Justice Committee

10th Report, 2014 (Session 4)

Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2014

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Justice Committee

Remit and membership

Remit:

To consider and report on:

a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice; and

b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.

Membership:

Christian Allard
Roderick Campbell
John Finnie
Christine Grahame (Convener)
Alison McInnes
Margaret Mitchell
Elaine Murray (Deputy Convener)
John Pentland
Sandra White

Committee Clerking Team:

Irene Fleming
Joanne Clinton
Neil Stewart
Christine Lambourne
Justice Committee

10th Report, 2014 (Session 4)

Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2014

The Committee reports to the Parliament as follows—

1. At its meeting on 30 September 2014 the Committee considered the following instrument—

   Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2014 [draft].

2. The instrument was referred to the Justice Committee as lead committee and was subject to affirmative procedure. The Cabinet Secretary for Justice, Kenny MacAskill, gave evidence on the instrument and also moved the relevant motion recommending approval of the instrument.

Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2014 [draft].

The draft instrument

3. The draft Order was laid under section 1(2) of and paragraph 2(7) of schedule 1 to the Legal Profession and Legal Aid (Scotland) Act 2007 and all other powers enabling them to do so. The purpose of the instrument is to make changes to the number and composition of the membership of the Scottish Legal Complaints Commission (SLCC) by reducing the number of the board from 12 to 9, thereby placing current practice on a statutory footing.

Scrutiny by the Delegated Powers and Law Reform Committee

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 5 August 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit¹.

Justice Committee consideration

5. The draft Order was considered by the Justice Committee on 30 September 2014, when it took evidence from Kenny MacAskill, Cabinet Secretary for Justice.

6. In his opening remarks the Cabinet Secretary explained that when the SLCC was created in 2008, schedule 1 to the 2007 Act stated that the board would consist of a total of nine members, whilst allowing Scottish Ministers to amend that number and the composition of the Board by Order. Mr MacAskill went on to explain that in 2010 the size of the board was increased to 12 members to allow periods of appointment and retirements to be staggered so as to always retain a number of experienced members. This process had successfully staggered the periods of appointments and he confirmed that the situation should not arise again. He stated that the size of the board had now decreased to the nine members originally provided for in the 2007 Act and that he was satisfied that a larger board was not required given that the composition matched the requirements of the 2007 Act.

7. In response to a question about a reference in the policy note to the affordability of 12 members, the Cabinet Secretary reaffirmed that, since the transition period had passed, the SLCC was able to function well with nine members. He clarified that the Order was aimed at reverting to the number of members allowed for in the 2007 Act and that it was not financially driven.

8. When asked why a similar Order laid in June 2014 had been withdrawn, the Cabinet Secretary explained that, due to a misunderstanding between the Scottish Government and the SLCC, it contained an error in the balance between lay and legal members. He confirmed that the board comprises five lay members and four professional members, thereby maintaining the balance between non-lawyer and lawyer members.

9. Mr MacAskill then moved the motion lodged in his name: S4M-10964—That the Justice Committee recommends that the Legal Profession and Legal Aid (Scotland) Act 2007 (Membership of the Scottish Legal Complaints Commission) Amendment Order 2014 [draft] be approved.

10. The motion was agreed to.

11. The Justice Committee therefore recommends to the Parliament that it approve the draft instrument.

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3 Made up of five non-lawyer members, including the chair, and four lawyer members.
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