JUSTICE 2 COMMITTEE

Tuesday 18 April 2006

Session 2

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JUSTICE 2 COMMITTEE
10th Meeting 2006, Session 2

CONVENER

*Mr David Davidson (North East 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

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

CLERKS TO THE COMMITTEE

Tracey Hawe
Alison Walker

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 4

Scottish Parliament

Justice 2 Committee

Tuesday 18 April 2006

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

Police, Public Order and Criminal Justice (Scotland) Bill: Stage 2

The Convener (Mr David Davidson): I welcome everyone to the 10th meeting in 2006 of the Justice 2 Committee. We have already agreed to take agenda item 4 in private. I welcome the Deputy Minister for Justice and his colleagues to day 5 of stage 2 consideration of the Police, Public Order and Criminal Justice (Scotland) Bill.

Section 75—Testing of arrested persons for Class A drugs

The Convener: Amendment 217, in the name of the minister, is grouped with amendments 218, 223 and 228 to 230.

The Deputy Minister for Justice (Hugh Henry): Amendment 217 is a minor drafting amendment to section 75 to ensure that there is consistency in the wording used in proposed new section 20A of the Criminal Procedure (Scotland) Act 1995 and section 76(1)(c) of the bill. Amendment 218 is also a minor drafting amendment that will tighten and clarify the wording used in section 75 and achieve a consistency of approach with the wording used in section 76(1)(c).

Amendment 223 will adjust section 76(1)(b) so that a person will be required to attend a mandatory assessment if an analysis of a sample reveals that a class A drug is present in the person's body, as opposed to a person being required to go to an assessment when such a substance "may" be present. This will remove any ambiguity about whether a person is required to attend an assessment if the result of the drugs test is inconclusive.

Amendment 228 will remove section 80, which deals with the retention of samples to allow further analysis. Having considered the planned processes further since the bill was introduced, we see no reason for the police to conduct a further analysis of a sample that has been taken. Consequently, there will be no need to retain samples for that purpose. There is already provision in proposed new section 20A(5)(b) of the 1995 act, which section 75 will insert, for the taking of a further sample if, for whatever reason, the taking of the first sample has proven unsuccessful.

Amendments 229 and 230 are consequential on the removal of section 80.

I move amendment 217.

Amendment 217 agreed to.

Amendment 218 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 219, in the name of the minister, is grouped with amendments 220 and 221.

Hugh Henry: Amendment 220 will amend the bill so that a sample that is taken for testing can be retained only for the purpose of taking criminal proceedings against a person for failing to attend or remain for the duration of a drugs assessment. The sample must be destroyed once it can no longer be used for that purpose. That will allow the Crown in such cases to produce the sample in court as evidence that a sample was taken and that a person was required to attend and remain at the assessment. The amendment will restrict the retention of the sample to the purpose of prosecuting a person under section 79 and requires that it should be destroyed when it can no longer be used for that purpose.

Amendment 219 is consequential on amendment 220.

Amendment 221 will make a minor change to the wording of proposed new section 20B(8) of the 1995 act to make it clear that information that is derived from a mandatory drugs test can be used for any, rather than only one, of the purposes that are listed in that subsection.

I move amendment 219.

Amendment 219 agreed to.

Amendments 220 and 221 moved—[Hugh Henry]—and agreed to.

Section 75, as amended, agreed to.

Section 76—Assessment following positive test under section 20A of the 1995 Act

The Convener: Amendment 222, in the name of the minister, is grouped with amendments 225 to 227.

Hugh Henry: Amendment 222 is a minor drafting amendment to remove section 76(1)(b) of the bill, which in effect duplicates proposed new section 20A(3)(c) of the 1995 act, which section 75 of the bill will insert.

Amendments 225 and 226 make slight changes to provide that a drugs assessor may change the date or time of a person's appointment for assessment only by giving that person a written notice to that effect.

Amendment 227 provides that a written notice that changes the details of an appointment is effectively served on a person only if it is given to them directly or is sent to them by recorded delivery or registered post.

I move amendment 222.

Maureen Macmillan (Highlands and Islands) (Lab): I am glad of that clarification, because the bill is unclear about whether a notice must be put in a person's hand.

Amendment 222 agreed to.

Amendment 223 moved—[Hugh Henry]—and agreed to.

Section 76, as amended, agreed to.

After section 76

The Convener: Amendment 224, in the name of Colin Fox, is in a group on its own.

Colin Fox (Lothians) (SSP): Amendment 224 approaches drug addiction and drug offences from an entirely different direction from that taken previously. It is fair to say that this committee, the Justice 1 Committee and people throughout Scotland's criminal justice system are struck by the utter pointlessness of the system of sending to jail people who exhibit all the signs of an addiction to drugs. Those people commit crimes to feed their habit, are arrested, go to jail, come out of jail unchanged and do exactly the same thing. They enter a vicious circle.

We fail because we fall into the trap of treating their behaviour rather than their addiction. Behind the amendment is the concept that treating the matter as a criminal justice issue rather than an addiction and health issue fails everyone—victims, taxpayers and offenders—and probably leaves every professional who is involved in the exercise tearing their hair out.

The amendment would allow us to take stock and say that there is another way. It suggests that, when an assessor has established through a drugs assessment that an offender is drug dependent, the assessor should consider the best treatment and the best way forward for that offender and direct him towards treatment and rehabilitation rather than jail. That is the essence of the amendment.

As the minister knows, the view is increasing in the world that it is pointless to have a system that clogs our courts with such cases. Given the huge cost, the disgraceful levels of reoffending that are a consequence of sending people with addiction to jail and the hopelessness of the current situation, the amendment seeks to take us in another direction—to treat the matter as a health and addiction issue and to treat people's behaviour, rather than put them in jail, which will not change things.

I move amendment 224.

Hugh Henry: I have a great deal of sympathy with what Colin Fox has said and I probably agree with the principles behind amendment 224, but there are practical issues to do with it that give me cause for concern. The intention behind everything that we are doing is to get into treatment people who need treatment and who would benefit from it, rather than send them to prison for abusing drugs.

If people have been tested and assessed and it has been decided that they need treatment, to some extent it would be logical to say that we should make it mandatory for them to get treatment, but we could not go down that route because forcing people to have treatment would raise European convention on human rights issues. Colin Fox's proposal falls between two approaches—he wants to place the onus of referring people for treatment on the drugs assessor. That worries me for a number of reasons.

Although I acknowledge the intention behind amendment 224, I can envisage circumstances in which having a statutory requirement to refer people for treatment could be counterproductive. What do we do if someone has no intention of seeking help or going through a course of treatment? In such circumstances, we would be wasting time and resources by tying up places on lists for people who would never turn up. As Colin Fox and others will know, it is crucial that people are provided with treatment when they are ready for it. We are not assuming that everyone will be ready for treatment. We expect assessment to allow the proper course of treatment and action to be identified and recommended for the individual concerned. That is the proper way to go. I am not sure that to impose a statutory requirement that someone should go for treatment when they had no intention of following it through would be the right thing to do.

Another issue that arises is how we would monitor whether a drugs assessor was referring people for treatment. Under the proposal in amendment 224, we would be placing a statutory obligation on the assessor to do so, but it would be difficult to monitor whether they were meeting that duty. There would be no effective way of ensuring that a drugs assessor complied with the proposed obligation, so I am not convinced that the imposition of such a requirement would be the best way forward. The bill already provides that if a drugs assessor thinks that a person would benefit from treatment, they can draw up an appropriate treatment plan and recommend that it be followed. There is nothing to prevent a drugs assessor from referring a person for further

treatment if that person is ready for it and wants to follow it through.

My concerns are about the potential waste of time and resources and how we could monitor the effectiveness of the measure. It would be better if we did not put drugs assessors in the position that Colin Fox has suggested. We must give them the flexibility to exercise their discretion, to make their assessment and to determine what is appropriate in particular circumstances. In the guidance on the bill that will be issued, drugs assessors will be reminded that they should aim to refer for treatment people who are willing to engage with the process. That will enable us to get into treatment people who would benefit from it and who would be willing and motivated, rather than people who were being coerced into something that they had no intention of seeing through.

I am sympathetic towards Colin Fox's aim and understand the principles behind his proposal, but am not sure that amendment 224 represents the best way to progress. Given my assurances about what the guidance will say, I hope that Colin Fox will withdraw his amendment.

14:15

Colin Fox: I am grateful to the minister for those remarks. I accept that there is a genuine commitment on the part of the minister and the Executive. We have examined the issue repeatedly, and I take some comfort from the points that the minister has made.

I will clarify one point. Amendment 224 does not seek to put the onus on the assessor. It is not about trying to reinvent the wheel—I refer to the minister's remarks about there being offenders who patently refuse treatment. My amendment aims to guarantee the necessary provision for those offenders who opt for a course of treatment. The minister mentioned appropriate treatment plans and recommendations. Through amendment 224, I seek something stronger than a recommendation: if the assessor comes to the conclusion that, given the dependency of the offender, they would be suitable for rehabilitation treatment, that will be provided for them. The emphasis is not on the assessor, or even on the offender; the amendment places the onus on the state to provide what is necessary.

Given what the minister has said—I will consider it later in more detail—I am prepared to withdraw the amendment now, with the proviso that I might return to the matter at stage 3.

Amendment 224, by agreement, withdrawn.

Section 77 agreed to.

Section 78—Date, time and place of assessment

Amendments 225 to 227 moved—[Hugh Henry]—and agreed to.

Section 78, as amended, agreed to.

Section 79 agreed to.

Section 80—Samples submitted for further analysis

Amendment 228 moved—[Hugh Henry]—and agreed to.

Section 81—Guidance for the purposes of sections 76 to 80

Amendment 229 moved—[Hugh Henry]—and agreed to.

Section 81, as amended, agreed to.

Section 82—Interpretation of sections 76 to 80

Amendment 230 moved—[Hugh Henry]—and agreed to.

Section 82, as amended, agreed to.

Section 83—Assistance by offender: reduction in sentence

The Convener: Amendment 236, in the name of the minister, is grouped with amendments 239 and 240.

Hugh Henry: Amendment 236 makes a simple but important change to the provisions on what happens when an offender makes a written assistance agreement with a prosecutor and gives, or offers to give, assistance under the terms of that agreement. The bill as introduced states that a court "may" take that into account when determining the sentence to be imposed on the offender. We have decided to go further and make it a requirement on the court to take such assistance into account. That is what amendment 236 does, supported by amendments 239 and 240, which make consequential drafting changes. That does not mean that a court must always offer a reduced sentence, as sentences are determined in the light of all relevant factors. In reaching its decision, the court must at least recognise and consider the assistance that is given or offered.

I move amendment 236.

Amendment 236 agreed to.

The Convener: Amendment 237, in the name of the minister, is grouped with amendment 238.

Hugh Henry: The bill seeks to ensure transparency in connection with the account that courts take of assistance agreements. If it were widely known that reductions in sentences have

been given on account of assistance given by offenders, I think that that would promote confidence in the assistance agreement system and that it would encourage more offenders to offer such assistance in future.

The bill already provides that when a court imposes a reduced sentence, it must declare its reasons unless there is a public interest reason for preserving confidentiality. Even then, both the prosecutor and the offender must be informed. Amendments 237 and 238 supplement those provisions by making a similar requirement in cases in which an assistance agreement has been made but, for whatever reason, the court has not chosen to impose a reduced sentence. In such cases, the amendments provide that the prosecutor and the offender must be informed of the court's reasons in relation to the sentence discount and that, wherever possible, those reasons must be made clear in open court.

I move amendment 237.

Amendment 237 agreed to.

Amendments 238 to 240 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 241, in the name of the minister, is grouped with amendment 242.

Hugh Henry: Amendments 241 and 242 are technical amendments. There are two references to imprisonment in section 83—in paragraph (b) of subsection (5) and in paragraph (c) of subsection (6). The purpose of section 83(7)(d) is to make clear that the word "imprisonment" in both references should be taken to include the equivalent for a young offender that is set out in the Criminal Procedure (Scotland) Act 1995. The second cross-reference is already correct, but the first needs to refer additionally to section 205(3) of the 1995 act, which covers the equivalent of life sentence for murder by a young offender. The amendments make the appropriate correction.

I move amendment 241.

Amendment 241 agreed to.

Amendment 242 moved—[Hugh Henry]—and agreed to.

Section 83, as amended, agreed to.

Section 84—Assistance by offender: review of sentence

The Convener: Amendment 243, in the name of the minister, is grouped with amendments 244 and 272.

Hugh Henry: Amendments 243 and 244 are concerned with what will happen when a sentence is reviewed either because the offender has failed to give promised assistance or because he has given new or additional assistance. In such circumstances, the bill provides that his original sentence can be reviewed and adjusted either up or down and that such reviews can take place only when the offender is still serving the original sentence. Amendment 243 will put beyond doubt that that would include periods after release from custody when the offender is serving part of his sentence in the community.

Amendment 244 recognises that calculating the time that requires to be served under a substituted sentence could be complicated. Credit must be given for time that has already been served, whether in custody or in the community. The amendment therefore creates a new order-making power so that Scottish ministers will be able to make provision for the way in which such periods are to be taken into account. Those orders will be subject to the negative resolution procedure.

Amendment 272 concerns an existing order-making power in the bill that will allow ministers to make orders to provide for the technical details of the court procedures to be followed during proceedings when a person's sentence is reviewed under section 84. We had originally decided that the orders should be considered under the affirmative resolution procedure—I recognise that the decision at the time was finely balanced. The Subordinate Legislation Committee recommended that the orders be considered under the negative resolution procedure instead. We have considered the matter further in the light of the Subordinate Legislation Committee's comments and are happy to agree that the orders be considered under the negative rather than the affirmative resolution procedure.

I move amendment 243.

Amendment 243 agreed to.

Section 84, as amended, agreed to.

Section 85 agreed to.

Section 86—Section 84: further provision

Amendment 244 moved—[Hugh Henry]—and agreed to.

Section 86, as amended, agreed to.

Section 87 agreed to.

After section 87

The Convener: Amendment 273, in the name of the minister, is in a group on its own.

Hugh Henry: Section 87 is concerned with the situation in which an offender is convicted of an offence but has given assistance to the police or the prosecution in connection with the investigation or prosecution of any other offence. It

allows information about that assistance to be provided to the sentencing court in confidence, and it allows the court to impose a reduced sentence if it sees fit. The section contains a number of safeguards to secure the confidentiality of information about the assistance that has been rendered by the offender.

Amendment 273 will introduce a new section to provide similar safeguards about confidentiality in cases in which the offender appeals against a sentence and the matter goes to the High Court. Like the sentencing court, the High Court will be prevented from disclosing the existence of the report, its contents and whether the sentence has been altered in the light of assistance that has been provided. That will apply to the High Court when it becomes aware of the information, whether in the context of an appeal by the offender or by dealing with an appeal in a separate case. However, when the court is dealing with an appeal by the offender, it will be permissible for the court to disclose the existence of the report or the information in it to the prosecutor, the appellant and, with the appellant's agreement, the appellant's counsel or solicitor.

Subsection (3) of the proposed new section to be inserted by amendment 273 also requires there to be rules of court that will allow offenders in that position to appeal against their sentence in confidence.

I move amendment 273.

Amendment 273 agreed to.

Section 88—Investigation and prosecution of crime: immunity from prosecution

The Convener: Amendment 245, in the name of the minister, is grouped with amendments 246 to 263.

Hugh Henry: The amendments respond to valid points that were made by the Law Society of Scotland. All but one of the amendments in the group are concerned with one simple change. They make it clear that when a prosecutor issues an immunity notice under section 88, he must set conditions that the offender must meet. The bill currently provides only that the prosecutor may set such conditions. However, when a prosecutor wishes to offer unconditional immunity, he will not need the provisions in the bill to do so; he can already do that under common law. Therefore, amendments 248 and 249 require each immunity notice to specify the conditions.

To make clear the difference between the provisions in the bill and the existing arrangements for immunity under common law, we think that a notice that is issued under section 88 should be called a conditional immunity notice, not just an immunity notice. That will make clear what the notice is. Amendments 245 to 247, 250 to 255 and 257 to 263 make the change in terminology.

Amendment 256 is concerned with cases in which an offender fails to meet the specified conditions and the immunity notice therefore ceases to have effect. It should then be possible for the prosecutor to open or reopen proceedings against him for his original offences. The purpose of section 88(8) is to ensure that such proceedings can go ahead despite the communication that has taken place between the prosecutor and the offender in the meantime.

The Law Society has put it to us that section 88(8) is too broad and too much in the prosecutor's favour. It would mean that nothing that took place as a result of the immunity notice could be a bar to such proceedings being taken. On reflection, we agree with the Law Society that that goes too far. Events could take place during the period when the notice had effect that might make it difficult for the offender to have a fair trial. Instead, we propose a replacement subsection that will simply provide that the fact that the offender has communicated with the prosecutor or others is not a barrier to the bringing or continuation of proceedings. However, under the proposed replacement subsection, the court will not be prevented from taking into account the nature, circumstances or consequences of any communications in determining whether proceedings may be brought or continued.

I move amendment 245.

Amendment 245 agreed to.

Amendments 246 to 263 moved—[Hugh Henry]—and agreed to.

Section 88, as amended, agreed to.

After section 88

The Convener: Amendment 264, in the name of the minister, is in a group on its own.

14:30

Hugh Henry: Amendment 264 is about strengthening a particular aspect of the Sea Fisheries (Shellfish) Act 1967. Members will be aware that that act established regulating orders for shellfisheries. A regulating order assigns management responsibility for a local shellfishery to a grantee and allows the grantee to issue licences and/or impose the payment of tolls before fishermen may be granted access to the regulated fishery. Section 3(1) of the 1967 act allows the grantee to impose restrictions on or make regulations respecting the taking of any specified description of shellfish within the fishery. Section 3(1)(a) enables the grantee to enforce any such restrictions or regulations by giving the grantee the

power to carry into effect and enforce such restrictions and regulations as are made under the order.

The difficulty is that the 1967 act does not go on to confer any specific enforcement powers, such as the power to board vessels or to search premises; thus, the general power is insufficient to allow enforcement by grantees to be fully effective. At the same time, the Scottish Fisheries Protection Agency does not have any legislative powers to enforce regulating orders. The approach that we propose would allow either the SFPA or the grantee, or indeed a combination of both, to enforce regulating orders. They would be able to board fishing vessels, search for shellfish and fishing gear, and request relevant documents. In addition, they would be able to search certain premises and vehicles. The proposed powers are based on powers that the SFPA already has to enforce other fisheries legislation. Amendment 264 allows flexibility in how particular orders are enforced, guided by local needs and circumstances. That is in line with the 1967 act, which envisaged grantees having the responsibility for enforcing regulating orders.

When I gave evidence on the proposal on 14 March, the committee asked me about resources. As I said then, the resources are in place for the SFPA to enforce regulating orders. Enforcement activity that is carried out by the grantees would be met from the income they draw from the fishery.

Current inadequate enforcement provision makes it difficult to prevent illegal fishing in a regulating order area and reduces the effectiveness of a useful fisheries management tool for achieving sustainable and viable fisheries. As such, improving the enforcement of regulating orders is an important issue to address. Amendment 264 will help to reduce illegal fishing in a regulating order area and to secure better-managed and more sustainable local shellfisheries.

I move amendment 264.

The Convener: I feel that the Police, Public Order and Criminal Justice (Scotland) Bill is an inappropriate place for dealing with the issue, especially as a fisheries bill will be presented to the Parliament in June. The Environment and Rural Development Committee would be better placed than this committee to deal with all aspects of the issue. The minister talked about conservation matters. If the issue had gone to the Environment and Rural Development Committee, that committee could have gathered evidence from those who seek to regulate fisheries and those who fish within them.

Having had the point well rammed home by a number of fishing interests, I believe that the current toll system under the 1967 act is for the improvement of the fisheries by cultivation and other such means and not for the transfer of funds to another agency—a public agency—to enforce the regulations. That is a personal view, which I state clearly.

I understand what the minister says about enforcement but I cannot support this blunderbuss approach to legislation, which involves tacking on bits here and there. The minister talks a lot about conservation, but that is not dealt with purely through enforcement. I cannot support the amendment.

Maureen Macmillan: The Environment and Rural Development Committee took evidence on the matter, including evidence from MSPs who have such fisheries in their constituencies. Most of the concerns have been ironed out as a result of that process. The Environment and Rural Development Committee has a full legislative agenda. Using this bill as a vehicle through which to address the matter is not inappropriate. I had not realised that the convener was going to raise an objection.

I have a simple question of clarification about the grantee. Will the grantee always be able to call on the SFPA if they feel the need to do so? Concerns have been raised that the grantee would not have the resources to deal with the problems that might confront them. I want an assurance that the grantee could call upon the SFPA. I presume that the cost of a fisheries protection vessel would not have to be met out of the income from the fishery that the grantee has at their disposal.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I understand the convener's point, but I recall that when the committee discussed amendments to the bill that cover matters that are likely to be addressed in future bills, he voted for increased sentences being available to district courts, which is a provision that is likely to be brought forward. I do not think that there is a problem with our taking an opportunity—as the convener did not so long ago—to make changes in the bill that is before us, even though we know that a bill may address the matter in the future.

Amendment 264 provides a targeted opportunity for action to be taken. It will be for ministers to take the appropriate decision on the appropriate application, therefore the amendment does not represent a blunderbuss approach. Relevant situations may arise in the south—we have heard representations from there—and the provision may also be relevant in Shetland, as has been confirmed by representations from the local MSP. It is therefore perfectly in order for us to support the Executive now.

Hugh Henry: Jeremy Purvis referred to the letter that my colleague Tavish Scott wrote in his capacity as a constituency member. The letter, which is well argued and reasoned, makes a powerful argument from the local perspective about why the provision should be put in place.

I do not accept the convener's claim that it is inappropriate to use the bill to address the matter, nor do I accept that we are taking a blunderbuss approach. Why are we adding the provision to this bill rather than waiting? The timing is crucial. If we use the opportunity that is afforded by the bill, new enforcement provisions will come into force in autumn 2006. If we waited for another bill, that could not happen. If the provisions are in force in autumn 2006, that will be in time for the opening in the autumn of the first full season of the Solway firth cockle fishery under a regulating order. The new powers will help to prevent illegal cockle fishing and could lead to stocks being more sustainable.

The convener asked why we are introducing the provision now. A lot of illegal fishing is going on, which, tragically, can lead to loss of life. If we can act quickly to prevent the loss of life that has taken place elsewhere in recent years, that alone is sufficient justification for introducing the provision in this bill rather than waiting. We know that such tragedies can happen. Hand gatherers are currently taking unacceptable risks in the Solway—they are fishing at night and in bad weather. It is right that we take the first available opportunity to address the matter.

Maureen Macmillan pointed out that the appropriate committee has considered these matters; indeed, she highlighted some of the pressures that that committee faces. As I cannot guarantee that we could introduce other legislation in time for autumn 2006, the bill is the appropriate place for the measure.

In response to Maureen Macmillan, I confirm that the SFPA will back up the grantee and the cost of fisheries protection vessels will be met not by local fisheries but in the usual way. I have nothing more to add.

The Convener: The question is, that amendment 264 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Maxwell, Mr Stewart (West of Scotland) (SNP)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

AGAINST

Davidson, Mr David (North East Scotland) (Con)

ABSTENTIONS

Fox, Colin (Lothians) (SSP)

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

Amendment 264 agreed to.

Section 89—Interpretation

Amendment 231 moved—[Hugh Henry]—and agreed to.

Section 89, as amended, agreed to.

Sections 90 and 91 agreed to.

Schedule 5

MODIFICATIONS OF ENACTMENTS

Amendment 65 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 265, in the name of the minister, is in a group on its own.

Hugh Henry: This technical amendment to the Police (Scotland) Act 1967 seeks to ensure that constables who are on temporary service with HM inspectorate of constabulary are considered to be on relevant service with regard to matters such as rank, promotion and accrual of pension rights. It also seeks to remove an inconsistency in the 1967 act that makes it unclear whether officers who are on temporary service with HMIC are covered by the act's relevant provisions.

I move amendment 265.

Amendment 265 agreed to.

Amendments 66 to 68 and 232 moved—[Hugh Henry]—and agreed to.

The Convener: Amendment 266, in the name of the minister, is grouped with amendments 267, 268 and 271.

Hugh Henry: The creation of the Scottish crime and drug enforcement agency and the change of name from the Scottish Drug Enforcement Agency have necessitated a number of changes to surveillance provisions in the Regulation of Investigatory Powers (Scotland) Act 2000 and part III of the Police Act 1997. This group of amendments seeks to provide for those changes.

Most of the amendments to the 2000 act are designed to ensure that the surveillance provisions continue the current procedure whereby constables in the SDEA can apply for authorisations; however, they also make the required changes as a consequence of the SCDEA's new statutory status.

The amendments seek to give the director of the SCDEA operational independence by providing him with the powers to grant authorisations for

intrusive surveillance and property interference for SCDEA operations on the application of SCDEA police members. Although the SDEA already carries out such activities, authorisations have until now been granted by Scottish chief constables.

The amendments respond to recommendations that were made by the chief surveillance commissioner in his annual reports. The rank of deputy chief constable was reintroduced to the Scottish police service by the Criminal Justice (Scotland) Act 2003, and we are taking this opportunity to reflect that change by updating authorisation procedures in the Regulation of Investigatory Powers (Scotland) Act 2000 and part III of the Police Act 1997.

I move amendment 266.

Amendment 266 agreed to.

Amendments 267, 268 and 131 moved—[Hugh Henry]—and agreed to.

14:45

The Convener: Amendment 269, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 269 will add the Scottish police services authority to the list of public authorities that are subject to the Freedom of Information (Scotland) Act 2002. The amendment provides that the SPSA is included only in respect of the police services that it directly provides under section 3(2) of the bill, such as, for example, the police college at Tulliallan.

Functions of the SPSA in respect of the Scottish crime and drug enforcement agency and the agency itself will not be subject to freedom of information legislation, because they deal with highly sensitive information and it is vital for them to be able to protect their intelligence sources.

Although we acknowledge that there might be some concerns about transparency, we are confident that this is the correct approach to ensure that the SCDEA can exchange information and operate freely with other law enforcement agencies, such as the Serious Organised Crime Agency, that are exempt from the equivalent legislation. Any concerns on the part of that agency about exchanging information with the SCDEA—if it was covered by the freedom of information regime—would hinder Scotland's ability to provide an effective counter to serious organised crime.

I move amendment 269.

Amendment 269 agreed to.

The Convener: Amendment 132, in the name of the minister, is in a group on its own.

Hugh Henry: Amendment 132 will remove paragraph 6(a) of schedule 5, which brings the police complaints commissioner for Scotland within schedule 2 to the Public Appointments and Public Bodies etc (Scotland) Act 2003. It is not usual for such single office-holders to be brought within the remit of the commissioner for public appointments in Scotland. Instead, it is standard practice for such appointments to be handled according to the Nolan principles—that is, to be made on merit, after an open and transparent process, but without the fully regulated process that is overseen by the commissioner for public appointments. There are several precedents for such an approach, including the appointment of the Scottish public services ombudsman, and there are currently no examples of single-person statutory office-holders listed in schedule 2 to the Public Appointments and Public Bodies etc (Scotland) Act 2003.

I move amendment 132.

Amendment 132 agreed to.

The Convener: Amendment 270, in the name of the minister, is in a group on its own.

Hugh Henry: This consequential amendment will substitute references to the SDEA in the Serious Organised Crime and Police Act 2005 with references to the SCDEA. In addition, it will ensure that the director of the SDEA and those who are under his direction and control will continue to be covered by the witness protection provisions in the Serious Organised Crime and Police Act 2005. Likewise, the amendment will add the director of the SCDEA and those who are under his direction and control to the list of persons protected.

I move amendment 270.

Amendment 270 agreed to.

Amendment 271 moved—[Hugh Henry]—and agreed to.

Schedule 5, as amended, agreed to.

Section 92 agreed to.

Section 93—Subordinate legislation

Amendment 7 not moved.

Amendment 272 moved—[Hugh Henry]—and agreed to.

Section 93, as amended, agreed to.

Sections 94 and 95 agreed to.

Long title agreed to.

The Convener: That ends our stage 2 consideration of the bill. I thank the minister for his attendance and diligence in pursuing the work of the committee.

We will have a short break to allow the minister to change his personnel.

14:50

Meeting suspended.

14:53

On resuming—

Subordinate Legislation

Maximum Number of Part-Time Sheriffs (Scotland) Order 2006 (draft)

The Convener: Item 2 is subordinate legislation. We have one affirmative instrument to consider today. No points were raised by the Subordinate Legislation Committee. I invite the minister to speak to the draft order.

Hugh Henry: Part-time sheriffs are used in a number of situations. They cover for full-time sheriffs who are absent on annual leave or sick leave or who are attending training courses. They also help out when the pressure of business calls for more resources than the full-time sheriffs can provide. Part-time sheriffs make a significant contribution to ensuring that justice is delivered as quickly and efficiently as possible. Their contribution is valued by the sheriffs principal, who run the sheriffdoms, and by the Sheriffs Association, which represents about 98 per cent of sheriffs.

The complement of full-time sheriffs stands at a record level of 140. It was previously decided that 60 part-time sheriffs was the right sort of number to support the contribution of full-time sheriffs, but five years' experience of operating in that way has shown us that 60 is not an adequate number. There are three main reasons for that. The first is that the success rate of the police in detecting crime and referring cases to the Procurator Fiscal Service has meant that business in the sheriff courts has continued at a very high level.

Secondly, the Executive has encouraged and funded an increase in training for new and experienced sheriffs, but sheriffs need time away from the bench to participate in training, which is where part-time sheriffs come in. Their contribution ensures that courts can be kept running while permanent sheriffs are engaged in developing their skills at training events.

The third reason is the requirement for sheriffs and part-time sheriffs to chair some of the new Mental Health Tribunal for Scotland tribunals that were introduced earlier this year. Hearings for restricted patients must be chaired by a member of the judiciary. The new system of tribunals is an important development in the care of patients who suffer from mental illness. It is essential that sheriffs can train for their new role and can chair hearings, so part-time sheriff cover is needed to take on business in the sheriff courts while full-time sheriffs are engaged on mental health tribunal business.

I recognise that determining the number of part-time sheriffs that is needed is not an exact science. Most part-time sheriffs have other jobs as solicitors or advocates, so their availability for part-time sheriff work is limited. We think that an increase of about 20 is right, although we cannot be exact and say that that will be the right number for ever and a day. However, such an increase will maintain a proper balance between the numbers of full-time and part-time sheriffs.

Part-time sheriffs provide an essential service by keeping the business of the sheriff courts running while full-time sheriffs are absent doing other things. We need more part-time people to cope with the general demands of the courts, to ensure that our sheriffs can participate in training and, as I said, to provide the resources that are needed to run the new system of mental health tribunals.

There are significant benefits to gain from the draft order and I commend it to the committee.

The Convener: Members now have the opportunity to question the minister.

After five years, you recommend increasing the number of part-time sheriffs. Do you have a timeframe for reviewing how that increase has worked?

Hugh Henry: Not particularly. If the pressure of business is such that we need more part-time sheriffs, we will come back to you. We would rather do that quickly and respond to the demand than cause chaos and inconvenience by not having an appropriate number. Equally, if the demand for part-time sheriffs ever dropped—although I do not believe that that will happen—and we needed to reduce the complement, we would do that. However, I expect more pressure for more part-time sheriffs. We think that the proposed number is about right, but we will wait and see. However, I am reluctant to put a five-year period or any period on that.

Maureen Macmillan: What is the size of the pool from which you draw part-time sheriffs? There is anecdotal evidence that the number of solicitors who do court work is diminishing. I am not sure whether the number of advocates is increasing. Are you concerned about the number of people who are available for appointment as part-time sheriffs?

Hugh Henry: We have no concerns about that. Maureen Macmillan raises a separate issue about people who engage in criminal work in some parts of Scotland.

The pool to draw from is sufficient. We must have regard to the pool that is available and we will not appoint people for the sake of appointing them—they will have to have commensurate ability and experience. We believe that the people whom we appoint are of that standard.

Obviously, we will have to keep an eye on the matter, not only because we want to have an adequate pool from which to draw sheriffs, but because we want to ensure that all branches of the law in the legal system are well served throughout the country. Maureen Macmillan has previously raised with me the matter that she has raised, and we will continue to keep an eye on it.

Motion moved,

That the Justice 2 Committee recommends that the draft Maximum Number of Part-Time Sheriffs (Scotland) Order 2006 be approved.—[*Hugh Henry*.]

Motion agreed to.

Police Grant (Scotland) Order 2006 (SSI 2006/91)

15:00

The Convener: Four negative instruments are to be considered under item 3, the first of which is the Police Grant (Scotland) Order 2006, on which the Executive's letter of 17 March 2006 provides further background information. The Subordinate Legislation Committee raised no points on the order and members have no questions on it. Are members therefore content with the order?

Members *indicated agreement*.

Prisons and Young Offenders Institutions (Scotland) Rules 2006 (SSI 2006/94)

The Convener: The rules have been drawn to the attention of the committee and the Parliament by the Subordinate Legislation Committee, which sought clarification on why there was no specific power to amend or revoke any direction issued under the rules. The Executive has provided the requested clarification.

Jeremy Purvis: I would like to make two points on different aspects of the rules, which I support. First, there seems to be growing evidence on the number of young people with mental health problems who are admitted to young offenders institutions. Will the minister consider in due course whether guidance should specifically state that medical examinations of young people who go into institutions should cover not only their health and well-being but their mental health? The mental health aspects of the rules seem to focus on the powers to send young people with excessive mental health problems to hospital and to report to ministers.

Secondly, members of the Scottish Parliament, members of the United Kingdom Parliament and members of the European Parliament have the right to visit young people in institutions, but those young people do not have the right to make representations to their MSP, MP or MEP if they

have a complaint. There are opportunities to make complaints to other people, but not to them.

Will the minister consider those matters?

Hugh Henry: I am not immediately familiar with what happens in medical examinations, but I will reflect on and respond to both points that Jeremy Purvis has made.

The Convener: Are members content with the rules?

Members *indicated agreement*.

Serious Organised Crime and Police Act 2005 (Consequential and Supplementary Amendments) (Scotland) Order 2006 (SSI 2006/129)

Serious Organised Crime and Police Act 2005 (Specified Persons for Financial Reporting Orders) (Scotland) Order 2006 (SSI 2006/170)

The Convener: No points have been raised by the Subordinate Legislation Committee on the orders and members have no questions on them. Are members therefore content with the orders?

Members *indicated agreement*.

The Convener: I thank the minister and his support staff for attending the meeting. We now move into private session.

15:04

Meeting continued in private until 15:29.

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