

# **JUSTICE COMMITTEE**

Tuesday 8 September 2009

Session 3

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## **JUSTICE COMMITTEE**

### **23<sup>rd</sup> 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:**

Fergus Ewing (Minister for Community Safety)

#### **CLERK TO THE COMMITTEE**

Andrew Mylne

#### **SENIOR ASSISTANT CLERK**

Anne Peat

#### **ASSISTANT CLERK**

Andrew Proudfoot

#### **LOCATION**

Committee Room 1



# Scottish Parliament

## Justice Committee

*Tuesday 8 September 2009*

[THE CONVENER *opened the meeting at 10:19*]

## Subordinate Legislation

### Judiciary and Courts (Scotland) Act 2008 (Consequential Modifications) Order 2009 (Draft)

**The Convener (Bill Aitken):** Good morning, ladies and gentlemen. I remind everyone to ensure that mobile telephones are switched off. We have apologies from Cathie Craigie and Angela Constance.

Item 1 is consideration of the draft Judiciary and Courts (Scotland) Act 2008 (Consequential Modifications) Order 2009, which is an affirmative instrument. I draw committee members' attention to the draft order and the cover note. The Subordinate Legislation Committee had no points to make on the draft order.

I welcome Fergus Ewing, the Minister for Community Safety, who is accompanied by Lachlan Stuart from the Scottish Government constitution, law and courts directorate and Alison Fraser from the Scottish Government legal directorate.

Minister, do you have an opening statement?

**The Minister for Community Safety (Fergus Ewing):** I will make a brief statement, if you wish, convener.

**The Convener:** Yes, please proceed.

**Fergus Ewing:** I thank the committee for inviting me to present a draft consequential modifications order that contains four technical amendments that are required by the Judiciary and Courts (Scotland) Act 2008.

The draft order modifies the Promissory Oaths Act 1871, thereby enabling the judicial oath to be taken by a part-time sheriff before any serving sheriff principal and by a full-time sheriff before the sheriff principal of the sheriffdom to which he or she is appointed. That modification is a consequence of the new requirement in law—introduced by the 2008 act—for holders of those offices to take the judicial oath. Without the modification, all oaths would require to be taken before a judge of the Court of Session.

The draft order also empowers the Scottish Court Service to pay the travelling expenses of

sheriffs principal. Section 19 of the Sheriff Courts (Scotland) Act 1971 allows only the Scottish ministers to pay such expenses, and the modification is a consequence of the Scottish Court Service's assumption of administrative management responsibilities for running the courts.

On removal of a part-time sheriff from office, the draft order corrects an erroneous cross-reference to the 1971 act. On final commencement of the 2008 act, new section 12E of the 1971 act—not section 11C, which is to be deleted—will prescribe the process for removing a part-time sheriff from office. The incorrect reference to section 11C of the 1971 act is a consequence of other amendments that the 2008 act introduced and is modified by the draft order with the correct reference to section 12E.

The draft order exempts from offender rehabilitation procedures certain new offices that the 2008 act creates. The modification is required in consequence of the offices' creation. Exemption means that lay members of the Scottish Court Service and the Judicial Appointments Board for Scotland and candidates for appointment to the two tribunals that will consider removal from judicial office will be required to declare otherwise spent convictions. The exemptions are in keeping with the legal and judicial exemptions that are already contained in schedule 4 to the Rehabilitation of Offenders Act 1974.

**The Convener:** With regard to the first modification, some sheriffs may be appointed on a floating commission, but are they attached to specific sheriffdoms for administrative purposes?

**Fergus Ewing:** I do not believe that that is the case; I think that part-time sheriffs can practise in any sheriffdom. The office applies throughout Scotland and is not particular to a specific shrieval jurisdiction. A part-time sheriff can sit on the bench in Glasgow, Inverness, Aberdeen or anywhere else. The measure is required only to avoid the impracticality, expense and inconvenience of all new part-time sheriffs having to turn up in Edinburgh to take their oath; instead, it enables them to take their oath before the sheriff principal in their own locale, thereby avoiding needless expense, costs and delay—something that I suspect is close to our respective hearts, convener.

**The Convener:** Indeed. There is no problem with the intent; it is unintended consequences that concern me. My understanding is that many full-time sheriffs are now appointed on a floating commission. What is their administrative situation? Are they attached to specific sheriffdoms for administrative purposes?

**Fergus Ewing:** Yes, they are.

**The Convener:** Would the relevant sheriff principal administer the oath?

**Fergus Ewing:** Yes.

**The Convener:** That is fine.

As there are no further questions, we move to item 2, which is consideration of motion S3M-4466, that the Justice Committee recommends approval of the draft order.

*Motion moved,*

That the Justice Committee recommends that the draft Judiciary and Courts (Scotland) Act 2008 (Consequential Modifications) Order 2009 be approved.—[*Fergus Ewing.*]

*Motion agreed to.*

**The Convener:** I suspend the meeting briefly to allow the minister and his team to leave. I thank them for their attendance.

10:25

*Meeting suspended.*

10:26

*On resuming—*

**The Convener:** I draw to members' attention the fact that the committee is required to report to the Parliament on the draft order because it is an affirmative instrument. Are members content to consider a draft report on the instrument in private at our next meeting?

**Members indicated agreement.**

### **Debt Arrangement Scheme (Scotland) Revocation Regulations 2009 (SSI 2009/258)**

**The Convener:** We come to the first of the three negative instruments for our consideration under agenda item 3. The Subordinate Legislation Committee had no points to make on the regulations. As members have no comments, are they content to note the regulations?

**Members indicated agreement.**

### **Licensing (Scotland) Act 2005 (Transitional Provisions) Order 2009 (SSI 2009/277)**

**The Convener:** On the second instrument, the Subordinate Legislation Committee had no points to make. Do members have any comments?

**Robert Brown (Glasgow) (LD):** Briefly, the transition to the new arrangements has been a matter of some concern to the committee. Might it be helpful to have an update from the minister, perhaps in writing initially, at an appropriate point before the expiry of the order?

Incidentally, it would be helpful if "licence" could be spelled properly on such documents.

**The Convener:** Yes, I had noted that also.

Robert Brown's general point is well made. The transition has been a matter of considerable concern not only to the committee but to all of us as individual members. We have all received representations on what, by any standard, is a highly unsatisfactory position. The Government has acted to mitigate the difficulties that have arisen, but I think that we will want to know, towards the end of the period of the validity of the order, precisely what the situation is.

That being the case, do members agree to note the order?

**Members indicated agreement.**

### **Maximum Number of Judges (Transitional Provision) (Scotland) Order 2009 (SSI 2009/291)**

**The Convener:** On the third instrument, the Subordinate Legislation Committee again had no points to make. The order is fairly straightforward, in that it simply provides for the payment of an additional judge's salary for 30 days, so I do not think that it raises too much difficulty. As members have no comments, are they content to note the order?

**Members indicated agreement.**

10:28

*Meeting continued in private until 12:35.*

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