JUSTICE 2 COMMITTEE

Tuesday 14 December 2004

Session 2

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JUSTICE 2 COMMITTEE
35th Meeting 2004, Session 2

CONVENER

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

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)
*Colin Fox (Lothians) (SSP)
*Maureen Macmillan (Highlands and Islands) (Lab)
Mr Stewart Maxwell (West of Scotland) (SNP)
*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Ms Rosemary Byrne (South of Scotland) (SSP)
Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Kenny MacAskill (Lothians) (SNP)
Margaret Mitchell (Central Scotland) (Con)
Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Colin Boyd (Lord Advocate)

CLERK TO THE COMMITTEE

Gillian Baxendine
Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Tuesday 14 December 2004

[THE CONVENER *opened the meeting at 14:01*]

Item in Private

The Convener (Miss Annabel Goldie): Good afternoon and welcome to the Justice 2 Committee's 35th meeting in 2004. I remind people to switch off mobile phones and pagers. I have not received any apologies, but I remind members that Kenny MacAskill is here as a substitute for Stewart Maxwell.

Item 1 on the agenda is to decide whether to take item 5 in private. Do members agree to take that item in private?

Members *indicated agreement*.

Constitutional Reform Bill

14:02

The Convener: Agenda item 2 is on the Constitutional Reform Bill. Members will recall that the committee took evidence on the bill and prepared a report. The matter has been progressing at Westminster and has resurfaced with the intimation that a Sewel motion will be put before the Parliament, the terms of which have been published. Members have a copy of the motion with the meeting papers. As the committee agreed, we have invited the Lord Advocate, Colin Boyd, to come before us this afternoon to allow us to put one or two questions to him. On behalf of the committee, I welcome the Lord Advocate and his colleague from the Justice Department Mr Paul Cackette. The committee has various questions to ask, but the Lord Advocate should feel free to make any introductory comments that he has.

The Lord Advocate (Colin Boyd): I do not like to take up too much of the committee's time with my comments, but it would be helpful to put the matter in context. I thank the committee for the opportunity to assist in the resumed consideration of the bill, which, among other measures, proposes the establishment of a new supreme court. Obviously, I give evidence in my capacity as Lord Advocate and as a minister in the Scottish Executive.

Shortly after the bill was introduced, I gave evidence to the committee to explain why the Scottish Executive and I support the bill. Clearly, some time has passed since then, but the case for a supreme court remains strong. To have the House of Lords sitting sometimes as a legislature and sometimes as a court is confusing and unjustifiable. In a modern democracy, there is an overwhelming need for transparency in the arrangements for the operation of the highest court in the land. As members know, the Parliament supported the principle of the supreme court in the debate and vote on 29 January 2004. The committee took evidence in the spring and in its report agreed that the case has been made for the establishment of the new court.

The vast majority of the proposals relate to reserved matters, although in one significant respect the bill will have an unavoidable impact on the Scottish Parliament's legislative competence. That matter is the jurisdiction of the Court of Session in relation to appeals from the inner house in non-devolution issues. At present, appeals can be made from the inner house to the Appellate Committee of the House of Lords. The proposal is that that appeal jurisdiction should transfer to the new court. Of course, there will be no impact on criminal appeals, for which the High

Court will remain the highest level of appeal in Scotland. Under the Scotland Act 1998, devolution issues, which are matters of a constitutional nature, must be resolved by a court with a United Kingdom-wide jurisdiction. Therefore, the bill will not impact on the Scottish Parliament's legislative competence in that respect.

A Sewel motion has been lodged, of which members have the text. In my letter to the convener, I set out my response to the Justice 2 Committee's report, following its consideration of the UK Government's proposal and of the evidence that it took. In its report, the committee agreed to the Government's case for establishing a supreme court and endorsed the principle that appeals to the court should be on the same range of cases as can at present be appealed to the House of Lords, without need for leave to appeal.

Lord Cullen of Whitekirk and Lord Hope of Craighead gave evidence that a new supreme court for the United Kingdom might open the argument that a decision on a case from one jurisdiction is binding on the other jurisdiction, thus perhaps creating a British jurisdiction in the image of English law. That is not and was never the Government's intention. The Secretary of State for Constitutional Affairs, Lord Falconer, stated his intention to produce an amendment to put the matter beyond doubt. The amendment will ensure that decisions of the supreme court will not have a wider or greater binding effect than corresponding decisions of the House of Lords or the Judicial Committee of the Privy Council have at present in their respective jurisdictions. That is to say that a decision of the supreme court in a non-devolution issue that arises from an English court will have no more effect in Scotland than such cases have at present. The exact wording of the amendment is still under consideration, in consultation with senior judges in Scotland and the House of Lords. I hope that that short summary of what the amendment will achieve is helpful.

It is vital that the new court is seen as serving the whole United Kingdom; it cannot be seen to be associated solely with one jurisdiction. Thus far, every devolution issue that has gone to the Judicial Committee of the Privy Council has raised issues under the European convention on human rights. Given that we have a single jurisdiction that is based on Strasbourg cases, a single unified approach is essential. For that reason, I cannot support the committee's recommendation in its report that, for devolution cases, there should always be a majority of Scottish judges. I have made clear my view that there is a key UK-wide constitutional jurisdiction in relation to devolution issues, including those that relate to the ECHR. It would be actively wrong to build in an automatic Scottish majority in cases in which there is a legitimate UK-wide interest in the outcome.

However, I am firmly of the view that the separate and distinct features of Scots law justify the continuation of the convention that at least two of the members out of 12 are Scots. The need for jurisdictional balance is recognised in clause 18(5)—formerly clause 21(5)—which was not in the bill when the committee considered it previously. The clause states that in selecting judges, the selection commission must ensure that judges have

"knowledge of, and experience of practice in, the law of each part of the United Kingdom."

As the Sewel memorandum points out, we have reached the view that the Scottish share of the court's running costs should come from the Justice Department budget, rather than from litigants in the Scottish court system. That is different from what will happen in England, but, in common with the evidence that the Faculty of Advocates and the Law Society of Scotland gave to the committee, we feel that our way forward furthers the concept of access to justice and is a fairer way of spreading the costs. I stress that Scotland's share will not relate to building costs and will not relate to the share of cases that come from Scotland in devolution issues.

This morning, the Lord Chancellor and the Secretary of State for Constitutional Affairs announced that his preferred option for the housing of the new court will be Middlesex Guildhall, although that is not the final decision. That has allowed a further costing to be made. Officials estimate that the Scottish share will be rather less than the £500,000 to £700,000 that is in the memorandum. The figure is now thought to be about £460,000 per annum.

The Convener: That is extremely helpful. Without further ado, we shall proceed to questions.

Bill Butler (Glasgow Anniesland) (Lab): In your introduction, Lord Advocate, you said that an amendment is well advanced to clarify that a decision in an appeal in England does not determine Scots law. You said that that was never the Government's intention. That has a general welcome. You also said that senior judges are being consulted on the amendment. When will that consultation be concluded? When will the amendment that arises from the consultation be available?

The Lord Advocate: I cannot give a definite date for conclusion of the consultation. I have seen the text of an amendment on which the Lord President commented. I know that House of Lords judges were being consulted on it. When the amendment might be available is out of my hands. However, it is bound to be moved during consideration of the bill in the House of Lords.

That means that it must be available later this month.

The Convener: How does that fit with the Sewel motion's timing?

The Lord Advocate: We had a little more difficulty than normal in deciding when to lodge the Sewel motion, simply because of the procedures that have been followed in the House of Lords. We were keen to ensure that the bill's shape was as finalised as it could be before we lodged the Sewel motion. Equally, we had to ensure adequate time at Westminster to take account of the Scottish Parliament's views. That has been a difficult balancing exercise. It is not for me to suggest a timetable for the Parliament, but it is clear that the Sewel motion will not be dealt with this year. I think that it will be considered early next year.

The Convener: I think that everyone acknowledges that the subject of Mr Butler's question is one kernel of the bill. The desire to have that aspect clarified is unanimous.

The Lord Advocate: When I know the text of the amendment that will be tabled in the House of Lords, I will write to the committee and show it to you.

The Convener: That is appreciated.

You will recall that the committee had concerns about the appointments process. I know that clauses 17 to 22 have been amended to improve the selection process. I understand that a single candidate will be proposed to a minister, whose options will be to accept or reject. Is that correct?

The Lord Advocate: Yes.

The Convener: Are you content that that adequately addresses the concerns that have been expressed?

The Lord Advocate: Two concerns are felt. One is that the process should be as transparent and independent as possible while ensuring that it is for ministers to advise Her Majesty on judicial appointments.

The second is that the concerns not only of Scotland but of other parts of the United Kingdom should be recognised. It is to be welcomed that, of the five selection commission members, at least one will be from Scotland—that will be the Judicial Appointments Board for Scotland's representative.

The Lord President and the First Minister will be consulted at two stages in the process. The first consultation will be by the commission during the selection process and the second consultation will be by the Secretary of State for Constitutional Affairs at the report stage. I should make it clear that that consultation will be on every appointment, not only on Scottish ones.

14:15

Mr Kenny MacAskill (Lothians) (SNP): Will there be a right of veto for the representative from Scotland on the selection commission, or can he or she be overruled?

The Lord Advocate: They could be overruled.

Mike Pringle (Edinburgh South) (LD): You have said a bit about the number of judges that are to be selected. Roy Martin, the dean of the Faculty of Advocates, states in his letter to the committee:

> "It seems to me that it is not appropriate to rely upon ad hoc or temporary appointments to provide a sufficient establishment in Scottish cases. As I have said previously, it is inconceivable that this would be found to be acceptable for the law of England and Wales, and I see no reason why the position should be any different in Scotland."

Do you want a majority of Scottish judges to sit in any cases? If we have only one or two judges, it is unlikely that there will be a majority, because the bench is usually five. Is that correct?

The Lord Advocate: Yes. The bench is usually five, although seven or nine can sit and three can sit in certain cases.

Mike Pringle: If the figure is usually five, clearly Scottish judges will not be in the majority. Do you think that there will be any cases in which you would want a majority of Scottish judges? How will we achieve that if we have only two judges? What do you think of Roy Martin's comments?

The Lord Advocate: I have not seen the letter to which you refer.

Mike Pringle: Sorry.

The Lord Advocate: That is okay.

Currently, two out of the 12 judges are, by convention, Scots. A number of judges in Scotland have the right, by virtue of the fact that they are members of the House of Lords, to sit in Scottish appeals. Until recently, the former Lord Chancellor, Lord Mackay of Clashfern, could also sit in Scottish appeals—and any other appeal, for that matter. It was not uncommon—indeed, it was common—to find that in Scottish cases there was a majority of Scottish judges.

I believe that that will continue, because there will be a procedure for bringing in other judges through the supplementary panel. Those will be in-house judges from the Court of Session in Scotland. In some cases, there will be a majority of Scottish judges. I suspect that that will be the situation in the majority of Scottish cases, but not in every one. For the reasons that I have given, I would not favour there being a majority of Scottish judges in every case.

Mike Pringle: What effect will there be on the judges in Scotland if some of them are shooting off

down to Westminster? I know that we do not have a huge number of appeals, but we all acknowledge that the judges' workload is considerable already. If there is a long appeal of one sort or another in a particularly complex Scottish case—those things usually tend to take some time—and the bench was at the maximum of nine, we would want five Scottish judges to be on the bench, so we would take three judges away from Scotland. That would inevitably have an effect on the workload here.

The Lord Advocate: It is very rare for there to be a nine-judge case from Scotland. I cannot think of one in the recent past.

I know that, as a member of the House of Lords, the Lord President sat from time to time—he did so in a case recently. You say that cases take a long time, but in fact they tend not to take very much time. Three or four days would be a longish case in the House of Lords, because by that stage we hope that the issues are fairly finely focused. The impact on the running of the Court of Session has not been huge or remarkable. Judges have a number of duties, other than their main judicial ones, that take them away from time to time. Lord Clyde is another retired Scottish judge who from time to time sits in Scottish cases.

The Convener: The mechanism that will operate to ensure what seems to be the continuation of the present situation will obviously be informal, because it is not written into the bill. Who will instigate the mechanism? If there are devises or retirements from the panel that will be the back-up provision, who will instigate the addition?

The Lord Advocate: The president of the court would do that, as happens at present, because the senior judge decides the composition of any bench. At the moment, the senior judge in the House of Lords is Lord Bingham; he will determine the composition of any bench. It is fair to say that the bill makes provision that Lord Bingham, if he is still the senior judge when the supreme court is established, would become the president of the court, so the arrangements would continue.

We have been talking about informal arrangements, but the bill makes a considerable advance on the arrangements that we have at present, because, for the first time, we will write into the statute a provision regarding the non-binding nature of cases from other parts of the United Kingdom in relation to Scottish cases and there will be a requirement to ensure that each of the jurisdictions in the United Kingdom is represented at the supreme court.

The Convener: It seems to me that we have managed to leap halfway across the ditch and I wonder why we cannot put into the bill the remaining safeguard to state expressly that the senior judge will have a responsibility to keep an eye not only on the selection, but on the panel. As Mr Pringle says, if we are to have only two Scottish judges but there is a desire to have a majority presence in certain cases to determine Scottish appeals, would it not be tidier if the bill referred to that in some form?

The Lord Advocate: One can rely on the president of the court to make the judgment in each case. I strongly believe that it would be wrong to write in stone inflexible arrangements that would mean that one would, in effect, have two jurisdictions within one court. One of the issues that we face at the moment is a difference about the interpretation of article 6 of the European convention on human rights in relation to delay and the differences between the Judicial Committee of the Privy Council sitting in a Scottish devolution case and the House of Lords sitting in a case from England. To be frank, given that the ECHR is a European convention, it is not right that there should be such a distinction; there should be one way of recognising that the ECHR is a jurisdiction that covers the whole of the United Kingdom.

Mr MacAskill: What is the minimum experience that you would anticipate that an English judge sitting in a matter related to Scots law would have? Will that be specified? If so, by whom will it be specified? If not, how will we be able to regulate or monitor the matter?

The Lord Advocate: I am sorry, could you repeat the question?

Mr MacAskill: What is the minimum experience of Scots law and the Scottish judicial system that a judge trained in English law will have? How will that be regulated or monitored?

The Lord Advocate: There is no minimum standard or level of qualification for English judges sitting in Scottish cases, Scottish judges sitting in English cases or Northern Irish judges sitting in Scottish or English cases.

Mr MacAskill: Perhaps I picked you up wrongly, but I thought that you had at least indicated earlier that there would have to be some understanding of the differences in the Scottish system. Are you saying that there is no requirement for a judge who is trained in English law to have any experience of the Scottish system before they can sit in an appeal on Scottish matters?

The Lord Advocate: Yes. That is what happens at the moment. Equally, most of the Scottish judges in the House of Lords sit mostly in English cases and they are not expected to have a minimum standard of competency in English law. Public administrative law and ECHR matters, to which there is a common approach throughout the

United Kingdom, form a high proportion of what they do.

Colin Fox (Lothians) (SSP): Good afternoon, Lord Advocate. As you will know, because we have discussed the matter on a previous occasion, concerns have been expressed about the new supreme court's independence, given that the responsibility for providing its staff and services will lie with the Secretary of State for Constitutional Affairs. As Mike Pringle mentioned, the Faculty of Advocates has suggested that that arrangement might be contrary to the principles of robust independence. Have you considered those concerns and is it likely that amendments that take them into account will be tabled in due course?

The Lord Advocate: Clause 1 of the bill will write into statute for the first time the independence of the judiciary in England, Wales and—as far as reserved matters are concerned—Scotland. I have indicated that it is the Executive's intention to consider the situation in Scotland separately. For the first time, there will be a requirement to respect the independence of the judiciary.

In relation to resources, I think that I am right in saying that clause 30 will establish a requirement for the Secretary of State for Constitutional Affairs to ensure that the court is properly resourced. If that provision is not in clause 30, it is somewhere in the bill. As the court is not self-financing, it must be provided with resources from somewhere and someone must be responsible for that. I believe that having a minister accountable to Parliament is the proper way to do that.

Colin Fox: We were fortunate enough to be told in your opening statement that you were able to say that the preferred option for the building that would house the new court was the Middlesex Guildhall. Although that is the preferred option, a final decision has not yet been taken. When and how will that final decision be taken?

The Lord Advocate: All that I have seen is a press announcement by the secretary of state in which he says:

"Following an extensive search and evaluation … I am today announcing that Middlesex Guildhall is my preferred option."

After giving a number of reasons for that, he goes on to say:

"I should stress that Middlesex Guildhall is my preferred option. As the detailed designs are developed, I will need to remain satisfied that they fully meet the operational requirements of a modern Supreme Court. This will, of course, require the normal planning approvals and my officials are consulting with English Heritage and Westminster City Council on the development of the designs. The Law Lords have continuing reservations as to the suitability of this building to house the Supreme Court of the United Kingdom. I will continue to consult with them closely on the issues."

He then discusses the design and the delivery of the proposals, for which he gives some costs, and outlines the search and evaluation process, which generated a long list of 48 properties.

That is where we are. I can make the document available to the committee. It is, no doubt, available through other sources, but to save time I can make it available to you. It came to me only this morning.

The Convener: That would be appreciated, Lord Advocate. Thank you.

The Lord Advocate: It is a written ministerial statement by the secretary of state.

Colin Fox: Am I right in saying that the announcement was made in the press this morning? Is that how you found out about the preferred option?

14:30

The Lord Advocate: My officials found out about it through the Department for Constitutional Affairs. I was aware that an announcement was going to come at some point and that Middlesex Guildhall and Somerset House were both in contention.

Colin Fox: I presume that the secretary of state was aware of the fact that the Justice 2 Committee was going to meet today when he scheduled his announcement. I was not able to pick up all that you said. Did you say that 48 options were considered? Were any of those situated outside London or in Scotland?

The Lord Advocate: I do not know the details of all of them, but you can take it that they were all in London.

Maureen Macmillan (Highlands and Islands) (Lab): In your opening statement, you talked about how the costs of the court would be met. You said that the Executive will fund the Scottish share of the supreme court costs from the Justice Department budget. Is that just the running costs? You mentioned the possible Scottish share of the cost of the building—Middlesex Guildhall—which you estimated at £460,000. Will that money come out of the Justice Department budget as well?

The Lord Advocate: No.

Maureen Macmillan: Can you explain where that money will come from?

The Lord Advocate: Let me make this clear. The capital costs will not be reflected in any of the Scottish budgets: they will be borne completely by the Department for Constitutional Affairs. The running costs to which we will contribute will not

include the costs for devolved issues, which, at the present time, go to the Judicial Committee of the Privy Council; they will be based on the proportion of cases that have gone to the House of Lords from Scotland.

Maureen Macmillan: How are you calculating the costs? Are you basing them on what has happened before? How have you calculated our share, and will it be reviewed?

The Lord Advocate: It is fair to say that the costs will be met by agreement between the Minister for Justice and the Department for Constitutional Affairs. The costs will be based on the proportion of cases that have gone to the House of Lords from Scotland. If that proportion were to increase radically, we would be expected to pay more; equally, if there was a decrease in that proportion, we would ask to pay less.

Maureen Macmillan: Will the amount be adjusted on a yearly basis?

The Lord Advocate: I cannot say whether it will be adjusted on a yearly basis or on a three-yearly basis. The £460,000 is a better estimate than the £500,000 to £700,000 estimate that I gave earlier. However, given the fact that the supreme court will not be established until the building is ready—and even today it looks as though we are several years away from that—it would be wrong of me to say that, in the first year, the cost will definitely be £460,000. At present-day prices and on the basis of present-day usage, that would be the figure.

Maureen Macmillan: So, that £460,000 is the estimated running costs.

The Lord Advocate: It is Scotland's share of those costs.

Maureen Macmillan: That is clear. Thank you.

The Convener: Will the approach in England and Wales be the same? Have they departed from a levy on fees as well?

The Lord Advocate: No, court fees in every court in England and Wales have been increased to fund the supreme court. Scottish ministers felt that that approach was not appropriate in Scotland.

Mr MacAskill: What is the method of calculation for Scotland's share?

The Lord Advocate: As I indicated, it is based on the proportion of cases from Scotland in the House of Lords.

Mr MacAskill: Clause 1, on judicial independence, has been amended to exclude any duty within the legislative competence of the Scottish Parliament. Will you advise when it is likely that parallel Scottish legislation will be brought forward?

The Lord Advocate: As you will be aware, in the partnership agreement, there is a proposal to bring forward legislation to put the Judicial Appointments Board for Scotland on a statutory footing. I envisage that we might bring forward legislation of a similar nature to that in clause 1 of the Constitutional Reform Bill in the future Judicial Appointments Board bill.

Mr MacAskill: I ask one further supplementary question—I apologise for my supplementaries, but I was not on the committee when it previously discussed these matters, so I am trying to understand the logic.

You spoke about public administration. When we are moving away from what was to some extent an anachronism—the House of Lords being the final court of appeal in civil, but not criminal, cases—why is it that a Scottish court is capable of being the final court of appeal in public policy matters such as drugs and firearms, which are reserved to the UK, but is not competent to be the final court of appeal in public policy matters in civil arenas such as ECHR? Why are Scottish courts capable in one area but incompetent in the other?

The Lord Advocate: I am sorry. I am sure that this is my fault, but I am not entirely sure that I follow your question. Matters under the Misuse of Drugs Act 1971 are reserved.

Mr MacAskill: The final court of appeal in a criminal matter relating to drugs would be—

The Lord Advocate: It would be in Scotland, as you point out. The House of Lords is not the final court of appeal in relation to Misuse of Drugs Act 1971 matters in Scotland.

Mr MacAskill: What is the logic that says that Scottish courts can be the final court of appeal on criminal matters, but not in civil matters, given that in some aspects of civil cases and in some criminal matters, UK decisions are made. Why can Scottish courts deal with some but not all matters?

The Lord Advocate: There are a couple of answers to that. The first is that in criminal law, the difference between Scots law and the law in England and Wales is much more distinct than in civil law.

Mr MacAskill: In what way?

The Convener: Although I do not want to inhibit the Lord Advocate in responding yet again, Mr MacAskill's colleague Nicola Sturgeon interrogated Executive ministers about this matter exhaustively in previous discussions.

The Lord Advocate: I do not want to take up too much time on this matter because it seems to me that the committee has looked at the principles in the past, as has Parliament. As I said in evidence to the House of Lords, on one view,

there is an anomaly that there is no right of appeal to the House of Lords in criminal cases. I do not think that it is right, however, to move to a right of appeal to the supreme court in criminal cases because, as Lord Hope has said, criminal law in Scotland is very different to that in England and Wales; that difference is far greater than in most civil law matters. It would be wrong now to reopen the debate on having a right of appeal to the supreme court in criminal cases. That would be seen as a step too far and nobody has seriously argued for that.

The Convener: Finally, I have a question on procedure. The bill is before the House of Lords and it still has to go to the House of Commons. Here in the Scottish Parliament we will have a Sewel motion. Do you intend to keep the committee informed of any changes that are made during the remaining stages of the bill's passage?

The Lord Advocate: If I may say so, that is an important point. The bill has had some twists and turns along the way and we are trying to follow them as the bill goes through the House of Lords. It will be back in the House of Lords today—probably in about 20 minutes' time, I am told—and certain amendments will be considered. I return to a question that I was asked earlier on accommodation and other resources. The committee will be interested to know that an amendment will be moved today in the name of the Secretary of State for Constitutional Affairs to the effect that the minister must ensure that the supreme court is provided with courthouses, offices and other resources for the proper functioning of its duties.

I am keen to keep the committee as fully informed as possible. It is clear that the Sewel motion will have to go to the Scottish Parliament in time for the view that it expresses to be fed into the consideration of the bill at Westminster—in effect, before the bill completes all its stages in both Houses of Parliament.

The Convener: On behalf of the committee, I thank you for coming before us this afternoon.

We have to make a decision about where to go next with this item. The options are contingent on what we heard this afternoon. Does the committee want to seek more written or oral evidence or to draft a further report on the basis of what we have heard and make a formal report to Parliament?

Maureen Macmillan: I think that we should do the latter.

Bill Butler: I agree.

The Convener: With members' agreement, I ask the clerks to note that. I seek the committee's agreement that we should put the matter on the agenda for our next meeting and that we should hear that item in private. Is that agreeable?

Members *indicated agreement*.

Mike Pringle: Will we have the discussion then?

The Convener: Yes.

Adults with Incapacity (Scotland) Act 2000

14:42

The Convener: We move on to agenda item 3, which concerns the Adults with Incapacity (Scotland) Act 2000. Members have a paper that has been prepared by the clerks. It is for the committee to consider what it would like to do. I am still trying to find my copy of the paper, which I certainly had at one point.

I thank the clerks for preparing the paper, which is a helpful résumé of what has been happening. Some of the responses are interesting and it is clear that the Executive has taken an interest as well. Paragraph 16 of the paper outlines the options that are available to the committee and I am happy to open up the meeting to a discussion of the proposals.

Mr MacAskill: My limited understanding is that people are still feeling their way and that things are very much at the early stages. I am fairly open-minded and I can see an argument for simply waiting. I do not know whether people have been in contact with the committee and are anxious to provide information but I would prefer to see how things work out rather than to carry out an investigation when people at all levels are still trying to feel their way. The position might be clearer six months down the line.

14:45

Jackie Baillie (Dumbarton) (Lab): I support what Kenny MacAskill says for slightly different reasons. The two issues that have been consistently raised with me have been addressed by the Executive in response to the research findings, and the immediate pressures relating to access to legal aid and the number of people who are authorised to countersign applications have been taken away. Those issues were raised with us previously and they have been addressed. We should therefore wait and see what happens. Six months is a reasonable period to wait.

The Convener: There is also the health service (miscellaneous provisions) bill, which will propose amendments to the act.

Mike Pringle: When will that bill come forward?

Gillian Baxendine (Clerk): This month.

The Convener: It is fairly imminent.

Mike Pringle: So we will have to deal with the matter again when the bill is introduced.

The Convener: The Justice 2 Committee will not have to deal with the bill, as the bill is a health bill and will not come before us. However, at least we will see how it deals with aspects of the Adults with Incapacity (Scotland) Act 2000 that cover medical treatment and research.

What Kenny MacAskill and Jackie Baillie said was helpful. Do members think that we should allow a period of six months to elapse and then consider the matter further?

Members *indicated agreement*.

The Convener: That is a sensible and practical approach for another reason. I am well aware that the committee's workload will be fairly acute in the new year as a result of the legislative scrutiny that is coming our way and our on-going youth justice inquiry. We will leave the matter in limbo for six months and make a note to revive it on an agenda around the end of May or in June.

Youth Justice

14:46

The Convener: Agenda item 4 is our youth justice inquiry. Members have been away on fact-finding visits to Dundee, Falkirk and South Lanarkshire, and papers have been circulated. It might be helpful to start with the Dundee visit, but I cannot remember who went on it.

Mike Pringle: I did.

The Convener: Obviously, the committee has the report, but members might find it helpful if you briefly commented on the principal matters that emerged from the visit.

Mike Pringle: I will make some brief comments.

I am grateful to Marlyn Glen, who is a member of the Justice 1 Committee, for coming on the visit. The people of Dundee put in a huge amount of effort and I would have felt guilty if the clerk—Anne Peat—and I had been the only two people there. I am also grateful to Anne Peat for coming all the way to Dundee and for putting together the report.

When we go on such visits in future, I suggest that there should not be as many people in each group that we meet. The group at the end consisted of such a wide range of people that it was difficult to get any serious information from them, as everyone wanted to have their say. However, good things came out of the meeting that was held immediately after lunch. Tayside fire brigade made interesting comments about what it is doing to encourage youngsters to get involved with the brigade in order to keep them out of mischief.

However, I suppose that the biggest issue that arose from the visit was the fast-track hearings system in Dundee. That comes out in the report. Dundee is one of the pilot areas and people are keen to find out whether the pilot will continue—I think that it will come to an end in March—and whether there would be more funding, as they were thinking about moving on, for example. I know that Marlyn Glen has spoken to the minister and she is now speaking to people in Dundee—Derek Aitken in particular—to try to get information back to the Executive.

The visit was good and many other issues came out of it. The session on the victims of youth crime—VOYCE—project was interesting. I often receive complaints from my constituents that matters are reported to the police and that is the last that they hear about them. It is clear that that is not happening in Dundee. People are being involved. That is a good idea from which perhaps lessons could be learned elsewhere.

The Convener: Thank you for that helpful report, Mike. I understand that Bill Butler went to Falkirk.

Bill Butler: Yes. I was told to go to Falkirk and I went.

Colin Fox: Are you sure that it was Falkirk?

Bill Butler: I am absolutely certain that it was Falkirk, Mr Fox.

I am grateful to Tracey Hawe and Frazer McCallum who not only accompanied me but provided great assistance in advance by undertaking the preparations for the visit. They arranged our meetings with the people in Falkirk who are trying to fashion a youth justice strategy that will meet the needs of young people in Falkirk and the surrounding areas.

As members will see from our report, Falkirk Council runs a multidisciplinary youth justice referral group, one of the good results of which is that referrals are now collated within seven days. The group enables information sharing among the various agencies, which means that the way in which young people are dealt with is as effective as possible. Its aim is to address the problems that the young people manifest and the problems that arise for the community.

On page 2 of our report, we have set out the various challenges that the group faces in future. The fact that it plans to continue to work in a multidisciplinary manner is good, as an integrated approach is the way ahead for youth justice. We spoke to a large number of the people who are involved in youth justice in the Falkirk area and that message came over clearly. Although it was interesting to meet so many people, as Mike Pringle said, it was difficult to engage fully with everybody we met. That said, the experience was positive.

We heard about some short-term funding issues that have to be resolved. The idea of securing long-term—or longer-term—funding is important to the people we met, as it will ensure that the approach that they are taking is as effective as possible. I will not go through all the bullet points that are listed on page 2, as members will have done so, or can do so, for themselves. The visit was worthwhile. I was glad to go to Falkirk and I am glad to report our findings from Falkirk.

The Convener: Thank you, Bill. I will ask Jackie Baillie to report on the final visit that she and I undertook to Hamilton. After she gives her report, I will take questions from members on the various visits.

Jackie Baillie: As I do not have a copy of our report in front of me, I will be quick. The convener is kindly offering to pass me a copy, but I am fine without it—I will just wing it.

I echo the thanks that members have given the clerks. Without their input, we would not have captured the essence of the visit. I also echo the comments that other members made about the number of people we met—there were just too many people to make our visit meaningful. We were introduced to virtually every member of the partnership and, although that was helpful, everyone had different contributions to make. Perhaps we could have undertaken the visit in a slightly different manner.

That said, I found Hamilton youth court incredibly interesting. It is staffed with committed people and offers a clear focus and link between the police, council and court. Things move quickly through the system, although that might be because of the pilot nature of the court with all the additional resources that are thrown at it. We picked up that there may be issues around displacement activity, with social workers and children's panel members feeling the pressure of social work attention being focused on the youth court. That had implications, as there were not sufficient staff to focus on both the youth court and children's hearings. I asked whether education services are fully involved in the partnership and whether those services feel that they have a proper role to play. The question was not properly answered, however.

As with everything, I did not come away with a sense of, "Ah—this is what works." A lot of the indications were that it is too early to judge on the basis of outcomes whether the youth court in particular is working yet. Our initial impressions are very positive, but there will have to be a bit of wait and see.

The Convener: Thank you, Jackie. I have nothing to add to the report. It has been helpful to get a résumé of the main points that emerged from our visits.

As no members have questions about the visits, we will proceed to the next agenda item, which we have agreed to take in private.

14:55

Meeting continued in private until 15:38.

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