

JUSTICE 1 COMMITTEE

Tuesday 25 September 2001
(*Afternoon*)

Session 1

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2001.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 25 September 2001

	Col.
ITEMS IN PRIVATE	2657
PROTECTION FROM ABUSE (SCOTLAND) BILL	2658
PETITION	2659
SUBORDINATE LEGISLATION	2661

Justice 1 Committee

† 25TH MEETING 2001, SESSION 1

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Lord James Douglas-Hamilton (Lothians) (Con)

Donald Gorrie (Central Scotland) (Liberal Democrats)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Paul Martin (Glasgow Springburn) (Lab)

*Michael Matheson (Central Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Iain Gray (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Lynn Tullis

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 3

† 24th Meeting 2000, Session 1—joint meeting with Justice 2 Committee.

Scottish Parliament

Justice 1 Committee

Tuesday 25 September 2001

(Afternoon)

[THE CONVENER *opened the meeting at 13:30*]

The Convener (Christine Grahame): I convene the 25th meeting of the Justice 1 Committee in 2001. Item 1 on the agenda was to have been a declaration of interests, but this will not be possible today, as it pertains to Donald Gorrie, who has extended his apologies.

Items in Private

The Convener: Item 2 is to consider whether to take items 6, 7 and 8 in private. They cover matters that are usually held in private. Item 6 is on the inquiry into the regulation of the legal profession. We are simply considering the written evidence that has been received and deciding whom to call to give oral evidence. Item 7 is further consideration of the draft report stemming from our legal aid inquiry. Item 8 is our work programme. Members have received a substantial paper on various pieces of proposed legislation and investigations, which we have the opportunity to consider.

Do I have members' agreement to consider those items in private?

Members *indicated agreement.*

Protection from Abuse (Scotland) Bill

The Convener: Item 3 concerns the Protection from Abuse (Scotland) Bill. Members have received a note on the bill from the clerk. This is as much new territory for me as it is for everyone else, as it is a committee bill. I think that Lord James Douglas-Hamilton and I got a bit confused when I appeared, with the leave of and on behalf of the Justice 1 Committee, before the Justice 2 Committee in order to move amendments. I do not know whether members want me to say any more about the amendment procedure, which was agreed previously. Are members content?

Members *indicated agreement.*

The Convener: The bill will then move to stage 3. It is my intention to move that the bill be passed at stage 3 on behalf of the committee and I would ask Maureen Macmillan, as she has had such a powerful hand in the matter, to sum up.

Maureen Macmillan (Highlands and Islands) (Lab): Thank you, convener. I will do so.

Petition

The Convener: Item 4 is on a petition by Mrs Elaine Crawford. Members will find attached to their copies of the petition a note from the clerk. I do not intend to go through that note with members, but invite comments.

Members can find the options set out by the clerk on the second page of the note. You do not need to stick to them; they are merely guidance. Do members have any comments on the petition and on how to proceed?

Lord James Douglas-Hamilton (Lothians) (Con): I note that the Public Petitions Committee's recommendation was that we should

"examine the issue of sentencing policy".

I understand that a research study on attitudes to sentencing is under way. However, I would welcome it if this committee were to carry out an inquiry into sentencing, particularly if we could find out whether the sentencing patterns were operating as effective deterrents, especially against more serious crimes and with particular reference to early release and the types of sentences meted out for different offences.

Michael Matheson (Central Scotland) (SNP): I broadly agree with that. It would be helpful if we could fit that in with the continuing research. I must confess that I had almost forgotten about it. It seems a long time since we commissioned the research, but it appears now to be fairly near its completion. That will be a good time for us to decide whether to hold a further inquiry into sentencing.

The Convener: I have been reminded by the clerk that the researchers are reporting back in October, and that a forum will debate the matter in November. It might be appropriate, Lord James, if we wait until that is concluded before examining the matter and taking views. We will then have more information before us. We could put the matter back on to the agenda at that stage.

Lord James Douglas-Hamilton: Given that reassurance, I am quite content, but I think that we should pursue the matter, in view of its interest to the general public.

The Convener: Is everybody agreed that we await the researchers' report and the forum debate?

Members indicated agreement.

The Convener: Let us return to the petition while putting the sentencing issue to one side for the time being. If we consider the procedures for and delivery of criminal injuries compensation, members will note that the matter is reserved in

many respects. I draw members' attention to two questions that they may wish to address, however: first, whether to ask Victim Support Scotland whether it is content that recent improvements instigated by the Home Office and the Criminal Injuries Compensation Authority—the CICA—are sufficient. This option is not listed, but one might also want to ask the Minister for Justice about his views on the changes in the procedures followed.

Michael Matheson: It appears from the note that the Public Petitions Committee is looking into the aspects of the petition that concern the CICA. I would be more inclined to suggest that the Public Petitions Committee, when it is considering the matter further, contact Victim Support Scotland to ask for its views, instead of our writing to Victim Support. We could end up writing to Victim Support to find out its views only to pass those on to the Public Petitions Committee. Should we write to the Public Petitions Committee to ask it to contact Victim Support?

The Convener: That might be sensible. We note that the Public Petitions Committee has agreed to seek the views of the Scottish Executive, so that committee would appear to be in charge of the correspondence. If there a role for us after that, would members be content for us to return to the matter?

Members indicated agreement.

The Convener: Item 5 is subordinate legislation. It appears, however, that the Deputy Minister for Justice is not yet here to speak to the regulations before us. I seem to have rattled on too fast.

We agreed to go into private for items 6, 7 and 8. I inform members of the public that we will go back into public session at 2 o'clock, and ask them to leave just now. I suggest to the committee that we now consider item 7, which involves going back over old ground, for some of us, in the form of our report on legal aid.

13:39

Meeting continued in private.

14:00

Meeting continued in public.

Subordinate Legislation

The Convener: Good afternoon, minister. It is nice that we are back in our usual positions—opposite each other—after our brief sojourn at the Justice 2 Committee last week.

The minister will move two motions, S1M-2177 and S1M-2178, which are linked to two statutory instruments. I ask the minister to move and speak to the motions separately. After he has done so, I will ask members for their comments.

The Deputy Minister for Justice (Iain Gray): I intended to move and speak to the motions together. Is that acceptable?

The Convener: If you wish. That is not a problem.

Iain Gray: I start by congratulating you on your elevation to the position of convener of the Justice 1 Committee. I do not think that I have appeared before the committee since that happened.

The Convener: I am the third convener of this committee, minister. It is a revolving seat—just how revolving I do not know.

Iain Gray: No doubt we will find ourselves sitting opposite each other for a period of time.

I believe that it would make matters clearer if I were to deal with both regulations together, although they serve two different purposes.

First, the regulations provide part of the legislative framework that we must put in place for the drug court pilot, which is to start in Glasgow sheriff court on 15 October. They follow the recommendations of the working group that was chaired by the sheriff principal and that involved the Glasgow Bar Association among other organisations. The regulations were developed with the help of the Scottish Legal Aid Board and the Law Society of Scotland. The other part of the legal framework for the drug court is contained in two negative regulations, which I shall say a word about in a moment.

Secondly, the regulations make a change that is required for the implementation of the Convention Rights (Compliance) (Scotland) Act 2001 on hearings for life sentence prisoners. The instruments are technical in nature but straightforward in intention.

The Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2001 ensure that legal aid can be made available for accused persons who appear before the new

court. Usually, summary criminal legal aid is available only when the accused pleads not guilty, but referrals to the drug court will take place only when there is a plea of guilty. The regulations also provide for automatic assistance by way of representation for the hearings that will take place under the Convention Rights (Compliance) (Scotland) Act 2001 to determine the punishment part of life sentences.

The Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 3) Regulations 2001 are more straightforward. They simply ensure that ABWOR does not apply by default in the case of the drug court.

The other two pieces of the drug court jigsaw are contained in negative regulations that Jim Wallace signed on 10 September. They provide that the duty solicitor, who would otherwise represent an accused person who appears in court from custody, would not represent people who participate in the drug court pilot. The working group recommended that an accused person who is referred to the drug court should be able to use their own solicitor, on the basis that he or she would better understand the client's history, situation and needs. The negative instruments establish a tailor-made scheme of fixed payments for solicitors who represent clients at the drug court.

I commend the regulations to the committee.

I move,

That the Justice 1 Committee recommends that the draft Advice and Assistance (Assistance by way of Representation) (Scotland) Amendment (No 3) Regulations 2001 be approved.

That the Justice 1 Committee recommends that the draft Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2001 be approved.

The Convener: If members wish to speak to the regulations, I ask them to make clear which motion their comments address. The minister has made the debate a little more complicated by moving the motions together.

Do members wish to comment on motion S1M-2177, which deals with the drug court?

Lord James Douglas-Hamilton: Will the minister confirm that legal assistance will be available to someone who was charged before the drug court but who did not have a solicitor?

Iain Gray: Absolutely. The difference is that they will be able to ask their own solicitor to represent them and will not be restricted to representation by the duty solicitor. However, if they have no solicitor, the duty solicitor will be available to them.

The Convener: It has been drawn to my attention that this is the third time that the Executive has amended the principal regulations,

and it may have to amend them again.

The complexity of the regulations became apparent during the committee's inquiry into legal aid. Do you intend to bring in a better way of dealing with the regulations, perhaps by consolidating them?

Iain Gray: We await the committee's report. I gave evidence to the inquiry and I know from the evidence gathered by the committee that members have an interest in the complexity of the regulations. I understand that the report is close to completion and we will wait for the committee's recommendations, to which we must respond.

The Convener: Consultation is another issue that has arisen in relation to other regulations. How much consultation took place on these regulations? For example, did you consult SLAB?

Iain Gray: Yes. We also consulted the Law Society. However, the key point is that the changes that were made in respect of accused persons who appear before the drug court were recommended by the working group, which we charged with turning the idea of a drug court into a practical proposition in Glasgow. Therefore, the working group proposed the changes made by the regulations, although we also involved the Law Society and SLAB in order to ensure that those organisations were satisfied with the changes.

The Convener: I presume that they were satisfied.

Iain Gray: Yes, they were.

Motions agreed to.

That the Justice 1 Committee recommends that the draft Advice and Assistance (Assistance by way of Representation) (Scotland) Amendment (No 3) Regulations 2001 be approved.

That the Justice 1 Committee recommends that the draft Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2001 be approved.

The Convener: That was short and sweet, minister. It might not always be.

I understand that we require to report to the Parliament only on affirmative instruments and that such reports should be short. If members are content, that report will be circulated by e-mail before it is issued.

Members indicated agreement.

The Convener: I regret the fact that we must move back into private session. I ask members of the public to leave the meeting.

14:09

Meeting continued in private until 15:19.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Tuesday 2 October 2001

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £500

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers