

JUSTICE 1 COMMITTEE

Tuesday 6 March 2007

Session 2

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CONTENTS

Tuesday 6 March 2007

Col.

DECISION ON TAKING BUSINESS IN PRIVATE	4267
SUBORDINATE LEGISLATION	4268
Number of Inner House Judges (Variation) Order 2007 (draft).....	4268
Civil Legal Aid (Scotland) Amendment Regulations 2007 (SSI 2007/59)	4272
Advice and Assistance (Scotland) Amendment Regulations 2007 (SSI 2007/60)	4272
Police (Injury Benefit) (Scotland) Regulations (SSI 2007/68)	4272
Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2007 (SSI 2007/87)	4272
UK BORDERS BILL	4273
PETITION	4275
Victims of Crime (Financial Reparation) (PE914).....	4275

JUSTICE 1 COMMITTEE

12th Meeting 2007, 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)

Bill Aitken (Glasgow) (Con)

Karen Gillon (Clydesdale) (Lab)

Mr Jim Wallace (Orkney) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

John Anderson (Scottish Executive Justice Department)

Johann Lamont (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 4

Scottish Parliament

Justice 1 Committee

Tuesday 6 March 2007

[THE CONVENER *opened the meeting at 13:50*]

Decision on Taking Business in Private

The Convener (Pauline McNeill): Good afternoon. Welcome to the 12th meeting in 2007 of the Justice 1 Committee.

I invite members to consider taking in private item 6, which is consideration of the legacy paper that we produce at the end of the session. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Number of Inner House Judges (Variation) Order 2007 (draft)

13:50

The Convener: I welcome Johann Lamont, the Deputy Minister for Justice, and John Anderson to the committee to speak to the draft Number of Inner House Judges (Variation) Order 2007. The minister is welcome to make a short opening statement.

The Deputy Minister for Justice (Johann Lamont): Thank you, convener. I hope that it will be helpful if I begin by providing the committee with a little of the background to the draft order. I recognise that it may be familiar territory to some and hope that they will bear with me. I will attempt not to speak for too long.

The purpose of the order is straightforward: to increase the number of judges in the inner house of the Court of Session from 10 to 11. An order is required because the number of judges is fixed by the Court of Session Act 1988. The order would not increase the overall number of judges; it would simply mean that one of the 24 judges who form the outer house would be promoted.

The inner house judges are the most senior judges, and their main task is to hear appeals against the decisions of judges sitting alone. Those may be judges sitting in the outer house, sheriffs principal, sheriffs or justices of the peace sitting in the district courts.

I will say something about the terminology. The Court of Session is our superior civil court. There is an appeal to the House of Lords, but the decisions of inner house judges are not routinely appealed. The Court of Session is divided into an outer house and an inner house. In the outer house judges sit alone or with a jury and deal with the routine cases that are brought before the court. If a litigant is unhappy with a decision, that decision can be reviewed by three or more judges sitting in the inner house.

There are 34 judges, including the Lord President and the Lord Justice Clerk. Ten, including those two most senior judges, form the appeal court, although they deal with some other types of case. Appointments to the inner house are made jointly by the Lord President and the Lord Justice Clerk. They need the consent of ministers and may consult judges, if they consider that to be appropriate.

The judges of the Court of Session are also the judges of the High Court of Justiciary. Inner house judges hear the appeals from the High Court,

sitting as a trial court, and from the sheriff and district courts. There is no appeal in criminal matters to the House of Lords, as there is in civil cases. However, as members will know, since devolution there has been a mechanism for taking certain questions of human rights to the Judicial Committee of the Privy Council.

The inner house judges play a significant role in the justice system, so it is important that the Lord President has sufficient senior judges to deal with the workload of the appeal courts. That brings me to why I am today inviting the committee to recommend that the draft order be approved. As members will know, we recently announced a far-reaching review of our civil courts. In announcing the review, we recognised how fortunate we were that Lord Gill, the Lord Justice Clerk, had agreed to lead that important piece of work. It will be a thorough and comprehensive review. The aim is to deliver a fair, efficient and effective justice system for the 21st century. To fulfil his challenging remit, Lord Gill will need time away from his judicial duties, although I understand that he will be able to sit part time while the review is under way. Even if a part-time arrangement proves to be practicable, some sitting time is bound to be lost. The Lord President has therefore asked that we add a further judge to the inner house to compensate for that loss of sitting days.

There is another factor that supports an increase at this time—the absence of Lord Macfadyen owing to ill health. Although it is thought that he may be able to undertake some work over the next few months, there remains uncertainty about when he will be restored to full good health. I am sure that members will join me in wishing Lord Macfadyen well.

We consider that, given all the circumstances, the Lord President's modest request is justified. I hope that what I have said this afternoon satisfies members that we should support the Lord President to ensure that the work of the appeal courts can be maintained, despite the absences to which I have referred. It is important that appeals are decided as quickly as possible not only for victims and appellants, but to maintain public confidence in the system as a whole.

That is all that I have to say about the draft order. I am happy to take questions.

Stewart Stevenson (Banff and Buchan) (SNP): I have a simple question. The figure of £25,300 is given for the costs that would be incurred as a result of our approving the order. Is there an additional cost associated with the appointment of a further outer court judge to replace an outer court judge promoted to the inner court? If so, should not that cost be reflected in the Executive note?

Johann Lamont: The purpose of the order is to move a judge from the outer house to the inner house, and the Executive note gives the cost of doing so. Costs result from having to manage pressures in the courts generally and from having to bring in assistance at particular times. Such costs do not specifically relate to moving a judge from the outer house to the inner house—they relate to the pressure of work on the outer house.

Stewart Stevenson: I should make it clear that I support the order. I do not have any issues with it, as we will get more value for money as a result of releasing an inner house judge to lead the review of our civil courts. However, the proposal is to increase the number of inner house judges by one, and it seems to me improper to think that the costs of doing so will be confined to £25,300, which the Executive note states will be the cost of moving a judge from the outer house to the inner house, because the consequence will be that an additional judge will be appointed. Would it not be proper to say that the true cost will be the total cost of appointing that additional inner house judge?

Johann Lamont: You may take that view. However, we can absolutely quantify the cost of moving a judge from the outer house to the inner house, but it is far more difficult to quantify the way in which the work of those who will continue the outer house's work will be managed and any temporary assistance that may be required. I do not accept your view that quantifying such costs is easy. We want to ensure that the inner house is properly staffed, given the important work that must be carried out. That is reasonable.

Stewart Stevenson: If one of the judges in the outer house is appointed to the inner house and a cost of £25,300 is incurred, is it intended to appoint an additional judge to ensure that the number of judges in the outer house remains the same?

Johann Lamont: No. The issue is how to ensure that pressures on business are properly dealt with with the same overall number of judges. Rather than taking a judge from the outer house into the inner house for certain work, a judge could be moved into the inner house. The temporary judge arrangement would then apply to the work of the outer house.

The Convener: If temporary judges are required further down the line, will the committee or the Lord President consider that requirement?

Johann Lamont: My understanding is that the overall complement of judges will remain the same. The order is necessary to move one judge from the outer house to the inner house. Perhaps John Anderson wants to add to what I have said.

John Anderson (Scottish Executive Justice Department): The Scottish ministers can appoint temporary judges if the Lord President thinks that he does not have sufficient judicial resources to deal with business at any given time. Currently, 14 temporary judges, whom the Lord President can pull in on a daily basis to manage peaks and troughs of work, are available as a resource. They are paid a daily fee of £736. As the minister said, it is not intended to increase the overall number of full-time judges, but if an outer house judge goes to the inner house, the Lord President may sometimes need a bit more temporary judicial assistance.

The Convener: I see. The pool of 14 judges can be used.

Margaret Mitchell (Central Scotland) (Con): I want to clarify something. The proposal is to appoint an additional judge to the inner house because the Lord Justice Clerk will be temporarily absent to conduct the review of the civil court justice system. When he returns from doing that, will that appointment still stand? Will the judge remain appointed to the inner house?

Johann Lamont: I understand that that will be the case. An appointment will have been made. However, it is obviously good practice constantly to review the work of the inner house and the outer house and the best use of judges and their time.

The Convener: I think that Mike Pringle has a question.

Mike Pringle (Edinburgh South) (LD): Thanks, convener, but my question has been answered.

The Convener: So has mine. So the additional judge will be a permanent appointment to the inner house.

Johann Lamont: A judge who is already in a permanent position will be moved from the outer house to the inner house. It is a matter of managing the pressures on both the outer house and the inner house while the review of our civil courts is being conducted and managing the other factors that have been mentioned. It will be a permanent appointment for the individual who moves.

The Convener: Right. So the judge who is appointed will remain in the inner house when Lord Gill finishes his work.

14:00

Johann Lamont: I should say that those matters were all taken into account in making the judgment about whether it was appropriate to manage the business by recognising the gap and moving somebody over from the outer house to

the inner house so that it is absolutely solid. It could have been done in other ways, but we have taken the view that, on balance, that was the appropriate way to do it.

The Convener: There are no other issues to discuss so, if the minister has said all that she has to say, I ask her to move the motion.

Motion moved,

That the Justice 1 Committee recommends that the draft Number of Inner House Judges (Variation) Order 2007 be approved.—[*Johann Lamont.*]

Motion agreed to.

The Convener: I thank the minister and John Anderson for attending.

Civil Legal Aid (Scotland) Amendment Regulations 2007 (SSI 2007/59)

The Convener: I refer members to the note that has been prepared on the regulations. As members have no comments, are they content to note the regulations?

Members indicated agreement.

Advice and Assistance (Scotland) Amendment Regulations 2007 (SSI 2007/60)

The Convener: As members have no comments, are they content to note the regulations?

Members indicated agreement.

Police (Injury Benefit) (Scotland) Regulations (SSI 2007/68)

The Convener: Members should by now be aware of the background to the regulations. These are the corrected injury benefit regulations for which we asked. Do members have any comments on them?

Stewart Stevenson: We are content.

Mike Pringle: Yes—we are now.

The Convener: We are now content with the regulations.

Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2007 (SSI 2007/87)

The Convener: If there are no comments on the act of sederunt, are committee members content to note it?

Members indicated agreement.

UK Borders Bill

14:02

The Convener: The UK Borders Bill is United Kingdom Parliament legislation. I refer members to the legislative consent memorandum on the bill, which has been lodged by Cathy Jamieson, the Minister for Justice, and to a note that the clerk has prepared on it.

I point out to members that, as a result of amendments to the bill that have been tabled, the UK Parliament will no longer legislate on devolved matters in the bill and, as such, there will be no need for the Scottish Parliament to debate a motion on the legislative consent memorandum.

Do members wish to make any comments?

Margaret Mitchell: I would be grateful if the clerks would provide a little explanation of what that means in practice.

The Convener: Is it possible to do that, Callum?

Callum Thomson (Clerk): Are you asking for an explanation of the substance of the matter?

Margaret Mitchell: Yes. What will happen as a result of our agreeing to the LCM?

Callum Thomson: The procedural position is that a matter of law that is devolved to the Scottish Parliament will no longer be legislated for by the UK Parliament. That would have been the position if we had been considering the UK Borders Bill as it was introduced to the UK Parliament, but the UK Government has tabled amendments to the bill that remove those elements of it that pertained to devolved matters. Therefore, assuming that those amendments are agreed to, the bill will not impact on any devolved matter. That is my understanding of the position.

Margaret Mitchell: I see.

The Convener: Members will see in the note on the LCM that most of the bill's provisions relate to reserved matters of immigration and nationality, so they do not apply to the Scottish Parliament. The exceptions are clauses 27(1) and 27(2), which amend the Asylum and Immigration (Treatment of Claimants, etc) Act 2004. Paragraph 5 of the note says:

"The Executive states that the application to Scotland of clause 27(1) and (2) was an oversight. As such amendments have been lodged so that these provisions do not extend to Scotland."

There is nothing for us to do, really.

Stewart Stevenson: I am slightly surprised that the Westminster Government has not addressed the powers of customs officers in Scotland. It is making changes to the powers of customs officers

in England and Wales that it is not making in Scotland. However, that is a matter for Westminster. If it wakes up to that, an LCM might be required later—you never know. However, the LCM that is before us is perfectly proper and reasonable. It simply reflects poor drafting or a mistake, which will be corrected. That is it—end of story.

The Convener: Are members content to move on?

Members indicated agreement.

Stewart Stevenson: Can I be clear that we have agreed to note the legislative consent memorandum?

The Convener: We have formally noted the LCM.

Stewart Stevenson: My reason for asking is that I think that this LCM is on the Parliament's agenda for tomorrow. If we note it, it will come off the agenda, if members see what I mean. The matter is not quite as trivial as it might seem.

The Convener: Thank you for that, Stewart—you are ensuring that we are procedurally correct.

Petition

Victims of Crime (Financial Reparation) (PE914)

14:06

The Convener: I refer members to the note that the clerk has prepared on the petition, which they may recall we started to consider when we began our work on the Criminal Proceedings etc (Reform) (Scotland) Bill. For tidiness, we thought that we should bring back the petition to satisfy members that the issues that it raises have been dealt with. I invite members to comment if they wish.

Mike Pringle: Keeping consideration of the petition open was right, but we have now dealt with the bill, which answered the questions, so I am content with the situation as it stands. I do not know about anybody else.

Stewart Stevenson: I am content to close consideration of the petition. The petition's existence raised several issues to which it does not refer directly, but that is a matter for another time and another place. The petition has been dealt with on the terms on which it was submitted.

Mike Pringle: Yes.

The Convener: I say for the record that petition PE914, which is by Peter Fallon, calls on the Scottish Parliament to urge the Scottish Executive to amend criminal justice legislation to require criminals to make financial reparation to victims of their crimes. A running theme of the bill that we dealt with recently was to give the Crown Office and Procurator Fiscal Service powers in relation to compensation offers in appropriate cases. The petition was pertinent to that bill.

As members have no more comments, do we agree formally to close consideration of the petition?

Members *indicated agreement.*

The Convener: The committee agreed under item 1 to discuss the next item—its legacy paper—in private.

14:08

Meeting continued in private until 14:53.

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