

JUSTICE 2 COMMITTEE

Tuesday 5 December 2006

Session 2

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JUSTICE 2 COMMITTEE

34th 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)

*Michael Matheson (Central Scotland) (SNP)

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

COMMITTEE SUBSTITUTES

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Mr Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Johann Lamont (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Tracey Haw e

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 1

Scottish Parliament

Justice 2 Committee

Tuesday 5 December 2006

[THE CONVENER *opened the meeting at 13:46*]

Subordinate Legislation

Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) (Scottish Legal Complaints Commission) Order 2006 (Draft)

The Convener (Mr David Davidson): Good afternoon and welcome to the 34th meeting in 2006 of the Justice 2 Committee. I ask everybody to switch off mobile phones, pagers and anything else that goes “ping”.

The first three items of business concern affirmative Scottish statutory instruments. I welcome the Deputy Minister for Justice, Johann Lamont, and her officials: Louise Miller, Helena Janssen, Gillian Mawdsley and Phil Burns.

I invite the minister to speak to the first SSI—the draft Public Appointments and Public Bodies etc (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) (Scottish Legal Complaints Commission) Order 2006.

The Deputy Minister for Justice (Johann Lamont): Thank you, convener. Schedule 4 to the Legal Profession and Legal Aid (Scotland) Bill makes provision for the Scottish legal complaints commission, which the bill will establish, to be regulated by the Office of the Commissioner for Public Appointments in Scotland. However, the provision cannot have effect until the legislation is brought into force and the new body comes into being, which would mean that the commissioner could not take part in the process of overseeing the first round of appointments to the Scottish legal complaints commission.

Section 3(3) of the Public Appointments and Public Bodies etc (Scotland) Act 2003 contains an order-making power that caters exactly for these circumstances. A section 3(3) order provides for a body that is in the process of being established to be treated for the purposes of appointments to that body as if it were one of the specified bodies that fall within the commissioner’s jurisdiction. The draft order before the committee today would allow the commissioner to regulate the process for appointments to the new body before it is formally established. I invite the committee to agree that the draft order should be approved by the Parliament.

The Convener: As no member wishes to question the minister and her officials, I invite the minister to move motion S2M-5210.

Motion moved,

That the Justice 2 Committee recommends that the draft Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Office or Body as Specified Authority) (Scottish Legal Complaints Commission) Order 2006 be approved.—[*Johann Lamont.*]

Motion agreed to.

Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2006 (Draft)

Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 2) Regulations 2006 (Draft)

The Convener: I invite the minister to speak to the draft regulations.

Johann Lamont: Would it be helpful if I spoke to both sets of draft regulations at the same time?

The Convener: That is fine.

Johann Lamont: The central purpose of the two sets of draft regulations is to ensure that access to justice is provided by extending legal aid provision through assistance by way of representation to the variation and termination of football banning orders. Both sets of regulations are subject to the affirmative procedure.

I will deal first with the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No 2) Regulations 2006. Football banning orders were introduced under chapter 1 of part 2 of the Police, Public Order and Criminal Justice (Scotland) Act 2006. The 2006 act provided for a number of proceedings, where all civil and most criminal proceedings are already covered by the existing legal aid provisions. However, variation or termination of football banning orders arising as additions or alternatives to criminal conviction were not covered by existing legal aid provisions. The draft regulations make that legal aid provision.

We have taken the opportunity to include two further changes in the draft regulations. The first provides that ABWOR is available for proceedings before the pensions regulator tribunal, which was established under the Pensions Act 2004. The pensions regulator replaced the Occupational Pensions Regulatory Authority in April 2005 and is primarily concerned with protecting the benefits of members of work-based pension schemes. The second change ensures that the draft regulations update references to proceedings under part IV of the Parole Board (Scotland) Rules 1993 (SI 1993/2225) so that they refer to the current rules,

the Parole Board (Scotland) Rules 2001 (SSI 2001/315).

The draft Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2006 clarify that assistance by way of representation is the appropriate form of legal aid for applications to vary or terminate football banning orders and, as such, will be the only form of legal aid made available for such applications.

The Convener: As no member wishes to question the minister on either set of draft regulations, I invite her to move motions S2M-5209 and S2M-5208.

Motions moved,

That the Justice 2 Committee recommends that the draft Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2006 be approved.

That the Justice 2 Committee recommends that the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No. 2) Regulations 2006 be approved.—[*Johann Lamont.*]

Motions agreed to.

The Convener: I thank the minister and her colleagues for coming this afternoon.

Petitions

Limited Companies (Court Representation) (PE863)

13:54

The Convener: Petition PE863, in the name of Bill Alexander, urges the Scottish Executive to amend the Solicitors (Scotland) Act 1980 to allow limited companies to be given the right to apply for legal aid or the right to represent themselves in court. Papers have been circulated, among which is an e-mail from Mr Alexander. I remind members that we considered the petition previously on 7 November 2006 and agreed to write to the Deputy Minister for Justice on a number of issues that were raised. The response from the Scottish Executive has been circulated and hard copies have been placed at members' places. Have members had an opportunity to consider it?

Members: Yes.

The Convener: I invite the committee to consider how to proceed. Several options are open to us. The committee can note the matters that have been raised and the evidence that has been received and close the petition; seek further written evidence; seek further oral evidence from the petitioner, the minister or any other relevant group or individual; or take any other competent action that it thinks appropriate. I open that to discussion.

Colin Fox (Lothians) (SSP): I have read the materials. The issue is closely connected to our continuing discussion with the Executive on sections 25 to 29 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. The petitioner has identified an anomaly—I say that as somebody who is not usually accused of sticking up for limited companies. The law provides for people to have legal aid, which limited companies cannot obtain. Bigger companies can afford lawyers, whom the petitioner has said that smaller companies cannot afford.

I do not support the proposal in the petition that limited companies should have access to legal aid; that is not attractive. However, I support the suggestion in the petition that the Executive should pursue the matter and get back to us when it commences in March sections 25 to 29 of the 1990 act, as it said it would. The appropriate way to deal with the petition is to ask the Executive to pursue the issue and to get back to us when it commences those provisions. That is the most suitable route.

The Convener: I remind members that Bill Alexander says in his recent e-mail that he is not convinced that limited companies should be given

legal aid, but I take your point about representation.

Jackie Baillie (Dumbarton) (Lab): My initial reaction is to oppose extending legal aid to limited companies. That was the position that I outlined when we previously discussed the petition. I am slightly confused by Colin Fox's suggestion, because we wrote to seek confirmation that ministers would commence sections 25 to 29 of the 1990 act. They have confirmed that they intend to do so next March, so I am not clear what the Executive should get back to us on. The purpose of commencing those provisions is to enable a wider range of representation, because people will acquire new rights of audience. It will not mean that limited companies will be able to represent themselves. I am not altogether sure what the Executive would be required to get back to us about.

The Convener: If we cast our minds back to the Christmas Day and New Year's Day Trading (Scotland) Bill, we will recall that it defines which shops will and will not be able to open. It is justifiable to ask to what size of company the petitioner's suggestion would apply and how that would be defined. To decide that is not for the committee.

Bill Butler (Glasgow Anniesland) (Lab): I agree with Colin Fox and Jackie Baillie that we should not extend legal aid to limited companies. I agree with Jackie Baillie about the commencement of sections 25 to 29 of the 1990 act—I am not sure whether that takes us anywhere. I am interested in what other members have to say. We should not proceed with the legal aid proposal. To be fair, the petitioner agreed about that in his supplementary e-mail of 3 December.

Maureen Macmillan (Highlands and Islands) (Lab): I agree that the crux of the matter is representation in court or in a tribunal. The position that small businesses are in is the same for clubs, charities and voluntary organisations, which may be even more deserving than small businesses are of having the anomaly rectified. As Jackie Baillie said, it looks as if some movement will take place next year. I do not know what else the Executive can tell us.

14:00

Colin Fox: As all members know, the law that we are discussing was passed in 1990. The commencement of the provisions has been delayed by 16 years. Members will realise that March is awfully close to dissolution. Only a couple of weeks' delay would mean that commencement was delayed further into the next session.

My suggestion would ensure that the matter that the petition raises was added to concerns that we have raised previously, as it is related to them. As other members have said, the issue is about rights of audience. I do not want to go into the subject, but the anomaly identified by the petitioner could be removed by giving limited companies the chance not to represent themselves but to appoint people who are not necessarily lawyers to represent them, which the 1990 act covers. It is important to send a message to the Executive that the committee takes seriously the Executive's commitment to commence the provisions in March next year. The petition underlines the seriousness with which we treat the matter.

I notice from the correspondence that was circulated that a letter was sent on your behalf, convener, to the new Deputy Minister for Justice on 16 November. Has she replied? I am not aware that a reply is in my papers, but it might have been circulated separately.

The Convener: I will refer to the clerks. *[Interruption.]*

Colin Fox: I see that the reply is one of the papers in front of me.

The Convener: A fair bit of correspondence has taken place between the Executive and me on the committee's behalf.

Colin Fox: I am grateful for the minister's helpful reply.

Bill Butler: If Colin Fox is suggesting that we simply note the petition but write to the Executive to emphasise that the committee takes seriously the Executive's promise to commence sections 25 to 29 of the 1990 act in March, that is reasonable. We cannot look into the future and say that we may fall behind by a week or two and that the matter may fall into desuetude. We can emphasise that the committee expects the Executive to keep its promise to act on sections 25 to 29 round about March.

The Convener: If the committee wishes me to write to the minister, I suggest that I should highlight the range of issues and groupings that those sections will affect and about which members have expressed concern. We can ask her to take that on board and to respond to the committee if she feels so moved. Does the committee agree?

Members indicated agreement.

The Convener: What will we do with the petition? Will we close it, seek further evidence—a letter with an option to respond is not seeking evidence—or take oral evidence?

Jackie Baillie: Given what we have agreed, I suggest that we close consideration of the petition.

The Convener: Is that the committee's view?

Members *indicated agreement.*

Colin Fox: Is that on the basis of Bill Butler's suggestion that we close the petition but write a letter to emphasise our view?

The Convener: Yes. The committee has agreed to that action and the clerks have noted it.

Swords (Ban on Sale or Possession) (PE893)

The Convener: Petition PE893 is by Paul Macdonald and calls on the Scottish Parliament to oppose the introduction of any ban on the sale or possession of swords that are used for legitimate historical, cultural, artistic, sporting, economic or religious purposes. The petitioner has informed the committee that a large number of signatures has been added to his online petition since he submitted his petition to the Public Petitions Committee—the total number of signatures now stands at 2,290.

I invite the committee to consider how to proceed. We could note the matters that have been raised and consider the issues as part of our stage 1 report on the Custodial Sentences and Weapons (Scotland) Bill. If that option is pursued, the committee may wish to conclude consideration of the petition. The committee could also seek further written evidence on the matters that the petition raises; seek further oral evidence from the petitioner, the minister or any other relevant group or individual; or take any other competent action that it thinks appropriate. I open that to discussion.

Bill Butler: We should go for the first recommendation. Noting the petition means that any issue that it raises and which members wish to raise as we proceed with the parliamentary progress of the bill can be dealt with. On that basis, we should formally conclude consideration of the petition.

The Convener: Are we agreed?

Members *indicated agreement.*

The Convener: The committee has agreed to take the first option, which is to continue consideration of the issue as part of producing its stage 1 report on the bill and to conclude consideration of the petition.

Tribunals, Courts and Enforcement Bill

14:06

The Convener: Item 6 is the Tribunals, Courts and Enforcement Bill, which is United Kingdom Parliament legislation. A note from the clerk about the legislative consent memorandum on the bill has been circulated. The committee is invited to agree its approach to the memorandum and to note the timetable that will be required to stay in step with the Westminster parliamentary timetable. Correspondence from the Scottish Council of Jewish Communities has been circulated and hard copies placed at members' places.

In particular, the committee is asked to answer the questions that are listed in paragraphs 8 and 9 of the clerk's note. I will repeat those questions. Does the committee wish to seek oral evidence from the Minister for Justice and any additional oral evidence? Does the committee wish to seek written evidence from the National Galleries of Scotland, the National Museums of Scotland, the Law Society of Scotland, the Criminal Injuries Compensation Authority or the Criminal Injuries Compensation Appeals Panel? Does the committee wish to seek written evidence in addition to what has been suggested?

Bill Butler: The timetable that is described seems fine, although it is very tight. We should seek oral evidence from the minister and it might also be reasonable to hear oral evidence from Professor MacLeary. We could call for written evidence from the organisations that are listed, which would inform the committee's consideration of the matter. We should proceed in that fashion.

The Convener: Does the committee agree to that?

Members *indicated agreement.*

The Convener: That is the action that the clerks and I will take on the committee's behalf.

We move into private, as agreed previously.

14:08

Meeting continued in private until 15:41.

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