

JUSTICE 2 COMMITTEE

Thursday 8 September 2005

Session 2

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JUSTICE 2 COMMITTEE

20th Meeting 2005, 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)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

COMMITTEE SUBSTITUTES

Ms Rosemary Byrne (South of Scotland) (SSP)

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Mr Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Margaret Smith (Edinburgh West) (LD)

*attended

CLERKS TO THE COMMITTEE

Gillian Baxendine

Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Thursday 8 September 2005

[THE CONVENER *opened the meeting at 14:04*]

The Convener (Miss Annabel Goldie): I welcome everyone to the 20th meeting in 2005 of the Justice 2 Committee. I hope that members had a good and restful break over the recess. Our only absence this afternoon is Colin Fox, who will not be attending any meetings in September. I also know that Jackie Baillie has commitments with the Edinburgh Tram (Line One) Bill Committee, but we are very pleased to see her today. I believe that Cathie Craigie will substitute for her when she is absent.

I should say on record that the four members who attended the committee's away day on Monday found the experience very positive and helpful. I should also point out that Jackie Baillie could not attend because she was convening the Edinburgh Tram (Line One) Bill Committee; Stewart Maxwell—sadly—was unwell; and Colin Fox obviously cannot attend any meetings. I want publicly to record my thanks to the clerks for their hard work in making all the necessary preparations for such a productive day. I am arranging for documentation from it to be circulated to members for their information.

Subordinate Legislation

False Monetary Instruments (Scotland) Order 2005 (SSI 2005/321)

14:05

The Convener: The first item on the agenda is consideration of quite a few negative instruments. I will simply go through them in the order in which they appear in members' papers.

Members have a copy of the False Monetary Instruments (Scotland) Order 2005 (SSI 2005/321) and a brief note on it from the clerk. Do members have comments on it?

Members: No.

The Convener: Are members content with the order?

Members *indicated agreement.*

Advice and Assistance (Scotland) Amendment (No 3) Regulations 2005 (SSI 2005/339)

The Convener: Do members have any questions about or comments on these regulations?

Members: No.

The Convener: Is the committee content with the regulations?

Members *indicated agreement.*

Fire (Additional Function) (Scotland) Order 2005 (SSI 2005/342)

Fire (Charging) (Scotland) Order 2005 (SSI 2005/343)

Fire (Scotland) Act 2005 (Consequential Modifications and Amendments) (No 2) Order 2005 (SSI 2005/344)

The Convener: The next group of orders relates to the fire service. Do members have any questions or comments on these orders?

Members: No.

The Convener: Is the committee content with the orders?

Members *indicated agreement.*

The Scottish Administration (Offices) Order 2005 (SI 2005/1467)

The Convener: Do members have any questions or comments on this order?

Members: No.

The Convener: Is the committee content with the order?

Members *indicated agreement.*

Petition

Public Bodies (Complainers' Rights) (PE578)

14:08

The Convener: The second item on the agenda is consideration of petition PE 578, from Mr Donald MacKinnon. Members will recall that the committee has considered this petition previously. The clerks have circulated some background information, which includes a letter from the Deputy Minister for Justice, Mr Hugh Henry, and a letter from Mr MacKinnon as petitioner. The committee has to decide what further action to take on the petition.

I am happy to invite comments from members.

Bill Butler (Glasgow Anniesland) (Lab): Like other members, I have read the letters from the deputy minister and the petitioner very carefully. I am not convinced that any change in the law is necessary or desirable and indeed concur with the position of the deputy minister and the Executive that extending absolute privilege risks non-compliance with the European convention on human rights. As the deputy minister says,

"the current law acknowledges the rights of children as well as those of persons against who claims of abuse may be brought."

That in itself is a safeguard.

In short, I think that we should close our consideration of the petition. I do not think that there is anything further that we can do that would be of any practical use.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I have considerable sympathy with the petitioner. The particular case that the petition uses as an example is a difficult one. I appreciate absolutely Bill Butler's comments, which were sincerely made. What he says may indeed be the case but I would regret it if we were to close the petition at this point as I think that there is still work that can be done within the area. Although I am a relatively new member, I am aware that this matter has been discussed in a number of committees and has been raised with a number of departments. I take on board the deputy minister's position but we should not just close the petition and recommend that there be no further consideration of it. The deputy minister said that on-going work was being done in the Justice Department and the Education Department, and it might be possible to come back to this area, perhaps in relation to the education field.

I confess that I am at a bit of a loss as to what the committee can do to progress the issue, other

than seeking to amend legislation and formally starting processes that would be against the position of the Executive, which would open up all the valid points that Bill Butler raised. I am slightly uneasy about closing the petition, however.

Bill Butler: I am not unsympathetic to the petitioner—quite the reverse; I sympathise with the petition. I understand what Jeremy Purvis says, but the deputy minister's letter of 28 August 2005 says that the Executive will

“continue to work with the agencies, practitioners, children and families to develop systems and responses which will ensure the child is at the heart of service delivery”.

No one here would gainsay that aim. However, he ends by saying something that I think is absolutely correct, which is that we can serve no useful purpose by continuing consideration of the petition. He says that he sees

“an extension of absolute privilege as neither necessary nor desirable.”

I concur with that and I suggest that, rather than draw out the petition any further—and it has been drawn out for a considerable time—we take a decision not to consider the petition further.

The Convener: I should say that, in fairness to any petitioner, we should continue a petition only if we have a clear idea why are doing so. It is unhelpful to petitioners if we cannot come to a clear view as to our specific objective in continuing our consideration of a petition. I say that by way of general guidance. I am not clear about the basis on which you would seek to continue the petition, Mr Purvis.

Jeremy Purvis: We have two options. We can decide, by means of a vote or whatever, that we think that what the petition is asking for—which is a change in approach—is valid and therefore ask the deputy minister to seek an opportunity to make that change when a legislative opportunity arises. Alternatively, as Bill Butler said, given that the deputy minister has said that the Executive is continuing to consider the matter in the wider context of child protection, we could ask him to report to us at some point on the progress that he is making in that area. That might be a compromise position.

The Convener: For the sake of clarity, I should point out that the deputy minister does not say that the Executive is continuing investigatory work in relation to the petition; he says that he will ensure that the Executive will

“continue to work with the agencies, practitioners, children and families to develop systems and responses which will ensure the child is at the heart of service delivery”.

That is why I need to be clear about the basis on which you would want the committee to continue.

14:15

Jeremy Purvis: I acknowledge that. The deputy minister has said, in clear terms, that he does not agree with the petition. It is for this committee to decide, perhaps by means of a vote, whether it agrees with the petition.

The second, wider point is that we could ask the deputy minister to come back to the committee and show how children are protected so that they will not suffer serious repercussions if they make valid accusations. I acknowledge that that is a wider aspect and is not a specific request in the petition, so I am appealing to other members to support our asking the deputy minister to come back and tell us about his conclusions.

The Convener: I assume that it would still be competent for the committee to do that off its own bat without having to continue the petition. I know that there is a genuine interest in the issues that Mr MacKinnon has raised. It is a perplexing area that rightly concerns us all. However, I am anxious that the committee should avoid straying into areas of complete uncertainty about what we are doing and what a petitioner might think that we are doing.

Bill Butler: I hear what Jeremy Purvis says but we have to deal with the item before us as it appears on the agenda, and we are dealing with a specific petition. I will not rehearse everything that I said before, but there is nothing that we can usefully do to continue the petition. It would be kinder to say that and end any further speculation that consideration of the petition's content is going to be continued in any way by the committee in the hope that the Executive will accede to the petitioner's requests. The Executive will not accede, and it is right to take that approach. That does not mean to say that the wider ramifications of putting the child at the centre of our concerns will be disregarded. That is a more general matter and a valid and important one, but we have to deal with the item as it appears before us today.

The Convener: Are there any other comments?

Mr Stewart Maxwell (West of Scotland) (SNP): I agree with Bill Butler. The Executive has made clear its position on the petition and I am not sure what we can add to the response from the deputy minister. In all fairness, he has made it clear that the Executive will carry on working with other organisations to make sure that where there are genuine complaints children will not be deterred from making them. The Executive made a commitment to do that and that brings the issue to a natural conclusion. The petitioner might not be entirely satisfied with that, but the committee should take the Executive at its word and accept what the deputy minister said.

The Convener: It seems to me that two views have emerged. The first is that the committee

should make a decision to close its consideration of the petition on the basis of the Executive's response, and the other view, as expressed by Mr Purvis, seems to be that the committee should continue the petition.

As Bill Butler has formally proposed that the committee should close its consideration of the petition, it would be logical to take a vote on that. If his proposal is successful, that will preclude any other vote. There is therefore a proposal before the committee that, having considered the petition and the Executive's response to our correspondence, the committee should close its consideration of the petition. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)

AGAINST

Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

The Convener: The result of the division is: For 5, Against 1, Abstentions 0.

I am sure that the committee will want to record its appreciation for Mr MacKinnon lodging his petition and bringing before us issues that are perplexing and of concern. There is not a shadow of a doubt that because of his petition, we, the Public Petitions Committee and the Executive are now perhaps more aware of and sensitive to those issues, and that can only be a healthy development.

Budget Process 2006-07

14:19

The Convener: Item 3 on the agenda is the budget process. Papers have been submitted and the clerk has prepared a note that explains where we are at. The basic agreement that I seek from the committee is that, first of all, Parliamentary Bureau permission should be sought to meet jointly with the Justice 1 Committee because that is our customary way of dealing with the budget proposals, and that in addition to scrutiny of the draft budget for 2006-07, selected parts of the efficient government technical notes should be scrutinised and reported on—as members will gather, this is all extremely technical. I would also like the committee to agree that we should meet jointly in private with the Justice 1 Committee to receive a briefing from the Scottish Parliament information centre on the budget proposals and also to consider possible witnesses for our consideration of stage 2 of the budget process.

So far, is there agreement to what is proposed?

Members *indicated agreement.*

The Convener: The other element on which I need a decision from the committee is the question of an adviser. Traditionally, an adviser has been appointed to assist both committees on what we all know is a complex and technical process. Given that we are talking about an interim stage—and we do not have a lot of time to look at this, as members know from the draft programme—it seems to me that there is no need to appoint an adviser because the extent of what we will be looking at is fairly restricted. Do members agree not to appoint an adviser?

Mr Maxwell: That is probably the practical solution because we do not have much time. However, I regret that that is the case. The clerk points out in the note that we received that the Finance Committee suggested that we take a particular view and look at the elements of the efficiency report that fall within our remit. Given that that is slightly different to what we have done in previous years, it would have been helpful to have some professional advice during the process. However, I accept that we do not really have time to appoint an adviser. Perhaps we need to bring such proposals to the committee earlier in future so that we can think about them rather than being rushed into taking a decision at the last minute.

The Convener: I have some sympathy with that view. At the same time, however, we shall have a SPICe briefing, which will be helpful.

Jeremy Purvis: I share Stewart Maxwell's view. I submitted to the clerks earlier my preference that

we have an adviser. Given the Finance Committee's work on scrutinising the efficient government review, there might be scope for us to borrow the expertise in the field of that committee's standing adviser. Perhaps he could even give us a background paper on the work done by the Finance Committee, in addition to the SPICe briefing. That could be a compromise. It would make sure that we are being consistent with the work of the Finance Committee and it would be helpful to that committee.

The Convener: That is a helpful suggestion that it might make a lot of sense to do follow. I note the general concerns expressed by Stewart Maxwell and Jeremy Purvis and I sympathise with them. We are to some extent victims of the system. However, I understand that the adviser to the Finance Committee, Arthur Midwinter, will be available to guide us if there are areas in which we think that his views would be welcome.

On that basis, we shall not seek the appointment of an adviser and we agree to meet jointly and in private with the Justice 1 Committee, to get a briefing from SPICe and to consider possible witnesses for our consideration of stage 2 of the budget process.

Members *indicated agreement.*

Youth Justice Inquiry

14:24

The Convener: Item 4 on the agenda concerns our youth justice inquiry. We have had a lengthy response from the Minister for Justice, which is helpful. The procedure is that we have made a request for early chamber time for a committee debate on our report and I do not anticipate a difficulty with that being granted. I am not sure that there is much competition for slots from other committees and I think there will be sympathy for our request for time for the debate. However, if there are issues that we want to raise with the Executive, we should do so before the debate. It would be helpful to have the Executive view on those matters at that point. Indeed, the committee may wish to seek the views of groups or bodies on the Executive response.

Mr Maxwell: There would be no great purpose in entering into debate with the Executive at this stage. We put our views forward in our report and the Executive has come back with its answers. I know where I stand and where the Executive stands.

The Convener: The facility exists and can be used by any member who wants to clarify a factual point before the debate.

Bill Butler: I agree with Stewart Maxwell. I welcome the comprehensive and detailed reply that the minister and her team have given us. The issues can be fully aired in the debating chamber. That is the way to proceed.

The Convener: Are we all agreed?

Members *indicated agreement.*

The Convener: Okay. We will proceed on the basis that we will try to secure a debate as quickly as we can.

Management of Offenders etc (Scotland) Bill

14:26

The Convener: The fifth item on our agenda concerns the Management of Offenders etc (Scotland) Bill. We will proceed to stage 2 in fairly short order. We have received two letters from the Minister for Justice: the first is in response to the committee's stage 1 report and the other indicates the Executive's intention to lodge amendments at stage 2. I added the item to the agenda as a matter of courtesy. I thought that members might want to comment on the letters. However, our view may be that everything is fine and that we should just await stage 2.

Bill Butler: Frankly, I think that we should just await stage 2. The ministerial team has given us a helpful and reasonably detailed response, for which we should record the committee's appreciation.

The Convener: I agree. The response is helpful.

Our stage 2 consideration of the bill is scheduled for Tuesday 20 September and Tuesday 27 September. Those meetings will be exclusively given over to our consideration of the bill. Amendments for sections 1 to 10 should be lodged by 12 noon on Thursday 15 September at the very latest. The time limit for all other amendments is 12 noon on Thursday 22 September. Those dates need to be clear in our minds.

Jackie Baillie (Dumbarton) (Lab): One practical point occurred to me at the meeting of the Public Petitions Committee this morning. We considered petition PE862, which was submitted by Margaret Ann Cummings with the support of Paul Martin MSP and which calls for changes to the legislation on sex offenders. I pointed out that the Management of Offenders etc (Scotland) Bill was before the Parliament and that the bill as it stands might not cover all the concerns that the petitioner raised. However, I see from the correspondence that the Executive intends to lodge stage 2 amendments.

I thought that I should give a warning that the Public Petitions Committee is sending petition PE862 to the Justice 2 Committee. I hope that it will come in time to form a backdrop to our consideration of amendments at stage 2.

The Convener: Thank you for alerting us to the petition. In the light of that statement, I suggest that our clerk should speak to the clerk to the Public Petitions Committee to facilitate the receipt of the information.

Meeting closed at 14:29.

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