

JUSTICE 1 COMMITTEE

Wednesday 15 June 2005

Session 2

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JUSTICE 1 COMMITTEE 20th Meeting 2005, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Mrs Mary Mulligan (Linlithgow) (Lab)
*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Helen Eadie (Dunfermline East) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 6

Scottish Parliament

Justice 1 Committee

Wednesday 15 June 2005

[THE CONVENER opened the meeting at 10:07]

Subordinate Legislation

Criminal Justice (Scotland) Act 2003 (Amendment of Police (Scotland) Act 1967) Order 2005 (Draft)

The Convener (Pauline McNeill): Good morning and welcome to the 20th meeting of the Justice 1 Committee in 2005. We have a short agenda this morning. I have received no apologies, so I presume that Margaret Mitchell will join us shortly.

Item 1 is subordinate legislation. Once again, I welcome Hugh Henry, the Deputy Minister for Justice, who will be taking part in our proceedings. I refer members to the note prepared by the clerks on the draft Criminal Justice (Scotland) Act 2003 (Amendment of Police (Scotland) Act 1967) Order 2005. I call the minister to move and speak to motion S2M-2942.

The Deputy Minister for Justice (Hugh Henry): I have a sense of exhilaration and freedom this morning, because I have no officials to constrain me, which is a—[*Interruption.*] Sorry—God, just when I thought I had absolute freedom to say what I wanted, I realise that I now have a minder with me.

The draft order that is before the committee today will reinstate provisions that existed prior to the abolition of the deputy chief constable rank, which happened under the Police and Magistrates' Courts Act 1994. Prior to that act, the Police (Scotland) Act 1967 made express provision to allow a deputy chief constable to return to his or her force after a period outwith that force to carry out relevant service, such as temporary service with a common police service. That enabled pay and pension provision to be preserved.

Section 5 of the Police (Scotland) Act 1967, as inserted by the Criminal Justice (Scotland) Act 2003, reinstated the rank of deputy chief constable. However, provision was not made in the 2003 act to allow a force to have more than one deputy chief constable, even though the 1967 act states that a deputy chief constable is entitled to return to his or her own force after a period outwith the force. In other words, the 1967 act allows for the creation of a deputy chief constable, but does not provide for there to be more than one

deputy chief constable, so we have a contradiction.

Not only will the draft order resolve an existing conflict between two provisions in the same act, but it will ensure that a deputy chief constable who leaves a force to carry out other service has his or her position preserved for pay and pension purposes.

I move,

That the Justice 1 Committee recommends that the draft Criminal Justice (Scotland) Act 2003 (Amendment of Police (Scotland) Act 1967) Order 2005 be approved.

The Convener: We now move to the debate, during which we can put questions to the minister for clarification.

Mrs Mary Mulligan (Linlithgow) (Lab): I have one question. The Executive note states:

"The Order has no financial effects on the Scottish Executive, local government or on business."

However, from what the minister has just said, the draft order is about ensuring that pension and pay provision is preserved. Is that not a demand on budgets?

Hugh Henry: There are two points. One is that at present no one is designated in that way, so there is no one in the system on whom the draft order will impact. We are trying to anticipate conflict that may arise in future. Secondly, should there be a need for the draft order's provisions to apply, that will be built into any plans for someone to move and then come back. That will all be properly catered for at the time. The short answer is that no one is affected just now, so there is no immediate financial impact, and any future impact will be planned for in any secondment out of and return to a force.

Mrs Mulligan: That is helpful. Thank you.

The Convener: When a deputy chief constable carries out service outwith their force, would someone else normally take on an acting deputy chief constable role until the person returned, or would there be two deputy chief constables?

Hugh Henry: It would depend on the length of the deputy chief constable's secondment to another service. If it was for a lengthy period of two or three years, for example, it would not be entirely reasonable for someone to act up for that period. The exigencies of the service would determine whether the person who took over did so in an acting capacity or was permanently appointed.

The Convener: But there could be two deputy chief constables in the same force once the secondee returns. Is there any prescription on how long such a situation could last?

Hugh Henry: That is what we are trying to cater for. Existing legislation does not allow for two deputy chief constables. For the sake of argument, someone at deputy chief constable level could be acting in a common service capacity elsewhere for a lengthy period of time, for example in the Scottish Drug Enforcement Agency—I am not sure where else. The legislation does not allow for there to be two deputy chief constables when that person returns and someone else is already acting in a deputy chief constable capacity. The draft order seeks to resolve a potential anomaly. We are not prescribing that forces will have to appoint more than one deputy chief constable; we are trying to ensure that there is no conflict if someone has been out of the force for some time.

The Convener: I understood that. However, when a secondee returns from the SDEA, for example, and there are two deputy chief constables, will it be up to the force to determine how long it will maintain those two positions?

Hugh Henry: Yes.

The Convener: Are there any other questions?

Hugh Henry: I have a point of clarification. While two people may have deputy chief constable status, only one will have operational powers. However, in terms of pay and conditions, both will preserve their rights as deputy chief constables.

The Convener: As there are no other comments or questions, do you have anything to say in winding up, minister?

Hugh Henry: No.

The Convener: In that case, the question is, that motion S2M-2942 be agreed to.

Motion agreed to.

That the Justice 1 Committee recommends that the draft Criminal Justice (Scotland) Act 2003 (A amendment of Police (Scotland) Act 1967) Order 2005 be approved.

The Convener: We have to report to Parliament on the draft order. We will do the usual and base any comments that we wish to make on the *Official Report*.

Before we move into private session, for the record I state that we previously agreed that we would consider further our stage 1 report on the Family Law (Scotland) Bill in private.

10:14

Meeting continued in private until 12:55.

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