

JUSTICE 2 COMMITTEE

Wednesday 28 February 2001
(*Morning*)

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JUSTICE 2 COMMITTEE

3rd Meeting 2001, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

Mrs Lyndsay McIntosh (Central Scotland) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)

*Christine Grahame (South of Scotland) (SNP)

*Ms Margo Macdonald (Lothians) (SNP)

Euan Robson (Roxburgh and Berwickshire) (LD)

Karen Whitefield (Airdrie and Shotts) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Iain Gray (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Lynn Tullis

ACTING SENIOR ASSISTANT CLERK

Fiona Groves

ASSISTANT CLERK

Graeme Elliot

LOCATION

Committee Room 3

Scottish Parliament

Justice 2 Committee

Wednesday 28 February 2001

(Morning)

[THE CONVENER opened the meeting at 10:34]

The Convener (Pauline McNeill): Good morning, everyone. Welcome to the Justice 2 Committee's third meeting of 2001. The agenda is short but important, because we must work out our future work programme, so that the committee knows what it will do in the foreseeable future.

I have some apologies. Karen Whitefield is attending the Social Justice Committee, which is dealing with its stage 1 report on the Housing (Scotland) Bill; Lyndsay McIntosh is attending the funeral of Lord Mackay of Ardbrecknish; and Euan Robson, unfortunately, has lost his electricity supply. I think that he is also snowed in.

Christine Grahame (South of Scotland) (SNP): I had nothing to do with that. I want that to be known.

The Convener: As a member of the Scottish Parliament who represents the area in which Euan Robson lives, I hope that you are looking after his interests, Christine.

Agenda item 1 is to obtain the committee's permission to deal with item 2, on our work programme, in private. Item 3 concerns subordinate legislation, which we will discuss with the Deputy Minister for Justice at 11.15. Do we agree to take item 2 in private?

Members indicated agreement.

10:35

Meeting continued in private.

11:29

Meeting continued in public.

Subordinate Legislation

The Convener: We apologise for keeping the minister and his team waiting. We were trying to firm up our work programme for the next year, and we are nearly there.

I welcome the minister and his team to the Justice 2 Committee. Members should have a copy of an e-mail from the clerk to the Subordinate Legislation Committee to the clerk to this committee. As members know, that committee must feed its views about statutory instruments to us. Members will see that the committee has picked up a minor technical point and commented on how that should be handled. I give members a second to remind themselves about what the e-mail says.

The Deputy Minister for Justice (Iain Gray): It might help if I explain some of the background to the draft Civil Defence (Scotland) Regulations 2001. We have responded to the Subordinate Legislation Committee's point, and my understanding is that that committee has accepted our position and does not intend to pursue the issue.

The purpose of the instrument is to make a start on modernising the legislation on and the administration of civil protection in Scotland. That issue goes back about 50 years, to when civil protection mainly meant civil defence, which focused on the cold war and the nuclear threat from the former Soviet Union. The threat then and for the subsequent 40 years or so was real and, as a result, successive Governments put considerable effort and substantial sums of money into addressing the perceived threat. After the Civil Defence Act 1948 was passed, a raft of statutory instruments—about 30 in 20 years—were issued on various public concerns, including water, shelters, hospitals, food, police and fire.

Since the cessation of the cold war in the late 1980s and early 1990s, central Government and local authorities have reaped the benefits of the peace dividend by reducing expenditure on civil defence in Scotland. In the past 10 years, the focus has almost totally switched away from civil defence. In practice, civil defence staff, accommodation and equipment have gradually been turned towards integrated emergency planning to deal with the effects of major incidents and crises.

The 1948 act and subsequent statutory instruments reflected how the Government set the

agenda for local authorities and the emergency services by paying civil defence grant. The Executive does not feel that that approach is right for the present climate, so the regulations will remove the ring fencing of payments to local authorities and fire brigades for civil defence. However, they do not remove the funding, which will be routed through more relevant channels. For local authorities, that means civil protection grant-aided expenditure, and for fire brigades, that is fire service GAE. The regulations allow specific grant for police civil defence activities to be continued, because they retain some functions that are conducted on the basis of civil defence rather than emergency planning responsibilities.

As I said, the regulations are a start. The intention in due course is to consider the need for new legislation on integrated emergency contingency planning to cover those activities that local authorities, police forces, fire brigades and others perform. However, given the pressures on the legislative programme, it would be fair to say that it may be some time before we can expect new legislation to replace the Civil Defence Act 1948. The Executive note that has been circulated makes it clear that all the organisations affected have been consulted on those changes and that the overall effect on public expenditure will be neutral. I hope that that is helpful and that the committee feels able to support the instrument.

I move,

That the Justice 2 Committee recommends that the draft Civil Defence (Scotland) Regulations 2001 be approved.

The Convener: Do any members want to comment or ask questions?

Christine Grahame: This has popped up out of the blue, has it not? Discussing civil defence takes me back to the post-war period. Before I ask a question, I would like to ask for an example of civil defence. Moving away from the cold war, what kind of national emergencies do you think would trigger these regulations?

Iain Gray: It is not so much a case of the regulations being triggered. The instrument changes the way in which the resources are given to authorities, fire brigades and so on, rather than changing the way in which civil defence is done. The kind of emergencies or incidents that we are talking about would include plane or rail crashes or major explosions. Even bad snow would be an example of an emergency in which at least some of the measures would come into play.

Christine Grahame: When were the civil defence regulations last used? When was the last time that payments were made for civil defence requirements?

Iain Gray: The payments are made annually as

part of the settlement, so they are made year on year.

Christine Grahame: Whether or not there is an emergency?

Iain Gray: Yes, because they are payments to ensure that the contingency measures are in place. At the moment, that money is given to local authorities and ring-fenced for that purpose. However, most local authorities actually spend between 20 and 100 per cent over the resources that are allocated and ring-fenced for that purpose, so they take their responsibility for emergency planning very seriously. The only difference that the instrument will make is that, although the resources will still go to the local authorities, that money will not be ring-fenced.

The Convention of Scottish Local Authorities has formally requested that we remove the ring fencing, partly because local authorities feel that hypothecation in general constrains their decisions. In a sense, we are going along with that request, in the knowledge that local authorities are spending more than they have been given in recent years in any case, because they take those responsibilities seriously.

Christine Grahame: Will there be any cut in the budgets as a result of the instrument? Will the financing remain exactly the same, but be coming through a different funnel, as it were?

Iain Gray: Yes, that is correct.

Christine Grahame: I wanted to ask about the withholding of a grant. Regulation 7 says:

"The Scottish Ministers may withhold in whole or in part, permanently or for such time as they may determine, grants which would otherwise be payable to a police authority under these Regulations, if they determine that any of the following conditions are not fulfilled".

There is then a list of such conditions, containing examples of circumstances in which the police have not done things properly. Does a police authority have any right to object to, resist or appeal against the withholding of a grant, or is it unilateral?

Iain Gray: I do not know the answer to that question, but I am happy to find out and write to you with an answer.

Christine Grahame: Thank you. It just seemed to me that that could be a matter of contention.

Ms Margo MacDonald (Lothians) (SNP): If the emphasis is switched from civil defence to civil emergency, I would like to know what constitutes an emergency. I am not probing the instrument; I just want to know for my own information. If bad snow can cause disruption to services, presumably that is an emergency?

Iain Gray: Yes.

Ms MacDonald: Would the same apply to flooding?

Iain Gray: Yes, it would. The decision would lie with the emergency procedures that the local authority and the emergency services have in place. If, for example, there were severe flooding, as there has been in Edinburgh, those emergency measures would be brought into play. It would not necessarily have to be a national emergency, but anything that constitutes a crisis out of the ordinary for which the different emergency services have to be brought in to work together would bring those procedures into play.

Ms MacDonald: Is that where Christine Grahame's question becomes relevant? There could be a difference of opinion as to when emergency status is reached.

Iain Gray: The procedures have to specify at what point and at what level that decision would be taken. I thought that Christine Grahame's question was more about the possibility of one player in one part of Scotland apparently not playing its part in those measures, or one authority not playing its part, and whether that would lead to any restriction of grant. It is worth saying that all the authorities and the services work together in strategic groups on emergency management. If one authority, or one police force or fire service, wanted unilaterally to withdraw from those arrangements, it is unlikely that it would be able to do that because it would be in partnership with the other authorities and services around it.

The Convener: Who then determines when there is a national emergency?

Iain Gray: The authority that has responsibility for that kind of planning is the local authority, so the chief executive of the local authority would be responsible for deciding at what point the contingency measures would be brought into play.

The Convener: Do members have any other questions on this point?

Ms MacDonald: I do not want to press this point at the moment, but I am sure that the minister will consider it when it comes to legislation. If there is a four-minute warning, there is no question about whether that is an emergency. The softer stuff, such as snow on the line, the right sort of leaves or the wrong sort of flooding, is a different matter altogether. However, we cannot press this point at the moment, because the instrument does not allow for that.

Iain Gray: That is a fair point. The Executive believes that there would need to be a fundamental look at the legislation on such issues. In a sense, this instrument is a temporary measure. We are quite open about that.

Christine Grahame: We have moved from civil

defence to civil emergency, even though the briefing paper talks about civil defence. This is a silly question, but I shall ask it. Why treat the police differently? Why is their money ring-fenced in that fashion?

Iain Gray: It is because their responsibilities are different. The police continue to have some responsibilities with the Ministry of Defence that are still civil defence responsibilities under the terms of the Civil Defence Act 1948.

Christine Grahame: So, if the police were involved in emergencies, such as the foot-and-mouth disease emergency—God forbid that it becomes any worse than it is—would the resources for that involvement come out of the police budget or the local authority budget? Would they all just pitch in together?

Iain Gray: It would come out of the police budget and it would not come out of the remaining bit of the civil defence budget that they would receive if this instrument is passed.

Christine Grahame: That is more a matter of civil order than an emergency.

Iain Gray: That is right.

The Convener: You said that the police have some functions. Is there a list of those functions, or is it a case of them being involved as and when required?

Iain Gray: Police functions would include such things as dealing with emergencies around military bases. The key difference is that civil defence is defined as dealing with a hostile attack. Under hostile attack, the police have certain responsibilities under the Civil Defence Act 1948, which they would still have along with the Ministry of Defence. That is why the instrument would continue to allow some ring-fenced funds for that.

The Convener: That information has been helpful, minister. I have to say that what you said in speaking to your motion was more helpful than the briefing note was. Do you want to say anything to summarise the debate?

Iain Gray: No. I happy to leave it at that.

The Convener: The question is, that motion S1M-1688, in the name of Iain Gray, be agreed to. Are we agreed?

Motion agreed to.

That the Justice 2 Committee recommends that the draft Civil Defence (Scotland) Regulations 2001 be approved.

11:44

Meeting continued in private until 12:00.

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