

JUSTICE 1 COMMITTEE

Tuesday 24 June 2003
(*Morning*)

Session 2

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CONTENTS

Tuesday 24 June 2003

Col.

SUBORDINATE LEGISLATION	13
Police (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/220)	13
Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2003 (SSI 2003/246)	14
Criminal Legal Aid (Youth Courts) (Scotland) Regulations 2003 (SSI 2003/249)	15
BUDGET PROCESS 2004-05	17
WORK PROGRAMME	19

JUSTICE 1 COMMITTEE

2nd Meeting 2003, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Mr Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)

*Marlyn Glen (North East Scotland) (Lab)

*Michael Matheson (Central Scotland) (SNP)

*Margaret Mitchell (Central Scotland) (Con)

*Mrs Margaret Smith (Edinburgh West) (LD)

*attended

CLERK TO THE COMMITTEE

Alison Taylor

SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

The Chamber

Scottish Parliament

Justice 1 Committee

Tuesday 24 June 2003

(Morning)

[THE CONVENER *opened the meeting at 10:32*]

The Convener (Pauline McNeill): Good morning and welcome to the second meeting in the second session of the Justice 1 Committee. This is the committee's final meeting before the recess. So far, no apologies have been received. As usual, I remind members to switch off anything that makes a noise or which might disrupt the meeting.

Subordinate Legislation

Police (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/220)

The Convener: The committee has three items of subordinate legislation to deal with this morning, the first of which is the Police (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/220). The clerks have prepared a note for members that explains the regulations. Members should also have a copy of the regulations.

The scrutiny period for the regulations has passed, but the committee can still consider them and highlight any issues retrospectively to the Executive. The committee may wish to consider whether we should take no action or whether we should write to the Executive noting issues of concern to members.

The only issue that I think might be worth clarifying relates to what the Executive's note says about the Home Office's decision to change police pay and conditions in England and Wales by determinations—whatever those are—rather than by regulations, which Scotland has not yet agreed to. It might be worth clarifying what that would mean. There is an irony in that we cannot scrutinise the regulations in the normal way—we can only comment on them retrospectively—but if determinations were used, matters would not come in front of a parliamentary committee once they were agreed. Perhaps it would be worth clarifying what is happening and how it affects Scotland.

Bill Butler (Glasgow Anniesland) (Lab): Is a move from regulation to determination absolutely necessary?

The Convener: That is a good question. The note says that that has already happened in

England and Wales. Police pay is negotiated on a United Kingdom-wide basis, so such a move may be absolutely necessary. For the purposes of clarity, we could ask whether Scotland has to follow suit and what the implications of doing so would be.

Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2003 (SSI 2003/246)

The Convener: Members have a background note for the Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2003 (SSI 2003/246). Such legislation is made annually and sets out fees for shorthand writers. It should be noted that acts of sederunt are made by the Lord President and not by the Scottish ministers, so members' comments should be directed at the Lord President rather than ministers.

Michael Matheson (Central Scotland) (SNP): I notice that the act of sederunt also has not been laid before the Parliament within the usual time scale, primarily as a result of dissolution, but there is no explanation for the delay. An explanation was provided in respect of the Police (Scotland) Amendment (No 2) Regulations 2003: negotiations took place right up to the last minute and nothing could be done until those had been completed. However, there is no explanation as to why consideration of the Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2003 has been left so late. I understand that the dissolution period creates an inconvenience, but I would have thought that, given that there is a fixed period, matters should have been flagged up earlier.

The Convener: No note has been provided, as the act of sederunt was laid during dissolution and there was no committee to scrutinise it. If the member wishes, we can write to the Lord President to say that, in future, we would prefer a delay, if that is possible. The act of sederunt relates to fees payable to people who work in the court system, but I am not clear whether delays might affect their annual pay.

Michael Matheson: The elections were not a secret—everybody knew what day they would be held on. I would have thought that there would have been a timetable that took the elections into account and that things would have been brought forward in order to ensure that the act of sederunt was put through the Parliament timeously, as it should have been.

The Convener: Are members happy for that comment to be made?

Bill Butler: I take Michael Matheson's point, but it should be pointed out that the previous Subordinate Legislation Committee had a large

work load towards the end of the previous parliamentary session—I can vouch for that. That might have been part of the practical difficulties, but we should find out about the matter.

Marlyn Glen (North East Scotland) (Lab): As dissolution is obvious, such matters should be brought forward. I am a new member and am interested to find out what the committee usually discusses. However, the first two matters that we have discussed today are not usual matters at all—as a result of delays, they are unusual matters. The dissolution period was not a surprise, so we should ask about the matter for the next time.

The Convener: We will politely make that point and check that everything is in order.

Criminal Legal Aid (Youth Courts) (Scotland) Regulations 2003 (SSI 2003/249)

The Convener: Members have a note about the regulations. Again, the scrutiny period for the regulations has passed.

Michael Matheson: I echo what I said about the act of sederunt. There should have been a clear timetable. I understand that dissolution is an inconvenience, but it was known when it would be.

The Convener: Does any member dissent from that view?

Margaret Mitchell (Central Scotland) (Con): I want to make a different point. What makes up the bulk of the £100,000 that is mentioned? Do the £50 fees for appearances for community supervision orders make up the bulk of that amount, or do the solicitors of choice make any difference?

The Convener: If you want that matter to be clarified, we could include your question in a letter to the Executive.

Margaret Mitchell: A breakdown would be helpful.

The Convener: I wonder whether members—particularly as there are a number of new members—are happy with the attached note to the regulations. Sometimes I think that assumptions are made about areas in which people might not have knowledge, such as how duty solicitors work. That could have been quite important in respect of the regulations both because they relate to youth courts and because fixed fees have been quite controversial.

The committee might want to think about that for the future. It will be an important consideration because we will receive a number of statutory instruments. Bill Butler will be the expert on those, having been a member of the Subordinate Legislation Committee. It is important that

members let me know if they want the notes to include more information.

Bill Butler: I would not claim expertise in subordinate legislation at all. However, the note is helpful for me and for all members. I like the narrative explanation in plain English. That is always helpful. I commend the clerks for providing the note.

The Convener: Hear, hear.

Budget Process 2004-05

The Convener: Item 2 on the agenda concerns the budget process. Committee members have a note from the clerk setting out the proposed approach to scrutiny of the Executive's budget for 2004-05. I ask members to consider whether to meet jointly with the Justice 2 Committee to consider the budget. Members may also want to consider both whether to appoint an adviser when the time for consideration of the budget comes and the terms of reference that they would want an adviser to have. I also put it to the committee that we should invite the Minister for Justice and the Lord Advocate to give oral evidence.

We will deal first with the approach that we want to take. Members will know from past practice that the previous Justice 1 Committee and Justice 2 Committee decided to meet jointly, but that does not preclude us from taking a different decision.

Mr Stewart Maxwell (West of Scotland) (SNP): Although previous practice does not preclude us from taking a different decision, it is eminently sensible for the committees to meet together. It would seem rather bizarre for us to examine the budget separately when the two committees' remits are the same. We should support the idea to meet together.

The Convener: Is that agreed?

Members indicated agreement.

The Convener: Last year was the first time that we appointed a budget adviser. From my recollection, most members found that useful—we found that it made our scrutiny more effective.

Michael Matheson: My experience as a member of the previous Justice 1 Committee was that the appointment of a budget adviser turned a daunting process into one that was more meaningful to members, especially when figures were turned into today's money, which highlighted a number of concerns about the budget. I found that having an adviser—I say nothing about the individual, only the process—was extremely helpful. I strongly encourage the committee to consider appointing an adviser again.

The Convener: Is that agreed?

Members indicated agreement.

The Convener: At this stage, we are not talking about names. However, members will get an opportunity to say whether they know of anyone suitable or have a preference. Do members have any views on the terms of reference for an adviser? Members could take the wider view that anything with which the adviser could assist us would be helpful.

Mr Maxwell: In annex A to the note by the clerk,

we have a proposed specification of the adviser's duties. That outline is acceptable to me, and I hope that it is acceptable to the rest of the committee. I suggest that we go with it as an outline.

The Convener: Stewart Maxwell is referring to the list that is attached to annex A of the budget paper. Is everyone happy with his suggestion?

Members indicated agreement.

The Convener: So that we can give notice, I ask the committee to agree to invite the minister and the Lord Advocate to give oral evidence on the budget and to provide the committee with a paper setting out the budget priorities for the previous four years and for the next four years. Is that agreed?

Members indicated agreement.

The Convener: Before we leave the budget, I assure members that they will get a chance to spend more time identifying the areas on which they wish to question the minister and the Lord Advocate. If any member wants a particular focus on an area, they will get a chance to say so at a later stage.

Work Programme

10:45

The Convener: Item 3 is discussion of our work programme. Committee members have a paper setting out a suggested short-term work programme—I emphasise that it is only for the period until we have some proposed legislation to consider. The paper is only an amalgam of members' suggestions; it is not yet a tablet of stone and members can change their minds today. The idea is that we give the clerks a head start in preparing for the subjects that the committee would like to consider after the recess and the types of visit that it would like to make.

As members will see from the paper, European matters came out as a strong interest among members and prisons are also an interest. The Protection from Abuse (Scotland) Act 2001 is mentioned for post-legislative scrutiny—that is, for us to see whether there are any problems after enactment. There is a suggestion for a speaker to address us on sentencing policy. At the end of the paper, there are ideas for a couple of visits.

I open the discussion to committee members.

Margaret Mitchell: The proposal looks like a well-balanced programme to take us through the short term.

When we take oral evidence for the post-legislative scrutiny, could we consider hearing from a representative of Victim Support Scotland? The interdict with power of arrest is now opening up to a wider range of people than victims of domestic abuse only. Someone from Victim Support who deals with a wider range of victims might be a good person from whom to hear evidence.

Michael Matheson: On the suggestion that the committee consider the annual report from the chief inspector of prisons in Scotland together with the Justice 2 Committee, I sound a note of caution against the two committees coming together too often. We must decide whether a particular committee will consider prisons and run with it—as happened previously—or whether the two committees will come together for fairly major reports. I am of the view that we must decide at some point which of the two committees will work on a particular issue. It may be that, if we meet together to consider the chief inspector's annual report, we will then decide which committee will run with prisons, but I sound that note of caution.

I cannot remember which organisations gave evidence on the Protection from Abuse (Scotland) Bill. Does the list of possible witnesses for our post-legislative scrutiny cover roughly those that gave evidence on the bill?

The Convener: We have a list of the organisations from which evidence was taken when the bill was considered. It includes Scottish Women's Aid, the Family Law Association, the Association of Scottish Police Superintendents, the Sheriffs Association, the Association of Chief Police Officers in Scotland, the Scottish Partnership on Domestic Violence and the Scottish Legal Aid Board, and we also took evidence from the Lord Advocate.

Michael Matheson: I ask primarily to check whether there is any need for us to request written evidence from those organisations. As the Executive has carried out research, I presume that it has been in contact with those organisations to get their views. It might be worth checking that. If the Executive has not done that, it may be worth our while asking those organisations whether they have any views that they can submit to us in writing. The list of organisations from which it is suggested that we take oral evidence is spot on.

The Convener: We would have to prioritise. I do not know whether we have any time to think about that. Should we start by asking the Executive whether it has had any feedback?

Michael Matheson: We should ensure that it has consulted or sounded out organisations that were involved in pushing for the act in the first place.

Mrs Margaret Smith (Edinburgh West) (LD): To pick up on that point, there is nobody from the court system or the judiciary on the list of possible witnesses. As such people are the end point of the system, a number of them should have input on the impact of the 2001 act, although it would be fine if such evidence were written rather than oral.

On Michael Matheson's point about the annual report of the chief inspector of prisons, I believe that I, and other new members of the justice committees, would benefit from the evidence being taken in a joint meeting. We can then decide which committee will consider the matter further. I would certainly benefit from having a description of the general backdrop. However, each committee should proceed only with certain pieces of work because there is no point in duplicating work. Given the number of new members of the justice committees, it would be beneficial for both committees to hear what the chief inspector has to say.

The Convener: I accept Michael Matheson's point that only one of the committees should work on an issue, but members of both committees would benefit from hearing about the chief inspector's annual report, especially as there is a new appointee to the post. Members will have an opportunity to thrash out the issues if we manage to organise an away day. We might be able to

persuade Andrew McLellan to give an introductory talk to both committees on his annual report.

Mr Maxwell: Point 18 in the paper, which is about sentencing policy, mentions that we might invite Dr Hutton to give the committee a briefing on the issue. As I have mentioned to the clerks, I have a general interest in sentencing policy. It would be of interest to members, particularly new ones, to get a background briefing on the subject.

Point 19 in the paper is about visits. One suggestion is that we visit a prison—I do not know whether the clerks have a prison in mind. I would like to visit a prison, but as I have already visited a number of them, I put in a bid for a visit to a prison that I have not been to before.

Bill Butler: That is on the record.

The Convener: If there are no other matters that members wish to raise, I will go through each of the points in the paper to ensure that we agree on them.

On European matters, the suggestion is that, as a starting point, we have an oral briefing on the basics of European law and legislation. Notwithstanding Michael Matheson's point that we should not always meet with the Justice 2 Committee, if that committee expresses an interest in such a briefing, it would make sense for it to be a joint one.

Bill Butler: As part of our induction, it would be best if the two committees got together to receive a briefing on the issues.

The Convener: "Induction" is a helpful word—the meeting on prisons and the briefing on European matters will fall under that heading and will kick-start members' knowledge of the systems. We will then adhere to the usual principle of meeting jointly only to discuss the budget.

Michael Matheson: In the past, I have been conscious that civil servants from the Executive tend to get a little carried away when they talk about European justice issues which, at times, can be rather complex and technical. When we request an oral briefing, can we make it clear that the briefing should take us from the bottom up through the process? At times, the civil servants tend to get us bogged down in the technicalities, which they seem to enjoy.

The Convener: That is a fair point.

Mrs Smith: The briefing should be simple.

Bill Butler: We want a beginner's guide.

The Convener: Yes, but it should not miss out anything important. The point is a fair one. People who spend their lives negotiating in Europe on such matters sometimes forget that we do not consider such issues every day.

How do members wish to deal with the issue of prisons? I accept the point that we must be more specific about issues that we want to consider, but do members want to hear from Andrew McLellan in a joint meeting with the Justice 2 Committee, or should we ask him to talk only to this committee?

Bill Butler: We should have a joint meeting, because that would be the best use of our and the chief inspector's time. The meeting should form part of our induction programme.

The Convener: On the Protection from Abuse (Scotland) Act 2001, we should start by asking the Executive whether it has had any feedback on the act. We could also send a letter to the organisations that are mentioned in the note—and, as Margaret Mitchell suggested, to Victim Support Scotland—to inform them that we intend to examine the operation of the act and to ask them to give feedback to the committee. Members could then decide which organisations should give oral evidence. Unless members know now or have strong views about which organisations they would like to take oral evidence from, we will communicate with members during the summer recess and provide them with any written responses. As the evidence will be taken in the first week or two after the recess, we will have to give notice to the people involved. It might become apparent which organisations we should call.

A number of members are interested in sentencing policy. Dr Neil Hutton of the University of Strathclyde, who was the adviser to the previous Justice 1 Committee on alternatives to custody, might be able to brief the committee on sentencing. Again, I assume that the briefing would be simple and would cover general issues. If the matter interests members, we could then decide which issues to consider further.

Mrs Smith: Am I correct in thinking that the Executive will produce a proposal for a sentencing commission?

The Convener: Yes. That is in the partnership agreement.

Mrs Smith: Do we know what the timetable is for the proposal?

The Convener: We will check that.

Mrs Smith: If we intended to do some work in the area, that would have a bearing on our work.

The Convener: The issue includes the sentencing commission, but there are other topical points. The briefing from Neil Hutton will allow members to assess which issues would be suitable to form the basis of a piece of work.

Visits do not have to be done by all committee members—we can do our own thing—but I want to get an idea of the visits that members would like

us to organise during the summer recess for after the recess. We will set up at least one or two prison visits—preferably to prisons that Stewart Maxwell has not been to. We will discuss the dates further.

Mr Maxwell: To clarify my previous remarks, I point out that I visited the prisons in a work capacity—there was no other reason.

Bill Butler: The member should be mindful of the advice: stop digging.

Margaret Mitchell: Methinks he protests too much.

The Convener: Are members keen on any other visits? Committee visits do not prevent members from undertaking their own visits in the summer.

Michael Matheson: A visit to Glasgow sheriff court is proposed. The convener will recall that when members of the Justice and Home Affairs Committee visited Glasgow sheriff court, we were accompanied by representatives of the Glasgow Bar Association. I found that visit useful because we visited the court with practitioners rather than officials of the court service. The visit helped me to get to grips with the differences between custody courts, intermediate diet courts and normal courts and highlighted problems in the system. As part of the induction process, perhaps we should ask one of the bar associations—I suggest the Glasgow Bar Association, given that Glasgow sheriff court is the busiest court in Europe—whether it would be willing to facilitate such a visit. Clearly, this time, we should also organise a meeting with the sheriff principal.

11:00

The Convener: I support that suggestion. As Glasgow sheriff court is Europe's busiest court, it is worth going to see, and we will be well looked after by the Glasgow Bar Association. We could also ask representatives of the Procurator Fiscal Service to give us a talk on the day, which would give us two opportunities.

Mrs Smith: You just touched on this, convener, but we could hear about the Procurator Fiscal Service generally, given that changes are going through the Crown Office and Procurator Fiscal Service at the moment. Could we hear from it about the impact of the changes?

The Convener: Okay.

Marlyn Glen: I am interested in how women are treated in the prison service, so I would like to visit Cornton Vale, if that is possible. I am also interested in going to see a children's hearing. I know that there are time constraints and I have been told that the hearings can take only one visitor at a time. That means that we would have

to organise visits individually, although that should not be too much of a problem.

The Convener: I do not see why we cannot do that. The clerks could arrange visits for Marlyn Glen and for anyone else who wants to go.

We can fit in only about two visits in the recess. We are talking about a visit to a prison and a visit to Glasgow sheriff court, which could incorporate a short briefing from the Procurator Fiscal Service. That would be a good induction. For the prison visit, we could organise a visit to Cornton Vale for those who are interested, a visit to a children's hearing and a visit to another prison. We can consult members on which prison would suit them geographically and cover their general interests.

Mrs Smith: Will we visit the High Court of Justiciary as well at some point? It is possibly easier to make our other visits in the recess, but a visit to the High Court will be easy to make after the recess as it is just across the road. I visited it last week and talked to the people who are doing the job, as Michael Matheson suggested that it is useful to do. I found that visit useful all round and other members would probably benefit too. The High Court is on our doorstep, so we should be able to fit in a visit more easily than we could fit in some of our other visits.

The Convener: We have discussed what we will try to fit in during the recess. We should also try to fix a date, after the recess, for a visit to the High Court.

Mrs Smith: That will be especially important if we are going to be the committee in charge of considering the High Court reform proposals.

The Convener: That brings us to the end of our agenda. I remind members that our next meeting will be held on Wednesday 3 September in committee room 3. The clerks will keep in touch with members over the summer recess. There will be plenty of time to go on a lot of visits and to do a lot of reading, which I am sure that members will do.

Meeting closed at 11:03.

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