Justice Committee

Criminal Cases (Punishment and Review) (Scotland) Bill

Letter from the Cabinet Secretary for Justice to the Convener

Further to the continuing and extensive media reporting of the contents of the Scottish Criminal Cases Review Commission’s Statement of Reasons (SoR) in the Al-Megrahi case (most recently in this week’s Herald newspaper), I am writing to update the Justice Committee with important discussions that have been held in relation to data protection considerations in the context of the Criminal Cases (Punishment and Review) Bill (the Bill).

The Scottish Government is committed to being as open and transparent as it can be in relation the Al-Megrahi case. In terms of the Bill’s framework for potential disclosure of information by the SCCRC, you are aware that the Scottish Government’s focus has been on ensuring that any appropriate steps that can be taken to enhance the ability of the SCCRC to comply with data protection legislation are taken.

As the Committee know, views have been offered to the Committee by the Information Commissioner’s Office, the UK Government and the SCCRC themselves on how the SCCRC may be able to comply with data protection legislation. Following a constructive meeting held on 7 March involving the SCCRC, the Information Commissioner, the UK Government and the Scottish Government, the SCCRC are now considering the issues discussed at that meeting. This includes the question of whether the processing of sensitive personal data under the framework provided for in the Bill can be said to be necessary for the administration of justice.

If the conclusion is that such processing could be necessary for the administration of justice (and the continuing and extensive publishing of the contents of the SoR is likely to be an important factor in this consideration), this would mean that compliance with one of the necessary conditions for the processing of sensitive personal data as provided for in Schedule 3 of the Data Protection Act 1998 could be achieved.

This would not mean the SCCRC did not need to consider other factors relevant to disclosure such as ECHR considerations, but it would mean that the SCCRC could be able to comply with data protection requirements without amendments to the Bill being made by the Scottish Government and without the need for an order under paragraph 10 of Schedule 3 to the Data Protection Act 1998 being made by the UK Government.

As the Committee has heard in evidence, it is ultimately for the SCCRC to be satisfied that they can comply with data protection legislation in terms of the framework in the Bill. With this in mind, the Scottish Government will be guided by the assessment of the SCCRC who, as noted above, are considering whether they may be able to comply with data protection legislation under the terms of our Bill.
With virtually every passing day, more and more of the content of the SCCRC’s Statement of Reasons in the Al-Megrahi case comes into the public domain. The Scottish Government firmly believes that this selective and partial reporting of the information only emphasises the importance of the SCCRC being able to decide to disclose information in the Al-Megrahi case.

I hope this update is helpful to the Committee as you deliberate over the drafting of your Stage 1 report.

Kenny MacAskill MSP
Cabinet Secretary for Justice
16 March 2012