

JUSTICE 2 COMMITTEE

Wednesday 5 February 2003
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE

4th 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

The Hub

Scottish Parliament

Justice 2 Committee

Wednesday 5 February 2003

(Morning)

[THE CONVENER *opened the meeting at 10:32*]

Item in Private

The Convener (Pauline McNeill): Good morning everyone and welcome to this meeting of the Justice 2 Committee. I ask members to do the usual and switch off anything noisy, such as mobile phones. No apologies have been received for the meeting.

The first item is to ask the committee's consent to take item 5 in private. Do members agree to take the item in private?

Members *indicated agreement.*

The Convener: I should have said for the record that, under item 5, we will discuss our committee legacy paper. We will leave a legacy behind us.

European Document

The Convener: I refer the committee to the clerk's note on our scrutiny of European Union justice and home affairs issues, with reference to the parental responsibility regulation. The purpose of the item is to consider the committee's approach to European Union justice and home affairs issues. Given the short time before dissolution, we will also consider the matters that we wish to recommend to our successor committee in respect of such scrutiny.

We took the opportunity to be briefed to get ourselves up to speed with the various options for influencing EU directives and regulations. The paper contains suggestions for members' consideration. The proposals include setting up a system of current awareness and focusing on influencing specific pieces of legislation, which is what we are attempting to do in respect of the parental responsibility regulation. It is also suggested that we scrutinise the implementation of EU measures as and when they happen. The paper contains a number of options for the committee's consideration. Which items do members wish to action?

Stewart Stevenson (Banff and Buchan) (SNP): The briefing that we had before the formal meeting was extremely useful and interesting. We should record our thanks to those who came to talk to us.

I would like to put two areas of focus on the record. First, we need the earliest possible indication of any work starting in the European Union that may affect us. I know that some of the time scales involved are extremely lengthy and would span the lifetime of the next parliamentary session. It is vital to get involved at an early stage. Given the relative lack of priority that one will always place on something that might happen in six, seven or eight years' time, it is important that we have a concise and focused way in which to see what has started to happen, what the time scale will be and what the impact might be on Scots law. I would like the committee to be provided with a regular overview. I have an open mind on whether that should happen every month, every two months or every three months, although it should certainly be no longer than three months. The overview should cover a single sheet of paper—possibly both sides.

The second point that I want to put on the record is that our successor committee—or any similar committee that there may be in the next session—should, I suggest, seek to satisfy itself, probably by talking to the minister on a regular basis, that Scots law, which is distinct from English law, is being represented in Europe in a way that ensures that its distinctive needs and practices are taken

into account. I am sure that there is good will in the system—I am not suggesting that there is not—but I do not know whether the distinctive practices of Scots law are being taken into account. I have an open mind on the matter, but I believe that any successor committee should examine it.

The Convener: That is a good suggestion. As a starting point, we should have some way of being made aware of legislation that may impact on Scots law. I am concerned about the volume of information that we might receive. Stewart Stevenson's view is correct—any briefing should be short to enable us to determine at a glance whether we should pick a matter up.

We must take the issue further, because we need to question the speed at which some of the regulations seem to be made. We have done the right thing by examining at least one of the regulations—the one on parental responsibility—with the assistance of Peter Beaton, who has given us an up-to-date note on the discussions on the matter. That has been an important exercise in examining how the committee can get involved in the process and what kind of information we can receive. We should continue to take the matter as far as we can, as long as the committee is in existence, and see where it ends up.

It is important that we should have a dialogue with the Minister for Justice to alert him to the fact that we take the scrutiny of EU regulations seriously. That scrutiny should be part and parcel of the general work of the committee. It may be helpful if the committee were to agree today that we should write to Jim Wallace to make him aware of the issue. We should ask him to come to talk to us, if there is time. A future committee could pick up the matter if it wanted to. It would be good to hear from ministers about their contacts on justice and civil matters in the EU. That would give us an idea of the extent to which ministers are themselves involved in those matters.

Mr Alasdair Morrison (Western Isles) (Lab): I agree that it would be useful to have a discussion with the Minister for Justice. A matter that I want to focus on is the situation post and pre-devolution. I imagine that the well-established system that was in existence from the 1970s until devolution translated easily into the current constitutional situation. I cannot imagine that the system would have been eroded or that it would not cover all the bases. Before devolution, we had a minister with responsibility for home affairs. We now have a Minister for Justice covering the same area. My suspicion—it is not an informed view—is that the transition has been seamless. However, it would be useful to have a letter from the minister telling us what the arrangements were pre-devolution, what they are now and whether there is any way in

which they can be improved. My suspicion is that the transition has been seamless, but that is speculation.

The Convener: We can mention in a letter that we would like that information. Do members have any other comments?

Bill Aitken (Glasgow) (Con): As Stewart Stevenson said, we had a long and—to my mind—beneficial session before the formal part of the meeting, during which we discussed in considerable detail various aspects of the way in which European legislation has the capacity to impinge on Scots law. There was unanimous agreement that, in certain respects, especially in these days when terrorism has to be eminent in our considerations, international co-operation is essential. In the context of the parental responsibility regulation, that co-operation can only be of benefit.

Nevertheless, the committee feels that the European influence on Scots law has the capacity to be damaging to some extent. The law of Scotland is well founded and, although it can always be improved, we would not wish to see it put under pressure because of the Commission. The chain of events can resemble a juggernaut—once it starts, we cannot stop it or change its direction. That makes it all the more important for us to flag up early anything that has the capacity to influence Scots law.

We have to consider—this may be a secondary matter once we have discussed the regulation with Jim Wallace—how a committee of the Scottish Parliament can directly influence a committee of the European Parliament. I know that the clerks and the Scottish Parliament information centre have had initial discussions on that issue, which will be beneficial, especially because contacts have been established. However, as far as I can see, there does not seem to be any formal arrangement whereby this or any other committee of the Scottish Parliament can directly make a view known to the appropriate committee of the European Parliament. We must examine that closely.

The Convener: I ask the committee to consider what direction it wants to head in. Members have in their paper some options in relation to the scrutiny of implementation of EU legislation and on current awareness, both of which are important issues. I wonder whether we want to go a step further and discover how we can directly influence legislation that impacts on Scots law. We could investigate the best process for doing that.

We accept the point that Alasdair Morrison and Stewart Stevenson have made, which is that we need a system to make us aware of what is going on. We can discuss that with the minister if we get

the opportunity. We will certainly make him aware of our discussions. Our view is that we need to look for a way in which we can have direct influence and that we need to spend more time considering how best that could be done. Is that agreed?

Members *indicated agreement.*

The Convener: Do members have any specific points on the regulation that we have been discussing?

Members: No.

Subordinate Legislation

Child Support Appeals (Jurisdiction of Courts) (Scotland) Order 2003 (Draft)

The Convener: We move to agenda item 3. Members have a note on the order. I welcome Hugh Henry to the committee. Minister, you may speak to motion S1M-3826.

10:45

The Deputy Minister for Justice (Hugh Henry): Thank you, convener. The order concerns child support, which, as you know, is a reserved matter in terms of general policy. However, the order relates to the jurisdiction of the Scottish courts in dealing with child support appeals. As such, it relates to a matter that is devolved by virtue of section 45 of the Child Support Act 1991. That provision enabled the Lord Advocate and now enables the Scottish ministers to allocate certain child support appeals to the courts. The order is essentially a tidying-up exercise. It will not change existing child support policy. It merely re-enacts existing provision that allocates certain child support appeals to the courts.

When the child support system was introduced 10 years ago, its purpose was to take decisions about child maintenance out of court in order to speed up the process. It was decided at the time that appeals should be made through an out-of-court process involving a non-adversarial tribunal hearing. There was one exception—it was decided that the courts should deal with appeals that were based on parentage issues. That decision was taken because of the importance of issues beyond child support, such as immigration and inheritance, and because the courts were accustomed to dealing with such matters in determining issues of parental rights and responsibilities in the wider context of family matters.

The exception was originally given effect in a United Kingdom order made jointly in 1993 by the Lord Advocate and the Lord Chancellor. The present order will revoke and replace the 1993 order as it affects Scotland. The Scottish order will stand alone. Similar, separate orders have already been made for England and Wales and Northern Ireland. I stress that the policy on the courts' role will remain the same.

The order is necessary because the references in the existing order will be out of step with, and too general in regard to, changes that have been made to primary legislation that deals with appeals against child support decisions.

Convener, do you want me to go into any more detail?

The Convener: There will certainly be some questions.

Stewart Stevenson: If it assists, convener, I have three questions that I suspect are relatively technical—the minister might find that he does not need to give me any further information.

Hugh Henry: Okay.

The Convener: We will go straight to questions.

Stewart Stevenson: My questions are fairly straightforward. I am not seeking to oppose the order; I am seeking clarity.

First, the draft order does not have a number. Is the order number 1 or should it not be numbered? That is a minor drafting issue.

Secondly, article 4 refers to an appeal made to a court in Scotland and

“the care of the child ... domiciled in Scotland on the date when the appeal is made”.

How is it determined who has care of a child when we are talking about transnational issues? I expect that that is something that is well known, but it is not known to me.

Thirdly, I have a little, quirky point. I understand that there is a special register of births, deaths and marriages that applies to such events as take place in aircraft and vessels. Will the minister confirm that there is a distinctly Scottish version of that? I have the feeling that, even if someone is born in an aircraft in Scotland, the birth is registered in England for legal purposes.

The Convener: Minister, I should explain that aircraft are Stewart Stevenson’s specialist subject.

Mr Morrison: To add to Stewart Stevenson’s question, is there a distinction between aircraft and helicopters? I know that children have been born in coastguard helicopters.

Hugh Henry: The first issue is fairly straightforward: we cannot allocate a number to the order until it is approved.

The determination of the care of a child who is domiciled in Scotland is a matter of fact. If there were a dispute about that, it would have to be determined through the court system on the basis of family law.

On births in planes, helicopters, ships—

Mr Morrison: And submarines.

Hugh Henry:—and submarines, the issue could well be one of domicile. The issue would relate to the jurisdiction of Scotland and the jurisdiction within which the vehicle was at a particular time. I will seek further guidance on the issue and get back to Stewart Stevenson through the convener.

Stewart Stevenson: If it assists, I point out that, although aircraft do not have a port of registry,

vessels do, which might distinguish Scots from English vessels. The minister might bear that in mind.

With the convener’s indulgence, I have a question that the minister might be able to answer on the negative instrument that we are to consider next. I do not know whether the minister is staying for the discussion of that instrument.

The Convener: The minister is not here to answer such questions; it would be a matter of courtesy if he decided to stay. However, we should deal first with what we have in hand.

Bill Aitken: I have one point that might assist the minister. I think that it is established in law that, where births occur in sea-going vessels that are outwith the territorial limits of a nation, the country of domicile determines the nationality.

Motion moved,

That the Justice 2 Committee, in consideration of the draft Child Support Appeals (Jurisdiction of Courts) (Scotland) Order 2003, recommends that the Order be approved.—[*Hugh Henry.*]

Motion agreed to.

Police and Police (Special Constables) (Scotland) Amendment Regulations 2003 (SSI 2003/21)

The Convener: Stewart Stevenson has a question on the regulations for the minister.

Hugh Henry: I have no information on them.

The Convener: If you feel that your question is unresolved, Stewart, we can note the issue in the report.

Stewart Stevenson: That is fine—I wanted to ask my question of the minister only as a matter of convenience.

The Convener: In that case, I thank the minister for coming.

I ask the committee to consider the regulations, on which members have a note from the clerk. Stewart Stevenson has a point to make.

Stewart Stevenson: I latched on to a point in the note provided by the clerk. The note describes the changes that are to be made, the first of which is that a police constable or special constable must be

“sufficiently competent in written and spoken English and sufficiently numerate”.

To be candid about my intention, I am concerned about special constables. If that requirement did not exist previously, will its introduction exclude people who have a great deal to offer as special constables and are perfectly capable of doing the job in the area in which they

are deployed but who might not meet that test? I wonder why that condition has been added to the regulations. In asking the question, I am not seeking to oppose or in any way inhibit the progress of the statutory instrument. In any event, I recognise that I would still have time to do that—I would not have to take any such action today.

The Convener: Who might be excluded?

Stewart Stevenson: Gaelic speakers, for example. Moreover, in some areas of Glasgow, there might be members of our quite substantial immigrant communities who might well be able to do an excellent job as special constables. I would not wish them to be excluded from providing their services to the community if they could not meet that test. It would be up to the chief constable to decide what was appropriate.

Mr Morrison: Dyslexia might be an issue.

Stewart Stevenson: Dyslexia could indeed have an inhibiting effect on competence in written English. I am thinking about special constables in particular, as they will not necessarily be deployed in the general way in which constables are deployed. Special constables can be used in a specific and focused way.

Mr Morrison: Does any member of the committee know whether special constables give evidence at court?

Bill Aitken: Yes, they do. I would like to reinforce what Stewart Stevenson said. I can confirm that in Glasgow there are a number of special constables who come from the south Asian and Chinese ethnic communities.

It is almost inevitable that any special constable who did not speak English—I doubt whether there are any special constables who are in that position—would experience difficulties. I suspect that that would be the case in the Hebrides, too. In my experience, the vast majority of troublemakers tend to be English speakers.

Stewart Stevenson: Some Gaels—Mr Morrison, for example—are an exception.

The Convener: No one would disagree with that.

Mr Duncan Hamilton (Highlands and Islands) (SNP): I want to comment on the additional requirements that the new regulations will impose. Regulation 6 of the Police (Scotland) Regulations 1976 stipulates that the chief constable has to be satisfied that candidates for appointment as constables

“are sufficiently educated through the passing of an examination”.

I am not sure what the difference is between that requirement and the requirement that someone

should be literate and numerate. In what way do the new tests introduce an additional requirement that is not already covered by the stipulation that candidates should be “sufficiently educated”? A knowledge of Shakespeare is hardly necessary.

I am also curious about the assessment of whether someone is sufficiently competent in written and spoken English and whether they are sufficiently numerate. I would like to know where it is defined how that will be decided. As far as I can see, the new regulations make no reference to any particular tests, but I might have missed something. I would like to know, for example, whether a qualification that someone who had come from another country had obtained in that country would count.

The Convener: The difficulty with negative instruments is that such questions are not answered. We have to make a judgment on whether we want to make any comment.

Mr Morrison: On page 3, under the heading “Competence in Oral and Written English and Numeracy”, the Executive note states that the police standard entrance test

“forms part of the assessment process”.

Mr Hamilton: It says that the police standard entrance test

“already comprises papers in Language, Numeracy and Information Handling.”

Does that not refer to the traditional test? We are talking about the additional test.

The Convener: If the committee has doubts or wants to get questions answered, the best policy would be to write to the Executive to obtain clarification.

Mr Morrison: I would like to reiterate what Stewart Stevenson said. In asking questions, we do not intend to block the new regulations.

The Convener: It is fair for the committee to seek as much information as it needs. We are being asked to comment on the regulations. If there are areas in which answers are required, it is perfectly valid to request such answers, provided that there is time to do so. We want to find out whether the requirement that we have discussed represents an additional test.

Stewart Stevenson: I make it clear that my focus is on the special constables. The Executive’s note states that special constables will not

“necessarily be required to undertake an entrance examination.”

If the proposed change is made, I presume that some kind of new assessment will be carried out. I am cautious about that.

Mr Hamilton: I want to put on record the reason for my confusion. Although it is stated that it is not intended that the proposed amendments to the regulations will result in the imposition of any new test, the explanatory note to the new regulations states that the literacy and numeracy requirements are additional to the current requirement that candidates be “sufficiently educated”. I am not sure how one could come to a view on whether those additional requirements were met without having an additional test.

The Convener: That is a fair point. As there are no other points, we will obtain clarification on the points that have been raised.

11:01

Meeting continued in private until 11:50.

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