



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 19 January 2021

Session 5



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Pàrlamaid na h-Alba

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JUSTICE COMMITTEE
2nd Meeting 2021, Session 5

CONVENER

*Adam Tomkins (Glasgow) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Annabelle Ewing (Cowdenbeath) (SNP)
*John Finnie (Highlands and Islands) (Green)
*Rhoda Grant (Highlands and Islands) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Humza Yousaf (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Virtual Meeting

Scottish Parliament

Justice Committee

Tuesday 19 January 2021

[The Convener opened the meeting at 10:00]

Subordinate Legislation

Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [Draft]

The Convener (Adam Tomkins): Good morning, everyone, and welcome to the second meeting in 2021 of the Justice Committee. We have received no apologies.

Our business in public is consideration of a range of secondary legislation. We start with the draft Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021. I refer members to the relevant papers.

I welcome the Cabinet Secretary for Justice and his officials, and I invite the cabinet secretary to make a brief opening statement on the instrument, if he wishes. I will then invite members to ask questions. Good morning, cabinet secretary.

The Cabinet Secretary for Justice (Humza Yousaf): Good morning, convener. I hope that you and all committee members are safe and keeping well. Thank you for the opportunity to speak to you on a range of Scottish statutory instruments, including these criminal legal aid and advice and assistance regulations.

The regulations have been introduced further to the introduction of legislation by the United Kingdom Parliament—namely, the Counter-Terrorism and Border Security Act 2019. The 2019 act introduces powers to stop, question and detain individuals at a port or in a border area to determine whether they are or have been involved in hostile activity on behalf of or in the interests of a state other than the UK.

The regulations provide that non-means-tested criminal advice and assistance may be available to a person detained under the provisions of the 2019 act. They also provide that non-means-tested criminal advice and assistance can be made available to any person who has a right to have a solicitor present at an interview under section 32 of the Criminal Justice (Scotland) Act 2016. The 2016 act currently disapplies that right in relation to terrorism offences under the Terrorism Act 2000. The regulations provide that,

in Scotland, all those detained can engage the provision of free criminal advice and assistance while in custody, regardless of the reasons for their detention and interview.

Without the regulations, a person detained in connection with a relatively minor offence could access non-means-tested advice and assistance from a solicitor, whereas a person detained under suspicion of terrorism-related offences could not. The introduction of the regulations ensures that access to justice is available to all and that legal representation is available in those cases. The regulations provide mechanisms for payment from the legal aid fund for the provision of such services.

That is a brief overview of the regulations and their context. I am, as always, happy to answer the committee's questions.

The Convener: It was a helpful overview of what the regulations are intended to do. I invite questions from members for the cabinet secretary on the regulations.

No member has indicated that they want to ask a question, so we move to the next item of business, which is formal consideration of the motion on the regulations. The Delegated Powers and Law Reform Committee has considered and reported on the regulations and has no comments.

I ask the minister to move motion S5M-23568; if necessary, there will then be an opportunity for a formal debate.

Motion moved,

That the Justice Committee recommends that the Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft] be approved.—[*Humza Yousaf*]

Motion agreed to.

The Convener: I invite the committee to agree to delegate to me the publication of a short, factual report on our deliberations on the regulations.

Members indicated agreement.

Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 [Draft]

Restitution Fund (Scotland) Order 2021 [Draft]

The Convener: Our next item of business is consideration of two related affirmative instruments. I refer members to the relevant paper and invite the cabinet secretary to make a brief opening statement on the orders, if he wishes. I will then invite members to ask questions.

Humza Yousaf: The orders that are being considered today are to enable the implementation of a new financial penalty—a restitution order—to be available to the courts for the offence of assault on police officers or police staff.

The money that is received from restitution orders will be paid into a restitution fund, which will be used to provide support services for the victims of such assaults. Support can be provided for physical and mental health and wellbeing.

The powers to introduce the orders derive from the Victims and Witnesses (Scotland) Act 2014, which introduced various measures to improve the support and information available to the victims of crime and to witnesses. To inform the development of the orders, the Scottish Government carried out a consultation on the operation of a restitution fund with a working group of stakeholders, including Police Scotland, police officer staff associations, police staff unions, the Police Treatment Centres and the Scottish Police Benevolent Fund.

The draft Restitution Fund (Scotland) Order 2021 relates to the general operation of the restitution fund. It provides for the delegation of the fund to the Scottish Police Benevolent Fund, which is a Scottish charitable incorporated organisation and will administer the fund on behalf of the Scottish Government.

A number of options for who should be responsible for administering the fund were discussed by the working group, and it was agreed that the SPBF was best placed to carry out the role. The SPBF already has experience in assessing and supporting the needs of police officers and staff, and it has existing structures in place to administer the fund effectively.

The order makes provision for the administration of the fund, including on the issuing of guidance by ministers, making payments, the keeping of records, and reporting back to ministers on outcomes, all of which will help to ensure that the fund is run in a fair and transparent manner.

The draft Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 makes a number of supplementary changes to the Criminal Procedure (Scotland) Act 1995. It provides that, when it comes to sentencing, compensation requirements that are imposed as part of a community payback order are to be preferred to a restitution order. It also provides that compensation requirements take precedence over both a restitution order and a victim surcharge when payments are received from an offender.

The order clarifies that, for the purposes of appeal, restitution orders are a sentence, so that an appeal against a sentence alone could be taken without requiring an appeal against

conviction. It ensures that enforcement of a restitution order and the victim surcharge would be placed on hold pending an appeal. It also clarifies that the victim surcharge and a restitution order cannot be imposed for either the same offence or for different offences in the same proceedings. Finally, it amends the definition of “fine” to clarify that restitution orders are a completely separate penalty.

I will just make some comments on the Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020, which is a related instrument. That order specifies that restitution orders are a “relevant penalty” for the purposes of fine enforcement rules in subsections 226A to 226I of the 1995 act. It enables the appointment of fine enforcement officers. It also enables the court to apply to the Department for Work and Pensions for a deduction from benefits order.

I am happy to leave it there and take any questions that the committee may have.

The Convener: I see that Rhoda Grant would like to ask a question.

Rhoda Grant (Highlands and Islands) (Lab): My question is about the restitution fund. It seems that the fund covers things that a good employer normally provides for victims who suffer an injury at work, such as support for their physical and mental health, but that payments cannot be made directly to victims. What did trade unions have to say when that was discussed with them? Are they happy with—[*Inaudible*].

Humza Yousaf: Sorry—I lost the final part of what Rhoda Grant said, but I think that I got the gist of it.

The staff unions and staff associations were involved in the working group that I mentioned. There is broad support for a restitution fund—indeed, it was one of the very first things that was mentioned to me in 2018 when I started in my role as the Cabinet Secretary for Justice. The Scottish Police Federation certainly supports it.

The order makes it clear that, when it comes to sentencing, it is preferred that money is paid directly to victims under compensation orders. As I said, there is broad support for a restitution fund. I hope that that answers Rhoda Grant’s questions.

The Convener: Rhoda Grant has not indicated that she wants to come back on that, and no other member has indicated that they wish to ask a question.

We will move on to formal consideration of the motions on the instruments. I invite the cabinet secretary to move motions S5M-23601 and S5M-23602.

Motions moved,

That the Justice Committee recommends that the Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 [draft] be approved.

That the Justice Committee recommends that the Restitution Fund (Scotland) Order 2021 [draft] be approved.—[Humza Yousaf]

Motions agreed to.

The Convener: I again invite the committee to agree to delegate to me the publication of a short, factual report on our deliberations on the instruments.

Members indicated agreement.

Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020 (SSI 2020/406)

The Convener: The next item of business is consideration of a negative instrument, which, as the cabinet secretary said, relates to the two affirmative SSIs that we have just considered. I refer members to the relevant papers.

No member has indicated that they wish to comment on the order. Further, no member has indicated that they want the committee to make any comments to Parliament.

European Union (Withdrawal) Act 2018

Civil Jurisdiction and Judgments (Lugano Convention 2007) Regulations 2021

10:12

The Convener: Our final piece of business in public is consideration of a proposal by the Scottish Government that it should consent to the UK Government legislating, using the powers under the European Union (Withdrawal) Act 2018, in relation to the UK statutory instrument proposal that is set out in the agenda.

Members are asked to consider an SI notification from the Scottish Government on the Civil Jurisdiction and Judgments (Lugano Convention 2007) Regulations 2021. I refer members to the relevant paper—paper 3—which is a note by the clerk. The paper notes:

“the Scottish Ministers believe the changes in the Regulations are necessary to implement the Lugano Convention in the UK.”

The Scottish Government says:

“The measures are technical in nature and are necessary to give full effect to the Lugano Convention.”

Members are asked to consider the SI notification that is covered by the clerk’s note and whether they agree with the view of the Scottish Government that it should consent to the relevant changes being made by the UK Government.

No member has indicated that they have a comment to make, and no member has indicated that they want to make any comments to Parliament.

Are members content to delegate to me the publication of a short, factual report?

Members indicated agreement.

The Convener: That concludes the public part of the meeting. I thank the cabinet secretary and his officials for joining us.

Our next meeting will be a week today, on Tuesday 26 January, when we expect to consider the Defamation and Malicious Publication (Scotland) Bill at stage 2.

10:13

Meeting continued in private until 11:51.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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