

# **JUSTICE 2 COMMITTEE**

Tuesday 28 October 2003  
(*Afternoon*)

Session 2

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## **JUSTICE 2 COMMITTEE**

**12<sup>th</sup> Meeting 2003, Session 2**

### **CONVENER**

\*Miss Annabel Goldie (West of Scotland) (Con)

### **DEPUTY CONVENER**

\*Karen Whitefield (Airdrie and Shotts) (Lab)

### **COMMITTEE MEMBERS**

\*Jackie Baillie (Dumbarton) (Lab)

\*Colin Fox (Lothians) (SSP)

\*Maureen Macmillan (Highlands and Islands) (Lab)

Mike Pringle (Edinburgh South) (LD)

\*Nicola Sturgeon (Glasgow) (SNP)

### **COMMITTEE SUBSTITUTES**

Ms Rosemary Byrne (South of Scotland) (SSP)

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Michael Matheson (Central Scotland) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Margaret Smith (Edinburgh West) (LD)

\*attended

### **THE FOLLOWING GAVE EVIDENCE:**

Joyce Lugton (Scottish Executive Justice Department)

Edythe Murie (Scottish Executive Legal and Parliamentary Services)

### **CLERK TO THE COMMITTEE**

Gillian Baxendine

Lynn Tullis

### **SENIOR ASSISTANT CLERK**

Irene Fleming

### **ASSISTANT CLERK**

Richard Hough

### **LOCATION**

Committee Room 2



## Scottish Parliament

### Justice 2 Committee

*Tuesday 28 October 2003*

*(Afternoon)*

[THE CONVENER *opened the meeting at 15:20*]

### Items in Private

**The Convener (Miss Annabel Goldie):** We will make a start. Do members agree to take item 5, which is consideration of the draft stage 1 report on the Vulnerable Witnesses (Scotland) Bill, in private?

**Members indicated agreement.**

**The Convener:** The clerk is keeping me right and has informed me that we should also agree to take any subsequent discussions on the draft report in private. Do members agree to take any such discussions in private?

**Members indicated agreement.**

**The Convener:** On a practical point, as we are late in starting and because we have witnesses from the Executive for agenda item 3, on subordinate legislation, do members agree to take agenda item 3 before agenda item 2?

**Members indicated agreement.**

## Subordinate Legislation

### Lands Tribunal for Scotland (Relevant Certificate) (Fees) Rules 2003 (SSI 2003/451)

### Lands Tribunal for Scotland Rules 2003 (SSI 2003/452)

### Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (SSI 2003/453)

15:21

**The Convener:** I welcome the witnesses from the Executive. Norman Macleod and Edythe Murie—that is an unusual spelling of Edythe—are from the office of the solicitor to the Scottish Executive, and Joyce Lugton is from the Scottish Executive Justice Department. I am grateful to them for joining us. I am sorry that they have been kept waiting, but the justice committees' discussion on our draft report on the budget proved a little more extended than we had anticipated.

Members have before them the three negative instruments that are to be considered under agenda item 3. Our witnesses have kindly made themselves available to answer any questions that arise. I normally ask witnesses if they want to say anything, but as we already have a lot of background information, and unless the witnesses are terribly enthusiastic about making an introductory statement, I will simply move to committee members' questions.

**Joyce Lugton (Scottish Executive Justice Department):** I am happy to proceed in that way.

**The Convener:** I asked the clerk to let the Law Society of Scotland know that we were considering the Lands Tribunal for Scotland Rules 2003 (SSI 2003/452). I have received an e-mail from the Law Society that raises one or two technical points. If the committee agrees, I will fire them at our witnesses for comment, although I do not think that they contain anything terribly alarming. One of the points is that rule 17, which concerns the administration of oaths, does not appear to contain any provision to allow witnesses to make an affirmation. Is there a reason for that?

**Joyce Lugton:** Under the Oaths Act 1978, an affirmation can be made instead of any oath.

**The Convener:** So existing legislation provides that facility?

**Joyce Lugton:** Yes.

**The Convener:** That answers the first point.

The Law Society's second point seems a little more technical. The e-mail states:

"Although there is a form given in Schedule 1 for the reference of disputes over compensation in School Sites cases (s 86 TC Act) there is no form given for a reference under s 87 TC Act—entailed sites under the Entail Sites Act 1840—although they follow a parallel procedure to s 86 cases. This omission is repeated in the Explanatory notes."

Would the witnesses like a copy of the e-mail?

**Joyce Lugton:** We had prior notice of the question and my colleague has come prepared with an answer.

**Edythe Murie (Scottish Executive Legal and Parliamentary Services):** One form covers both kinds of application—a separate application form is not required.

**The Convener:** Sorry—the Law Society's e-mail has misled me. I thought that the two points referred to the Lands Tribunal for Scotland Rules 2003, but they do not; the second point relates to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 (SSI 2003/453). On you go.

**Edythe Murie:** The point refers to an application to the Lands Tribunal in respect of provisions in the Title Conditions (Scotland) Act 2003 for school sites and entailed sites. Separate application forms are not required because the same provision in the act covers both types of application. Section 86(5) deals with school sites and section 87(1) applies the provisions of section 86(5) to applications under the Entail Sites Act 1840.

**The Convener:** So there has not been an omission.

**Edythe Murie:** One form can be used for both kinds of application.

**The Convener:** That is a helpful reassurance. As members have no further questions, I thank the witnesses for their brief but helpful appearance, which has enabled us to address the issues that the Law Society of Scotland raised. We are grateful to you for that.

May I assume that there is no objection to noting the three instruments?

*Members indicated agreement.*

### **Advice and Assistance (Scotland) Amendment (No 2) Regulations 2003 (SSI 2003/421)**

**The Convener:** Because it is tidier, we will move on to agenda item 4, which is also on subordinate legislation. Is it agreed that we have no points to make on the regulations?

*Members indicated agreement.*

## **Petitions**

15:27

**The Convener:** We now go back to agenda item 2. Members have been circulated with copies of the four petitions with which we will deal. We will take them in the chronological order in which they appear on the agenda.

### **Scottish Legal Aid Board (PE200)**

**The Convener:** Petition PE200, which is from Andrew Watt, calls on the Scottish Parliament to review the working methods of the Scottish Legal Aid Board, particularly in relation to the collection and disbursement of compensation moneys. The clerks have given us a lot of helpful background information about the petition and its progress since it first appeared in the Parliament.

If members do not have any questions about the background information, we will move to consideration of the options for the petition as described in paragraph 18 of the clerk's note. Given that the arrangements for property that is recovered or preserved have moved on considerably since May 2000, when the petition was originally referred to the Justice 1 Committee, and, in particular, given the improved information and guidance on compensation awards produced by the Scottish Legal Aid Board, the committee may consider that the points raised in the petition have been answered. If so, the committee may wish to close consideration of the petition. If the committee is so minded, it is invited to forward to the petitioner the report that the Scottish Legal Aid Board submitted in August this year.

Do members have any questions?

**Karen Whitefield (Airdrie and Shotts) (Lab):** I have no questions about the petition. The clerks have made a helpful suggestion, and that is the course of action that the committee should take.

**The Convener:** Does the committee agree that the options detailed in paragraph 18 of the clerk's note on the petition should be followed?

*Members indicated agreement.*

### **Criminal Injuries Compensation (PE375)**

15:30

**The Convener:** Next is petition PE375 from Mrs Elaine Crawford, which calls on the Scottish Parliament to carry out a review of criminal injuries compensation procedure and policy, and a review of sentencing policy on violent crime. It emerged during the previous parliamentary session that criminal injuries compensation is a reserved

matter—it is not one over which the Parliament has competence. The Parliament has competence over sentencing.

If there are no questions about the background information, I refer the committee to the options in paragraphs 10 and 11 of the clerk's note on the petition. As the criminal injuries compensation part of the petition has not been referred to the committee, it is suggested that we may wish to take no further action on that aspect. Does the committee agree?

**Members indicated agreement.**

**The Convener:** The previous Justice 1 Committee carried out considerable work on sentencing—the other aspect of Mrs Crawford's petition—and the Scottish Executive has recently established the sentencing commission. Therefore, one of the options is that the committee may wish to note Mrs Crawford's concerns on sentencing and pass her petition to the sentencing commission for information. Would that be an acceptable means of dealing with the petition?

**Members indicated agreement.**

### **Clydesdale Horses (Couping) (PE347)**

**The Convener:** Petition PE347 from Mr Kenneth Mitchell calls on the Scottish Parliament to investigate the practice of show shoeing Clydesdale horses and to introduce legislation to make such a style of shoeing illegal unless sanctioned for medical reasons by a veterinary surgeon. This petition is also accompanied by extensive background information, some of which has been provided by the clerks and some of which is evidence from other bodies and organisations.

Does the committee have any questions about the background information?

**Jackie Baillie (Dumbarton) (Lab):** As I understand it, we still do not have any indication from the Executive as to when it will introduce its Protection of Animals (Scotland) Bill. Is that still the case?

**The Convener:** I think that that is the case. There is a statement in "A Partnership for a Better Scotland: The partnership agreement." We have no more specific information than is contained in the clerk's background note. You will see from that note that there is an option for a member's bill to be introduced to cover the practice. Dr Sylvia Jackson has been interested in the issue throughout the petition's progress.

**Maureen Macmillan (Highlands and Islands) (Lab):** I give Dr Jackson's apologies. She had hoped to attend the meeting, but she is at another committee this afternoon.

**The Convener:** Thank you.

If there are no other questions about the background to the petition, I refer members to paragraph 15 of the clerk's note. It is suggested that, in light of the previous Justice 1 Committee's consideration of the petition and of the further information received—particularly on the legislative intentions, which may be on the Scottish Executive's part or may be through a member's bill—the committee agrees to write to the late Mr Mitchell's representative and to forward all recent correspondence regarding the petition, explaining that the petition has been examined thoroughly and that, in view of current legislative plans, we propose to take no further action.

**Maureen Macmillan:** The issue is important. The previous Justice 1 Committee spent a lot of time on it. I hope that it is included in the Executive's Protection of Animals (Scotland) Bill when it is introduced. However, there is not much that the committee can do now to further the matter. We must wait to see what legislative proposals are introduced by the Executive or in a member's bill.

**Jackie Baillie:** Although I agree with most of that, I do not think that we should conclude our consideration of the petition absolutely. Although the Executive intends to introduce the Protection of Animals (Scotland) Bill, we are unclear as to what the bill's content will be. If we keep the petition alive for the time being, that may have some extra influence over the Executive. Our consideration of the petition should not be concluded at this stage, although I realise that the petitioners will get what they want, whether through the Executive's legislation or through Sylvia Jackson introducing a member's bill.

**The Convener:** I echo Maureen Macmillan's point. The issue is clearly substantive and merits serious consideration. I suggest that another way of dealing with the petition would be to write formally to the Scottish Executive. We could say that the petition has been placed before us and that our attitude to it depends to some extent on the clarity of the legislative proposals, and ask whether the Executive is in a position to guide us on that. Depending on the response, we can then determine how to deal with the petition. On that basis, we would continue the petition as part of our work.

Is that agreeable to the committee?

**Members indicated agreement.**

### **Scottish Law (Protection of Minors) (PE565)**

**The Convener:** The final petition is from a Miss Jacqueline Shields. Petition PE565 calls on the

Scottish Parliament to take the necessary steps to provide a protective mechanism to ensure that the welfare concerns of minors are paramount in Scottish law. The committee will see that Miss Shields is still a young lady—she was 12 in December 2002—so she is to be commended for having the resolve to bring the matter to the Parliament's attention.

We have, again, useful background information. I found helpful the information from the bodies mentioned in paragraph 4 of the clerk's note on the petition. The Scottish Executive responded to the Public Petitions Committee and we have information from the Scottish Child Law Centre and the Scottish Alliance for Children's Rights. I also found the response from the cross-party group in the Scottish Parliament on children and young people helpful.

If there are no questions about the background information, I refer members to the options listed in the clerk's note. The first point that we need to consider is whether we can take a view on the petition based on the information that is currently available or whether it would be desirable to seek further information on the procedures that support children who are involved in civil law and other court proceedings to determine whether they are sufficient. That would have to be done by correspondence, as our committee timetable does not permit evidence ingathering, as far as I can see—certainly not in the short term. It is worth while making that clear to committee members. You will remember that we will be the secondary committee for the antisocial behaviour bill. There is a demanding time framework for that.

Another option is to seek the Executive's view on the sufficiency of the procedures that support children who are involved in civil law and other court proceedings, the adequacy of the guidance available to sheriffs in considering such cases and the availability and accessibility of relevant information that is directed at children.

**Karen Whitefield:** We are not quite ready to take a decision on the petition, but if we wrote to the Executive, as recommended in paragraph 9 of the clerk's note, and to the Law Society of Scotland, as recommended in paragraph 10, to seek their views, we would quickly be able to reach a conclusion on the matter and respond to the petitioner.

**The Convener:** I have a lot of sympathy with that view, because I feel that we are slightly lacking in information about the situation. The third body to which it is suggested that we write is the Scottish Legal Aid Board. That is relevant.

Does the committee agree that we continue the petition, write to the Executive, the Law Society of Scotland and the Scottish Legal Aid Board and

determine how to proceed further once we have responses from those bodies?

**Members indicated agreement.**

**The Convener:** Thank you. That brings us to item 5, which is to be taken in private.

15:39

*Meeting suspended until 15:43 and thereafter continued in private until 16:20.*



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