JUSTICE 2 COMMITTEE

Wednesday 15 January 2003
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE

† 2nd Meeting 2003, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
*Mr Duncan Hamilton (Highlands and Islands) (SNP)
*George Lyon (Argyll and Bute) (LD)
*Mr Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)
Lord James Douglas-Hamilton (Lothians) (Con)
Donald Gorrie (Central Scotland) (LD)
Dr Sylvia Jackson (Stirling) (Lab)

*attended

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Irene Fleming

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 3

† 1st Meeting 2003, Session 1—held in private.

Scottish Parliament

Justice 2 Committee

Wednesday 15 January 2003

(*Morning*)

[THE CONVENER *opened the meeting at 09:48*]

The Convener (Pauline McNeill): Good morning and welcome to the second meeting of the Justice 2 Committee this year. I apologise to the minister and others for the late start. Members should turn off their mobile phones and pagers. We have received no apologies and we expect other members to join us in the course of the morning.

Item in Private

The Convener: I refer members to the revised agenda that was issued yesterday and ask the committee's consent to take items 4 and 5 in private. Under item 4, the committee will receive a briefing from the Executive on the European document concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility. Under item 5, we will consider our forward work programme. Members have already agreed to take item 6 in private, which is consideration of the draft report on our Crown Office and Procurator Fiscal Service inquiry. Does the committee agree to take items 4 and 5 in private?

Members *indicated agreement*.

Subordinate Legislation

Extended Sentences for Violent Offenders (Scotland) Order 2003 (Draft)

The Convener: I welcome Hugh Henry, the Deputy Minister for Justice, to the committee. Members will have a note that the clerk prepared on the Extended Sentences for Violent Offenders (Scotland) Order 2003. The order is an affirmative instrument, which is why we have the minister with us this morning. Without further ado, I ask Hugh Henry to move and speak to motion S1M-3711.

The Deputy Minister for Justice (Hugh Henry): Thank you, convener. The order is made in exercise of the powers conferred by section 210(7) of the Criminal Procedure (Scotland) Act 1995 and is subject to the affirmative procedure.

It might be helpful if I explained the background to the provisions in the order. The proposal to make the order arose from a recommendation in the report of the committee on serious and violent sex offenders, which was chaired by Lord MacLean. Part of the MacLean committee's remit was

"to consider experience in Scotland and elsewhere and to make proposals for the sentencing disposals for, and the future management and treatment of serious sexual and violent offenders who may present a continuing danger to the public".

Among other issues, the committee considered the present provision for extended sentences, which are competent only in cases of crimes committed after 30 September 1998. The committee proposed that one aspect of the law relating to extended sentences should be changed.

At present, under section 210A(3) of the 1995 act, the extension period for a common-law sexual offence cannot exceed 10 years, whereas for a common-law violent offence the period is a maximum of five years. The committee could not see the justification for that difference, which it agreed had the effect of limiting the discretion of a court in fixing an extension period for a violent offender who may be in need of just as much post-release supervision as someone whose crime was sexual in nature.

The purpose of the order is to make provision for the MacLean committee's recommendation 11, which is that Scottish ministers should use their powers under section 210(7) of the 1995 act to amend section 210A(3)(b) to regularise the maximum competent period of an extended sentence to 10 years for both violent and sexual offences.

Extended sentences were specifically designed to address the problem that some violent and sexual offenders continue to present a risk to the public even after they have reached the end of a determinate sentence. The extended sentences allow courts to impose additional post-release supervision on a licence if a court considers that the normal sentence would not provide a period of supervision of sufficient length to protect the public from serious harm.

An extended sentence can be imposed on a person convicted on indictment in respect of a sex offence, as defined in section 210A(10) of the 1995 act, if the court intends to pass a determinate custodial sentence of any length, and a violent offence, if a court intends to pass a determinate custodial sentence of four years or more. A violent offence is defined in section 210A(10) of the 1995 act as

"any offence (other than an offence which is a sexual offence within the meaning of this section) inferring personal violence."

In response to the consultation paper on the MacLean committee recommendations, the Law Society of Scotland and four local authorities agreed with recommendation 11 that the maximum extension period of an extended sentence should be 10 years for both sexual and violent offences prosecuted at common law. Scottish ministers subsequently agreed to use their powers to amend that provision by statutory instrument.

I move,

That the Justice 2 Committee, in consideration of the draft Extended Sentences for Violent Offenders (Scotland) Order 2003, recommends that the Order be approved.

The Convener: Thank you, minister. There may be a few questions.

Stewart Stevenson (Banff and Buchan) (SNP): What I want to say is more in the way of a couple of observations. I am certainly minded to support the draft order. I think that there has been limited justification, as the MacLean committee observed, for the difference—five years in one case and 10 in the other.

In particular, I am informed to some extent by my visit last year, in relation to the prison estates review, to a French prison at Bapaume, where the strong assertion was that the majority of the prisoners had a sexual aspect to their offences. That meant that something like 10 times as many people had a sexual aspect to their crime than would be expected as a percentage of the overall prison population.

As a result of reviewing long-term offenders' cases in the Scottish system, it is emerging that more people who are not categorised as sexual offenders have a sexual aspect to their offences, so I suspect that there has been under-reporting. An increase in the supervision of violent offenders will usefully catch some violent offenders who have a sexual aspect to their offences.

Paragraph 11 of the Executive's note refers to the

"designation of both the supervising authority and supervising officer **at the start of the prison sentence**".

I recognise that that idea is not new, but I welcome it as part of the supervising authority's throughcare provision. However, I sound a note of caution about appointing a supervising officer at the start of a prison sentence when the period of supervision may extend to 10, 15 or 20 years. It seems implausible that a person who is appointed at the outset will sustain supervision over the whole period. It would be useful if the minister gave an assurance that the system will not break down if there is a discontinuity in respect of the supervising officer—I am convinced that the minister will be able to give me such an assurance. We are talking about long-term supervision and it is important that the processes work well. Although I seek such an assurance, I support the intentions of the draft order.

Hugh Henry: I am advised that the administrative guidelines cover guidance to local authorities and deal with that matter. A person will be identified as the supervising officer but, if that person leaves for whatever reason, the facility exists for someone else to be appointed in that person's place. Such a contingency is therefore dealt with.

The Convener: I have no difficulty in supporting the motion, but I am trying to understand where such a provision fits in with other matters that we have dealt with. I appreciate that you did not have ministerial responsibility for this area at the time, but have you had a chance to catch up with our discussions about orders for lifelong restriction, for example? We tried to grasp the effect of an order for lifelong restriction that applies to sexual and violent offenders compared with the effect of supervision orders under which there is supervision for a period of time following a person's release from prison. Why would an order for lifelong restriction not do the trick and be the solution, rather than the provisions in the draft order?

On procedure, at stage 2 of the Criminal Justice (Scotland) Bill, the committee considered a provision that deals with maximum sentences for offences in connection with obscene materials in child pornography cases. Why was that provision in the primary legislation? Does that mean that, if ministers wish to extend sentences in future, they will do so through affirmative instruments? I would like clarity about the process and a comparison of

the provisions of the draft order with orders for lifelong restriction, which the MacLean report also dealt with.

Hugh Henry: I am not familiar with the discussions on the orders for lifelong restriction, but the draft order specifically attempts to bring together sentences and procedures for sexual and violent offenders. It should not detract in any way from other measures that would need to be considered from time to time as part of a broader process to make sentencing more effective. If points were made in that other debate to which we need to refer, I will inform the convener.

Not all offenders would meet the criteria for orders for lifelong restriction. The MacLean committee considered that extended sentences would provide the courts with options for additional supervision of violent offenders. That may be part of the solution, but if other suggestions are made I will inform the committee of them. I will consider whether issues of procedure need to be addressed and report back to the committee on that, too.

10:00

The Convener: The points that I made were in no way critical of you, minister. I was trying to understand where things come from. Can you clarify why extended sentences are competent

"only in cases of crimes committed after 30 September 1998"?

Does that provision relate to the Crime and Disorder Act 1998?

Hugh Henry: Yes.

Bill Aitken (Glasgow) (Con): I am relaxed about the order. I see no difficulties with it.

Motion agreed to.

That the Justice 2 Committee, in consideration of the draft Extended Sentences for Violent Offenders (Scotland) Order 2003, recommends that the Order be approved.

The Convener: I thank Hugh Henry for attending this morning's meeting.

Criminal Justice (Scotland) Bill

The Convener: Item 3 on our agenda concerns the Criminal Justice (Scotland) Bill. I refer members to a letter that we have received from the Deputy Minister for Justice, Hugh Henry, which provides the further information on electronic search warrants that we requested at stage 2. Members will recall that the committee asked a number of questions about amendment 16, which dealt with electronic search warrants. The Executive agreed to withdraw the amendment, so that it could clarify some of the issues that we had raised. It has now done that in a paper, which is attached to the minister's letter. I hope that members have had a chance to examine the paper. If they are still not satisfied, they may now raise any issues that they consider to be unclear.

Bill Aitken: The Executive appears to be reasonably satisfied that everything is in order. However, I am concerned that there appears to be no hands-on facility in the process from start to finish. I am all for technology, but there must be someone at the end of it. Here we are dealing with permission to search people's homes, which should not be granted lightly.

By setting up such a system, we will dilute judicial control of the activities of the police, which is not always satisfactory. That makes me sound terribly liberalistic in my outlook, which most members would regard as uncharacteristic. However, the issue that I have raised must be borne in mind.

On the basis of the answers that we have received to our questions, however, I have no serious objections to the provision.

Stewart Stevenson: I read with interest the material that the minister provided in his letter and in the attachment to it. Nothing in that material leads me to believe that I should oppose the amendment that was withdrawn and that we expect to be lodged again at stage 3.

However, my experience in a previous life leaves me with one or two unanswered questions. In December, the minister offered to provide the committee with a direct briefing. I recognise that not all members of the committee may want to be involved in that, so I would be happy to act as a reporter on behalf of the committee, if members so wish.

To make clear to the committee the importance of getting the provision right, I cite a case affecting a Scottish prisoner who was held at Chartley Hall in Staffordshire. That prisoner used a method of encryption to write to someone outside the prison. A third party broke the encryption and modified the letter and, as a result, created a false impression

of the activities in which the prisoner was involved, which subsequently led to the execution of that prisoner. The prisoner in question was Mary Queen of Scots, who wrote the letter on 17 July 1586, but—

The Convener: Forgive me, but I am not the only person who is struggling to make the connection between your example and electronic search warrants.

Stewart Stevenson: The example is exactly analogous. There is a need to be able to protect in a secure way information that, because it is held electronically, is potentially available for modification by a wide range of people. The explanation that the Executive has provided is not quite sufficient to assure me that such protection is in place. However, my expectation is that, when further explanation is provided, it will prove to me that such protection is in place.

The Convener: Well, I am glad that you have cleared that up. You are right to say that electronic warrants need proper scrutiny if we are to pass the proposal into law. We know that the issuing of warrants has generally been problematic in the past. The Executive briefing outlines one reason why a procedural change was made to require the involvement of the procurator fiscal—that was due to some of the difficulties that were experienced in obtaining accurate warrants.

However, I still have a few concerns. I am not happy that the bill uses the term "justice" to mean both justices of the peace and sheriffs. We previously raised the straightforward question whether the bill as drafted meant that sheriffs could sign a warrant regardless of whether they were in their own jurisdiction. We were told that that was not the purpose of section 49, but now we are told that "justices" mean justices and sheriffs. I am not a member of the Plain English Campaign but I subscribe to its theory. If the bill means justices and sheriffs, it should say so.

Another issue, about which I know Bill Aitken is also concerned, is whether electronic warrants should be followed up in writing. We perhaps need further discussion with the justice department about that. I am sure that sheriffs will be quite pleased if the bill is passed into law, because they will no longer have to drive to the border of their jurisdiction to sign off warrants for police officers in cars. However, I would like some understanding of the rota system that is used to ensure that the signing of such warrants is shared. There might be a tendency to go to the nearest sheriff all the time.

I have a few concerns that I would want to be settled before we pass the proposal into law. Stewart Stevenson may be right to suggest that we simply keep a watching brief on the issue—perhaps he could be our reporter on that. However, I am reasonably satisfied with the Executive's explanation, provided that the language about justices and sheriffs is cleared up.

Bill Aitken: In Glasgow, the rota system is operated so that sheriffs are not required first thing in the morning if they have lost half a night's sleep because they had to sign a warrant. That is simply common sense.

On the other aspect, I understand that sheriffs were required, until comparatively recently, to live within their commissioned area. If we were to try to enforce such a requirement nowadays, there would be a considerable—and perhaps understandable—outcry from the sheriffs. However, the existing mechanisms are in place to deal with the issue of who signs the warrants.

The Convener: Another question is what would happen if a sheriff lived considerably outside his jurisdiction. Would the procurator fiscal have to travel to the sheriff's home?

Bill Aitken: No. I understand that, because of what has been happening, Harthill service station can be an interesting place in the early hours of the morning.

The Convener: But sheriffs would no longer need to do that. They will be able either to sign the warrant electronically or to sign it when they are outwith the jurisdiction that they cover. How would the process work? Presumably, sheriffs would be required to have computers in their homes or would need to go to some kind of office to provide an electronic signature.

Bill Aitken: They would have computers in their homes.

Stewart Stevenson: It is fair to say that the process is not clear from the explanation that has been provided. However, I think that we need not be unduly concerned that the process would be influenced either way by the technology. Whether it is influenced in a particular way by the legal process is a different issue.

The Convener: Is the committee reasonably satisfied with the briefing that has been provided?

Members *indicated agreement*.

Stewart Stevenson: Sufficient unto the day.

The Convener: We now move into private session.

10:10

Meeting continued in private until 13:03.

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