



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 17 January 2012

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JUSTICE COMMITTEE
2nd Meeting 2012, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Jenny Marra (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)

*John Finnie (Highlands and Islands) (SNP)

*Colin Keir (Edinburgh Western) (SNP)

Alison McInnes (North East Scotland) (LD)

*David McLetchie (Lothian) (Con)

*Graeme Pearson (South Scotland) (Lab)

*Humza Yousaf (Glasgow) (SNP)

*attended

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 17 January 2012

[The Convener *opened the meeting at 11:01*]

Decision on Taking Business in Private

The Convener (Christine Grahame): I welcome everyone to our second meeting in 2012. I ask everyone to switch off mobile phones and other electronic devices, as they interfere with the broadcasting system even when they are switched to silent. Apologies have been received from Alison McInnes.

Agenda item 1 is a decision on taking business in private. The committee is invited to agree to consider in private item 6, on a European Union legislative proposal, and item 7, on a call for written evidence on the Police and Fire Reform (Scotland) Bill. Are we agreed?

Members *indicated agreement.*

Subordinate Legislation

Prior Rights of Surviving Spouse and Civil Partner (Scotland) Order 2011 (SSI 2011/436)

11:02

The Convener: The committee first considered this negative instrument at last week's meeting, when it agreed to write to ask the Cabinet Secretary for Justice to explain why the limit for the housing prior right is proposed to be increased significantly. The committee also asked for further information on the Scottish Government's plans to raise awareness of the importance of writing a will. The response from the Minister for Community Safety and Legal Affairs is included in paper 1. Do members have any comments?

Roderick Campbell (North East Fife) (SNP): Having raised the issue last week, I formally record my thanks to the minister for her helpful response. It possibly begs questions about the existing law of succession, but that goes beyond the order. I am happy with the response and do not want to take the matter further.

The Convener: Do members agree?

Members *indicated agreement.*

The Convener: Do we agree to make no recommendation on the order?

Members *indicated agreement.*

Charities References in Documents (Scotland) Amendment Regulations 2011 (SSI 2011/446)

The Convener: The Subordinate Legislation Committee has not drawn the Parliament's attention to the regulations on any of the grounds in its remit. If members have no comments, are they content to make no recommendation?

Members *indicated agreement.*

Act of Sederunt (Fees of Messengers-at-Arms) (No 2) 2011 (SSI 2011/431)

Act of Sederunt (Fees of Sheriff Officers) (No 2) 2011 (SSI 2011/432)

Act of Sederunt (Rules of the Court of Session Amendment No 8) (Terrorism Prevention and Investigation Measures) 2011 (SSI 2011/441)

The Convener: Item 4 concerns three acts of sederunt that are not subject to any parliamentary procedure. Do members have comments?

David McLetchie (Lothian) (Con): I notice that messengers-at-arms are getting a 3.8 per cent increase in their fees, while everybody else seems to be having a pay freeze. Is there some reason for that?

The Convener: Do you want us to write to find that out?

David McLetchie: It would be interesting to know the scale of fee increases. Messengers-at-arms are in effect contracted—they operate in the private sector but have their fees sanctioned by us.

The Convener: We are not quite clear about whether the Government or the Scottish Court Service sets the fees. Do you want us to pursue the issue?

David McLetchie: It is the courts that set the fees, as the relevant instrument is an act of sederunt.

The Convener: Do you want us to pursue the question?

David McLetchie: In fairness, to put the increase in context, it might be interesting to know the recent history of fee levels and increases. Fees might not have been increased for a number of years—I do not know—in which case the proposed increase would be entirely appropriate.

Jenny Marra (North East Scotland) (Lab): I recollect from reading the papers at the weekend that the instrument is something to do with the cost of travel.

Graeme Pearson (South Scotland) (Lab): That is right—it relates to petrol expenses.

Jenny Marra: That seems reasonable, given fuel price increases.

The Convener: I am happy to pursue the matter—lots of people have increased travel costs.

David McLetchie: On Jenny Marra's point, if I understand the cover note, the act of sederunt makes a specific amendment to fees for travel in remote areas, which I agree with, but it also substitutes

"a new Table of Fees increasing the fees payable ... by 3.8%",

which appears to be of general application and is not limited to travel situations.

The Convener: I will not spend any more time on the subject. We will simply write to ask for clarification about increases over, say, five years. Fees might have been frozen for that time, so the increase might be reasonable.

David McLetchie: That might have been the position, in which case the increase would be fine.

Committee Bills

11:05

The Convener: Item 5 is consideration of the procedure for introducing a committee bill. Members will recall that the issue arose during last week's consideration of petition PE1280, by Julia Love and Dr Kenneth Faulds, which calls for a fatal accident inquiry to be held when a person from Scotland dies abroad.

Members have paper 6, which outlines the process for introducing committee bills and provides a copy of a letter about the petition that has been received from the Cabinet Secretary for Justice since last week's meeting. In his letter, he clarifies that the Scottish Government intends to introduce a bill

"to reform and modernise the law on fatal accident inquiries ... within the lifetime of this Parliament."

Can I have members' comments, please?

Humza Yousaf (Glasgow) (SNP): The point was a good one to raise at the time but, as the paper sets out, a committee bill probably should not be introduced if a minister has said in writing that they plan to introduce a bill on the same subject in this parliamentary session. This time round, the cabinet secretary's commitment is firmer, so I am quite pleased with that.

Graeme Pearson: The cabinet secretary's letter certainly indicates a "firm intention" to introduce a bill. It gilds the lily somewhat in relation to his previous letter, which did not give the same firm commitment. Others on the committee will know from experience whether such firm commitments are always delivered on.

The Convener: I am sure that members will assure us that such commitments are delivered on. Some committee members will now have salt on the cabinet secretary's tail.

Are we content that the situation has moved on? We have done something.

David McLetchie: That takes us back to the question last week about what we do with the petition. I remember that there were some options, one of which was to keep the petition open. Will we still keep the petition open until firm legislation comes forward?

Graeme Pearson: I think so.

The Convener: I think so. The petition is important so, in fairness to the petitioners, we will keep it open.

Graeme Pearson: We will add some pepper to the salt.

The Convener: Adding pepper to salt—my goodness.

I will leave the paper on the committee bill procedure with members so that they can see the procedure, although we are not applying it to the issue in the petition. Perhaps we can discuss whether to pursue introducing a committee bill when we consider our broader work programme in February. At that time, members could present ideas. The Scottish Law Commission has lots of ready-made, off-the-shelf bills—including one on succession, although it might be too complex—that the committee might be able to consider. Do members agree to that approach?

Members *indicated agreement.*

The Convener: As agreed earlier, we will move into private session.

11:08

Meeting continued in private until 11:35.

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