

# **JUSTICE 2 COMMITTEE**

Tuesday 6 February 2007

Session 2

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## **JUSTICE 2 COMMITTEE** **3<sup>rd</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)

### **CLERK TO THE COMMITTEE**

Tracey Haw e

### **SENIOR ASSISTANT CLERK**

Anne Peat

### **ASSISTANT CLERK**

Steven Tallach

### **LOCATION**

Committee Room 4



# Scottish Parliament

## Justice 2 Committee

*Tuesday 6 February 2007*

[THE CONVENER *opened the meeting at 14:00*]

### Custodial Sentences and Weapons (Scotland) Bill: Stage 2

**The Convener (Mr David Davidson):** Good afternoon, ladies and gentlemen. I welcome you to the third meeting in 2007 of the Justice 2 Committee. We have not received any apologies, as yet. I ask everybody to switch off their mobile phones, pagers or anything else that goes ping and that might interfere with the sound system.

This is day 1 of our stage 2 consideration of the Custodial Sentences and Weapons (Scotland) Bill. Following the committee's decision, we will consider the bill in the following order today: sections 43 to 46, on weapons; section 1; schedule 1; and sections 2 to 5. Members should have with them the marshalled list and groupings for today's amendments, as well as the detailed response from the Minister for Justice to the committee's stage 1 report. I thank the Deputy Minister for Justice for the Scottish Executive's response, and I welcome her and her officials to the committee.

#### Section 43—Licensing of knife dealers

**The Convener:** Amendment 1, in the name of the Minister for Justice, is grouped with amendments 2 to 7.

**The Deputy Minister for Justice (Johann Lamont):** Section 43 provides for the introduction of a licensing scheme for knife dealers. This group of amendments makes a number of changes to the scheme to ensure that it will be more effective in practice. The bill requires individuals who wish to operate as knife dealers to hold a licence. There is currently no direct link to the premises from which the dealer operates. Amendments 1 and 2 amend the bill to ensure that knife dealers' premises are identified in licences.

Our discussions with local authorities and others on the operation of a licensing scheme have identified the need for licences to specify the premises in respect of which they are held. Amendment 1 puts in place the same requirement for knife dealers' licences to specify the premises that applies to scrap metal dealers under section 28(4) of the Civic Government (Scotland) Act 1982. Amendment 2 is a technical amendment and is consequential to amendment 1.

Amendments 1 and 2 are important, first because they will simplify enforcement by both local authorities and police and, secondly, because they will enable local authorities to charge appropriately for licences covering multiple premises in order to recover the additional inspection, enforcement and other costs.

The bill requires a knife dealer's licence not only for selling but for any businesses that hire, offer or expose for sale or hire, lend or give non-domestic knives or swords. Discussions with stakeholders about how the licensing scheme might operate in practice have identified an unintended consequence of the licensing requirements. As introduced, the bill would require professional fencing coaches who lend swords to pupils for use during a training session to obtain a knife dealer's licence. We have made it clear that the bill is not intended to place undue burdens on legitimate sword users.

Amendment 3 enables the Executive to modify the licensing requirements, for instance to ensure that professional coaches will not require licences simply for the purposes of lending or giving swords to their pupils. Amendment 7 specifies the required parliamentary procedure for the use of those powers and is consequential to amendment 3. The provisions are intended to provide sufficient flexibility to enable us to deal with any similar problems that might arise in practice. Amendment 3 will also allow ministers to extend the scope of the licensing scheme should new forms of activity arise that might properly justify a requirement for a knife dealer's licence.

Amendments 4 to 6 aim to clarify the bill's licensing requirements in cases where separate premises are involved in the sale and dispatch of non-domestic knives, swords and so on. Amendment 4 is a technical amendment, consequential to amendments 5 and 6. Amendment 5 will ensure that a licence is required for any part of a knife dealing operation that is located in Scotland, even if the sale or dispatch occurs elsewhere. Amendment 6 will ensure that separate licences are required where the sale and dispatch happen in different local authority areas in Scotland. Those changes will enable local authorities to recover the inspection and enforcement costs where they arise. Identifying separate premises in that way will also enhance any police enforcement that is required.

This group of amendments will enable the licensing regime for knife dealers to be more effectively operated in practice. I urge the committee to support the amendments.

I move amendment 1.

*Amendment 1 agreed to.*

*Amendments 2 to 7 moved—[Johann Lamont]—and agreed to.*

*Section 43, as amended, agreed to.*

*Sections 44 and 45 agreed to.*

#### **Section 46—Sale etc of swords**

**The Convener:** Amendment 8, in the name of the minister, is in a group on its own.

**Johann Lamont:** The bill provides for the introduction of a ban on the sale of swords by enhancing ministers' existing powers to enable them to make an order prohibiting the sale of swords, subject to specified defences. The ban will build on the model of the existing statutory ban on offensive weapons in section 141 of the Criminal Justice Act 1988. However, we recognise that, unlike the items that are prohibited under section 141 at present, there are legitimate uses of swords, which should continue to be permitted.

The bill therefore allows defences for other purposes to be specified by order. Ministers have made it clear that they will use this power to provide exceptions to the ban on sale for legitimate religious, cultural and sporting purposes, including highland dancing, theatre, film, television, antique collecting, re-enactment and living history, fencing and those martial arts that are organised on a recognised sporting basis. However, although the commitment to providing exceptions for legitimate purposes is set out clearly in the policy memorandum and elsewhere, it does not feature in the bill itself. Amendment 8 therefore sets out in the bill the purposes for which the Executive intends that exceptions will be made. As I said, the additions to the existing defences under section 141, and other modifications of those powers in respect of swords, will address the issue of the legitimate use of swords.

The amendment reinforces the commitment that the Executive made in the policy memorandum to make exceptions for legitimate religious, cultural and sporting purposes. I urge the committee to support the amendment.

I move amendment 8.

**The Convener:** The minister is using powers that are retained by ministers to create these exemptions. If in the future someone came up with a purpose that could be deemed to be reasonable, could they apply directly to the minister of the day to seek an exemption for that purpose?

**Johann Lamont:** The advice that I am given is that the bill also provides for people to be able to make an application for exception. We are trying to respond to the anxieties that those who perceive legitimate uses for swords and so on expressed while, at the same time, not making the policy on the sale of weapons vulnerable.

**Maureen Macmillan (Highlands and Islands) (Lab):** Probably I should know the answer to this question, but are we doing the same for knives? I am thinking in particular about sgian dubhs. Will they be excluded from the scope of the bill?

**Johann Lamont:** My understanding is that that will be defined as a reasonable defence for possession. The defence would be that the purpose was cultural.

**Maureen Macmillan:** That is fine.

*Amendment 8 agreed to.*

*Section 46, as amended, agreed to.*

#### **After section 46**

**The Convener:** Amendment 9, in the name of the minister, is in a group on its own.

**Johann Lamont:** Amendment 9 raises the age of sale for crossbows from 17 to 18, which brings it into line with the age limit for the sale of non-domestic knives. Although—thankfully—crossbows are not currently seen as a problem in relation to violent crime in Scotland, there is a risk that the increase in the age limit for the sale of non-domestic knives to 18 would result in crossbows being regarded as more readily available, in which case they might be increasingly used in violent crime.

Amendment 9 replicates for Scotland section 44 of the Violent Crime Reduction Act 2006, which amended the Crossbows Act 1987 for England and Wales by raising the age at which a person may be sold or hired a crossbow from 17 to 18. I urge the committee to support the amendment.

I move amendment 9.

*Amendment 9 agreed to.*

**The Convener:** Amendment 10, in the name of the minister, is in a group on its own.

**Johann Lamont:** At stage 1, the committee considered the issue of weapons in prisons. We agree that possession of a weapon in prison should be a criminal offence. I am therefore happy to meet, through amendment 10, the commitment that the Executive made in its response to the committee's stage 1 report. At present, a prisoner who is found with a weapon in the confines of prison is not subject to the same provisions that members of the public at large are subject to. Although possession of a weapon is an offence under prison rules, governors have limited powers to punish prisoners for it. The police and procurators fiscal cannot bring criminal charges for possession of a weapon, although they may of course do so if the weapon was used and a minor or serious assault occurred.

The committee may recollect from evidence that the approach in amendment 10 was welcomed by

the Prison Officers Association. In 2005-06, 182 incidents that involved weapons were recorded in the Scottish Prison Service, 38 of which involved lock-back knives. That is clearly unacceptable. Amendment 10 will add a new section to the bill that will amend the Criminal Law (Consolidation) (Scotland) Act 1995 to make it an offence to possess a weapon in prison. I urge the committee to support the amendment.

I move amendment 10.

**The Convener:** I seek clarification on proposed new section 49C(3) of the Criminal Law (Consolidation) (Scotland) Act 1995, which lays out defences. The first defence is that the person had the item “for use at work”, which, one assumes, is to cover situations that might arise in a controlled workshop. The second is that the person had the item “for religious reasons”. Am I right that that would be for a religious ceremony, again in a controlled environment? The third defence is that the item was

“part of any national costume”.

Will you detail when somebody in prison is likely to be given permission to wear a full national costume?

**Johann Lamont:** The amendment replicates the defences for possession of a weapon in a public place although, notably, the defence of the item being a penknife is excluded, so the defences are tighter. The legal advice is that those defences should be included to ensure that the offence of possession of a weapon in prison is reasonable. Personally, I cannot imagine a set of circumstances in which a prisoner could wear national costume but, given that the advice is that the defence is necessary, I am working on the assumption that that may be a possibility.

The positive message is that amendment 10 is in the interests of making the prison environment safer for prisoners and prison officers. The amendment is important and, on that basis, I hope that it will be supported.

**The Convener:** Thank you for the clarity. I presume that such matters will be left to the judgment of prison governors, should an application be made within the rules.

**Johann Lamont:** As I said, prison governors at present have limited powers to deal with someone who is caught in possession of a knife, so they already judge whether something is against prison rules. The important point is that we are making possession of a weapon in prison a criminal offence, which therefore means that such matters will be tested in the courts.

*Amendment 10 agreed to.*

## **Section 1—The Parole Board for Scotland**

**The Convener:** Amendment 11, in the name of the minister, is grouped with amendment 12.

**Johann Lamont:** Amendments 11 and 12 will make the bill’s description of the Parole Board for Scotland’s functions more accurate. In compliance with the requirements of the European convention on human rights, decisions about whether prisoners are suitable for release must be taken by an independent court-like body. In Scotland, that is the Parole Board for Scotland. In practice, the board’s decision whether an offender should be released on licence is based on an assessment of the risk that the offender poses and the requirements of legislation. If the board concludes that the risk that is posed is acceptable, the Scottish ministers are obliged to release him or her on licence.

At present, section 1(2) of the bill does not describe that function properly. In keeping with the current legislation, which dates from 1993, it says that the board

“has the function of advising ... Ministers”.

Although that was true in 1993, the legal framework has changed and it is now accurate to say that the board will direct ministers. Of course, most of the directions will be on the release of prisoners whose cases are referred to the board, as that is the principal function of the board, but other situations will arise in which directions are made, such as when licence conditions are varied after a prisoner has been released on licence. Amendments 11 and 12 will make that clear.

I move amendment 11.

*Amendment 11 agreed to.*

*Amendment 12 moved—[Johann Lamont]—and agreed to.*

*Section 1, as amended, agreed to.*

*Schedule 1 agreed to.*

*Sections 2 to 5 agreed to.*

**The Convener:** That concludes day 1 of stage 2 consideration of the bill. I thank the minister and her colleagues for coming along this afternoon.

**Johann Lamont:** Thanks. See you next week.

**The Convener:** We look forward to it.

## Prisoner Escort and Court Custody Services Contract

14:16

**The Convener:** Item 2 is on the prisoner escort and court custody services contract. Members have a note by the clerk and the post-implementation review of the contract.

**Michael Matheson (Central Scotland) (SNP):** I have a few comments. I missed the committee's initial consideration of this issue, but when I was reading the note a number of questions came to mind. I was taken by the point in paragraph 5 that Reliance is currently in negotiations to vary the existing contract. That raises a number of issues, particularly regarding the basis of the projected numbers on which the contract was originally based. The note suggests that Reliance is dealing with a great deal more prisoner movements than was anticipated.

That raises questions about the contract, which was meant to be worth £126 million over seven years. Given that a balancing payment is made at the end of the year, the contract could be worth considerably more than that. Given that a variation is being considered, why was there such a significant underestimating of the number of prisoner movements that Reliance would deal with? How much is the balancing payment that Reliance receives at the end of the year for the number of prisoner movements in which it is involved and does that payment increase significantly the overall value of the contract?

The Scottish information commissioner made a number of points about the confidentiality clauses in the contract, which he does not believe represent best practice in public contracts. In the negotiations that the SPS is having with Reliance about the variation to the contract, will it ensure that the variation is not subject to the same confidentiality clause that the information commissioner criticised? Is it negotiating to have some of the areas exempted from the confidentiality clauses that were originally in the contract, for which the commissioner criticised Reliance? I thought that it would be worth flagging up those points, which merit further consideration.

**Jackie Baillie (Dumbarton) (Lab):** On the latter point, I support what has been said, not least because the information commissioner is clear that he would expect the disclosure for private contracts in the delivery of public services to be of the same standard that we would expect from public services. I assume that, when a private contractor undertakes a service for the Executive, the performance reporting requirements are a matter of public record. Anything else would be the

exception rather than the rule. However, we need to test that assumption with the Executive. If we test the general point, that will cover us for the future.

**Bill Butler (Glasgow Anniesland) (Lab):** I share the concerns that Michael Matheson and Jackie Baillie expressed. Jackie Baillie mentioned the point that is made in paragraph 20 of the clerk's paper:

"The Commissioner commented that private companies delivering public services should be scrutinised to the same level as public services."

There is no valid argument against that. We should test the point and raise the outstanding issues in writing with the minister and/or the SPS, as appropriate. It would worry me if the variation that is sought increased the area that is covered by confidentiality. That area should be diminishing, and confidentiality should be the exception, not the rule. I agree with Michael Matheson and Jackie Baillie about that.

**Tracey Hawe (Clerk):** For information, I understand that some of the terms of the contract variation will be placed on the SPS's website when the negotiations are concluded. However, I am not sure how detailed that information will be.

**The Convener:** Given that it is late in the parliamentary session and that we are talking about the Executive's procedures, it is my view that we should write to the SPS and the minister to get clarity on the points that have been raised. We should ask for a progress report on what is on the table for discussion—in general terms, as Jackie Baillie put it—and the principles of the contracting system.

**Maureen Macmillan:** This might be an aside, but for a long time I have been asking the Executive to consider using video links between prisons and the courts instead of having an escort service transport people who appear on remand between the prison and the court. I do not know whether it is appropriate to mention that in our deliberations on reviewing the contract, but it is important to consider other ways in which prisoners can engage with the courts. There have been pilots of video links elsewhere and the system has been used in Northern Ireland. It would be a particular benefit in rural situations.

**The Convener:** Apart from the costs, obviously, there is the issue of security for certain prisoners.

**Maureen Macmillan:** I do not know why pilots have not been rolled out.

**The Convener:** Does the committee agree to mention that in our letter?

**Members indicated agreement.**



**The Convener:** I thank members for their clear comments. Any information that we get can be included in our legacy paper. A future justice committee can continue with the work, but at least the initial work will have been done. Do members agree that we should include the matter in our legacy paper?

**Members** *indicated agreement.*

## Serious Crime Bill

14:24

**The Convener:** Item 3 is the Serious Crime Bill, which is United Kingdom legislation. The legislative consent memorandum on the bill was referred to the committee. A paper has been circulated that sets out a possible timetable for consideration and I invite the committee to agree an approach to the bill.

There are a couple of questions. First, do we wish to take oral evidence from the Minister for Justice? Secondly, do we wish to seek oral or written evidence from anyone else?

**Bill Butler:** I think that the clerk's suggested timetable is appropriate. I agree that we should take oral evidence from the Minister for Justice, but I am minded to suggest that we should seek only written evidence from other organisations that have an interest in the LCM. We should proceed on that basis.

**The Convener:** We will be pretty tightly pushed for time, but I believe that the minister might be able to make herself available to the committee. I will ask the clerk to send letters on the committee's behalf to those organisations that are listed in paragraph 10 of the clerk's paper. Are there any other organisations that members feel should be added to that list?

In that case, we will proceed in the way that Bill Butler desires.

## Subordinate Legislation

### **Drugs Assessor (Qualifications and Experience) (Scotland) Regulations 2007 (SSI 2007/8)**

14:26

**The Convener:** Item 4 is subordinate legislation. We have three negative instruments to consider. Members should note that the Subordinate Legislation Committee has drawn the first of those to our attention. Do members have any comments on the regulations? If not, are members content to make no recommendation on the regulations?

**Members indicated agreement.**

### **Antisocial Behaviour (Fixed Penalty Offence) (Prescribed Area) (Scotland) Regulations 2007 (SSI 2007/15)**

**The Convener:** Do members have any comments on the second instrument? My only comment is that I understand that Tayside police are very encouraged by what has happened so far. Are members content to make no recommendation on the regulations?

**Members indicated agreement.**

### **Tenements (Scotland) Act 2004 (Prescribed Risks) Order 2007 (SSI 2007/16)**

**The Convener:** Do members have any comments to make on the final instrument? If not, are members content to make no recommendation on the order?

**Members indicated agreement.**

**The Convener:** Before closing the meeting, I remind everyone that the deadline for lodging amendments to sections 6 to 20 of the Custodial Sentences and Weapons (Scotland) Bill is noon on Thursday 8 February. I appeal for early notification of amendments that are to be lodged with the clerks. I thank members for their attendance this afternoon and now close the meeting.

*Meeting closed at 14:27.*

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