

# **SUBORDINATE LEGISLATION COMMITTEE**

Tuesday 4 May 2004  
*(Morning)*

Session 2

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## SUBORDINATE LEGISLATION COMMITTEE

15<sup>th</sup> Meeting 2004, Session 2

### CONVENER

\*Dr Sylvia Jackson (Stirling) (Lab)

### DEPUTY CONVENER

Gordon Jackson (Glasgow Govan) (Lab)

### COMMITTEE MEMBERS

\*Mr Stewart Maxwell (West of Scotland) (SNP)

\*Christine May (Central Fife) (Lab)

\*Alasdair Morgan (South of Scotland) (SNP)

\*Mike Pringle (Edinburgh South) (LD)

\*Murray Tosh (West of Scotland) (Con)

### COMMITTEE SUBSTITUTES

Bruce Crawford (Mid Scotland and Fife) (SNP)

Alex Johnstone (North East Scotland) (Con)

Maureen Macmillan (Highlands and Islands) (Lab)

\*attended

### CLERK TO THE COMMITTEE

Alasdair Rankin

### ASSISTANT CLERKS

Joanne Clinton

Bruce Adamson

### LOCATION

Committee Room 3



## Scottish Parliament

### Subordinate Legislation Committee

Tuesday 4 May 2004

(Morning)

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

### Delegated Powers Scrutiny

**The Convener (Dr Sylvia Jackson):** I welcome colleagues to the 15<sup>th</sup> meeting in 2004 of the Subordinate Legislation Committee. At the moment, I have no apologies, so I assume that our two missing members—Murray Tosh and Gordon Jackson—will arrive.

#### National Health Service Reform (Scotland) Bill: as amended at Stage 2

**The Convener:** Item 1 is delegated powers scrutiny of the National Health Service Reform (Scotland) Bill as amended at stage 2. Our report on that will be produced tomorrow morning.

Murray Tosh has arrived, so we now have one of our two missing members.

The committee will remember that we asked two questions on new section 4B(5)(da), which the bill will insert into the National Health Service (Scotland) Act 1978. The answers that we have received from the Executive have led our legal adviser to feel that the use of delegated powers to amend the 1978 act is a quick fix and is not helpful drafting in health legislation, which is already a complicated area. What are members' views on the matter?

**Alasdair Morgan (South of Scotland) (SNP):** No further action is required, convener.

**The Convener:** Are we all agreed that we have gone as far as we can?

**Members** *indicated agreement.*

**Christine May (Central Fife) (Lab):** It must be fixed.

**The Convener:** Yes, it must be fixed.

#### Emergency Workers (Scotland) Bill: Stage 1

**The Convener:** Item 2 is delegated powers scrutiny of the Emergency Workers (Scotland) Bill at stage 1. Committee members have received the bill and associated information.

The bill, which is part of the antisocial behaviour agenda, creates a new offence of assaulting or impeding persons who provide emergency services. The bill also contains powers to make delegated legislation in section 6, which concerns powers to modify. However, paragraph 6 of the memorandum on the bill that the Executive has submitted to the committee mentions that, in addition to introducing the power to add a person to, or remove them from, the list of emergency workers covered by the bill,

“Section 6(1) also allows the Scottish ministers to make provision connected with modification as they think fit.”

Our legal advice suggests that it is possible that that further power might be used to adjust the penalties contained in section 4, for example, which would be a significant and possibly controversial change. The delegated powers are simply subject to annulment, and the question is whether that is sufficient, particularly for the further power.

**Alasdair Morgan:** The provisions to alter the bill are far too widely drawn to be subject to the negative procedure, and we need to write to the Executive on that point.

**The Convener:** Should we be a bit more specific on the point that arises from paragraph 6 in the Executive's memorandum to us?

**Christine May:** We should, because if the Executive were to confine ministers' powers to modify the bill to making changes to the list of emergency workers alone, that might—I use the word “might” advisedly—be sufficient to allay the committee's fears. We have time to ask the Executive whether it would be prepared to amend the bill to restrict the powers to modification of the list only, after which we could examine the provisions and determine whether that restriction and the associated scrutiny powers were sufficient.

**The Convener:** Is that agreed?

**Members** *indicated agreement.*

**Murray Tosh (West of Scotland) (Con):** As the legal briefing points out, the exercise of Henry VIII powers is ordinarily subject to the affirmative procedure rather than the negative procedure. I recall that, several meetings ago, we agreed to let something go on the basis that it did not seem terribly significant. However, at some stage, perhaps we should have a paper on the matter that we could discuss in isolation from any statutory instruments, so that we do not make decisions on the basis of the importance of provisions, because that could be the thin end of a substantial wedge. We should at least consider the principle that we should always ask for the affirmative procedure to be used for Henry VIII

powers. It may be that, if we consider the matter, we will decide that that is an extreme view to take, but I would not mind having that discussion at some stage.

**The Convener:** That is a good point. We could perhaps go further than having that debate ourselves; we could have it at our next meeting with the Executive. Is that what you mean?

**Murray Tosh:** Absolutely.

**The Convener:** Do the clerks have a note of the wording that Christine May suggested?

**Alasdair Rankin (Clerk):** Yes, I have taken a note of that point.

**The Convener:** Are we agreed on what we will say about section 6?

**Members** *indicated agreement.*

**The Convener:** No points arise on section 7, which concerns the short title and commencement.

## Executive Responses

### Home Energy Efficiency Scheme Amendment (Scotland) Regulations 2004 (SSI 2004/188)

10:35

**The Convener:** Item 3 is the Executive response on the Home Energy Efficiency Scheme Amendment (Scotland) Regulations 2004 (SSI 2004/188). The committee asked three questions, which were about progress towards consolidation of the principal regulations, why consolidation has been delayed and whether the disparity with the situation in England and Wales, where changes have been made, was due to a lack of resources in Scotland. The reply is that the changes are in their initial stages and that the Executive is having problems with resources. What are the committee's views?

**Mr Stewart Maxwell (West of Scotland) (SNP):** We discussed these regulations last week. The fact that the Executive has acknowledged that it has a resource problem is in its favour, but if it has such a problem, it really must tackle it. It is not reasonable to leave the situation in such a mess, with consolidation barely having been progressed in the past three years even though the Executive had indicated that it was imminent. I am glad that the Executive has acknowledged the issues that we raised with it, but I would have liked a much firmer response on when it will deal with them and a timescale for the completion of the consolidation. We do not have such a response, and I can see the matter drifting on for years yet. That is a bit disappointing, to be honest, but we can only draw the response to the attention of the lead committee and the Parliament.

**The Convener:** I wonder whether we could do two things. First, we could draw the lead committee's attention to what we have discussed, the Executive's response and our concern. Secondly, we could write back to the Executive to try to get a firmer timescale for consolidation, because it is important. Is that agreed?

**Members** *indicated agreement.*

**The Convener:** I also wonder whether we should pursue the resources issue and, if so, how best we could do that. Perhaps we should have a meeting with the Executive about that fairly soon.

**Murray Tosh:** Do we have enough information for such a meeting? Might it be more appropriate to get some information from officials about the difficulties that they are having? I do not know the structure of the Development Department, but we know that the Health Department has difficulty updating statutory instruments. It may be that

there is scope for us to do some investigation by letter before we start to have meetings the purpose of which is not entirely clear other than to say that something should be resourced. It might be better to focus on particular areas of difficulty, which might also help Executive officials to clarify the matter in their minds.

**The Convener:** We have certainly noticed the difficulty with consolidation.

**Mr Maxwell:** I support Murray Tosh's idea. It would be helpful if, before we decide what to do, we received a response that detailed the resource issues and problems, whether they are temporary or longer term and whether they occur in certain areas and not in others. Murray Tosh is right that, until we have those answers, it would be premature to have a meeting.

**The Convener:** That seems sensible. Are we agreed?

**Members** *indicated agreement.*

**The Convener:** We will put that in a letter.

## Draft Instruments Subject to Approval

### Budget (Scotland) Act 2004 Amendment Order 2004 (Draft)

11:39

**The Convener:** No points arise on the draft order.

### Health Professions (Operating Department Practitioners and Miscellaneous Amendments) Order 2004 (Draft)

**The Convener:** The draft order in council makes provision for the regulation of health professionals known as operating department practitioners. Such persons were not previously subject to statutory regulations. Our legal advice notes two points that were raised informally with the Executive, but, apart from them, there are no points of substance. Are there any further points?

**Members:** No.

## Instruments Subject to Annulment

### European Communities (Services of Lawyers) Amendment (Scotland) Order 2004 (SSI 2004/186)

10:40

**The Convener:** Two points have been raised on the order. The first refers to whether the omission from the order of a reference to solicitor advocates is deliberate. It may be that the reference to solicitors is taken to be all-encompassing and that it covers solicitor advocates. The second point is whether the term that has been used for the designation of a Luxembourg lawyer is correct.

**Alasdair Morgan:** I agree with those two points, which we should ask about. I note that, for some fascinating reason, possibly to do with the European Communities Act 1972, the instrument has been made by the Privy Council rather than the Scottish ministers, which is quite unusual.

I also noticed, in going through the fascinating list of what lawyers are called in every country in the European Union, that the correct term, "Δικηγόρος", is used for Cyprus, whereas, for the Hellenic Republic, the word has been transliterated into the Latin alphabet—"Dikegoros". I am not aware of Greece having adopted the Latin alphabet, so I wonder why that has been done.

**Christine May:** For the benefit of those of us who did not have Alasdair Morgan's classical education, perhaps.

**Mike Pringle (Edinburgh South) (LD):** I was going to say something similar. You obviously had a serious classical education, Alasdair.

**The Convener:** Would you like to say that through the chair?

**Mike Pringle:** Sorry.

**Alasdair Morgan:** If we are going to ask about the Luxembourg designation of "avocat-avoué", we might as well ask why the Hellenic Republic seems to have given up the Greek alphabet.

**The Convener:** That is very interesting. There are no further points. We will ask the Executive those questions.

### Supervised Attendance Order (Prescribed Courts) (Scotland) Order 2004 (SSI 2004/194)

**The Convener:** No points have been identified in the legal advice.

**Mike Pringle:** It is good that the provisions under the order have come into force, and I look forward to their being rolled out to district courts across Scotland.

**Murray Tosh:** That is a policy point.

**Mike Pringle:** I realise that.

**The Convener:** There are no points from a subordinate legislation point of view.

**Act of Sederunt (Fees of Solicitors and Witnesses in the Sheriff Court) (Amendment No 2) 2004 (SSI 2004/196)**

**The Convener:** The Court of Session has acknowledged that the instrument is technically defectively drafted, by reason of the typographical error in paragraph 2(2). There therefore seems to be no need for a further letter to the court, but the committee should perhaps draw the attention of the lead committee and the Parliament to that error, so that there is no confusion. Is that agreed?

**Members indicated agreement.**

**Special Waste Amendment (Scotland) Amendment Regulations 2004 (SSI 2004/204)**

**The Convener:** These regulations have returned to us. We pointed out a difficulty, and the erroneous reference to “producer return” has now been removed. There are no further points. Is that agreed?

**Members indicated agreement.**

**Instruments Not Laid Before the Parliament**

**Act of Adjournment (Criminal Procedure Rules Amendment) (Miscellaneous) 2004 (SSI 2004/195)**

10:43

**The Convener:** The Lord President’s legal secretary has asked legal advisers to express his most sincere apologies to the committee for the drafting error that occurred. We might wish to consider reporting the defective drafting to the Parliament.

**Christine May:** We should also mention the fact that the High Court is moving to correct the error.

**The Convener:** Yes—we will say that the court is correcting it. Is that agreed?

**Members indicated agreement.**

**Act of Sederunt (Ordinary Cause, Summary Application, Summary Cause and Small Claim Rules) Amendment (Miscellaneous) 2004 (SSI 2004/197)**

**The Convener:** This act of sederunt involves an extension of the period within which lists of witnesses must be exchanged from 14 to 28 days. We should ask whether the inclusion of that extension is deliberate because, looking at the explanatory note, it seems that the act of sederunt is intended simply to be a restatement of the existing rules, which allow for 14 days. Is that agreed?

**Members indicated agreement.**

**Public Appointments and Public Bodies etc (Scotland) Act 2003 (Commencement No 6) Order 2004 (SSI 2004/198)**

**The Convener:** No points of substance arise.

**Christine May:** There is an informal point about earlier commencement orders, which could be raised in an informal letter.

**The Convener:** Is that agreed?

**Members indicated agreement.**

**Freedom of Information (Scotland) Act 2002 (Commencement No 3) Order 2004 (SSI 2004/203)**

**The Convener:** No points of substance have been identified, but we might wish to use an informal letter to make a point about the explanatory note, as noted in paragraph 56 of the legal brief. Is that agreed?

**Members indicated agreement.**

**The Convener:** I thank members for their attendance.

*Meeting closed at 10:45.*

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