

JUSTICE 2 COMMITTEE

Tuesday 31 January 2006

Session 2

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JUSTICE 2 COMMITTEE

3rd Meeting 2006, 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

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Carolyn Leckie (Central Scotland) (SSP)

Mr Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Mike Pringle (Edinburgh South) (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

Tuesday 31 January 2006

[THE CONVENER *opened the meeting at 14:06*]

Item in Private

The Convener (Miss Annabel Goldie): I welcome everyone to the third meeting of the Justice 2 Committee in 2006. I have received apologies from Colin Fox, who will not be joining us. We have no information about his substitute attending, so he is an absentee.

Item 1 on the agenda is to ask the committee to consider whether to take item 5 in private. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2006 (SSI 2006/5)

14:06

The Convener: Item 2 concerns two pieces of subordinate legislation, which have been circulated to members. They are both negative instruments and I will take them in the order in which they appear on the agenda.

We have explanatory information about the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2006 (SSI 2006/5). Does anyone have any questions on the rules?

Bill Butler (Glasgow Anniesland) (Lab): Perhaps Mr Maxwell, as a member of the Subordinate Legislation Committee, can add some information. It seems to me, having looked into the background, that there was a difference of opinion between the Subordinate Legislation Committee and the Executive on the Executive not supplying an Executive note with the rules. The Executive says that the explanatory note should suffice.

I note from the extract from the *Official Report* of the Subordinate Legislation Committee meeting of 24 January that that committee has written again to the Executive seeking further clarification on that point. Although the Executive's response will be of interest to the Subordinate Legislation Committee and this committee, I cannot think what more we can do at the moment other than note the situation and the continuing discussion.

The Convener: Mr Maxwell, do you want to add anything to that?

Mr Stewart Maxwell (West of Scotland) (SNP): I will add an update, as the matter came up at this morning's Subordinate Legislation Committee meeting. The Executive has now written back. To sum up, it stuck to its guns and said that an Executive note was not required because the explanatory note says everything that would have been in an Executive note.

The Subordinate Legislation Committee did not agree with that view for a number of reasons. The main thrust of the problem is that the explanatory note, which committee members can read on the back of the rules, is a single sentence. The rules represent a change in policy because they change the amount of short leave that a prisoner can get. The Subordinate Legislation Committee felt that it was necessary for the Executive to explain that policy. The purpose of an Executive note is to do just that, and therefore there should have been an Executive note, which would have been available

on the office of public sector information website for people who wanted to read the rules and the detailed reasons why the policy change has occurred.

The Executive provided a press release explaining the policy. Although it is interesting to have the press release, it is not possible for members of the public or the professions to read the official explanation for the policy change on the OPSI website. The Subordinate Legislation Committee believes that that detail should have been in an Executive note and does not feel that the Executive's response last week and this week—that the explanatory note sufficed because it covered all the detail—answered that point.

Although Bill Butler is right that there is nothing more to be said about the matter, we should note that the Subordinate Legislation Committee disagreed with the Executive about the necessity of an Executive note in this case.

The Convener: We should also note that the press release covered a number of general matters, one of which happened to be the redevelopment of the young offenders institution at Polmont, and that the rules relate to young offenders.

Bill Butler: I believe that the press release is in the name of the Scottish Prison Service. Is that correct?

The Convener: Yes.

Jackie Baillie (Dumbarton) (Lab): I was going to make a similar point and note that the press release is from the Scottish Prison Service rather than the Executive.

I have no problem with the purpose of the rules, but there is a procedural point, which the Subordinate Legislation Committee will pursue. For the purpose of our debate today, we should just approve the rules.

Mr Maxwell: I apologise if I referred to an Executive press release; it is, of course, a Scottish Prison Service press release. My point was that we were supplied with the press release, which was among our original notes along with the instruments, and it seems rather strange to get that and not an Executive note.

The Convener: Just to clarify further, did you say that the Subordinate Legislation Committee might take the matter further by undertaking a procedural inquiry, or has the matter now come to an end?

Mr Maxwell: To be honest, I cannot remember the detail of what we eventually agreed on at this morning's meeting—I had to go back and look at my notes because we deal with many instruments at every meeting. As far as these rules are

concerned, this is the end of the matter: there is a disagreement between the Subordinate Legislation Committee and the Executive, and there is nothing else to be done.

The Convener: If the committee agrees, I will write to the convener of the Subordinate Legislation Committee to say that we have a slight concern about the procedural aspect, and if any further clarification is elicited on the general principle of when an explanatory memorandum should be a little more explicit, that explanation could be given to us.

Mr Maxwell: Just for clarity, we are not looking for the explanatory memorandum, which we received; it was the Executive note that was missing. That is the crux of the problem.

Maureen Macmillan (Highlands and Islands) (Lab): It is the why, not the what.

The Convener: It is both, because the what is very scant—it is just a summary of what the rules are for.

Maureen Macmillan: We need to know why that has happened.

Bill Butler: What the convener suggests is sensible and will keep us aware of any developments.

The Convener: Subject to that, is the committee content with the rules?

Members indicated agreement.

Intensive Support and Monitoring (Scotland) Regulations 2006 (SSI 2006/15)

The Convener: Members have information about the regulations. As no member has any questions, is the committee content with the regulations?

Members indicated agreement.

Petition

Police Complaints Commission (PE890)

14:13

The Convener: The third item on the agenda concerns petition PE890, by James A Mackie, on an independent police complaints commission. It relates to an issue that the committee considered in connection with its stage 1 scrutiny of the Police, Public Order and Criminal Justice (Scotland) Bill. The committee has concluded its stage 1 deliberations and has signed off the report, which will be debated in Parliament this coming Thursday. It therefore falls to the committee to determine how it now wishes to deal with the petition, which was forwarded to us by the Public Petitions Committee on behalf of Mr Mackie.

Bill Butler: Members will be aware that Mr Mackie's petition calls for the creation of an independent police complaints commission

"to ensure that complaints against the police by members of the public are properly investigated and acted upon and that any investigative powers should be retrospective."

On Thursday, we will debate the stage 1 report, which contains substantially what Mr Mackie calls for.

We should simply note the petition, conclude our consideration of it and inform Mr Mackie that his interest in the matter is included in the stage 1 report.

Mr Maxwell: I note that the additional information accompanying the petition says:

"If the police ... refuse to take a complaint from the public ... there is no mechanism for that complaint to be investigated."

The points that Bill Butler just made about what is proposed in the Police, Public Order and Criminal Justice (Scotland) Bill will answer that point, because the proposed ombudsman will be able to take up such issues and will have the ability to appoint non-police officers to that role if he so decides.

14:15

Maureen Macmillan: The only thing that has not been covered in the report is that Mr Mackie wants the powers to be retrospective. That would not be a good idea because we do not want to reopen old cases on which decisions have been reached, which I presume is what he wishes.

The Convener: I should note as a point of procedure that Mr Mackie is known to me, purely on a personal rather than on a professional, remunerated basis.

Jackie Baillie: As a regular attendee of the Public Petitions Committee, I know Mr Mackie too, but only as a petitioner.

I note in annex B to the committee papers on the petition that Mr Mackie rejects the contents of the "draft bill". Although we might be content with the bill after scrutinising the details, I suspect that he will remain discontented. We should simply note the petition, close our consideration of it and advise the Public Petitions Committee accordingly, because our conclusions are contained in the stage 1 report.

The Convener: Given members' contributions, is it the committee's view that, having considered Mr Mackie's petition and the Police, Public Order and Criminal Justice (Scotland) Bill, we should note the petition, conclude our consideration of it and write to the petitioner accordingly?

Members indicated agreement.

Scottish Prison Complaints Commissioner

14:17

The Convener: Item 4 on the agenda concerns the Scottish prison complaints commissioner. Members will recall the presentation by the commissioner, Mr Vaughan Barrett, at our meeting on 6 December 2005. Following that, we wrote to the Executive. Members should have with their papers a copy of the Executive's response—a letter from the Minister for Justice dated 23 January 2006. Comments, please.

Jackie Baillie: I suggest that we copy the letter to the Scottish prison complaints commissioner for his information, but other than that, we await the outcome of the review that will take place this year.

The Convener: Is that agreed?

Members *indicated agreement.*

14:18

Meeting continued in private until 14:43.

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