

# **JUSTICE 2 COMMITTEE**

Tuesday 16 January 2007

Session 2

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## JUSTICE 2 COMMITTEE

### 2<sup>nd</sup> Meeting 2007, 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)

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:

Johann Lamont (Deputy Minister for Justice)

Karen Whitefield (Airdrie and Shotts) (Lab)

#### CLERK TO THE COMMITTEE

Tracey Haw e

#### SENIOR ASSISTANT CLERK

Anne Peat

#### ASSISTANT CLERK

Steven Tallach

#### LOCATION

Committee Room 5



# Scottish Parliament

## Justice 2 Committee

*Tuesday 16 January 2007*

[THE CONVENER *opened the meeting at 14:08*]

### Christmas Day and New Year's Day Trading (Scotland) Bill: Stage 2

**The Convener (Mr David Davidson):** Good afternoon, ladies and gentlemen, and welcome to the Justice 2 Committee's second meeting in 2007, in session 2 of the Parliament. We have received apologies from Michael Matheson and I welcome Kenny MacAskill as his substitute for the meeting. I remind everyone to switch off mobile phones, pagers or anything that can go bleep. I welcome Karen Whitefield and Rodger Evans.

We turn to the Christmas Day and New Year's Day Trading (Scotland) Bill. Members should have copies of the marshalled list and groupings for today's consideration of amendments at stage 2. I welcome the Deputy Minister for Justice and her officials.

#### Section 1—Large shops not to open on Christmas Day or New Year's Day

**The Convener:** Amendment 1, in the name of the minister, is grouped with amendments 2 to 6. At the minister's request, I will move amendment 1; the minister has decided not to move the amendments in her name, but to allow a debate to take place we need someone to move amendment 1. If amendment 1 is agreed to, amendment 2 will not be called, as it will be pre-empted. I will now move amendment 1 and invite the minister to speak.

I move amendment 1.

**The Deputy Minister for Justice (Johann Lamont):** Thank you, convener, for your willingness to move amendment 1, which allows the committee to have a debate if it so wishes.

The committee should be aware that the Executive has not reached an agreed position on the bill. However, we want to make it possible for the committee to reflect the stage 1 report and debate, which were extremely helpful in setting out the issues that relate to the bill. To provide a focus for the debate, several amendments have been lodged. However, as the convener said, I have not come to the committee to move any of those amendments. Indeed, given that they identify different positions, it would be illogical for me to do

so. As I have said as an Executive minister, the Executive does not have any particular position on the amendments at this stage.

**Bill Butler (Glasgow Anniesland) (Lab):** On a point of order, convener. I hesitate to interrupt the minister, but I really must ask about this. Am I right in saying that you, convener, have moved the amendment formally and that the minister is simply seconding it?

**Johann Lamont:** No.

**Bill Butler:** What is the situation? Who is moving the amendment?

**The Convener:** We have taken advice on the matter. The amendments that are before the committee were lodged correctly through the parliamentary procedure. Amendment 1 had to be moved to stimulate a debate. The amendment is in the name of the minister, but she is not prepared to move it. As other members, including the member in charge of the bill, and the public and press were aware that there was to be a debate today, I decided to move amendment 1 so that that debate could take place. I invited the minister to speak about the amendments and the reasons why they were lodged, so that the committee would have an opportunity to discuss and debate the amendments. As far as I am concerned, as convener, because the procedure has gone so far down the line, we are obliged to create a situation in which the minister can explain her reasons and members will have an opportunity to debate the amendments.

**Bill Butler:** I am grateful for that clarification, because we need it on the record.

**Johann Lamont:** I genuinely do not intend to make life more difficult for committee members. The Executive's position was, as a minimum, to allow a debate to take place, with a range of options before the committee. I will come to those in a moment.

When the Parliament considered the bill at stage 1, there appeared to be cross-party support for action in relation to Christmas day, but there was an unresolved debate about new year's day—it appeared that members from all parties wished to explore that matter further. As you all know, the bill was agreed to at stage 1. The Executive did not declare a view at stage 1, precisely because it wanted the process of exploration to take place and to engage in that process, with the objective of securing the best possible legislation for Scotland by balancing the various legitimate interests. The Executive expected that amendments would be lodged at stage 2 that would give the Parliament an opportunity to express its views separately on the proposals for Christmas day and new year's day. That was said during the stage 1 debate. To ensure that any

amendments were well drafted, we had them prepared by parliamentary counsel, which is why they were lodged in my name.

The committee acknowledged at stage 1 that there are weaknesses on both sides in the evidence on the bill's impact on enterprise and tourism. Despite the three meetings of the ad hoc ministerial group on the matter, which was announced at stage 1, and discussions with the relevant sector, it remains extremely difficult to provide an evidence-based approach to the issue of new year's day trading.

14:15

The amendments would allow two approaches to be taken, by reading amendment 2 with amendment 3, or by reading amendment 2 with amendment 4.

Amendment 2 separates the ban on Christmas day trading from the ban on new year's day trading—that is common to both alternatives. Amendment 3 gives ministers the power to lay an order introducing a ban on new year's day trading. The trigger for the introduction of a new year's day ban would be a commencement order subject to the affirmative resolution procedure. That means that the Parliament would be given the opportunity to debate the ban before it came into effect. Ministers would have to submit a report to the Parliament before the draft order could be laid. That report would consider the economic impact and the impact on family life of trading on new year's day, and it would contain ministers' conclusions on whether the ban should be imposed. Amendment 3 requires ministers to give reasons for concluding that such an order is necessary. Those reasons could be reasons of principle as well as reasons deriving from empirical evidence about the economic impact and the impact on family life of trading on new year's day.

The alternative approach is represented by the combination of amendments 2 and 4. Amendment 4 gives ministers power to lay an order introducing a ban on new year's day trading. Again, the trigger for the introduction of a new year's day ban would be a commencement order subject to the affirmative resolution procedure, with the Parliament having the opportunity to debate the ban before it came into effect. In the case of amendment 4, there would be no requirement to produce a report to justify that. That would allow immediate action to protect vulnerable shop workers without the hurdle of a report, for which evidence might be difficult to gather.

The simplest approach of all would be the removal of the ban on new year's day trading from the bill without any alternative approach being

offered to protect the specialness of new year's day. That would be achieved through amendments 1, 5 and 6.

I hope that that explanation of the purpose and effects of the amendments is helpful to the committee.

**Bill Butler:** I am grateful to the minister for allowing parliamentary counsel to prepare the amendments so that they could be lodged and so that we could hold this debate. The amendments do certain things that I think are not necessary. I do not think that there is any reason whatever to do as amendment 2 suggests: basically, to decouple the bill or separate out new year's day and Christmas day. At stage 1, there was a clear majority in the Parliament and a clear will—in my view—as expressed in the stage 1 debate for both days to be kept together, for the bill to remain intact in that regard and for us to proceed in that fashion. Nothing has persuaded me otherwise in the intervening period.

The minister says—rightly—that the evidence is difficult to gather on both sides of the argument. I think that we all agree with that. That was perfectly clear from our evidence gathering. There is assertion and doubt on both sides but, on balance, I think that the best possible approach would be to keep the bill intact and to ensure that the ban is operative for both new year's day and Christmas day. I do not see any reason for us to do other than defeat the amendments. The idea of separating out the two days, but then offering a commencement order subject to the affirmative resolution procedure sometime in the future in a Parliament that some of us might not be in, is to equivocate where there is no need to equivocate. We can decide today, by rejecting the amendments, to send a clear message to the Parliament at stage 3 that the bill should remain intact.

On amendment 4, to debate a ban without taking evidence would seem worse than the approach behind amendment 3. Why debate a ban on new year's day, and perhaps commence it, without evidence? The body of evidence that we have received is just enough to come down on the side of retaining the bill intact and keeping the ban for both days. I will vote against all the amendments, because I do not think that they are necessary. The bill as it stands should proceed.

**Colin Fox (Lothians) (SSP):** In the stage 1 debate, the Parliament made it clear that it supported the general principles of the bill. During stage 1 consideration, the convener described the amendments that are in front of us today as wrecking amendments. Whether or not they are wrecking amendments, they take us backwards from the decision that the Parliament took at stage 1. All the amendments that are before us have as

a starting point the separation of new year's day from Christmas day. As far as I am concerned, that is just not on because it makes a mockery of the bill. During evidence taking, the committee took no evidence from anyone who wanted to open on Christmas day. If we reduce the bill to one that stops people doing something that they do not want to do anyway, we will make a laughing stock of the whole operation.

During the bill's passage so far, it has been clear that the debate is centred largely on new year's day. The committee has taken its view, which has been reported, as has the view that the Parliament took in the stage 1 debate. As far as I am concerned, that is where we stand. My understanding of stage 2 consideration is that it is about developing our understanding of the general principle; it is not about taking that principle, breaking it across our knees and starting on another one. I am afraid that I have no sympathy for any of the amendments in front of us and I will not support them.

**Jackie Baillie (Dumbarton) (Lab):** Although I am grateful to the minister and the ad hoc ministerial committee for giving us a third opportunity to debate the issues, I feel that the matter is not unresolved, either in the committee or in the Parliament, given that at stage 1 there was majority support for the bill to deal with Christmas and new year together. Because that is a fundamental principle of the bill, I, too, am opposed to all the amendments. I am sure that we will hear from the member in charge of the bill in due course.

**Maureen Macmillan (Highlands and Islands) (Lab):** I support what Bill Butler and Jackie Baillie have said. New year's day's status as a holiday is already being eroded, as was apparent on new year's day this year. Given that there are already commercial pressures for shops to open and for people to have to work when they do not particularly want to, I would be unhappy if Christmas day and new year's day were to be separated in the bill. I agree with my colleagues that the bill should be kept as it was and should not be separated into two elements, so I will not vote for any of the amendments.

**The Convener:** I call Karen Whitefield, who is the member in charge of the bill.

**Karen Whitefield (Airdrie and Shotts) (Lab):** I thank the convener for allowing me to attend the meeting and for giving me the opportunity to speak on the Executive's amendments.

The extensive correspondence that I have received since the vote on the stage 1 debate has made it clear to me that there is wide support throughout Scotland for my proposal, particularly among the shop workers whose families contacted

me this Christmas because their family members were being forced to work on new year's day and were being told that they would have no job if they chose not to do so. It is important that we remember that contrary to what some people might have us believe, my proposal is supported by many members of the business community and the retail sector—not just by employees, but by employers, too.

Throughout the process, I have always been happy and willing to listen to any legitimate concerns and arguments about the impact that my bill could have. Some people believe that it will have a negative impact on the Scottish economy and on tourism. Indeed, that seems to be the central concern of the amendments that the Executive has lodged. However, I am not at all convinced by those arguments.

Throughout the bill's progress, I have heard no concrete evidence that the bill will damage either the retail sector or Scottish tourism. In fact, the only evidence that we have received points to the opposite conclusion: the Scottish economy and Scottish tourism both continue to thrive during the festive period although, in recent years, only one large shop in Scotland—Debenhams—has chosen to open on new year's day. Has the widespread and, at the moment, voluntary closure of large shops affected the number of people who come to Scotland for the traditional hogmanay celebrations? I do not believe that it has. In fact, we might do better to legislate against the wind if we are looking to protect the Scottish tourism industry at new year. I jest on that point—in case anyone is confused.

I believe that there is no evidence to support the main reasoning behind the amendments; therefore, I urge committee members to reject them. They are, in effect, the same amendment in that they all seek to remove the new year's day holiday, either by removing it from the bill completely or by delaying its implementation until an unspecified date. The economic arguments in support of those positions are speculative at best, and at worst they can be seen as a deliberate attempt to scaremonger.

There is a choice to be made today, but that choice is not between a strong economy and a weakened one; neither is it between a thriving tourism industry and a damaged one. The choice is between the right of shop workers to have two days off each year when they can spend time with their families and friends and the right of some, but not all, large retailers to remain open for business 24/7 for 365 days a year. The committee can choose to protect the special nature of those two days for the people of Scotland, accepting that they are not just two more days on which we can go shopping and no different from the other 363

days in the year. The choice is between a reasonable request for some breathing space in the frantic rush of consumerism and a free-for-all that results in shop workers being pressurised to work on those special days.

I know the choice that I have made, and I hope that the committee will reflect on those comments and thoughts as it considers the amendments.

**The Convener:** It falls to me to wind up the debate and summarise what has been said. An ad hoc ministerial working group has been set up to find a way of answering some of the spoken and unspoken thoughts of those members of the Parliament who have experienced unease. As I have said all the way through the bill's progress, the bill is about restraint of trade; it is not about workers' rights, which would be simply a consequence arising from the restraining of trade on certain occasions.

We have heard from the deputy convener that weak evidence has been given on both sides of the argument on some aspects, especially regarding the economic aspect. I personally do not believe that any committee member should support a measure whereby the power to control the implementation of a bill would be held indefinitely into the future, given that there could be a change of Administration or circumstances. Frankly, that is a bit of a cop-out, although I understand the intent behind the Executive's amendments. I believe the minister when she says that she is seeking to give committee members choice. The committee and the Parliament will be aware that there will be an opportunity to introduce further amendments at stage 3, should members wish to do so. It will be up to the Presiding Officer to decide what amendments are permissible. I have allowed these amendments to be debated today on the basis of what was said in the chamber about the ad hoc working group and choices being brought forward by the Executive.

There are some members of the Parliament who do not feel that the bill as drafted is correct. I do not know anybody who wants to stop Christmas day closure—I have not heard any evidence of that—but there is an opportunity for members to lodge further amendments to improve the bill, or otherwise, and they can decide whether to support the bill at stage 3.

14:30

This is a unique situation in that the minister has said that the Executive will present us with choices. However, I suspect that the fact that ministers have not come to a collective view on the way forward is a coded message that they consider that to be work in progress. I am not asking the minister to respond to that; it is just my

suspicion. If that is the case, I remind the minister that if the Executive intends to do something in that regard, it must ensure that it sticks to the timetable for stage 3. To that end, I do not wish to press amendment 1, in the name of the minister. Does any other member wish to press amendment 1?

**Bill Butler:** Yes. I will press amendment 1.

**The Convener:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### AGAINST

Baillie, Jackie (Dumbarton) (Lab)  
Butler, Bill (Glasgow Anniesland) (Lab)  
Davidson, Mr David (North East Scotland) (Con)  
Fox, Colin (Lothians) (SSP)  
MacAskill, Mr Kenny (Lothians) (SNP)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**The Convener:** The result of the division is: For 0, Against 7, Abstentions 0.

*Amendment 1 disagreed to.*

*Amendment 2 moved—[Bill Butler].*

**The Convener:** The question is, that amendment 2 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### AGAINST

Baillie, Jackie (Dumbarton) (Lab)  
Butler, Bill (Glasgow Anniesland) (Lab)  
Davidson, Mr David (North East Scotland) (Con)  
Fox, Colin (Lothians) (SSP)  
MacAskill, Mr Kenny (Lothians) (SNP)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**The Convener:** The result of the division is: For 0, Against 7, Abstentions 0.

*Amendment 2 disagreed to.*

**The Convener:** The question is, that section 1 be agreed to. Are we agreed?

**Bill Butler:** No.

**Jackie Baillie:** Yes.

**Bill Butler:** Sorry, I meant yes. This is such a unique inversion of our roles, convener.

**The Convener:** Shall I ask the question again, for the benefit of the deputy convener?

**Bill Butler:** No, no.

**Jackie Baillie:** Yes, yes.

**Bill Butler:** I sit corrected.



**The Convener:** The question is, that section 1 be agreed to.

*Section 1 agreed to.*

*Sections 2 to 6 agreed to.*

#### After section 6

*Amendment 3 moved—[Bill Butler].*

**The Convener:** The question is, that amendment 3 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### AGAINST

Baillie, Jackie (Dumbarton) (Lab)  
Butler, Bill (Glasgow Anniesland) (Lab)  
Davidson, Mr David (North East Scotland) (Con)  
Fox, Colin (Lothians) (SSP)  
MacAskill, Mr Kenny (Lothians) (SNP)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**The Convener:** The result of the division is: For 0, Against 7, Abstentions 0.

*Amendment 3 disagreed to.*

*Amendment 4 moved—[Bill Butler].*

**The Convener:** The question is, that amendment 4 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### AGAINST

Baillie, Jackie (Dumbarton) (Lab)  
Butler, Bill (Glasgow Anniesland) (Lab)  
Davidson, Mr David (North East Scotland) (Con)  
Fox, Colin (Lothians) (SSP)  
MacAskill, Mr Kenny (Lothians) (SNP)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**The Convener:** The result of the division is: For 0, Against 7, Abstentions 0.

*Amendment 4 disagreed to.*

#### Section 7—Short title

*Amendment 5 moved—[Bill Butler].*

**The Convener:** The question is, that amendment 5 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### AGAINST

Baillie, Jackie (Dumbarton) (Lab)  
Butler, Bill (Glasgow Anniesland) (Lab)  
Davidson, Mr David (North East Scotland) (Con)  
Fox, Colin (Lothians) (SSP)  
MacAskill, Mr Kenny (Lothians) (SNP)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**The Convener:** The result of the division is: For 0, Against 7, Abstentions 0.

*Amendment 5 disagreed to.*

*Section 7 agreed to.*

#### Long title

*Amendment 6 moved—[Bill Butler].*

**The Convener:** The question is, that amendment 6 be agreed to. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### AGAINST

Baillie, Jackie (Dumbarton) (Lab)  
Butler, Bill (Glasgow Anniesland) (Lab)  
Davidson, Mr David (North East Scotland) (Con)  
Fox, Colin (Lothians) (SSP)  
MacAskill, Mr Kenny (Lothians) (SNP)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)

**The Convener:** The result of the division is: For 0, Against 7, Abstentions 0.

*Amendment 6 disagreed to.*

*Long title agreed to.*

**The Convener:** That ends stage 2 consideration of the bill. I thank the minister for her attendance.

**Jackie Baillie:** I ask for clarification on one point, convener, given your comments during the debate. If an amendment is unanimously rejected by committee members, is it likely that a similar amendment that is lodged at stage 3 will be selected for debate?

**The Convener:** That is a matter for the Presiding Officer. On occasion, the Presiding Officer has selected resubmitted amendments.

**Jackie Baillie:** Even when the proposal had been unanimously rejected by the lead committee at stage 2?

**The Convener:** That is a matter for the Presiding Officer.

**Jackie Baillie:** Okay. Thank you.

**The Convener:** I also thank Karen Whitefield for coming along.

## Custodial Sentences and Weapons (Scotland) Bill

14:35

**The Convener:** Item 2 is consideration of the Custodial Sentences and Weapons (Scotland) Bill. A letter from the Deputy Minister for Justice has been circulated to members. I ask members to consider motion S2M-5408.

*Motion moved,*

That the Justice 2 Committee considers the Custodial Sentences and Weapons (Scotland) Bill at Stage 2 in the following order: sections 43 to 46, section 1, schedule 1, sections 2 to 42, sections 47 to 49, schedule 2, section 50, schedule 3 and the long title.—[*Mr David Davidson.*]

*Motion agreed to.*

## Justice and Home Affairs in Europe

14:37

**The Convener:** Item 3 is consideration of a paper on justice and home affairs in Europe, which the clerks circulated. I invite members to consider the recommendations in paragraphs 11, 19, 23, 26 and 27.

The action point in paragraph 11 invites the committee

“to highlight its interest in these EU dossiers in its legacy paper to a successor committee.”

Are members content to do that?

**Members indicated agreement.**

**The Convener:** Paragraph 16 refers to the proposed framework decision on the protection of witnesses and individuals who co-operate with the judicial process. The issue is important and pertinent. At paragraph 19, the committee is invited to

“note the inclusion in the Commission’s Work Programme of a proposed Framework Directive on witness protection; and recommend to the European and External Relations Committee that this dossier be included in the European policy tracker.”

Do members agree with that course of action?

**Members indicated agreement.**

**The Convener:** The action point at paragraph 23 is:

“The Committee is invited to recommend to the European and External Relations Committee that the following dossiers be added to the European policy tracker as being of interest to the Justice 2 Committee—

Procedural Rights in Criminal Proceedings

Proposal for a Council Framework Decision on the European Supervision Order in Pre-Trial Procedures Between Member States in the European Union (the European Supervision Order)

Follow-up to the Green Paper on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union”.

Is the committee content with that approach?

**Members indicated agreement.**

**The Convener:** The next action point is:

“The Committee may wish to respond to the EERC by highlighting the importance of tracking EU policy proposals from an early stage, engaging with the Commission and working in collaboration with the Scottish Executive and Westminster counterparts as appropriate to ensure Scotland’s interests are effectively represented.”

Is the committee content with that?

**Members indicated agreement.**

**The Convener:** Further to that, the committee is invited to consider whether it wishes to make any further comments to the European and External Relations Committee in connection with the conclusions and themes of Mr Wallace's paper.

If committee members wish to raise no points, we now move into private for the final agenda item, as previously agreed.

14:40

*Meeting continued in private until 14:48.*



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