

JUSTICE COMMITTEE

Wednesday 3 June 2009

Session 3

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CONTENTS

Wednesday 3 June 2009

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| | |
|---|-------------|
| SUBORDINATE LEGISLATION..... | 2027 |
| Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) | |
| Amendment Order 2009 (Draft)..... | 2027 |
| Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 (Draft) | 2029 |
| Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) | |
| Order 2009 (Draft)..... | 2030 |
| Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2009 (Draft) | 2030 |

JUSTICE COMMITTEE

18th Meeting 2009, 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)

*Stewart Maxwell (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

THE FOLLOWING GAVE EVIDENCE:

Kenny MacAskill (Cabinet Secretary for Justice)

Shona Robison (Minister for Public Health and Sport)

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 3

Scottish Parliament

Justice Committee

Wednesday 3 June 2009

[THE CONVENER *opened the meeting at 12:00*]

Subordinate Legislation

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2009 (Draft)

The Convener (Bill Aitken): Good morning, ladies and gentlemen. Today's meeting is an additional one that has been convened as a result of pressure of business, to deal with four Scottish statutory instruments under the affirmative procedure. I remind everyone that mobile phones should be switched off. Cathie Craigie has been delayed at another committee meeting and might join us later.

Agenda item 1 is evidence from the Minister for Public Health and Sport, Shona Robison, and her officials on the draft amendment order. I draw members' attention to the order and the cover note. The Subordinate Legislation Committee did not bring any matters to our attention. I welcome Shona Robison, who is accompanied by the Scottish Government officials Dave McLeod, policy administrator with the health workforce directorate, and Kirsty McGrath, branch head with the solicitors health and community care division. Minister, do you wish to make an opening statement?

The Minister for Public Health and Sport (Shona Robison): Briefly.

The Convener: That would be very welcome.

Shona Robison: I ask the committee to consider the draft Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2009, which will add to the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003 provisions on employment or work that is concerned with the provision of social care services on a one-to-one basis for adults at risk. For added clarity, the amendment order also provides a definition of the term "social care service".

Following audit compliance work by Disclosure Scotland, it came to light that some positions fall outwith the criteria that are set out in current legislation for the higher levels of disclosure check, as there is no defined meaning of a social care service. There were also inconsistencies in the level of checks that were being sought and

received by some organisations, which mistakenly believed that they were eligible to seek enhanced disclosure checks. That means that, because of a misinterpretation of existing regulations, there are individuals working in the social care sector who until recently have had enhanced disclosure checks but who can no longer have them.

The types of positions in services that fall outwith the present criteria include those involving advocacy support, befriending, social inclusion-type support and homelessness support. The issue also applies to services that are provided because of age or condition, which means disability, health or age-related circumstances. We recognise that a significant degree of trust and responsibility goes with such work, whether it is paid or unpaid. We believe that, if such work often places the worker in a position in which they have unsupervised one-to-one contact with adults who are at risk, it is appropriate that the organisation should be able to seek the type of information that is afforded by an enhanced disclosure check as part of its recruitment procedures.

The main beneficiaries will be voluntary and charitable sector organisations. I am sure that we all agree that such organisations provide valuable support and assistance that sustain adults who are at risk in the community and help to reduce social isolation. We all welcome that work, much of which is done by unpaid volunteers. The voluntary sector has endorsed the proposal to amend the secondary legislation to provide continuity and to create a bridge between the current legislation and the implementation of the Protection of Vulnerable Groups (Scotland) Act 2007. The order will ensure that some of the most at-risk adults in our society can have peace of mind that they will continue to receive the support that they need from individuals who have been checked appropriately.

I hope that that short explanation is helpful to the committee. I am happy to answer any questions that members have.

The Convener: I think that the committee agrees that we have a clear duty to look after the most vulnerable members of our society and to ensure that the appropriate disclosure checks are available to the organisations in question. Are there any questions from members?

Members: No.

The Convener: Agenda item 2 is formal consideration of motion S3M-4201.

Motion moved,

That the Justice Committee recommends that the draft Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2009 be approved.—[*Shona Robison.*]

Motion agreed to.

12:05

Meeting suspended.

12:06

On resuming—

**Licensing (Scotland) Act 2005
(Consequential Provisions) Order 2009
(Draft)**

The Convener: Agenda item 3 is consideration of another affirmative instrument. I draw members' attention to the instrument and to the cover note that has been provided. The Subordinate Legislation Committee did not draw any matter to the committee's attention. In accordance with normal practice, I invite Mr MacAskill, the Cabinet Secretary for Justice, to make a brief opening statement. The cabinet secretary is joined by Gary Cox, head of the alcohol and knives licensing team in the Scottish Government, and Craig McGuffie, principal legal officer in the Scottish Government legal directorate.

The Cabinet Secretary for Justice (Kenny MacAskill): Committee members will recall that the Parliament passed the Licensing (Scotland) Bill in 2005. Since then, the implementation of the 2005 act has continued in line with the previous Executive's timetable. On completion of a transition period, the 2005 act will come fully into force on 1 September 2009, replacing the system that is set out in the Licensing (Scotland) Act 1976. This is a technical order that reflects that change by making amendments to and repealing provisions in primary and secondary legislation to ensure that references in various pieces of legislation that relate to the 1976 act are replaced by appropriate references to the 2005 act.

The Convener: The instrument is technical and straightforward.

Agenda item 4 is formal consideration of motion S3M-4196.

Motion moved,

That the Justice Committee recommends that the draft Licensing (Scotland) Act 2005 (Consequential Provisions) Order 2009 be approved.—[*Kenny MacAskill.*]

Motion agreed to.

12:08

Meeting suspended.

12:08

On resuming—

**Proceeds of Crime Act 2002 (Cash
Searches: Constables in Scotland: Code
of Practice) Order 2009 (Draft)**

**Proceeds of Crime Act 2002
(Investigations: Code of Practice)
(Scotland) Order 2009 (Draft)**

The Convener: Finally, we will consider two draft codes of practice.

I draw members' attention to the instrument under consideration at agenda item 5 and to the cover note. The Subordinate Legislation Committee did not draw any matter to the committee's attention. The Cabinet Secretary for Justice is accompanied by George Dickson, policy officer in the Scottish Government police and community safety directorate, and Kevin Gibson, solicitor in the Scottish Government legal directorate. I invite Mr MacAskill to make a brief opening statement, after which members may ask questions.

Kenny MacAskill: Before the committee are two draft codes of practice that provide guidance on how to handle aspects of the Proceeds of Crime Act 2002. The codes are important safeguards to ensure that any investigation or cash search is conducted fairly and appropriately. Both codes have operated for about six years and need to be amended to take account of legislative changes. The current versions are too long and parts simply replicate the legislation, rather than provide an easily understood guidance note. We have therefore taken the opportunity to revise the original codes comprehensively. We believe that the codes will be more fit for purpose.

It might help if I set out briefly the background to each code. The cash searches code sets out the practice for cash searches by constables in Scotland under section 289 of the 2002 act. The section allows constables who are lawfully on any premises and who have reasonable grounds for suspecting the presence of cash that is recoverable property or which any person intends to use in unlawful conduct to search for that cash. Normally, such a search would be subject to prior approval from a sheriff. The police rarely use the POCA cash search power, as they normally use common-law powers or other statutory powers. However, we are bound by statute to provide a code of practice, which we have updated and made as simple as possible.

The investigations code sets out the procedures that are to be adhered to by proper persons—who are constables in relation to confiscation and money laundering investigations, and the Scottish ministers or people whom they name in relation to civil recovery or detained cash investigations—when applying for and executing investigative

orders, such as production orders, search warrants, customer information orders and account monitoring orders.

The Convener: That is fairly straightforward. Do members have questions?

Nigel Don (North East Scotland) (SNP): I am sure that reducing the minimum amount for searches from £10,000 to £1,000 was sensible, but in such—possibly hypothetical—circumstances, who in practice judges how much money is being searched for?

Kenny MacAskill: That is an operational matter for the police. They enter premises and search with specific information about cash or with knowledge of drug dealing on which cash was consequent. Such information is available to those who instruct an investigation.

Nigel Don: So it is up to the local inspector or whoever to judge how big the amount of cash might be. The minimum of £1,000 is sensible, as that makes a search justifiable and prevents people from going for 50 quid. I am just curious to know who makes the judgment and on what basis.

Kenny MacAskill: Ultimately, a sheriff could make the decision. Parliament decided to reduce the minimum from £10,000 to £1,000 to facilitate the opportunity to deal with those who make money from drug dealing in particular and from criminal offending in general.

Nigel Don: I have no problem with the limit; I just wondered whose mindset would be changed by the change in the number.

Kenny MacAskill: What is important is the acquisition of the money and the ability to access it. That affects the level at which the minimum is set.

Bill Butler (Glasgow Anniesland) (Lab): Will the code of practice on cash searches apply to special constables?

Kenny MacAskill: We do not think so, but we will check that out and get back to you. I presume that special constables are involved in a fair number of searches, but the point is legitimate.

The Convener: We should bear it in mind that special constables are sworn police officers.

Kenny MacAskill: Absolutely.

The Convener: So the order probably would catch them.

Kenny MacAskill: We will check whether the code's application is consequent to the office of constable, as the convener suggests, or whether other matters are addressed. The point is valid and we will investigate it.

The Convener: We would be grateful for that.

Agenda item 6 is consideration of motion S3M-4199.

Motion moved,

That the Justice Committee recommends that the draft Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2009 be approved.—[*Kenny MacAskill.*]

Motion agreed to.

The Convener: I draw members' attention to the instrument under consideration at agenda item 7 and the cover note. The Subordinate Legislation Committee drew no matters to our attention. I invite the cabinet secretary to make a short opening statement, after which members may ask questions.

Kenny MacAskill: I have nothing to add to the earlier points.

The Convener: The arguments were canvassed under agenda item 5.

Agenda item 8 is consideration of motion S3M-4200.

Motion moved,

That the Justice Committee recommends that the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2009 be approved.—[*Kenny MacAskill.*]

Motion agreed to.

The Convener: That concludes the meeting.

Meeting closed at 12:16.

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