JUSTICE 2 COMMITTEE

Wednesday 29 January 2003
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE
3rd 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 2

Scottish Parliament

Justice 2 Committee

Wednesday 29 January 2003

(*Morning*)

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

The Convener (Pauline McNeill): Good morning, everyone, and welcome to the third meeting this year of the Justice 2 Committee. In particular, I welcome the Deputy Minister for Justice and his team. I have received apologies from George Lyon.

Subordinate Legislation

Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2003 (Draft)

The Convener: Item 1 is subordinate legislation. We start with an affirmative instrument: the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2003. I ask the minister to speak to and move motion S1M-3801.

The Deputy Minister for Justice (Hugh Henry): The Proceeds of Crime Act 2002 contains a comprehensive package of measures to investigate, seize and confiscate the ill-gotten gains of criminals and their associates. The act received royal assent last July and we are currently implementing its various provisions. The committee may recall that, on 11 December 2002, it approved the draft order and code of practice relating to cash searches by constables in Scotland. The code duly came into effect at the end of December. The provisions on civil recovery, taxation, money laundering, investigation powers and information gateways are being commenced on a United Kingdom basis on 24 February. The provisions on confiscation after a criminal conviction are being commenced in March.

There are two draft orders before the committee today, which have been laid under the affirmative resolution procedure. They relate to the information gateway provisions and to the investigation powers, both of which are to be brought into effect in February.

The draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2003 brings the code of practice on the use of investigation powers into operation on 24 February. Part 8 of the 2002 act sets out a range of investigation powers in relation to confiscation, money laundering and civil recovery. That covers production orders, search warrants, disclosure orders, customer information orders and account monitoring orders.

The powers can be exercised by proper persons. In relation to confiscation and money laundering investigations, a "proper person" is defined as a police constable or a customs officer. In relation to a civil recovery investigation, proper persons are

"the Scottish ministers or a person named by them".

In practice, persons named by them will be employed in the civil recovery unit and will mainly be seconded police and customs officers.

The investigation order is a powerful tool, which will assist in the pursuit of the proceeds of crime. As a safeguard to ensure that proper and appropriate use is made of the orders, section 410 of the 2002 act requires the Scottish ministers to

"prepare a code of practice as to the exercise by proper persons of"

the orders. The Home Secretary is required to make a similar code in relation to England and Wales.

As required by the act, we published a draft code for consultation in October and we amended it in light of the responses that we received. We have made the summary of responses and the action that we took in relation to them available to the committee. In general, respondents welcomed the code and the comments were of a technical nature. The draft code is intended to be self-explanatory and easily understood. Members of the public will be able to consult it in police stations and it will be available on the Scottish Executive website.

Paragraphs 1 to 4 of the code form an introduction and set out the scope of the code and the implications of not complying with it. Paragraphs 5 to 7 explain that the code covers proper persons, as I described earlier. Paragraphs 8 to 19 deal with general provisions relating to all the orders and warrants. They stress the need to act courteously and with respect for persons and property. They cover procedural issues, such as the need to show evidence of authority and to serve a disclosure order or customer information order.

The following paragraphs explain the statutory requirements and procedures for different types of order or warrant: paragraphs 20 to 31 deal with production orders; paragraphs 32 to 49 deal with search warrants; paragraphs 50 and 51 deal with customer information orders; paragraphs 52 to 54 deal with account monitoring orders; and paragraphs 55 to 63 deal with disclosure orders. Only the Lord Advocate and the Scottish ministers can apply for a disclosure order.

We consider that the code of practice is an important safeguard in ensuring that the investigation powers contained in the Proceeds of Crime Act 2002 are used in a fair and proportionate way. I therefore commend the code to the committee.

I move,

That the Justice 2 Committee, in consideration of the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2003, recommends that the Order be approved.

Mr Alasdair Morrison (Western Isles) (Lab): Agreed.

The Convener: Before we agree to the order, members have the right to take up to 90 minutes to debate it if they so wish.

The minister will be aware that the Subordinate Legislation Committee has asked the Justice 2 Committee to consider whether the issue of human rights should be set out in the legislation. I can anticipate your reasons for saying that it should not be set out in statute. However, a focus has been placed on the legislation, which concerns an area in which we need to be careful about the application of the European convention on human rights. Will guidance be issued to police constables or customs officers on how to conduct themselves in searches in accordance with the convention, or will they be required only to be aware of the convention?

Hugh Henry: We replied to the Subordinate Legislation Committee on 23 January about two matters that it raised, one of which was human rights. The need to observe human rights obligations and the need to protect vulnerable persons are not unique to investigations under the 2002 act. Those matters are relevant to several activities. Personnel who exercise powers under part 8 of the 2002 act must always be aware of and observe the wider obligations, so we consider it unnecessary to give guidance in the code of practice. We ensure that officials are generally aware of obligations under human rights legislation. We expect that to apply to activities under the 2002 act, as it would to anything else.

Bill Aitken (Glasgow) (Con): The minister will be relieved to hear that I have no intention of debating the order for 90 minutes. What he said about the human rights aspect covers any difficulties that might arise. Human rights legislation has been an impediment to the proper administration of Scots law and we should never have incorporated it into domestic law. However, the general legislation is welcome. It is a positive and—I hope—a far-reaching step in the campaign against money laundering and significant crime. I have no difficulty with the legislation.

Stewart Stevenson (Banff and Buchan) (SNP): As expected, I will rise to the bait and say that not all parties that are represented on the committee agree with Bill Aitken's remarks about human rights legislation. Most of us feel that the human rights legislation is a valuable and important addition to the law of Scotland.

Scott Barrie (Dunfermline West) (Lab): I echo that.

The Convener: What could a disclosure order cover? Would it cover telephone records or any information that a private company held?

Hugh Henry: Anything that could assist in the obtaining of information could be covered.

The Convener: Is that a catch-all provision for anything that would assist in the provision of evidence?

Hugh Henry: Yes.

The Convener: Would you like to say anything to wind up the debate, minister?

Hugh Henry: No.

The Convener: The question is, that motion S1M-3801 be agreed to.

Motion agreed to.

That the Justice 2 Committee, in consideration of the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2003, recommends that the Order be approved.

Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) (Scotland) Order 2003 (Draft)

The Convener: Agenda item 2 is another affirmative instrument.

Hugh Henry: Part 10 of the Proceeds of Crime Act 2002 provides a statutory basis for the disclosure of information to and by the Lord Advocate and the Scottish ministers. Section 439 of the act lists several persons and bodies that can disclose information to the Lord Advocate and the Scottish ministers in relation to their role under the act. Section 441 lists several functions for which the Lord Advocate and the Scottish ministers can pass on information that they have obtained as a result of their role under the 2002 act.

The first purpose of the order is to add persons who are permitted to disclose information to the Lord Advocate and the Scottish ministers and to specify the functions in respect of which those people may disclose such information. The persons and functions are listed in the schedule to the order.

The additional persons and functions are specified to ensure that our efforts to pursue the proceeds of crime are sensibly joined up early. By specifying the persons and functions, we shall be able to access information about suspect activities such as social security fraud, offences that involve motor vehicles and activities that might be used for money laundering. Nothing in the provisions authorises the making of a disclosure that contravenes the Data Protection Act 1998 or that is prohibited by part I of the Regulation of Investigatory Powers Act 2000.

Secondly, the order adds two further functions to the list set out in section 441 of the Proceeds of Crime Act 2002, in respect of which Scottish ministers and the Lord Advocate may disclose information to others. Those relate to protecting public health and the functions of the Financial Services Authority under the Financial Services and Markets Act 2000. The designation of protecting public health as a relevant function would allow us to disclose information relating to, for example, illicit supplies of medicinal products. The designations of the functions of the Financial Services Authority will allow us to disclose information that might be relevant to the FSA's regulatory function.

Once more, nothing in the provisions authorises the making of a disclosure that contravenes the Data Protection Act 1998 or that is prohibited by part I of the Regulation of Investigatory Powers Act 2000. The order extends to the whole UK. The Home Secretary is making a parallel order in relation to disclosures to and by the director of the Assets Recovery Agency.

We are satisfied that the bodies and functions specified in the order will allow us to make sure that the relevant information about suspect activities can be passed to the people who need it for the pursuit of the proceeds of crime and the protection of all.

I move,

That the Justice 2 Committee, in consideration of the draft Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) (Scotland) Order 2003, recommends that the Order be approved.

10:00

Bill Aitken: I notice that the schedule designating permitted persons includes the Gaming Board for Great Britain. We all know that one of the great cover-ups for unexplained wealth is that it was obtained through gambling. I assume that the intention behind involving the Gaming Board for Great Britain is that it could ask a casino operator or bookmaker whether anyone had done rather well out of a fast horse or dice falling the appropriate way. I am sure that there is an explanation, but I am a little concerned. Would a bookmaker or casino proprietor be aware of the identity of individuals who might have won significant amounts and took that money away in cash?

Hugh Henry: I would not assume that those who operate a casino would necessarily know that. However, if during an investigation an individual was identified and some activities could be traced to the casino, the order would enable the information to be obtained and exchanged with certain information being given to those who operate the casino. That is an important area to cover and it would be a serious omission if we ignored it, given the vast amounts of money that can exchange hands in casinos and the way in which some criminals use such activities to launder money and cover up the real source of their wealth.

Stewart Stevenson: Can the minister confirm my recollection that the relevant gaming acts require that casinos operate on a membership basis? Before accepting someone into membership, a casino requires to receive, verify and record information about the person. If a casino were to fail to do that, that would be a material consideration in the renewal of its licence.

Hugh Henry: Stewart Stevenson is right. Entry to and use of casinos is restricted to members. Those who apply for membership are required to provide information. Failure to operate under those conditions would be considered seriously by those who issue operating licences. To be fair to casino operators, I should say that people who are intent on covering their tracks can be sophisticated in shielding their true identity. However, the conditions that I have set out go some way towards providing routes for tracing and identifying those individuals.

The Convener: As there are no other points, is there anything else that you would like to say, minister?

Hugh Henry: No, thank you.

Pauline McNeill: In that case, the question is, that motion S1M-3800 be agreed to.

Motion agreed to.

That the Justice 2 Committee, in consideration of the draft Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) (Scotland) Order 2003, recommends that the Order be approved.

Act of Sederunt (Fees of Sheriff Officers) (No 2) 2002 (SSI 2002/567)

The Convener: Item 3 is consideration of two negative instruments. I refer members to the note from the clerk on the Act of Sederunt (Fees of

Sheriff Officers) (No 2) 2002 (SSI 2002/567). The Subordinate Legislation Committee had no comment to make on the instrument. Are members content merely to note it?

Members *indicated agreement*.

Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No 4) 2002 (SSI 2002/568)

The Convener: I refer members to the clerk's note on the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No 4) 2002 (SSI 2002/568). Do members have any comments on the instrument?

Bill Aitken: It is significant that the clerk's note underlines the explanation that was provided for the Executive's failure to meet the 21-day rule. For the record, we should note that omission.

The Convener: Yes. We have come up against the problem before. There is nothing controversial about the instrument, but, if there had been, we would have been placed in difficulty. We have said before that we would not be happy just to recommend an instrument where there had been a failure to comply with the statutory number of days.

Bill Aitken: The Executive must note the fact that the committee would have been concerned if the matter had been more contentious and that, as far as we are concerned, the 21-day rule should always be adhered to.

Stewart Stevenson: When a matter is uncontroversial and could reasonably be thought in advance to be uncontroversial, it ought to be relatively easy to bring it forward in the schedule. I understand why deadlines can be squeezed when an instrument is controversial. However, when an instrument is uncontroversial, that is unacceptable.

The Convener: After reading the Executive's explanation, I am none the wiser about why there has been a delay.

Mr Duncan Hamilton (Highlands and Islands) (SNP): I have a question not on the procedure, but on the substance of the instrument. There is a schedule attached that itemises the fees that can be charged. To an extent, they are meaningless figures, as they have no context. I wonder whether, in the future, it would be possible for comparative figures to be given. It is not clear whether the figures represent simply an inflationary uprating for the previous two years or something else. Providing that information would be easy for the Executive to do and it would give us some idea whether the figures were exceptional or normal.

The Convener: That is a fair point. Sometimes, we are given tables showing the previous fees. I am sure that I have seen those in the past.

Stewart Stevenson: Yes, the gaming fees were an example. In that instance, I questioned the uplift and we got a perfectly reasonable explanation that the Executive could have provided in the first place.

The Convener: It is a fair point. This set of figures is meaningless unless we know what the previous figures were. How would we note that point? Could we do that in our report?

Gillian Baxendine (Clerk): Yes.

The Convener: Okay. We are happy to do that and to note the instrument.

Members *indicated agreement*.

Petitions

The Convener: Item 4 is consideration of petitions. Members have a note from the clerk on each of the three petitions that we have before us. We have seen all the petitions before, but this is the first opportunity that the committee has had to pay a bit more attention to them.

Judiciary (Freemasons) (PE306)

The Convener: The first petition is PE306, from Thomas Minogue. It calls for a system to be set up that requires members of the judiciary to declare whether they are freemasons. The committee agreed to ask the Minister for Justice to consider establishing a system that would require members of the judiciary to declare membership of any group or society in which there is deemed to be a perception of secrecy. The minister reiterated his position that he is not convinced of the need to introduce such measures.

I draw the committee's attention to further correspondence that has been received from the petitioner. Members should note that the minister will be giving evidence to the committee on 4 March on the Judicial Appointments Board for Scotland. I invite the committee to consider the options and decide what action to take.

Scott Barrie: In his recent letter to the committee, the petitioner states that he is aware of

"specific examples of cases where difficulties have arisen".

We should ask him for details of those, at least as a starting point. We will have an opportunity to revisit the issue when the minister comes before the committee to talk about the Judicial Appointments Board next month.

The Convener: With regard to the Speculative Society of Edinburgh, which Mr Minogue mentions in his letter, the letter from Jim Wallace's private secretary says:

"The Minister had enquiries made about this body for another purpose a little time ago. He is satisfied that it is simply a debating society with membership drawn from the Judiciary and other professions. He does not believe that the decisions of Scotland's Sheriffs and Judges are in any way influenced by their membership of this organisation."

That has always been my position and I believe that it is the position of the committee. I want to place on record the fact that no member of this committee has suggested that judges are influenced by their membership of societies. We have questioned the effects of the perception of membership of any secret society and whether it might be a good thing in the interests of transparency to get the matter out of the way by having judges make a declaration. I believe that such a course of action has been taken in England and Wales but that the minister has decided not to pursue that path. However, it is for the committee to decide whether to end the matter at this point or take it further.

I am not happy simply to leave matters as they are. I cannot see what would be wrong with asking sheriffs and judges to declare that they are or are not members of a secret society.

Mr Morrison: Do we have a list of such societies?

The Convener: We do not have anything other than the correspondence that you have before you. If we wanted to take the matter further, that is the kind of research that we might want to be done.

Mr Morrison: If we are going to ask sheriffs and judges to make any sort of declaration, we have to be sure that we know what we are talking about. What type of societies would we want to ask about? Sporting societies? Cultural societies? Do we have a list of the relevant societies?

The Convener: You would have seen it if we did. There is no list.

Mr Hamilton: No one is suggesting that the organisations are illegal or improper. We have no evidence that the matter is a problem. Mr Minogue tells us that he is aware of

"specific examples of cases where difficulties have arisen over the question of Sheriff/judicial membership of the Freemasons."

It is therefore up to him to write to the Executive to make those cases known and to copy the committee into that correspondence. In the absence of that, I do not think that the committee should go on a fishing expedition to see what we can discover.

MSPs have declared that they are members of the freemasons, but their membership does not matter in relation to their position as elected public officials. That is why we have the register of members' interests and so on. We have to be aware of the different role of judges in that regard. They are public figures, but they are not elected. In the absence of evidence that the judges and sheriffs are freemasons or that that has influenced their decisions, I am not sure of the basis on which the committee would wander into this matter. Further, coming up with a list of organisations is fraught with difficulties. What would be the rationale for one organisation being in and one being out? Like the minister, I do not think that the Speculative Society of Edinburgh is anything more than a dining club and a debating society. I have never been at one of its meetings, but I am sure that there is nothing sinister about it. A degree of paranoia is creeping into this matter and we should be careful about that.

10:15

Stewart Stevenson: We must divide this into two parts. First, does judges' membership of undisclosed societies, clubs and organisations have a real and identifiable effect on the decisions for which they are responsible? I have not seen a shred of evidence to suggest that that is the case. However, the petitioner suggests that he has such evidence. I will wait and see what that is.

Secondly, where it might be thought that, or a perception might arise that, one is influenced by an external club, organisation or society, there is a duty to disclose such affiliations so that such an impression may be discharged. This bears on the way in which we as members of the Parliament are required to operate, and it is reasonable to expect that people in positions of authority in public life should operate similarly.

I do not believe that there is a problem, because no one has shown me that there is a problem—but the fact that some people think there is a problem results from less disclosure than might be useful. I do not use the word "appropriate" because, ultimately, the judgment must be that of the sheriff or judge. If we cannot trust the people whom we place in these very important positions of authority, the whole structure of our society and the systems that surround it breaks down. It will never be possible to audit everything in this regard; it will never be possible to identify all of the influences that play upon people. It is simply a matter of encouraging judges to be as open as possible. I use the word "encouraging", not the word "legislating", because I do not believe that that can be done.

Bill Aitken: We must be fairly careful with this issue. There is no evidence of a significant problem. Judicial appointments are governed by one very important factor—that the holder of that office is required to take the judicial oath, whereby he or she undertakes to do right unto all manner of people without fear, favour or prejudice. That is a very solemn and important oath, and there is no evidence that any holder of judicial office has failed to adhere to its terms.

In the absence of any further evidence, this matter should end here. If evidence had been available, it would have been forthcoming by now. Also, any judge—at whatever level—who had knowledge of an individual through shared membership of an association would decline jurisdiction over any case or action to which that person was a party. When I sat on the bench, on two occasions an accused person who was known to me came before the court. I declined to deal with the case.

Stewart Stevenson: Strange friends, Bill.

Bill Aitken: Perhaps I should not say whether they were accused or witnesses. Clearly, it was important to decline jurisdiction in that case and to make it clear to all parties that I was doing so because I was aware of certain circumstances pertaining to the individual. I do not think there is a problem; we could pore over the entrails of this matter for a long and weary time without finding any difficulty. We should not take this any further.

The Convener: I am trying to summarise what members said. No one other than Scott Barrie and me wants to take the matter any further. Is that okay, Stewart?

Stewart Stevenson: To clarify, the petitioner referred to "specific examples", and I firmly believe that he should be given the opportunity to tell us about those. However, I am sceptical about what he will say.

The Convener: I heard what members said about that evidence, and I agree with most of what Stewart Stevenson said. However, I do not wish to personalise this to one person's experience. If the committee were to take this further it would do so because it thought that it would be good to explore whether there should be a general declaration for judges and sheriffs because of their positions of authority. I hold the opinion that that would be good. However, I am unhappy to proceed on the evidence of one or two particular examples, and I am not necessarily influenced by one person's anecdotal evidence.

Although I feel that it is good to proceed, I do not feel so strongly about it that I would push committee members to change their minds. If the committee were to proceed, it would be best to get more independent advice. I accept Duncan Hamilton's and Alasdair Morrison's point that we need a more scientific basis on which to proceed, which would give us some kind of broad-based evidence on which to continue.

Mr Morrison: With all due respect convener, this is not a scientific process. The committee has a letter from an individual from Dunfermline who anecdotally says that he is aware of what he describes as "difficulties that have arisen". I assume that there is a process through which he can raise those difficulties.

Where will it end for the committee if it takes evidence from one individual who claims to have identified difficulties about others' alleged or perceived membership of an organisation? I share Bill Aitken's view that, until we have something concrete on which to work, we will be engaged in a futile exercise. Mr Minogue is welcome to send a written submission to the committee—as many witnesses do—and it would be eminently sensible if he did so. I would be happy to read it. The committee regularly declines invitations from individuals and organisations that want to give evidence. However, I am in your hands as regards Mr Minogue.

The Convener: You used the phrase "with all due respect" as though you were disagreeing with me, but I agree that if we proceed it will not be because of the petitioner's evidence. I want to proceed because the committee has another way of establishing whether it would be generally good or bad to have such a declaration. The petitioner's one or two cases will not persuade me, so to that degree I agree with your point. However, your point is different from that of Stewart Stevenson and Scott Barrie, who would like to hear from the petitioner. I do not know whether that takes us any further forward.

Mr Hamilton: Did Mr Minogue speak to the Public Petitions Committee when he submitted his petition?

The Convener: We will get that clarified for you.

Mr Hamilton: This is becoming circular. The committee has no evidence but would like to find out whether the suggestion is good. However, the only evidence would come from someone whom the committee thinks does not have much evidence and who has not provided the committee with any evidence. The Executive, which is ultimately responsible for the administration of justice, says that there is no problem. It also says that it has no evidence from Mr Minogue or anyone else, and the committee has no evidence. The Executive says that it does not know whether there is anything for the committee to look for, or how to go about looking for it. This is a waste of time.

Stewart Stevenson: I propose that we take no further action, but we should write to Mr Minogue advising him that, if he has concrete evidence that he wishes to put to the committee in writing, we will consider it with a view to reopening the issue.

Mr Morrison: I am happy with that.

The Convener: There is no dissent from that. On 4 March, the Minister for Justice will be coming to talk to us about judicial appointments. We can think about whether we want to raise the issue with the minister on that day.

Parental Alienation Syndrome (Sibling Contact) (PE438)

The Convener: Petition PE438, from George McAuley, on behalf of the UK Men's Movement, calls for procedures to enable children to establish a right of contact with siblings. The committee sought views from various organisations on the adequacy of existing legislation, and the responses are included among the committee papers. What action, if any, do members wish to take?

Bill Aitken: Once again, despite the various representations that have been made, there appears to be a lack of evidence, apart from that of an anecdotal nature. That said, we all have a degree of sympathy with the terms of the petition. The problem is how we take it further, because the course of action is not at all clear. Existing legislation, which requires the child's views, opinions and wishes to be taken firmly into consideration, is in some respects a little inadequate. Some fairly heartbreaking cases have already been brought before us; we want to do something, but I am not sure of the way forward.

The Convener: That has always been my instinct. We have previously discussed the Children (Scotland) Act 1995, which is meant to deal with contact with siblings, parents, grandparents and all interested parties in a child's life. I have always wondered whether the act should be strengthened: duties might be put in place to ensure that a child has proper contact with siblings or anyone else in their family. I have no way of knowing whether the situation is monitored once the court makes a decision. If a court decision is made on who should get contact with the child, who monitors whether that has happened?

Like Mr Aitken, I am not clear what we can do about the petition, but I certainly do not want to go in the direction suggested by the petitioner. That would be more problematic, as it would effectively create a legal aid system to allow sisters and brothers to take action to get contact. I would have thought that, if there is a problem, there must be a simpler way of solving it.

Scott Barrie: You have highlighted where the difficulties lie. It is quite clear that, in some regards, the current law on contact is deficient. The difficulty is finding another way of dealing with that problem. The more one legislates, the more cumbersome the legal process would become and the more impediments would be in the way.

In general terms—I am not referring to this specific petition—if we were to put into statute that grandparents had an automatic right of contact with grandchildren, that would become problematic in itself, should people want to stop that contact for whatever reason. One can imagine the civil courts becoming absolutely clogged up with inter-family and inter-sibling disputes.

We want to keep the courts out of those situations as far as possible. As soon as legal means start to be used to remedy complex, interpersonal difficulties, everything becomes more, rather than less, difficult. The subject matter of the petition is particularly difficult because it is hard to see a legislative way forward. We always want everyone who is involved in a child's life to act in the best interests of the child. However, we know that that does not always happen, which is the difficulty for the committee.

10:30

The Convener: You have particular experience of such situations, Scott, so you will know that the onus is effectively on the other party to seek access. Parents almost have a duty to seek contact with their children, but if that does not happen, there is no way of remedying the situation. I wonder whether a stronger duty should be put on the person who is the custodian or guardian of the child to ensure that the child has access to all family members. Rather than take a roundabout way of creating other ways in which people would be forced into court, that might strengthen the 1995 act. It costs money and resources for those families to go to court.

Scott Barrie: An advantage of the 1995 act is that it does not have to be brothers, sisters, grandparents or biological parents who seek contact and residence through the courts; the act uses the phrase "any relevant person", which is a wide definition. Anyone who shows that they have an interest in the child's welfare can petition the court, and that is a strength of the 1995 act. It does not limit contact by saying that only certain persons can petition the court, but says that any relevant person can seek contact or residence. Perhaps that is the best that we can get. The legislation is relatively new, but it is certainly better than what existed previously, which was much more draconian.

The Convener: Are you saying that no specific reference is contained in the 1995 act to sisters, grandparents or whoever?

Scott Barrie: Yes. It just says, "any relevant person".

Mr Hamilton: One of the comments in the response from the Family Law Association struck me as interesting. The second paragraph states that procedures are

"in place that enable a person (including a minor child) to make an application to Court to establish contact with a child."

Presumably, that also applies to contact between siblings.

The response continues:

"This would include any application for contact by a sibling. Legal aid is available for minor children to instruct Solicitors if necessary and the Association feels the current arrangements are adequate."

I am not sure how many people are aware that the act contains that provision. We may have a job to do to sell the fact that that right is a possibility under current arrangements, to make people aware of it and to tell them that support is available to establish it. That would be different from coming up with a new procedure, and the Family Law Association has said as much.

The Convener: What about a three-year-old child who has been separated for two years from their five-year-old brother or sister? If nobody took the initiative on behalf of the younger child, who could not possibly know that they were being deprived of contact with a brother or sister, how would the system work?

Mr Hamilton: Presumably, Scott Barrie's point is that the parent or guardian would not be solely responsible. A grandparent could be the "relevant person", and could assume responsibility by telling the courts what is in the best interests of the child.

The Convener: You are referring to the grandparent effectively suing for access to the three or five-year-old. However, they would not have the right under the act to bring the child and a relevant person together. That is what the petition is about.

Presumably, the petitioner feels that there is some detriment to children if there is a gap in their life in that they have no contact with their brothers and sisters. The provision in question allows a grandparent or relevant person to gain access, but it does not necessarily bring the family together. If a child were old enough to know that they would like to see their brother or sister, they could take the relevant steps and someone would act on their behalf. However, I find it difficult to work out how that would work if the child were very young. The Family Law Association has told us about its experiences in court, but we have no information about the real experiences of parents or others who have been affected by the system.

Bill Aitken: I find Scott Barrie's comments very interesting. Obviously, he has the advantage of dealing with such issues in his previous career. One point that resonates is the fact that the Children (Scotland) Act 1995 is quite new, and it is possible that we have not yet had the opportunity to find out how the provision is working its way through the system.

Frankly, I think that the petition has some merit. The question is how we make progress on the matter. Doing nothing is always the easy option, but this might just be one of those cases where we should do nothing. That said, we should perhaps flag up that the matter might need to be revisited in future once the operation of the appropriate legislation can be judged against experience.

Mr Hamilton: There is also the matter of the Law Society of Scotland's response. I take the point that we may need to hear from that organisation and get a definitive statement on the position that Bill Aitken outlined, which we could encapsulate. We should include the proviso that if the family law division of the Law Society of Scotland were to tell us that a major problem existed, the matter could become an early priority for a successor committee.

The Convener: Just for clarification, I should point out that the Family Law Association's response refers to petition PE413, which concerns parental alienation syndrome. However, we are dealing with petition PE438, which concerns wilful alienation by the parent who has custody of siblings. The focus of that petition is not the separation of siblings.

Bill Aitken: Yes. We are dealing with petition PE438.

The Convener: I am not giving any credibility to the term "parental alienation syndrome" and agree with Fiona Miller from the Scottish Child Law Centre on that matter. However, that is not to say that the principal point of petition PE438 has no merit. How do members wish to proceed?

Bill Aitken: We should take no action, but indicate to the petitioner that we consider that the issues raised in his petition have some merit and that we would prefer to wait and see how the legislation works through. If the petitioner still feels that a problem exists, he should be encouraged to re-petition the Parliament when the matter might be examined further.

Stewart Stevenson: Perhaps we might choose to put on record our recommendation that, in approximately a year, the successor committee should examine whether the implementation of section 11 of the 1995 act has started to deliver any benefits. It would be entirely up to the committee at that time to accept, reject, modify or do whatever it liked with that recommendation.

The Convener: We will take Bill Aitken's proposal for future action along with Stewart Stevenson's suggestion that the matter would be a good subject for a future work plan. I think that we should phrase it in that way, because it would be difficult to ask a successor committee to undertake such work. Is that agreed?

Members *indicated agreement*.

Civic Government (Scotland) Act 1982 (Obscene Material) (PE476)

The Convener: The final petition under consideration is petition PE476, from Mrs Catherine Harper on behalf of Scottish Women Against Pornography. The petition calls for better enforcement and a full review of the legislation on the display of obscene material. We have received a note of the additional information that the Minister for Justice sought in accordance with the committee's request. As the minister's response points out, no research has been undertaken on the matter, but research on a similar topic is in the pipeline. I invite members to consider the merits of the issues contained in the petition and to suggest possible action.

Stewart Stevenson: In view of the indication that research on this matter is in prospect, I think it inappropriate to take any action on the petition until the results of that research are available.

Mr Morrison: I agree wholeheartedly with Stewart Stevenson's comments.

Bill Aitken: I, too, concur with his remarks.

The Convener: We note that, as research is on-going, it would be inappropriate for the committee to take any action. However, that is not to say that, once the results of the research are available, it would not be an important subject to pick up in a successor committee's future work plan. Are members agreed?

Members *indicated agreement*.

The Convener: That brings us to the end of what has been perhaps our shortest-ever meeting. The committee will meet again on 5 February. Members will know that the debate on our report on the Crown Office and Procurator Fiscal Service will be held on 13 February, and you should all have received the response from the Crown Office.

Further, all members are invited to visit the procurator fiscal's office in Hamilton. Bill Aitken and I will certainly attend. We are trying to sort out the dates, but the invitation is open to any member who wishes to go.

Mr Morrison: I am sorry, convener. I take it that we meet again a week today, and then debate the report on 14 February.

The Convener: When do we meet again after the meeting on 5 February?

Mr Morrison: We meet on 12 February.

Stewart Stevenson: There is no meeting on 12 February.

Mr Morrison: Okay.

The Convener: Alasdair, if you need a list of dates, I think that one is available.

Gillian Baxendine: We have already circulated a list, but we can circulate it again.

Mr Morrison: If the list contains any changes, please do so.

The Convener: Okay. Thank you for that.

Meeting closed at 10:41.

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