

JUSTICE COMMITTEE

Tuesday 24 November 2009

Session 3

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CONTENTS

Tuesday 24 November 2009

Col.

SUBORDINATE LEGISLATION.....	2369
Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No 3) Order 2009 (Draft)	2369
Act of Sederunt (Fees of Sheriff Officers) (Diligence) 2009 (SSI 2009/379)	2371
Campbeltown Legalised Police Cells (Declaration and Revocation) Rules 2009 (SSI 2009/380)	2372

JUSTICE COMMITTEE **32nd 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)
*James Kelly (Glasgow Rutherglen) (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)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 24 November 2009

[THE CONVENER *opened the meeting at 10:31*]

Subordinate Legislation

Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No 3) Order 2009 (Draft)

The Convener (Bill Aitken): Good morning, ladies and gentlemen. Could everyone please ensure that their mobile phone is switched off? There are no apologies.

Agenda item 1 is consideration, under the affirmative procedure, of an item of subordinate legislation. Our consideration of the draft Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No 3) Order 2009 is continued from last week. I draw members' attention to the order and the cover note, which is paper 1. The Subordinate Legislation Committee had no points to make on the order. Last week, the matter caused minor excitement, as a result of which the cabinet secretary undertook to provide further information in response to questions that members raised. That information has been received timeously and has been circulated as paper 2. I welcome Kenny MacAskill, the Cabinet Secretary for Justice; Gerry Bonnar and Karen Stewart from the Scottish Government criminal procedure division; and Anne-Louise House from the Scottish Government legal directorate. I ask Mr MacAskill whether he wishes to make an opening statement.

The Cabinet Secretary for Justice (Kenny MacAskill): Thank you, convener and members of the committee. At the committee meeting on 17 November, I undertook to provide further information on the order in response to the questions that members raised. I hope that the paper that was passed to the committee in advance of the meeting has addressed the concerns that were aired.

It might be helpful for me to address the issue that was raised last week of the impact of the order in relation to the temporary transfer of a prisoner from Scotland to a participating country under section 47 of the Crime (International Co-operation) Act 2003. Members queried whether ministers would have discretion to refuse a particular transfer. Section 47 focuses on a criminal investigation that is being conducted by

United Kingdom authorities, when it is thought that it might be of assistance to send a UK prisoner to another country temporarily. The power of the Scottish ministers to decide whether to grant a warrant to transfer the prisoner is discretionary, and a minister would consider the circumstances of each case. The transfer would be done with the prisoner's consent and at the instigation of the prosecuting authority in the UK. In refusing a request, ministers would be preventing a voluntary and temporary transfer that had been arranged for the benefit of an investigation in the UK.

Such applications are likely to be rare. There have not been any in respect of the countries that are already designated. An example could be sending a prisoner to participate in an identity parade in another country to aid a UK investigation when the witness resided in that country.

Section 48 contains the reverse position, under which a prisoner may be transferred to the UK from a participating country to assist an investigation that is being conducted by that participating country. Once again, the power of the Scottish ministers to decide whether to grant a warrant to transfer the prisoner is discretionary. The transfer would be temporary and subject to the prisoner's consent.

Although the term "warrant" is used in the act, it is not a warrant as we would normally understand it, as warrants are normally granted by sheriffs and justices of the peace. In this context, the warrant is granted by the Scottish ministers with the consent of the person involved in cases where the person is already in custody.

I hope that the further explanation that I have given aids the committee's consideration. I am happy to answer questions on any additional points.

Robert Brown (Glasgow) (LD): Will the cabinet secretary accept that the explanation that we have been given this week is much clearer than the one that we had last week? The explanatory note that was originally attached to the statutory instrument was a wee bit defective with regard to the implications of the power. The cabinet secretary and his officials might wish to consider that for future issues of this sort. The provisions are not unimportant, as they involve the movement of prisoners, so it is important that the committee has the background information and a clear view of the matter. I trust that you agree with that, in the light of our experience with the draft order.

Kenny MacAskill: I am always happy to improve things. The documentation that has been provided is the same as the documentation that was provided with the two previous orders that were laid during my tenure or under the previous Administration. We are happy to learn and to

improve matters for the assistance of members and of the public.

The Convener: You will appreciate that the committee is particularly vigilant on such matters.

Kenny MacAskill: Absolutely.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): This issue did not particularly come up last week, but could you expand a wee bit on the consent of the prisoner? What happens if the prisoner refuses to give their consent?

Kenny MacAskill: The transfer will not happen. It will not proceed. Consent is fundamental to the decision. Any minister would have the opportunity to refuse a transfer request under section 47 of the 2003 act but, if the prisoner did not give their consent, the application would not be received.

The Convener: There being no further questions or comments, we move to item 2, which is formal consideration of the motion to approve the order.

Motion moved,

That the Justice Committee recommends that the draft Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) (No. 3) Order 2009 be approved.—[*Kenny MacAskill.*]

Motion agreed to.

The Convener: That is all that we need from you this morning, Mr MacAskill. I thank you and your officials for attending.

10:37

Meeting suspended.

10:38

On resuming—

Act of Sederunt (Fees of Sheriff Officers) (Diligence) 2009 (SSI 2009/379)

The Convener: Item 3 is further subordinate legislation, and there are two negative instruments for our consideration.

I draw members' attention to the first of the Scottish statutory instruments and to the cover note, which is meeting paper 3. Although the Subordinate Legislation Committee drew the act of sederunt to the attention of the Parliament on the basis that its meaning could be clearer, it was noted, and accepted, that the lack of clarity was due to a typographical error. The Lord President's private office has undertaken to address the error at the next available opportunity. The error is not thought likely to have an effect on the operation of the instrument.

Members do not have any comments. Are we content to note the instrument?

Members indicated agreement.

Campbeltown Legalised Police Cells (Declaration and Revocation) Rules 2009 (SSI 2009/380)

The Convener: I refer members to paper 4. The Subordinate Legislation Committee did not draw any matters to the attention of the Parliament in relation to the rules. Do members have any comments?

Robert Brown: I have a brief query. I do not know whether anyone can answer this. The paper says that

"legalised police cells" are distinct from "certified police cells",

and I confess that I am totally unable to see the difference. Perhaps somebody can elaborate on that at either this point or some future point.

The Convener: I think that it will have to be at some future point. I am in a position of similar difficulty.

Nigel Don (North East Scotland) (SNP): I assume that we will find out when we get some feedback on the Criminal Justice and Licensing (Scotland) Bill, in which the same subject appears.

The Convener: It will be an interesting academic point. Perhaps our clerk can offer some advice.

Andrew Mylne (Clerk): I cannot claim to be able to provide you with a clear distinction. That note was added simply to make it clear that the cells referred to in the rules are not the same as the cells that were referred to during the evidence on the bill.

Apparently, we also have some further information from Scottish Government officials, which we are happy to pass on to the committee.

The Convener: That information will be circulated. The question seems to be of fairly remote interest; nevertheless, we should get an answer. My only comment is that few of us would ever have thought that we would see the day when we overruled a decision that the Earl of Rosebery made almost 150 years ago.

Are members content to note the instrument?

Members indicated agreement.

The Convener: That concludes the public part of the meeting.

10:41

Meeting continued in private until 12:36.

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