but I do not know whether it will get called.

The Convener: I have asked to put a supplementary question on the issue during First Minister's question time on Thursday.

Marilyn Livingstone: I do not know whether my question has been included in First Minister's question time.

The Convener: It has. Your question is number 3.

Marilyn Livingstone: Oh, right. Well, I can now say that I have a parliamentary question on the issue. I think that the Executive must say something, for the reasons that the convener gave.

The Convener: I point out that the Executive hopes to announce its response to the committee's lifelong learning report and, indeed, the results of the Executive's wider review of higher education on 11 February, I think. Is it 11 February?

Simon Watkins: It is that week, certainly.

The Convener: Iain Gray has invited committee members to a briefing on the Monday morning. I do not think that it would be easy for most members to get to a briefing in Edinburgh at 8.30 on a Monday morning, so I will speak to the minister to see whether we can rearrange the meeting. However, he has kindly offered to give the committee an informal briefing a couple of days before the formal announcement of his policy, which is helpful.

Marilyn Livingstone: That is to be welcomed.

The Convener: Absolutely. We will try to arrange with the minister a more appropriate time for the formal briefing, so that members can get to it. Simon Watkins and I are working on that with Iain Gray. I presume that his statement has to indicate what the Executive intends to do north of the border about top-up fees.

I think that we are all agreed that we endorse the legacy paper—with the one or two amendments that we discussed—and strongly recommend to our successor committee or committees that the paper be taken seriously. I hope that, once a new convener and deputy convener are appointed, they will take the legacy paper as item 1 or 3, as the case may be, on their agenda. I hope that they get the benefit of the four years' experience of the Enterprise and Lifelong Learning Committee. Marilyn Livingstone and Annabel Goldie have been on the committee since it was formed.

Miss Goldie: The doyennes.

The Convener: They have added a great deal to the proceedings. If they are happy with the paper, that is particularly important, because it means that the full, four-year span of experience can be taken into account.

Marilyn Livingstone: We should congratulate the clerks, because the paper is very good.

The Convener: Absolutely. It is an excellent paper.

That takes us to 10.22 am. The minister cannot join us for item 2 until 11.30 am, so I will formally suspend the meeting until then. I beg members to

come back and bring with them as many of their colleagues as they can to ensure that we have a decent turnout for the minister.

10:22

Meeting suspended.

11:31

On resuming—

Subordinate Legislation

Late Payment of Commercial Debts (Scotland) Regulations 2002 (SSI 2002/335)

The Convener: Item 2 is on subordinate legislation. Before we start, I ask committee members to declare any relevant interests.

Miss Goldie: I should, perhaps, declare an interest as a member of the Law Society of Scotland.

The Convener: No doubt Mr Jackson is about to do the same and declare his interest as a member of the Law Society of Scotland.

Gordon Jackson (Glasgow Govan) (Lab): I have not been so insulted for a long time. *[Laughter.]*

The Convener: I thought that I would just give you time to sit down. Would you like to declare an interest?

Gordon Jackson: I am a member of the Faculty of Advocates.

Rhona Brankin (Midlothian) (Lab): I seek guidance about what sort of interests we are legally obliged to declare.

The Convener: All your shares, pensions and everything. No, seriously—

Rhona Brankin: That will not take long.

Miss Goldie: We want to hear about your legal transgressions generally.

Rhona Brankin: Would being a trustee of an organisation be a relevant interest?

Simon Watkins: We have particularly requested members to declare any interests because the committee's previous discussion on the regulations dealt with the relationship between advocates and solicitors and several members have specific interests in that area.

Rhona Brankin: That is fine.

The Convener: I welcome Iain Gray, the Minister for Enterprise, Transport and Lifelong Learning, who will say a few introductory words. I also welcome Lloyd Quinan, who will sit in on the committee's proceedings for this item. This is the second time that the committee has discussed the regulations. I am glad to say that I was not at the first meeting, but I am sorry to be here at the second.

The Minister for Enterprise, Transport and Lifelong Learning (Iain Gray): I am grateful for the opportunity to address the issue again. When we discussed it previously, I undertook to return to the committee and report back on the consideration that the Executive had given to the issue and the work that it had done to address the concerns that were expressed. With the committee's forbearance, I will take a few minutes to report back.

Since the meeting last October, my officials have met representatives of the Law Society of Scotland, the Faculty of Advocates and the Scottish Legal Aid Board. The issue that caused most concern to members, of course, was the reference in the regulations to advocates' fees, which are subject to the late-payment directive. As I said in October, it is our view that advocates' fees are covered by the terms of the European Union directive on combating late payment in commercial transactions. We have a statutory duty to ensure that the regulations that we introduce implement that directive fully and properly. It is our belief that the payment of fees by a client to an advocate is a commercial transaction under the terms of the directive.

The regulations amend the Late Payment of Commercial Debts (Interest) Act 1998, which uses the term "contract". We believe that it was necessary to make it clear in the regulations that advocates' fees come within the amended late-payment legislation, which is why the regulations will add a section 2A to the 1998 act. I understand that the Faculty of Advocates believes that we will be right to do so in order correctly to implement the EU directive. The Law Society of Scotland does not accept our view, but it has not said anything that leads the Executive to reconsider the terms of the regulations on fees and it welcomes the rest of the regulations and the rights that they give to businesses. I think that that point was made in our discussion in October; I will return to it.

I want to deal with another issue that relates to Scottish legal aid payments. Concern was expressed that considerable Executive expenditure might be involved, but I assure the committee that that will not be the case. The Executive and the Scottish Legal Aid Board believe that payments by the board fall outside the late-payment legislation because there is no contractual or commercial relationship between the board and solicitors or advocates. The board has a statutory duty to pay solicitors and counsel for legal aid that is provided to assisted people.

I understand that the Faculty of Advocates and the Law Society are still considering that issue, but it would ultimately be for the courts to determine whether the legislation applies in any particular

case or relationship. In any event, the committee might wish to note that the sums that are involved are likely to be relatively small. The board already pays more than 95 per cent of its accounts within 30 days, which is the normal commercial payment period, and is working to improve payment procedures further and to make payments on account as a case progresses through the legal system. Therefore, even if the matter were to be tested in court and it was found that the legislation applied, the financial impact would be relatively small for the Executive.

The third main issue that I took from the meeting in October concerned the relationship between the advocate, the solicitor and the client—views on that matter were strongly expressed. I said then, and restate now, that the Executive does not seek to change or influence the nature of that relationship.

As with all businesses that are now subject to late-payment legislation, there will be a review of working practices, which will lead to arrangements that are compatible with the legislation. The ultimate aim of the legislation is to reduce late payment; I hope that that will happen with advocates' fees, as with any other commercial transaction. I understand that the Law Society and the Faculty of Advocates is, in the light of the regulations, examining the current agreement for accounting for counsel's fees.

The introduction of any new legislation will lead to questions about how it will operate in practice. I know that the Law Society has practical queries as well as substantive legal questions and I have asked my officials to continue their discussions with the Law Society and to offer advice. However, it is not appropriate that discussions with Executive officials should take the place of independent legal advice; therefore, work is being done so that the arrangements are compatible with the new legal position.

I reiterate that we believe that we have correctly carried out our responsibility to transpose the European late-payment directive. We have had a series of useful meetings with the Law Society and the Faculty of Advocates, and I am confident that those will lead to greater understanding of the practical implications of the regulations. As far as the regulations' wider application to the business community is concerned, the inquiries that we have received suggest that business has welcomed and is exploiting them, as we would have hoped.

The Convener: Thank you. Would you like to introduce your officials?

Iain Gray: I am sorry—I should have done so beforehand. That is remiss of me. Andrew McConnell and Alastair Clyde are here to support me.

Miss Goldie: I thank the minister for returning to the committee. You were, at the time of the original discussion, good enough to indicate that you would come back. I am certainly interested to hear the outcome of the discussions that have taken place and I wonder whether the Law Society of Scotland said what its concerns were. Were those concerns about the nature of the relationship between solicitor and client and the relationship between solicitor and advocate?

Iain Gray: The Law Society has a number of concerns about the way in which the system works. One of my colleagues—who have been involved more directly in the discussions with the Law Society—will comment on that. My understanding is that the Law Society would have preferred us not to add section 2A to the Late Payment of Commercial Debts (Interest) Act 1998 and to test the impact of the legislation in court. When we had the discussion in October, it seemed to me that there was concern—I remember that Mr Quinan talked about this—that we should avoid that course of action and that we should not have legislation that will inevitably be tested in court. We are in a bit of a perverse position, because as we go ahead, the legislation will be tested in court.

In a sense, the Law Society's position is practical in terms of the discussions that it is having with the Faculty of Advocates about working relationships. The discussions focus on payment schemes, because it is possible for the regulations not to apply if a properly constituted payment scheme with redress is in place as part of the relationship. The position is practical in that sense, and those discussions are being progressed. The Law Society's position is that one legal principle can be resolved in discussion and the other would have to be tested through legal process.

Alastair Clyde (Scottish Executive Legal and Parliamentary Services): I really cannot speak for the Law Society of Scotland on its position. We explained what our obligations were in relation to the directive and how we believed that we had met those obligations, and the Law Society explained the practical difficulties that the regulations cause in relation to its agreement with the Faculty of Advocates. In terms of substantive law, we more or less have an agreement to differ. We will give the Law Society any further assistance that we can on the regulations.

We have clarified some areas. There was concern about from whom the late payment of the debt would be due. Our understanding is that the debt is due from the client to the advocate. Again, a court might ultimately resolve that matter, but our understanding is that the client rather than the solicitor would be caught. I think that the Law

Society's view was that the solicitor might be caught like a piggy in the middle, although I am not in a position to speak for the society. Our understanding is that that would not be the case.

Miss Goldie: I want to clarify for the record whether the committee received from either the Law Society of Scotland or the Faculty of Advocates any representations or comments post 8 October 2002.

The Convener: We have received none.

Gordon Jackson: I have declared that I have an interest and I have not discussed the matter with anyone. When the Executive took representations and heard that the client, rather than the solicitor, was responsible to the advocate, did the Faculty of Advocates express a view?

Alastair Clyde: My understanding is that the Faculty of Advocates agrees with us that the debt is due from the client to the advocate, but I cannot speak for it, either.

Gordon Jackson: I am a little surprised, but the world might have moved on.

Alastair Clyde: You might wish to clarify that matter with the Faculty of Advocates. I will be happy to deal with any concerns that you might have in correspondence. My understanding is that at least on that point the Faculty of Advocates, the Law Society of Scotland and the Executive were in agreement.

Gordon Jackson: My understanding has always been that I was due such money from the solicitor, that it was his responsibility to pay me and that I had no relationship with the client in terms of money. I can see why the Law Society could be a bit twitchy about the legislation. On the other hand, I can see why I would not be in the least bit twitchy about it—there is a vested interest.

Miss Goldie: As a practising solicitor, I can say that my understanding is entirely the same as Gordon Jackson's. For the reason that he mentions, instructing solicitors are always extremely careful to know whether funds are available before they employ the services of an advocate.

Alasdair Clyde: Is that not because of the terms of the Law Society's agreement with the Faculty of Advocates?

Miss Goldie: No, it is because of ethical professional practice, as a solicitor could be both professionally and personally liable if there were any default.

Iain Gray: Part of the answer relates to the discussions that we understand are taking place between the Faculty of Advocates and the Law Society. Our understanding is that most of the

payments take place under the 2002 scheme for accounting for and recovering counsel's fees, which is an agreement between the Faculty of Advocates and the Law Society. Those two organisations are discussing any implications that late payments might have on the scheme and whether it needs to be altered to take account of that. I imagine that the protection of the client's interests would be part of that discussion.

11:45

The Convener: Are you still twitchy, Gordon?

Gordon Jackson: No. I am simply conscious of the incestuous nature of the discussion. I have never understood myself to have any relationship with the end user at all. I have always worked on the basis that lawyers' relationships were with one another and that the client was the solicitor's problem. I could be wrong, but that is the way in which Annabel Goldie and every other lawyer whom I know operates.

Mr Lloyd Quinan (West of Scotland) (SNP): I raised the issue for the reasons that Gordon Jackson and Annabel Goldie have mentioned. I also wanted to probe the nature of the relationship, because I was also concerned about the relationship that exists in other jurisdictions. The barrister's contract in England, Wales and Northern Ireland is not included in the directive; there, the relationship between client and solicitor is not seen as a contract in the same way as it is here. I still do not quite understand why we have chosen to add a section to the Late Payment of Commercial Debts (Interest) Act 1998.

Further to what Gordon Jackson said, I was also under the impression that the relationship between advocate, solicitor and client was coloured by the fact that advocates are officers of the court, which prevents them from entering into a contract with the client.

I am pleased that the minister has come back and I accept what he says about the on-going negotiations and the fact that it might be that the situation will be settled in court. If that is what the Faculty of Advocates and the Law Society seek to do, so be it. However, I maintain that we find ourselves in this situation partly because the Subordinate Legislation Committee—when the instrument came before it—did not compare the legislation for England and Wales bill with that for Scotland, which would have made it obvious that there was to be an additional section. Had that been done, the matter could have been dealt with at that stage and would not have had to come before this committee.

However, having received no further representations from the Law Society, I am happy to go along with what the minister has said this

morning because I believe that there might be court action once the relationship between the Faculty of Advocates and the Law Society is finally defined. That is a sad situation because it is never particularly admirable when law must be tested in court, but so be it.

The Convener: Annabel Goldie, the deputy convener, wrote to the Procedures Committee on the point that Lloyd Quinan makes about the need for the Subordinate Legislation Committee to be made aware of additional information, but I do not think that we have had a reply yet. The Procedures Committee will, no doubt, take the matter up at some stage.

Miss Goldie: The point of particular concern to the committee when I wrote that letter was the way in which the time scale for the statutory instrument procedure worked. Mr Quinan lodged his motion in a proper and competent way but, in so doing, he placed the committee and the minister in an almost impossible position. If the minister had not been scheduled to meet the committee that morning anyway, it is difficult to see how he might have been able to alter his timetable to meet the committee. However, in terms of the procedure, the committee was obliged to consider Mr Quinan's motion and it would have been difficult to do that without intervention or input from the minister. That procedural point was at the nub of the referral to the Procedures Committee.

The Convener: I hope that we will get a reply from the Procedures Committee in the next couple of months.

Gordon Jackson: I am not defending anyone, but I do not think that the matter could have been dealt with by the Subordinate Legislation Committee because it is a policy decision; it is not really to do with the detail of the drafting of the instrument, which is what the Subordinate Legislation Committee tends to deal with. I suspect that the Subordinate Legislation Committee would simply have referred the matter back to this committee anyway.

The time scale is, however, a huge problem, particularly for the Subordinate Legislation Committee. I keep telling the Executive that, but it might be that the time scale causes it a problem as well.

Iain Gray: We have to recognise that there are different views on the legal position, but I reassure the committee that the practical implications are being discussed at some length by the Faculty of Advocates and the Law Society. It might be that the other question is tested in court at some point—that is always a possibility.

The Convener: I thank the minister and his officials for their attendance.

Meeting closed at 11:50.

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