

JUSTICE COMMITTEE

Tuesday 5 February 2008

Session 3

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JUSTICE COMMITTEE **4th Meeting 2008, Session 3**

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*Paul Martin (Glasgow Springburn) (Lab)
*Stuart McMillan (West of Scotland) (SNP)
*Margaret Smith (Edinburgh West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)
Marlyn Glen (North East Scotland) (Lab)
John Lamont (Roxburgh and Berwickshire) (Con)
Mike Pringle (Edinburgh South) (LD)

*attended

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 5 February 2008

[THE CONVENER *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I remind everyone to switch off their mobile phones. There is a full turnout and no apologies have been received.

The first item is a decision on whether to take in private item 3, which is the paper on our approach to consideration of the Judiciary and Courts (Scotland) Bill. Normally, such items are taken in private. Is that agreed?

Members indicated agreement.

Subordinate Legislation

Criminal Procedure (Scotland) Act 1995 Compensation Offer (Maximum Amount) Order 2008 (SSI 2008/7)

The Convener: Item 2 relates to subordinate legislation. There are two negative Scottish statutory instruments for consideration. The first is SSI 2008/7. As members have no comments, are they content to note the instrument?

Members indicated agreement.

The Convener: My one comment is that the order enables a compensation offer of £5,000 to be made by the procurator fiscal. I personally consider it unsatisfactory that compensation of £5,000 can be payable without anyone having a conviction recorded against their name. However, the matter was dealt with in earlier legislation. I have made it clear that I do not think that it is the function of the committee to seek to thwart the wishes of the Parliament, and the Parliament voted through the principal legislation unanimously. Therefore, I, too, am content to note the instrument.

Bill Butler (Glasgow Anniesland) (Lab): That is very consensual and also very sensible.

Discontinuance of Legalised Police Cells (Scotland) Rules 2008 (SSI 2008/8)

The Convener: The second instrument on the agenda is SSI 2008/8. After the papers were issued for the meeting, the clerks were advised that the instrument is to be revoked. A letter from Scottish Prison Service officials that explains the position has been received and circulated. Members therefore do not need to comment—they can merely note that a revocation order will be made in due course.

Members may wish to comment on the correspondence that has been received, but in any event there is not much that we need to do about it.

Bill Butler: I agree that there is not much that we can do, but it seems strange that a day before the committee was to look at the instrument the SPS states that a revocation order will be made. That is rather puzzling. Can we ask that, in future, such short notice of a revocation order is avoided at all costs?

The Convener: The relevant question to ask is: what subsequent information became available that necessitated the SPS's letter of 4 February?

John Wilson (Central Scotland) (SNP): Like Bill Butler, my curiosity has been aroused by the fact that a cabinet secretary laid before the

committee a set of rules that has been revoked in a letter from the SPS. Surely the cabinet secretary should be telling us about that rather than the SPS. I seek clarification about who is entitled to revoke instruments that are laid before the committee.

The Convener: The revocation order will, in fact, come in the cabinet secretary's name, but he may wish to be made aware of the issue.

John Wilson: My point is that although the instrument was laid by the cabinet secretary, we have nothing from him revoking it; we have a letter from the SPS. My argument is that if the cabinet secretary lays an instrument, it should be the cabinet secretary who revokes it; we should not be basing our decisions on a letter from the SPS. Are we opening the door to allow any other organisation that may be the subject of an order to say, "We are asking for the instrument to be revoked, so we do not want the committee to consider it"?

Bill Butler: I agree with a lot of what John Wilson said but, given that the SPS would not say that a revocation order will be made without the cabinet secretary being aware of that—at least informally—and agreeing to it, it is in order that we inquire as to why circumstances changed so dramatically and so suddenly.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): John Wilson has raised a valid point. I would like clarification on what the changes were—they seem to have taken place within a matter of days. Perhaps we should consider having an understanding between the committee and the cabinet secretary that, if he lays an instrument before us and an organisation that is attached to the justice department—the SPS is an arm's-length body, but it is still attached to the department—requests that it be revoked, the revocation request should come from the cabinet secretary himself, with an explanation.

The Convener: I propose to write to the cabinet secretary to ask for an explanation of the information that became available that necessitated the correspondence from the SPS, and what the protocol will be for the future. Is that agreed?

Members indicated agreement.

Margaret Smith (Edinburgh West) (LD): You have asked the main question, convener: what new information came to light that necessitated the change? However, my colleague Liam McArthur had intimated to the clerks that he wanted to come to the committee to talk about the rules' impact on Orkney, and I suspect that one of the things that came to light was that local members suddenly became aware of the implications of the rules for remote parts of the

country. Perhaps there is a practical reason why cells need to be available at any given time, even if only for a short period, in parts of the country that are sometimes snowbound or weather bound.

I would like to ask what consultation was undertaken on the rules before they were put together. If the new information that came to light is of the kind that I described, it would not have taken a great deal of thought from anybody to realise that the rules would have such practical impacts on remote and island communities, which would have to be taken into account. I would like to know what consultation the SPS undertook before it put the rules together, what responses it got and why it realised the consequences as things went on. I suspect that the new information that came to light was perfectly easily available earlier on in the process.

The Convener: With all due respect to Liam McArthur, if the situation was obvious to him, it should have been obvious to the Scottish Prison Service. We will make the appropriate inquiry.

Paul Martin (Glasgow Springburn) (Lab): We have raised points on the specifics of the situation, but I have a procedural issue that I have raised previously. A practice has started to creep in whereby, when we request information from the cabinet secretary, we receive responses from the various agencies. That is poor practice. I would have raised the same matter with the previous Minister for Justice if it had arisen. If we ask the cabinet secretary for a response, it should come directly from him, although I appreciate that he might get his civil servants to prepare it for him. Poor practice has crept in, and it is important that we make that point at the same time as we make our points about the rules.

The Convener: I agree. We will proceed on that basis. In the meantime, we simply have to note that a revocation order will be made in due course.

We now move into private in accordance with our earlier agreement.

10:09

Meeting continued in private until 10:15.

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