

JUSTICE 2 COMMITTEE

Tuesday 20 June 2006

Session 2

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JUSTICE 2 COMMITTEE

18th 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)

Paul Martin (Glasgow Springburn) (Lab)

CLERKS TO THE COMMITTEE

Tracey Hawe

Alison Walker

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 6

Scottish Parliament

Justice 2 Committee

Tuesday 20 June 2006

[THE CONVENER opened the meeting at 14:05]

Subordinate Legislation

Management of Offenders etc (Scotland) Act 2005 (Supplementary Provisions) Order 2006 (draft)

The Convener (Mr David Davidson): Good afternoon, ladies and gentlemen. I welcome everyone to the 18th meeting in 2006 of the Justice 2 Committee and ask that all mobile phones, pagers and BlackBerrys be switched off.

I welcome to the meeting Kenny MacAskill, who is substituting for Stewart Maxwell, and Paul Martin, who has an interest in item 3. However, our first star turn is the Deputy Minister for Justice, who is accompanied by Scottish Executive officials Sheila Tait and Gordon McNicoll. At this point, I should apologise for the fact that my hayfever seems to have broken out today.

Item 1 is consideration of a draft affirmative order. A cover note from the Subordinate Legislation Committee draws our attention to the draft order

“on the grounds that it represents at best an unusual or unexpected use of the power, and at worst there are doubts about whether it is *intra vires*.”

Moreover, the Subordinate Legislation Committee also suggests that article 6 of the order

“raises a devolution issue as it appears to legislate in an area of law reserved to UK Ministers under the Scotland Act.”

As members appear to have no questions of clarification, I invite the minister to move motion S2M-4510 and open the formal debate.

The Deputy Minister for Justice (Hugh Henry): The draft Management of Offenders etc (Scotland) Act 2005 (Supplementary Provisions) Order 2006 makes additional provision for the new community justice authorities and their staff, including chief officers.

Given the role that CJAs will fulfil, it will be important for CJA staff, particularly the chief officer, to demonstrate political neutrality and independence from agencies delivering the services. That is the purpose of articles 2 and 3.

Article 4 requires the prospective chief officer to obtain and produce a criminal conviction

certificate, commonly known as basic disclosure, prior to being formally appointed. As the chief officer will not act in a child care capacity, it is considered unnecessary to require any form of enhanced disclosure. Article 5, which renders chief officers ineligible for jury service, places the post of chief officer in a similar position to similar appointments in social work and in prisons.

As the principal function of CJAs is to integrate the management of offenders, they must be free to share information with relevant agencies. Article 6 provides for CJAs to be included in the scope of the Re-use of Public Sector Information Regulations 2005. Because they are to be funded wholly or mainly by Scottish ministers, CJAs are probably caught within the scope of those regulations anyway. However, we consider that they should be expressly referred to as a class in the list of public sector bodies specified in regulation 3.

As indicated in the Executive note, the order's provisions have been the subject of discussion and consultation with relevant bodies, most particularly with the Convention of Scottish Local Authorities and the Scottish Prison Service. The Subordinate Legislation Committee considered the draft order at its meetings on 30 May and 13 June, and officials attended the meeting on 13 June to address its concerns. As you have pointed out, convener, that committee took the view that the order

“represents at best an unusual or unexpected use of the power”

in section 22 of the Management of Offenders etc (Scotland) Act 2005 and that

“at worst there are doubts about whether it is *intra vires*.”

That committee also considered that article 6 raises a devolution issue as it appears to legislate in an area of law that is reserved to United Kingdom ministers under the Scotland Act 1998. I would refute both those statements. In my view, the order contains provisions that are properly supplementary to the 2005 act.

Articles 2 to 4 are concerned with the appointment of staff and do no more than make supplementary provision regarding the extent of the CJAs' powers or duties under section 4 of the 2005 act. With regard to articles 5 and 6, I consider that in order to give full effect to the provisions of the act it is necessary or expedient that chief officers should be ineligible for jury service and that CJAs should be subject to the Re-use of Public Sector Information Regulations 2005.

As I have mentioned, the Subordinate Legislation Committee has concerns that the article dealing with the 2005 regulations is outwith the competence of the Parliament in that it deals

with either data protection or intellectual property. We do not agree. The article merely applies the 2005 regulations expressly to CJAs. It does not alter or affect the law relating to data protection or intellectual property. Indeed, the 2005 regulations expressly state that they do not apply to documents where a third party owns the relevant intellectual property rights. We therefore believe that ministers have the necessary power in terms of the 2005 act to make this order. Of course, it would be for a court to decide whether the order is ultra vires, but I believe that we are acting properly within the powers that are available to us and the intention of the legislation.

I move,

That the Justice 2 Committee recommends that the draft Management of Offenders etc. (Scotland) Act 2005 (Supplementary Provisions) Order 2006 be approved.

Motion agreed to.

The Convener: I thank the minister for one of his shorter appearances. I also thank his colleagues.

Home Detention Curfew Licence (Prescribed Standard Conditions) (Scotland) Order 2006 (SSI 2006/315)

The Convener: This is a negative instrument. The Subordinate Legislation Committee has not drawn it to the attention of this committee. Are members content to make no recommendation on the order?

Members: No.

The Convener: There will be a division.

FOR

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

AGAINST

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

The Convener: The result of the division is: For 6, Against 1, Abstentions 0.

It is agreed that the committee will make no recommendation on the order.

Petition

Justice System (Child Sex Offenders) (PE862)

14:13

The Convener: We continue our consideration of a petition by Margaret Ann Cummings calling on the Scottish Parliament to urge the Scottish Executive to conduct a full review of the current system for dealing with and monitoring convicted child sex offenders. We agreed to return to the petition. It was suggested last week that an ad hoc committee of the Parliament should be established to consider the issue.

The response from the Minister for Justice to the issue in Ms Cummings's most recent correspondence was circulated with the papers for last week's meeting. I will update the committee on what has gone on behind the scenes since then. I have been in discussion with the Minister for Parliamentary Business, Margaret Curran, and her office. The clerks have been in discussion with their superior staff and with Margaret Curran's staff. The view seems to be coming back from Margaret Curran that she wishes to put the issue before the Parliamentary Bureau next week.

Margaret Curran favours the option of forming a sub-committee of the Justice 2 Committee rather than an ad hoc committee of the Parliament. That sub-committee would report back to the Justice 2 Committee and we would report to Parliament if we thought that that was the thing to do. The idea is that the Parliamentary Bureau would appoint the five members of the sub-committee. That takes account of the fact that we have a fairly busy work schedule coming up. The committee would also be appointed on the d'Hondt principle, which is standard for a committee of the Parliament. Discussions are on-going with the minister about how that will be resourced and supported by the clerks. No doubt that will form part of the Parliamentary Bureau's discussions next week because it will have to provide the resources and decide who will sit on the sub-committee.

14:15

Bill Butler (Glasgow Anniesland) (Lab): What the Minister for Parliamentary Business is proposing is reasonable. Because the sub-committee will have the option of reporting to the committee, and the committee can then report to the Parliament, the proposal mirrors the seriousness of the issues that members considered during the past couple of weeks were still outstanding. The convener has described a way forward and we should accept it because it is a positive move.

Jackie Baillie (Dumbarton) (Lab): I endorse Bill Butler's comments. It is a positive move. However, I register the plea that I registered last time: if we are to do the issue justice, we need to ensure that additional clerking resources are made available, rather than simply relying on the clerks we have at the moment. Good though they might be, I am conscious that this will take some stretch, so if the Parliamentary Bureau could be advised of our desire for additional resources, that would be helpful.

The Convener: I have certainly made that view known to the minister on behalf of both myself and the committee. You have also put it on the record.

Colin Fox (Lothians) (SSP): I was not at last week's meeting, so I am not sure whether this was discussed then or not. We seem to have leaped on a bit. Concerns were expressed about the committee taking on the petition given our workload and the other things that we have to consider. I remember that other options were put to us. There was a legacy paper idea, but we were disinclined to go that way because there would be no obligation on a justice committee in the next session to take the issue up. I am still worried that the committee's workload is quite heavy—I am trying not to use a prejudicial word that would suggest that it is any heavier than that of any other committee—and, in effect, we are still asking the members of the committee to take on extra responsibility.

The Convener: The idea is that the new sub-committee of the Parliament would do all the work and then submit a report to this committee during a single session. We would expect to consider all the evidence and other considerations, such as housing and human rights. It is quite a complex issue. The Minister for Parliamentary Business has taken on board the fact that we have a heavy workload because of the Executive's legislative programme. She agrees, as we all did at the previous meeting, that this is a serious piece of work and that if it is going to be done at all, it must be done properly. Does that answer your question?

Colin Fox: I think that I understand but, just to be clear, am I right in thinking that the membership of the sub-committee would not come from the Justice 2 Committee?

The Convener: Yes. The clerk will clarify.

Tracey Hawe (Clerk): Standing orders provide that the members of the primary committee will normally make up the membership of the sub-committee. However, if the committee so chooses, members of other committees can be appointed. It is likely to be a mix of members of this committee and other members, depending on the views of business managers.

Colin Fox: Thank you.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): That is a helpful clarification about practicalities. My preference is still to take the route of having reporters and to work with other committees if reporters can be from more than one committee. However, if the consensus is that we should take a different route, I accept that. It is important for other committees to be represented, because consideration of the petition could have an impact on housing and education, so that input would be useful. However, I acknowledge the proposal that the minister will be making to the Parliamentary Bureau next week and I suspect that the business managers will then discuss some of the practicalities.

The Convener: I remind members that Paul Martin made a suggestion to the committee on how to proceed.

Paul Martin (Glasgow Springburn) (Lab): If the Parliamentary Bureau agrees to the proposal next week, this will be the first time that a sub-committee has been formed in the Parliament. That is testament to the seriousness of the issue and I pay tribute to the committee for giving the matter careful consideration. The point has been made on a number of occasions that we want to ensure that the issue is carefully examined and that we do it justice. Members have made their own constructive suggestions, but I think that the way forward is to do what is now proposed. Margaret Ann Cummings, the petitioner, and others who have been involved in or affected by such matters want us to find some way to examine carefully and to interrogate all the issues surrounding the petition.

Jeremy Purvis has mentioned the fact that various committees might be involved in the scrutiny and I hope that, when the Parliamentary Bureau makes its appointments, it will consider that point. Housing is important, as is justice, and there are other elements that the Parliament could take into consideration at the same time. I hope that, by next May, we will have completed a piece of work that will be a legacy. Some people envisage that we will reach a stage at which we have dealt with the issue conclusively, but I would argue that we are dealing with some of the most dangerous individuals in society and that we must therefore continue to develop and evolve our thinking on the matter. I think that a sub-committee would give us a starting point for that.

The Convener: Thank you for your comments and for coming to the committee this afternoon. We expect an Executive bill on sentencing to come to the committee and we are not sure how much overlap there might be. This committee is not the expert committee on housing or on other subjects, and I think that the general view around

the table last week—which also seems to be the view of the minister and of some of the business managers—was that a variety of remits and skills is required to deal with the important matter that has been raised. I presume that you are content for the Parliamentary Bureau to take matters from here. I know that one of the ways in which we can ensure that members of the bureau are briefed is for those members who are here today—along with Stewart Maxwell, who was unable to attend—to speak to their own business managers to ensure that they have a full understanding of the situation. I have certainly spoken to my business manager and I think that it would be helpful if other members did the same, so that all business managers understand the complexity of the matter.

I thank the committee for coming to a consensus. Do we agree to recommend to the Parliamentary Bureau that a sub-committee be set up to examine this issue?

Members *indicated agreement.*

The Convener: Before we move into private for item 4, which is our draft report on the Legal Profession and Legal Aid (Scotland) Bill, I would like to repeat the declaration that I have made before all our sessions on the bill, which is that I have a son who is a lawyer in England. He is not qualified to work in Scotland and has no connection with legal services in Scotland.

Maureen Macmillan (Highlands and Islands) (Lab): I refer members to the declaration that I made when we first discussed the bill.

14:24

Meeting continued in private until 15:57.

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