

JUSTICE COMMITTEE

Tuesday 16 December 2008

Session 3

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CONTENTS

Tuesday 16 December 2008

Col.

DECISION ON TAKING BUSINESS IN PRIVATE	1475
SUBORDINATE LEGISLATION	1476
European Communities (Service of Judicial and Extrajudicial Documents) (Scotland) Amendment Regulations 2008 (SSI 2008/372).....	1476
Justice of the Peace Court (Sheriffdom of Glasgow and Strathkelvin) Amendment Order 2008 (SSI 2008/374)	1476
Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2008 (SSI 2008/377)	1477
Police Pensions (Amendment) (Scotland) Regulations 2008 (SSI 2008/387).....	1480
Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2008 (SSI 2008/391)	1481
Insolvency (Scotland) Rules 1986 Amendment Rules 2008 (SSI 2008/393)	1482

JUSTICE COMMITTEE

31st Meeting 2008, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)

*Angela Constance (Livingston) (SNP)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Nigel Don (North East Scotland) (SNP)

*Paul Martin (Glasgow Springburn) (Lab)

*Stuart McMillan (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)

John Lamont (Roxburgh and Berwickshire) (Con)

Mike Pringle (Edinburgh South) (LD)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 16 December 2008

[THE CONVENER *opened the meeting at 10:16*]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I open the meeting with the usual reminder that mobile phones should be switched off.

Under item 1, I ask the committee to agree to take in private item 3, which is consideration of whether to accept written evidence that was received after the deadline for the submission of evidence on the Offences (Aggravation By Prejudice) (Scotland) Bill.

Members indicated agreement.

Subordinate Legislation

European Communities (Service of Judicial and Extrajudicial Documents) (Scotland) Amendment Regulations 2008 (SSI 2008/372)

10:17

The Convener: Item 2 concerns subordinate legislation. There are six negative instruments for consideration today.

The Subordinate Legislation Committee raised no points on the first instrument. Do members have questions on the regulations, or are they content to note them?

Bill Butler (Glasgow Anniesland) (Lab): The regulations are self-explanatory and I am content.

The Convener: No one is contrary minded. Do members agree to note them?

Members indicated agreement.

Justice of the Peace Court (Sheriffdom of Glasgow and Strathkelvin) Amendment Order 2008 (SSI 2008/374)

The Convener: The Subordinate Legislation Committee drew the order to the committee's attention on the ground that there had been a failure to follow normal drafting practice, but not so as to affect the order's validity or operation. Do members have any questions on the order, or are they content to note it?

Robert Brown (Glasgow) (LD): I have an observation. We only just dealt with the principal order, which concerned the amalgamation of the district courts in the sheriffdom. It seems a little odd, to say the least, that we should be faced with an amendment order within two or three weeks. It does not give great confidence that the Scottish Government dealt with the matter in a cohesive way. Is there any further background to why the transfer of property, rights and liabilities was missed out?

The Convener: It is quite straightforward: the Government simply omitted to deal with premises, which is far from satisfactory. Is the committee's mood to seek an explanation in writing from the Cabinet Secretary for Justice?

Bill Butler: We should seek an explanation, but, as a former member of the Subordinate Legislation Committee, I must say that such things happen from time to time and we should not get overexcited.

The Convener: We will not get overexcited, but we will ask for an explanation. Is that agreed?

Members indicated agreement.

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2008 (SSI 2008/377)

The Convener: The Subordinate Legislation Committee raised no points on the rules. Do members have any questions on them?

Robert Brown: I have some concerns about the adequacy of the background information on these rules, the justification for which seems scanty. I am not against the proposal to make mobile phones prohibited articles—perhaps we should have considered doing so some time ago—but, at the same time as there was publicity about the matter, there was also publicity about violent PlayStation games, for example. One can envisage a number of other issues in the background.

The use of mobile phones by prisoners is an important issue, and I would like to see a more substantial justification of how the problem has arisen at this stage and why it is necessary to introduce a separate statutory instrument now. I would also like to find out whether the Scottish Government plans a more comprehensive review of the rules—perhaps they will be dealt with in due course under the proposed criminal justice and licensing bill. It is unsatisfactory that the matter has been dealt with in this way. Are computers allowed in prison or not? Are there issues with e-mail access? A number of other issues arise, about which I would like to know more from the Government.

The Convener: To be honest, I am astounded that action on mobile phones was not taken years ago. It seems to me a given that those who are behind bars should not have access to them, for the simple reason that they would have the opportunity thereby to continue their criminal enterprises. For example, there was an episode in which a prisoner used a mobile phone to encourage violence against a third party outside the prison. The matter should have been dealt with some years ago—many years ago, in fact.

Bill Butler: Robert Brown makes some telling points—as do you, convener. We should write to the cabinet secretary asking for clarification on the matters that have been raised. The criminal justice and licensing bill is on its way. Although we do not want to prevent the rules from coming into force, we need a response from Mr MacAskill on the matters that have been raised.

The Convener: I should mention to the committee that a paper dated 15 December, which answers some of our questions, has only just now been put before me. I propose to circulate it to the committee later. Nevertheless, having scanned the document in the time available to me, my initial reaction is that certain questions remain

unanswered. Dependent on what Angela Constance has to say, we may inquire further.

Angela Constance (Livingston) (SNP): My understanding is that, in practice, mobile phones are contraband. I have never known an establishment in which they were allowed. The point certainly requires clarification, but I wonder whether this is a case of the rules catching up with practice. Prisoners were certainly not allowed mobile phones when I was a prison social worker, although mobiles, among other things, were occasionally—or not so occasionally—smuggled into prisons.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Angela Constance is right, to my knowledge. If the rules come into force, it would become a criminal offence for a prisoner to have a mobile phone in their possession, whereas, at present, if a prisoner is found with a mobile phone, perhaps some perks that they have earned are taken away.

The Convener: Committee members are well aware of the difficulties that arise in prison discipline due to the operation of the European convention on human rights and the fact that prison governors are no longer considered independent tribunals. That is another issue.

Angela Constance: Computers and, in particular, violent Xbox games such as Grand Theft Auto or whatever—members can see that I am really up to date with all that—raise interesting issues. I do not think that they are routinely considered contraband, but we are tapping into similar issues to do with pornography. I am not averse to all such issues being looked at. I think that members will find that pornography is not considered contraband in prisons—it can be accessed within Her Majesty's institutions.

Xbox games contain some interesting scenes that can be revisited. In Grand Theft Auto, a player can beat up a prostitute, and that scene can be revisited. That is rather unhelpful for certain types of offenders, whose heads we are trying to get into and change. That was an issue in one of the institutions that I worked in latterly—I will not name it.

The Convener: It certainly seems highly unedifying.

Bill Butler: The rules close off what has been seen as a legal loophole, although, as Angela Constance and other committee members have said, other loopholes may still exist. I hope that the paper from the cabinet secretary gives members—including the convener—some comfort. However, if there are other areas that the convener or committee members think require investigation and clarification, we should pursue them.

Robert Brown: I do not think that anyone round the table is against the proposal to extend the definition of “prohibited article” to mobile phone possession and usage and to add a criminal sanction. Unlike committee members who have some experience of these issues, I make no claim to be an expert on prison rules, but I wonder whether they ought to be reviewed in the light of developing technology and different practices and challenges in prisons. I can go only on newspaper reports on the issues that we have been discussing. There are specific issues to do with drugs, for example.

I wonder whether the prison rules ought to be reviewed by the Scottish Government. Among other things, if the rules were in a code, if you like, that would get round any ECHR issues, which the convener rightly touched on—it would be a different sort of ball game. That should be the nub of what we say to the Government. Perhaps we can inquire whether there is to be a formal, comprehensive and considered review of the prison rules.

The Convener: The Government has to some extent anticipated us. In the paper before me it indicates that a full review of prison rules is being undertaken. The difficulty, however, is that the review is unlikely to be completed before 2010. I will arrange for the clerks to copy to committee members the Government’s paper today and also to copy to them—probably tomorrow—a draft letter. Thereafter, if members wish to pursue issues, they can feed those back through the clerks and we will amend the letter accordingly. That would be the most sensible procedure.

Paul Martin (Glasgow Springburn) (Lab): I understand that a review is taking place, but did you say that it will take a further 12 months? That is a considerable period, given that the review is focused on communication issues and technology, in which significant advances have been made. Twelve months is a particularly lengthy period. Perhaps the review could be brought forward so that we can consider the issues in more detail sooner.

The Convener: You are guilty of understatement, because the review is likely to take more than 12 months. While that strengthens your argument, I should say that the review will not be restricted to the aspects of technology that we are discussing today.

Bill Butler: Following on from Paul Martin’s comments, I propose that the committee consider conveying to the cabinet secretary our wish that, if possible, the period of time for the review should be telescoped and matters dealt with more expeditiously. Further, it might be worth while our asking the cabinet secretary—probably through the convener—whether legal loopholes that are

similar to the one we are considering today could be dealt with by regulation in the meantime. That would be an efficacious approach. However, the review has to be quicker, if that is humanly possible.

The Convener: That is generally agreed. The Government’s paper will be copied to committee members, along with the draft letter, once the clerks have had the opportunity to prepare it. Thereafter, committee members can submit any additional matters that they wish to raise, and the clerks will attempt to incorporate them into the letter. Is that agreed?

Members indicated agreement.

Police Pensions (Amendment) (Scotland) Regulations 2008 (SSI 2008/387)

10:30

The Convener: The Subordinate Legislation Committee drew the regulations to the attention of the committee on the grounds that it sought and received an explanation from the Scottish Government of the meaning and effect of regulations 1(3)(b) and 19. The Subordinate Legislation Committee subsequently agreed that it was satisfied with that explanation.

The Subordinate Legislation Committee also noted that this is the 21st time that Police Pensions Regulations 1987 (SI 1987/257) have been amended, and recommended that the Scottish Government should consider making future amendments by way of consolidation. Do members have any questions, or are they content to note the regulations?

Bill Butler: I agree with the Subordinate Legislation Committee that consolidation needs at least to be considered. The principal regulations have been amended for the 21st time. Well, happy birthday and all that, but that is far too many. Consolidation is a better way forward.

The Convener: I agree.

Nigel Don (North East Scotland) (SNP): I endorse Bill Butler’s comment. Not only is this the 21st time that the principal regulations have been amended, but it now takes 44 regulations to amend them. My point is that if I had wanted to scrutinise the regulations thoroughly, that would not have been possible. Somebody somewhere presumably has a well-thumbed copy that they need to get into print. The whole thing should be consolidated. I suggest that otherwise the regulations are, in principle, unworkable.

Robert Brown: Over the past couple of days, problems in other pension schemes in the United Kingdom have been in the news. My colleague Vince Cable recently gave evidence in the House

of Commons on the issue. Are we certain that the police pensions scheme is not one of the schemes affected by the calculation problem? I do not recall it being mentioned, but I would like to be certain.

The Convener: My understanding is that funding has been provided to deal with any short-term shortfall in the adequacy of the fund. However, it might be appropriate to ask for the updated position in respect of the longer term.

Do we agree to note the regulations as they stand and to recommend to the Scottish Government that any future amendments should be dealt with by way of consolidation? Do we also agree to ask, by correspondence, about the present situation with regard to the adequacy of the fund?

Members *indicated agreement.*

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2008 (SSI 2008/391)

The Convener: No points were raised by the Subordinate Legislation Committee. As members have no questions, are they content to note the order?

Members *indicated agreement.*

**Insolvency (Scotland) Rules 1986
Amendment Rules 2008 (SSI 2008/393)**

The Convener: No points were raised by the Subordinate Legislation Committee. As members have no questions, are they content to note the rules?

Members *indicated agreement.*

10:34

Meeting continued in private until 11:57.

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