



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 16 March 2021

Session 5



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JUSTICE COMMITTEE
10th 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

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Virtual Meeting

Scottish Parliament

Justice Committee

Tuesday 16 March 2021

[The Convener opened the meeting at 10:30]

Decision on Taking Business in Private

The Convener (Adam Tomkins): Good morning, and welcome to the 10th meeting in 2021 of the Justice Committee. This is our final meeting of the parliamentary session.

We have received apologies from Rona Mackay, our deputy convener, who is unwell. I wish her a full and speedy recovery and place on record, on behalf of the whole committee, my thanks to her for her work during the session as the committee's deputy convener. She has dealt with the work with her customary good humour and diligence, and we are very grateful to her.

Agenda item 1 is consideration of whether to take items 4 and 5 in private. Do members agree to do that?

As no member has objected, we agree to take items 4 and 5 in private.

Subordinate Legislation

Scotland Act 1998 (Agency Arrangements) (Specification) (Overseas Production Orders) Order 2021 (SI 2021/144)

Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 (SSI 2021/79)

Prisons and Young Offenders Institutions (Coronavirus) (Scotland) Amendment Rules 2021 (SSI 2021/80)

10:31

The Convener: Agenda item 2 is consideration of three negative statutory instruments. I refer members to the relevant paper in our pack, which is a note on the instruments by the clerk. I refer members to correspondence that we have received from the British Fireworks Association and the Howard League Scotland about the two Scottish statutory instruments. That correspondence is also in members' papers.

No member has indicated that they have any comments on the Scotland Act 1998 (Agency Arrangements) (Specification) (Overseas Production Orders) Order 2021.

The Fireworks (Scotland) Miscellaneous Amendments Regulations 2021 are, of course, the regulations on which the British Fireworks Association has written to us. Do members have any comments on the instrument?

Annabelle Ewing (Cowdenbeath) (SNP): There has been some to-ing and fro-ing with correspondence on the regulations. I have read the correspondence, but I think that the amended regulations are proportionate and definitely meet a need that my constituents have told me about, so I am happy to support the regulations. I understand the British Fireworks Association's perspective, but I am not convinced by what it has said. I see that it has a 10-point action plan, but it is interesting to note the timing of that plan. As I said, the regulations are proportionate and meet a need, so I am very happy to support them.

Liam Kerr (North East Scotland) (Con): Broadly, I understand what Annabelle Ewing has said. There is no doubt that the public response is largely in favour of the regulations, and I do not necessarily move away from that. However, there are some outstanding questions, and it would be useful to hear the Minister for Community Safety's response. If there has been one, I do not have it in front of me.

Annabelle Ewing talked about the timing of the plan, but there is also the suggestion that the date has come back from June to March. The British Fireworks Association has suggested a possible reason for that. I have no idea whether that is true, but it would be interesting to hear from the minister at some point about the reason for the change of date.

We know that there is existing law, but it is interesting that the British Fireworks Association suggests that proper resources have not been provided and that the law is not being enforced properly. That matter has been raised by a number of stakeholders.

Although I will not go against the legislation at this stage, it would be handy if the minister would respond to some of those suggestions and let us know before the Parliament considers the regulations.

The Convener: On what the committee can do, procedurally, given that these are negative instruments, if any member wanted to object, they would have to lodge a motion to annul the instruments with the chamber office. The committee would then have to schedule an additional meeting to discuss the matter with the responsible minister. Similarly, if members have questions that they need the Scottish Government to answer, we can postpone consideration of any of the instruments, write to the Government and hold an additional meeting to consider any response.

I agree with Annabelle Ewing. There has been a lot of to-ing and fro-ing about the issue, but the Government has called it broadly correctly, and I certainly agree with her that the measures are proportionate.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I broadly agree with what you and Annabelle Ewing have said. I want to reflect the situation for my constituents because, as I imagine is the case for us all, we are inundated at certain times of the year with fireworks inquiries. There is probably public appetite for restrictions on fireworks to go much further, but it is clear that the Scottish Government has tried to strike a proportionate balance to take into account some of the concerns that we heard from the British Fireworks Association and others. However, on the basis of some of the queries that I receive, there is probably public appetite to go further. I think that the regulations are proportionate and I will back them.

Liam McArthur (Orkney Islands) (LD): I echo the points that the convener, Annabelle Ewing and Fulton MacGregor have made. There has been quite a bit of back and forth, and the issues have been thoroughly aired. There is frustration about

measures that are taken forward through secondary legislation, because there are limits to what can be done through the scrutiny process, but through the work in the chamber, the issues have had a good airing. There are those who wish to see us go further. The proposals are generally proportionate and, on that basis, I am content to support the regulations.

Liam Kerr: I do not disagree with anything that I have just heard, and I will not look to stretch out the process any further. I would be interested in the minister's response to some of the questions, but I do not disagree with what I have heard.

The Convener: That is all on the record, and we can certainly draw it to the attention of the minister's officials, if that would reassure you, Liam. That concludes members' comments on the instrument.

We move on to the prisons and young offenders institutions rules.

J7ohn Finnie (Highlands and Islands) (Green): It is not my intention to prolong procedures on that, but the letter that we have received from the Howard League, which I often find myself aligning with, raises important issues. Prisons and young offenders institutions are unique establishments, and it is right that there is rigorous monitoring. We know that people have found themselves being held in their cells for close to 24 hours a day for the past 18 months. The most pertinent point raised by the Howard League in relation to what is, in effect, legislation—this is clearly the law of the land—is that the consultation was entirely internal. That is worrying. We have heard the phrase “marking your own homework” a lot lately, and this is making up your own rules.

I do not question the integrity of the Scottish Prison Service or that its intention was other than to have safe establishments. However, the process looks to have been entirely insular. We need a broader examination, which would include Her Majesty's Inspectorate of Prisons for Scotland and the Scottish Human Rights Commission and seeking views from others, such as the staff associations.

Although I do not intend to oppose the instrument, points are raised that I would hope people would have regard to. If there is an opportunity to have an early review and revise some of those issues, that would be positive.

The Convener: I do not always agree with Mr Finnie, but I associate myself with every one of those remarks. When I read the correspondence from the Howard League, I was quite disturbed that this sort of measure is being dealt with by a negative instrument. It is absolutely not our place to turn negative instruments into affirmative ones, but it seems to me that the instrument is making—

or, in effect, continuing—changes to conditions of imprisonment, not only in prisons but in young offenders institutions, that are really serious and that deserve full and proper scrutiny.

Rhoda Grant (Highlands and Islands) (Lab): I absolutely agree with everything that John Finnie said. I suppose that that leaves us with the question of whether we should vote against approving the instrument and, in moving against it, what options we have, given that we are coming to the end of the session of Parliament.

There is a wider issue about scrutiny of Government action when the Parliament goes into recess for the election and about how, at such a crucial time, we are being prevented from scrutinising such measures. Can we write to the Cabinet Secretary for Justice expressing our deep concern about the issue and about the lack of scrutiny and consultation, and ask whether we can have on-going scrutiny during the recess period? I notice that the Howard League copied in the Scottish Human Rights Commission to its letter; maybe we should also let the commission know of our concern. Given the timeframe, there is little that we can do other than vote down the SSI, which would probably be irresponsible. However, there are very big issues here.

The Convener: As I understand it, the committee does not have an opportunity to vote against it today, as these are negative, not affirmative, instruments. If any member wanted to push the instruments to a vote, they would need to lodge a motion to that effect, which would then be debated in the chamber. However, we can write to the cabinet secretary, recording the concerns that have been expressed by a range of members in this meeting about those matters.

Liam McArthur: Like Rhoda Grant, I wholeheartedly agree with the concerns that John Finnie laid out. I would contrast what we are dealing with in relation to this SSI with the previous one that we disposed of on the emergency provisions that had to be put in place as a result of Covid restrictions, in terms of the quality in general and the debate that took place. The decision to move ahead with the extension of restrictions in this SSI to the context of young offenders institutions has not had a similar airing. I attach considerable weight to the views of staff in those establishments, but there are other views that need to be heard. That is all the more important when we are dealing with a negative instrument as opposed to an affirmative one.

It is absolutely right that we find ourselves in a bind here, which is not helped by the fact that we are in the dying days of the parliamentary session. I do not think that we have an alternative, in a practical sense, to passing the SSI, but I would want to make sure that the committee states in

terms our dissatisfaction with the way in which the matter has been handled. We are told that there was an internal consultation and then the other stakeholders were informed—the fact that steps were taken to inform the other stakeholders rather suggests a belief that those stakeholders have an interest in and a perspective on the contents of the SSI.

The situation is highly regrettable. I am pleased that the Howard League Scotland has clearly set out its dissatisfaction and concerns about the process. The committee needs to reflect those to the cabinet secretary and probably also to the Scottish Prison Service.

10:45

Fulton MacGregor: I echo what other members have said. I am glad that John Finnie raised the issue, and I completely agree with what others have said. As someone who, in a previous job, used to have to visit young offenders institutions fairly regularly, I am surprised that quite serious changes are being presented here.

At the same time, I find myself completely where Rhoda Grant and others are, in that I will back the instrument going through, because it would not be right for it not to go through. However, as Liam McArthur said, a letter to the cabinet secretary to get more information on the thinking behind the instrument, and more views and perspectives, would be useful, because there are significant changes.

The Convener: I am grateful to all members who have contributed to our discussion of the SSI. All those who have spoken are agreed that we should write, in quite strong terms, to the cabinet secretary, setting out the committee's concerns and reservations.

That concludes our consideration of the instruments.

Justice Sub-Committee on Policing (Report Back)

10:46

The Convener: Our next agenda item is feedback from the Justice Sub-Committee on Policing, which recently held meetings on 1 and 15 March, on Brexit issues and with the new chair of the Scottish Police Authority respectively. I invite John Finnie to deliver a verbal report, after which members can indicate in the usual way if they have any questions.

John Finnie: I will be brief. As ever, I will be happy to take questions.

As you have said, convener, on 1 March the sub-committee took evidence from Deputy Chief Constable Will Kerr and Assistant Chief Constable Patrick Campbell on Brexit and policing. That updated the evidence that we had heard at a previous meeting, in October last year, which took place prior to the end of the transition period on 31 December. It is fair to say that, across law enforcement, there is a willingness to make the current arrangements work. However, in some respects those are “sub-optimal”, to employ the term that was used.

The sub-committee’s final session took place yesterday, when we heard from the SPA’s new chair, Martyn Evans, and new chief executive, Lynn Brown, on its priorities for the future. We also covered a range of matters that had been undertaken at previous meetings, not least the scrutiny of issues such as the purchase of drones and body-worn cameras. In addition, we agreed a legacy report, which reflected a range of scrutiny that has taken place since 2016.

Further information on those meetings will be available in the relevant *Official Reports*.

Finally, the sub-committee recently agreed a draft report on the scrutiny of Police Scotland’s use of remotely piloted aircraft systems and body-worn cameras. That will be of great interest to members, not least in relation to the proposed proliferation and use of such equipment, and the implications of those. The report will be published later this week.

I am happy to take questions.

The Convener: Thank you very much, John. No member has indicated that they have questions.

I wish to thank John Finnie, both formally and personally, for his outstanding work in chairing the Justice Sub-Committee on Policing. He and all the sub-committee’s members have made a tremendous contribution to oversight of the police and the SPA—particularly, as we have just heard,

in relation to the introduction and use of new technologies. I wish John a very happy and fruitful retirement as he stands down from the Parliament in the next weeks. We will all miss his informed and reasoned contributions to our work. He has been a member of the Justice Committee for many years. John, thank you very much for your contributions.

John Finnie: Many thanks.

Liam McArthur: I do not know whether John wanted to come back in there, but I know that we are about to move into private session. Convener, in the absence of Rona Mackay, who I am sure would have been piping up at this stage, I want to put on the record my gratitude, and that of my committee colleagues, for your convenership of the Justice Committee. I know that it has not been a long tenure, but it has certainly covered some fairly thorny issues. The way in which you have assisted the committee and colleagues to navigate our way through those has been greatly appreciated. Thank you very much indeed. “Retirement” would not be the appropriate word; we wish you the best of luck in your own move towards the next phase and the next challenge.

The Convener: It is very kind of you to say so, Liam. Thank you very much.

I also want to put on record my tribute to Margaret Mitchell, who has been deputy convener of the Justice Sub-Committee on Policing and a long-standing convener of the Justice Committee. I am sure that we all wish her well, too, and thank her for all her work on justice matters.

Finally—but most importantly of all, by way of thank you—I take this opportunity, on behalf of all committee members, to thank Stephen Imrie, Katrina Venters and all their staff. I include the staff who work for the committee, the staff of the Scottish Parliament information centre and all the parliamentary staff who have supported me in the short time that I have been convener and who have supported the committee for a long time. This has been a tough, long session for them. We are massively in their debt. It is one that will never be repaid, although I have promised them lunch when that is legally permitted. I think that they will get a bit of a rest when the Parliament goes into recess. I hope that they will make the most of that, because I fear that they will be every bit as busy in session 6.

Thank you very much. I now close the public part of the meeting, and we will move into private session for the final time this session.

10:51

Meeting continued in private until 11:16.

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