

JUSTICE 2 COMMITTEE

Tuesday 13 September 2005

Session 2

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CONTENTS

Tuesday 13 September 2005

	Col.
ITEM IN PRIVATE	1653
SUBORDINATE LEGISLATION	1654
Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 2) Regulations 2005 (draft)	1654
Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (draft)	1655
REGULATORY POWERS INQUIRY	1657

JUSTICE 2 COMMITTEE **21st 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 (Tw eeddale, Etrick 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

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

CLERKS TO THE COMMITTEE

Gillian Baxendine

Tracey Haw e

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 5

Scottish Parliament

Justice 2 Committee

Tuesday 13 September 2005

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

Item in Private

The Convener (Miss Annabel Goldie): Good afternoon, everyone. I welcome you to the 21st meeting in 2005 of the Justice 2 Committee. Apologies have been received from Jackie Baillie, who is unable to attend the meeting. In her absence, we welcome Cathie Craigie. Apologies have also been received from Jeremy Purvis, who is attending a funeral. Colin Fox will not attend meetings during September.

Item 1 is to seek the agreement of the committee to take item 4 in private. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 2) Regulations 2005 (draft)

14:02

The Convener: Item 2 is subordinate legislation. Copies of two affirmative instruments have been circulated to members with explanatory briefing papers. Because they are affirmative instruments, we require the presence of the minister to speak to them. I therefore welcome Hugh Henry, the Deputy Minister for Justice, to our meeting. He is accompanied by his advisers, Gillian Mawdsley, Paula Anderson and Ian Vickerstaff. Before the minister moves the motions, I would like to know whether members have any questions to ask or points for clarification to raise.

Mr Stewart Maxwell (West of Scotland) (SNP): Are we considering both instruments together?

The Convener: I think that, for ease, we will first consider motion S2M-3185 on the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 2) Regulations 2005.

Mr Maxwell: My question is on the second instrument.

The Convener: Okay. I ask the minister to direct his thoughts to the first instrument.

The Deputy Minister for Justice (Hugh Henry): These draft regulations are required to ensure that assistance by way of representation is available without financial test in connection with proceedings to be conducted before the mental health tribunal for Scotland. The draft regulations, which come into force on 5 October 2005 are, as the convener said, made under the affirmative procedure. They form part of a number of legal aid changes that require to be made to different legal aid regulations to ensure that legal aid is available for proceedings before the mental health tribunal for Scotland and to make other technical changes. They ensure that assistance by way of representation will be available on a similar basis to that which is presently available under the Mental Health (Scotland) Act 1984. No one will fall through the legal aid net as a result of these changes.

I move,

That the Justice 2 Committee recommends that the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2005 be approved.

Motion agreed to.

Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 (draft)

The Convener: We move on to motion S2M-3239 on the draft Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005. Mr Henry will speak to and move the motion. His officials Andrea Summers and Mr Gery McLaughlin join him. We welcome you to the meeting.

Again, members should indicate whether they have any questions to ask or points for clarification to raise.

Mr Maxwell: I have a question on the list of weapons that paragraph 1 of the schedule to the draft order describes. Can the minister give us background information on the list? I have never heard of half of the weapons on it. I wonder how the list was agreed to and whether it could give people the opportunity to slip through the net. Clearly, if a weapon is not on the list, the draft order will not cover it. Can the minister comment on that?

Paragraph 2 of the schedule refers to the period of 100 years with regard to antiques. Many weapons that are less than 100 years old could also be classified as antiques. Can the minister clarify that point?

The Convener: I have a further point for clarification. The schedule describes a “stealth knife” as one

“which is not designed for domestic use or for use in the processing, preparation or consumption of food or as a toy”.

I assume that somewhere else in the legislation that exemption covers other forms of knives. It would be helpful if you clarified that for the committee, minister.

Hugh Henry: I will handle the specific questions first and then go on to the purpose of what we propose.

We are trying to catch in the draft order something other than what the legislation previously described. For example, stealth knives have been described as non-metallic hunting or stiletto knives, made of a range of materials, such as nylon zytel or high-impact plastic. Stealth knives can look like conventional knives, but they are difficult to detect because they are non-metallic.

The nub of the convener’s and Stewart Maxwell’s questions comes down to the parent legislation, which is the Criminal Justice Act 1988. The list of weapons, some of which Stewart Maxwell has never heard of, and the 100-year period in relation to antiques were specified in orders previously made under section 141 of the

1988 act. That is where the list of weapons in the draft order came from. If a new weapon were identified, we would return to Parliament with a new order, using the same procedure that we are using today, to add the weapon to the list.

A straightforward procedure is therefore available to the Executive and Parliament should there be concerns about types of weapons that had not previously been considered becoming a problem, and I hope that we would follow that procedure. Essentially, we are specifying weapons under section 141 of the 1988 act.

The Convener: As there are no further questions, minister, I ask you to speak to and move the motion.

Hugh Henry: The draft Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 consolidates previous offensive weapons orders into a single Scottish order. As you indicated, convener, it adds stealth knives and also batons to the list of specified—that is, banned—weapons.

The Criminal Justice Act 1988 makes it an offence to manufacture, sell, hire, lend, give or import the offensive weapons that are specified in the order. The draft order is made under the powers that are conferred by section 141(2) of the 1988 act. We have made two previous orders under the 1988 act to specify certain descriptions of weapons, and more than a dozen weapons are already banned in that way, including swordsticks, push-daggers, shuriken or death stars and butterfly knives.

I have already referred to stealth knives. We argue that such knives present a general threat because of their portability and concealability. We consider that they have no legitimate purpose and that it is therefore undesirable that they should be freely available for purchase by the public. We are also banning straight, side-handled and friction-lock truncheons, which are sometimes known as batons. They are the type of batons that are used by the police, and prohibiting the sale, manufacture and import of such truncheons for other purposes is a matter of public safety. The draft order is an effective way of stopping the supply of wholly unacceptable and dangerous weapons and I ask the committee to support it.

I move,

That the Justice 2 Committee recommends that the draft Criminal Justice Act 1988 (Offensive Weapons) (Scotland) Order 2005 be approved.

Motion agreed to.

The Convener: I thank the minister and his officials for attending the meeting.

Regulatory Powers Inquiry

14:12

The Convener: We move on to agenda item 3, which concerns the regulatory powers inquiry that is being undertaken by the Subordinate Legislation Committee. The convener of that committee has written to all the other committees and provided a consultation paper. Members will have received a copy of that paper, which indicates the various areas on which the Subordinate Legislation Committee would welcome comment.

I realise that this is a complex and technical issue and that it might not seem to be the most exciting topic that the Justice 2 Committee has ever handled. Nonetheless, it is important for the Parliament to get right the way in which it handles subordinate legislation. There have been some hiccups and it is timely that the Subordinate Legislation Committee is considering the matter.

Because the matter is fairly technical, I propose that we ask our clerks to examine our experience of handling subordinate legislation and come back to us with a note of any difficulties, pressures or problems that we have encountered. At the same time, they could perhaps give some notional thoughts on the areas on which comment is sought. I know that the clerks would find members' comments or suggestions helpful. My idea is that the clerks come back to us with a paper, supplemented with those ideas and suggestions, and that we consider it at a future meeting and finalise our response to the Subordinate Legislation Committee.

Bill Butler (Glasgow Anniesland) (Lab): Your suggestion is well made. If we ask the clerks to examine the committee's experience, that will pay dividends when we consider our detailed response to this important inquiry. There is one matter on which you could fill me in. Before I joined the committee, did it have any experience of the super-affirmative procedure, which is one of the more esoteric aspects of subordinate legislation? It is well over two years since I had the privilege and joy of being a member of the Subordinate Legislation Committee and it would be useful to have some information on the experience of the Justice 2 Committee before I joined it.

The Convener: Off hand, I cannot remember. The clerks may want to go and research that. They will need to consider our experience and handling strategy before they are able to respond to that specific point.

14:15

Maureen Macmillan (Highlands and Islands) (Lab): The problem for me is with negative instruments, in that a minister does not come to

explain what they are about. The explanation from the Executive is often written by people who are deeply immersed in their subject and who are not writing for lay people, which is what we are. I would like more clarity in the explanations of the impact of the instruments that reach us, so that we have a better idea of what we are looking at. I am sure that I do not speak just for myself when I say that when we are considering legal language it sometimes takes a long time to work out exactly what is what.

The Convener: That is a well-made point. The nature of subordinate legislation is that it will probably be detailed and technical, although that does not mean that a mistake or an omission cannot occur. If we understand better what an instrument is trying to address we might be in a more positive position to pick up such mistakes or omissions.

Do members have any other questions?

Mr Maxwell: It is not so much a question as a comment. I agree with the idea of coming back to the issue with a paper in front of us. That would be helpful. I have the pleasure of being a member of the Subordinate Legislation Committee, so I have been involved in phase 1 of its inquiry. The committee is proposing to introduce a bill in 2006 to try to tidy up some of the issues surrounding statutory instruments and subordinate legislation in general, so it is important that the committees get involved.

The super-affirmative procedure has a great deal of merit, particularly in relation to our ability to consider drafts. That is its major advantage. At the moment, the procedure is rarely used in the Parliament—I can think of only two examples off the top of my head.

We should take particular interest in the section on amendments in the Subordinate Legislation Committee's paper. At the moment there is no possibility of amending subordinate legislation. Effectively, instruments come before us and we either accept or reject them. There is merit in some discussion about the possibility of considering amendments to subordinate legislation. We would probably not want to amend most of it, but sometimes there may be a case for amendment. Amendments to subordinate legislation create some difficulties with the Scotland Act 1998, so we have to think about how we would go about it. However, it is important that we consider the issue of amendments.

For lead committees, the other issue is the timescale for dealing with Scottish statutory instruments. Most of the time, the timescale is okay, but there are certain times of the year and certain SSIs in which the timescale becomes a bit of a problem. The timescale can be very tight

between the initial date of an instrument's publication and the date on which it has to go before Parliament. In the meantime, the Subordinate Legislation Committee has to see the instrument and report on it, and it has to go before the lead committee. It is extremely important that we consider that. There is a case for extending timescales, but there are difficulties with doing so.

My final point is on instruments that are not subject to parliamentary procedure. Such instruments go to the Subordinate Legislation Committee, which considers them from a technical point of view, but lead committees do not consider them after that. A lot of stuff goes through that is not laid before Parliament and in which no parliamentary procedure as such is involved. There may be a case—as outlined in the Subordinate Legislation Committee's paper—for considering whether some sort of procedure should be put in place under which all the instruments that do not come before the lead committees in the Parliament would be considered. The paper contains many issues that we should address.

The Convener: That is helpful.

I recall one instance of the operation of the negative procedure when a member wished to question the wisdom of allowing an instrument to continue; in other words that member sought the instrument's annulment. That created practical problems because a committee has to be convened to consider the issue and a minister has to be available to speak—if anyone lodges a motion to annul, a minister has to be given the opportunity to speak to it. That all involves working within the rather tight framework—40 days after the draft is laid—for negative instruments. That is an area on which I would want us to give some thought. Committee members might have their own views on whether that procedure is entirely workable.

Our discussion has been extremely helpful. I will ask the clerks to give some thought to what we have said and to consider the paper. In fairness to the Subordinate Legislation Committee, we should try to return to the issue as soon as possible, without placing impossible burdens on the clerks in investigating the matter.

14:20

Meeting continued in private until 15:02.

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