Criminal Cases (Punishment and Review) (Scotland) Bill

Bill Number: SP Bill 5
Introduced on: 30 November 2011
Introduced by: Kenny MacAskill (Government Bill)
Passed: 20 June 2012
Royal Assent: 26 July 2012

Passage of the Bill

The Criminal Cases (Punishment and Review) (Scotland) Bill was introduced in the Parliament in November 2011.

The Parliament’s Justice Committee was designated as lead committee for the purposes of parliamentary consideration. Its stage 1 report was published in March 2012. The Scottish Government produced a written response to that report in April 2012, and the Bill completed stage 1 proceedings following a parliamentary debate later the same month. Stage 2 consideration of the Bill was carried out by the Justice Committee at a meeting in May 2012.

The Bill was passed following the stage 3 parliamentary debate in June 2012 and became the Criminal Cases (Punishment and Review) (Scotland) Act 2012 following Royal Assent in July 2012.

Purpose of the Bill

The Bill contained provisions in relation to two distinct issues:

- Part 1 of the Bill sought to amend some of the statutory rules used by the High Court when calculating the “punishment part” of a life sentence (ie the period a life sentence prisoner must serve in custody before being eligible to apply for release on parole). The Scottish Government’s proposals in this area were intended to correct a perceived anomaly arising from the decision of the High Court in the case of Petch & Foye v HM Advocate (2011)
• Part 2 of the Bill sought to establish a framework under which the Scottish Criminal Cases Review Commission can disclose information, contained within a “statement of reasons”, about cases it refers to the High Court – where the relevant appeal is subsequently abandoned. The Government’s proposals in this area were originally prompted by the case of the now deceased Abdelbaset al-Megrahi (convicted of murder following the Lockerbie bombing)

Parliamentary Consideration

In relation to Part 1 of the Bill, there was broad support for the stated goals of the Scottish Government, with the stage 1 report noting that the Justice Committee was:

“supportive of the aim of Part 1 of the Bill in seeking to address the anomaly identified in the Petch and Foye case whereby a life prisoner is likely to have a parole hearing earlier than a non-life prisoner sentenced for a similar crime”. (para 4)

Given this fact, the most fundamental issue to be debated was whether or not the detailed approach set out in the Bill would actually provide the judiciary with a clear set of rules, under which they could set a punishment part which is appropriate in all the circumstances of a case. On this point there were differences of opinion. The stage 1 report stated that:

“The Committee accepts that the existing legislative framework on non-mandatory life sentences is already a complex area of law. However, we also note the difference of views between the Scottish Government, which considers the Bill to provide a clear framework for judges to use when calculating the punishment part of non-mandatory life sentences, and those expert witnesses who consider the legislation overly complex. These views are difficult to reconcile.” (para 94)

Despite the existence of some continuing concerns amongst MSPs about how the provisions would be applied in practice, none of the amendments lodged during the passage of the Bill related to Part 1. The Cabinet Secretary for Justice did, however, provide assurances during the stage 3 debate that the Scottish Government would keep the operation of the provisions under review.

Parliamentary scrutiny of the provisions in Part 2 of the Bill was heavily influenced by:

• the publication, by a Scottish newspaper, of the Commission’s statement of reasons in the al-Megrahi case shortly before the Justice Committee was due to finalise its stage 1 report
• active discussions between relevant stakeholders in relation to what barriers data protection rules might present to the publication of any statement of reasons
The publication of the statement of reasons in the al-Megrahi case led some to question whether there was still any need for Part 2. However, there was also an acceptance that the provisions were capable of being used in relation to other cases. The Scottish Government sought to emphasise the more general applicability of the provisions, with the Cabinet Secretary for Justice stating during the stage 3 debate that:

“Subsequent to the introduction of the Bill, the Commission’s statement of reasons has been published by a newspaper. However, our legislation is general, and we consider that it is in the interests of ensuring transparency and openness in the justice system that there is a framework in place to ensure that, in future cases, the Commission is able to consider releasing information relating to abandoned appeals arising from a reference that it has made, where there is a substantial public interest.” (cols 10277-8)

In relation to data protection rules, the above mentioned discussions led to the emergence of a consensus that any obstacles those rules might present to publication of information by the SCCRC may not be as significant as initially thought by some (including the Scottish Government and the SCCRC).

A number of Scottish Government amendments to the provisions in Part 2 of the Bill were passed during stages 2 and 3. They sought to improve the original provisions in a number of areas, including the impact of legal professional privilege and the treatment of information originating from a foreign authority.

The Bill, as amended, was passed without division.