

ENTERPRISE AND CULTURE COMMITTEE

Tuesday 20 June 2006

Session 2

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ENTERPRISE AND CULTURE COMMITTEE

18th Meeting 2006, Session 2

CONVENER

*Alex Neil (Central Scotland) (SNP)

DEPUTY CONVENER

*Christine May (Central Fife) (Lab)

COMMITTEE MEMBERS

*Shiona Baird (North East Scotland) (Green)

*Richard Baker (North East Scotland) (Lab)

*Susan Deacon (Edinburgh East and Musselburgh) (Lab)

*Murdo Fraser (Mid Scotland and Fife) (Con)

*Karen Gillon (Clydesdale) (Lab)

Michael Matheson (Central Scotland) (SNP)

*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

COMMITTEE SUBSTITUTES

Mark Ballard (Lothians) (Green)

Donald Gorrie (Central Scotland) (LD)

Fiona Hyslop (Lothians) (SNP)

Margaret Jamieson (Kilmarnock and Loudoun) (Lab)

David McLetchie (Edinburgh Pentlands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Allan Wilson (Deputy Minister for Enterprise and Lifelong Learning)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Seán Wixted

LOCATION

Committee Room 5

Scottish Parliament

Enterprise and Culture Committee

Tuesday 20 June 2006

[THE CONVENER opened the meeting at 14:06]

Subordinate Legislation

The Robert Gordon University (Establishment) (Scotland) Order 2006 (SSI 2006/276)

The Convener (Alex Neil): I welcome everybody to the 18th meeting of the Enterprise and Culture Committee this year, which will be our final meeting before the summer recess.

The minister seems to have got lost, so if the committee agrees I will take item 2, on subordinate legislation, first then go back to item 1 when the minister arrives.

Members indicated agreement.

The Convener: We have three pieces of subordinate legislation to deal with. They are all subject to the negative procedure. The first order, which relates to the Robert Gordon University, has been circulated. Are there any comments?

Christine May (Central Fife) (Lab): Convener, I may be getting the procedure entirely wrong, but do we not normally have the minister here for such items?

I believe that I am wrong, so I withdraw my comment. Murdo Fraser wanted to know as well, though.

The Convener: The minister was never coming for this item, because it deals with negative instruments.

Murdo Fraser (Mid Scotland and Fife) (Con): Do we have Executive officials here?

The Convener: Normally we do, but I think that there was a bit of an oversight on our part. To be fair, it was not the Executive's fault. If members have any questions, we can, of course, still put them to the Executive.

Are members happy with the order?

Members indicated agreement.

Designation of Institutions of Higher Education (Scotland) Order 2006 (SSI 2006/279)

The Convener: Are there any points on the order?

Members indicated disagreement.

Education (Student Loans) Amendment (Scotland) Regulations 2006 (SSI 2006/316)

The Convener: Are there any points on the regulations?

Murdo Fraser: It is not of any great significance to the policy intention of the regulations, but I am curious to know how many students will be affected. Unless I missed it, no figure was given in the explanatory note. The number will not be high, because the regulations affect only students who commenced their studies before 1998.

The Convener: Shall we write to the Executive to ask for that figure?

Members indicated agreement.

The Convener: The regulations are subject to the negative procedure, so we do not need to make any recommendation. Everybody happy?

Members indicated agreement.

The Convener: I should have said at the beginning that I have received an apology for absence from Michael Matheson. His wife had a wee boy on Thursday, called James, who weighed 8lb 8oz.

Christine May: Ouch!

The Convener: Our congratulations to Michael and Susan.

Members indicated agreement.

Bankruptcy and Diligence etc (Scotland) Bill: Stage 2

14:08

The Convener: I welcome the minister, Allan Wilson, to our stage 2 consideration of part 14 of the Bankruptcy and Diligence etc (Scotland) Bill.

Section 197 agreed to.

Schedule 4

MODIFICATIONS OF ENACTMENTS RELATING TO ADMIRALTY
ACTIONS AND THE ARRESTMENT OF SHIPS

The Convener: Amendment 24, in the name of the minister, is grouped with amendments 25, 26 and 28.

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): The bill's provisions on admiralty actions and arrestment make textual amendments to the Administration of Justice Act 1956. Amendments 24 to 26 are minor technical amendments and are needed simply to ensure consistency of language in the 1956 act when it is amended by the bill.

Amendment 28 is another technical amendment—albeit very minor—for which I also seek the committee's approval. It will improve consistency in the terminology that is used in expense provisions for pursuer and defender expenses in admiralty actions by inserting some additional words into new section 47B(2) of the Administration of Justice Act 1956.

I move amendment 24.

Amendment 24 agreed to.

Amendments 25 and 26 moved—[Allan Wilson]—and agreed to.

The Convener: Amendment 27, in the name of the minister, is in a group on its own.

Allan Wilson: Amendment 27 is a clarifying amendment. Ships, cargo and other maritime property are, of course, easy to move from place to place. It should not be too easy for debtors to avoid claims by moving a ship or other maritime property outside the jurisdiction of the court when they know that a court action has been started.

New section 47A of the Administration of Justice Act 1956, which is inserted by paragraph 6 of schedule 4 to the bill, provides that, where a sheriff has agreed to the arrest of a ship, cargo or other maritime property by granting a warrant for arrestment, that warrant can be executed anywhere else in Scotland that the ship is moved to. The sheriff will then hear the claim and make a decision. If justice is to be done, a successful claim must be capable of enforcement against the

ship. It is clear, under general law, that a sheriff can make an order for sale of a ship that is situated in the sheriff's sheriffdom. Amendment 27 will clarify, for the avoidance of doubt, that a sheriff can also make an order for the sale of a ship, cargo or other maritime property that is situated outwith the sheriff's sheriffdom when the order is made. The amendment complements the reforms that are already being made in the bill.

I move amendment 27.

Amendment 27 agreed to.

Amendment 28 moved—[Allan Wilson]—and agreed to.

Schedule 4, as amended, agreed to.

After section 197

The Convener: Amendment 20, in the name of the minister, is grouped with amendments 21 to 23, 30, 29 and 31.

Allan Wilson: This group of amendments will introduce into the bill a new part on ejections. I have therefore written to the committee to explain the background to the policy on ejection.

Ejection is the last step in what might have been a long and unpleasant process. We owe it to debtors and other defenders to make that last step as humane as we can. However, our processes are too complex and too hard to understand. Further, in some cases, they are too hard to defend. The reforms in the new part will help people who face ejection by making the process clearer and fairer. The reforms do not alter the grounds on which a person can be removed. The amendments can do no more than improve the final procedures, but that is still worth doing.

14:15

It is always unfortunate when such action has to be taken. There are, however, some circumstances when it might be necessary. In such cases, it is important that there is a fair and clear process that must be undergone. At the moment, there are a number of ways to remove an occupier who had a right to be in heritable property and to eject an occupier who never had the right to be there. The amendments will bring in a common procedure that must be used in all ejections, but predominantly those connected with debt enforcement, tenancy disputes and the recovery of possession in situations in which persons have no valid title to occupy, for example if they are squatters.

Amendment 20 sets out the types of ejections that will be covered by the changes, although some flexibility is needed with any law reforms, so the list will be able to be changed by Scottish

ministers. For example, occupiers can be removed under a compulsory purchase. It is not thought that a common procedure should cover such special cases—at least, not for the time being. The power to amend the list could, however, be used to add that and other types of ejection, if it were thought appropriate in the future. The power is also needed so that the new common procedure can be applied to any grounds of objection that are created in the future under housing legislation, for example.

There is no doubt that ejecting someone from land is a serious step, particularly if people live there. It is only right to give them proper notice before the court messengers are called in to evict them. At present, the amount of notice varies. In some cases there is no need for any notice and in others the period of notice can be as short as 48 hours. Amendment 21 makes that standard period of charge 14 days. That is a fair length of time in most cases. It will strike the right balance between the interests of landowners, such as landlords, in relation to getting back land, and the interests of defenders, such as debtor tenants, in relation to having enough time to leave in a dignified way.

In some cases, 14 days will be too long. For example, the occupier might be seriously damaging a property that they know they will have to leave. The court will, therefore, be given the power to vary or dispense with the 14-day period if persuaded that there is a sound reason to do so. When the 14-day notice period has run out, the defender and any other occupier can be removed with all of their effects. Other occupiers include persons who have, for example, been given permission to stay by the tenant. It would be unfair to make a landlord take separate action against people whom they might not even know about.

The committee will see that the term “messenger of court” is used in the amendments. You will recall that I said during the stage 1 debate that we intend to change the name of the new court officer profession to “judicial officer”. We still intend to bring forward such an amendment, but I did not want to pre-empt the committee’s decision on that issue by making any changes today. If these amendments and the new name are both agreed, I will bring forward a consequential amendment at stage 3.

At present, there is an argument that ejection can take place on any day and at any time. I do not think that that is right. Being ejected is bad enough without that ejection taking place in the middle of the night. Amendment 22 ensures that people are not ejected during unsocial hours, unless that is the right thing to do. It restricts the dates and time when ejections can take place. It will, in general, be unlawful to eject someone on Sundays, on holidays or before 8 am or after 8

pm. In most cases, that will strike the right balance between the interests of the parties. There will be rare cases in which ejection should take place outwith those hours. That will still be possible, as long as the court agrees with that proposition.

Amendment 22 is in the same terms as similar arrangements for money attachment in this bill and for attachment in the Debt Arrangement and Attachment (Scotland) Act 2002. It will, therefore, make ejection consistent with those enforcement processes.

Amendment 23 further clarifies the procedure for ejections and deals with any property that is left behind by persons who have been ejected. At the moment, premises are often cleared of any possessions that are left behind. In most cases, the pursuer will arrange for the occupier to collect any possessions at a later date, but there is no legal obligation on them to do so. The amendment clarifies the position by giving the court the power to order the pursuer, for example a landlord, to store such property. It may be unfair for the landlord to have to pay storage costs, so the court will also be able to order the defender to pay them. The amendment will make it possible for the court to deal justly with the people involved in an ejection.

Amendment 29 will change the period for removings under the Sheriff Courts (Scotland) Extracts Act 1892 from 48 hours to 14 days. That makes it consistent with other time periods for a charge before a removing can take place.

Amendment 30 provides a modern procedure that reforms the law on heritable proprietors being given security for claims in actions for removing from heritable property. It makes it clear that the court can order the defender to provide security—find caution—for any financial claim that a pursuer may have arising from any occupation, whether lawful or unlawful, by the defender or other occupants. It also clarifies that it will no longer be competent to order a defender to find caution for violent profits. Caution can take the form of a bond of caution, such as a guarantee of payment from an insurance company, or lodging a sum of money with the court.

Amendment 31 provides that the court cannot order the defender to find caution for claims for violent profits, by repealing the Ejection Caution Act 1594.

I move amendment 20.

Murdo Fraser: I want to ask the minister a couple of questions on the amendments. Amendment 22 sets out the dates and times of removing. I do not have any particular problem with what is being suggested, but I wonder what the rationale is behind the time period of 8 am to 8

pm. Can you comment on the Executive's thinking behind allowing ejections during that period?

My second point is on amendment 30. Under proposed new subsection (2), the existing right of courts to order the defender to find caution for violent profits will be removed. Can you comment on the Executive's policy intent behind that provision? I have read and reread your letter of 16 June, including the paragraph on policy objectives, but—it may be because it is after lunch—I am having difficulty getting my head round the arguments.

The Convener: As no other member wants to speak, I ask the minister to wind up and answer Murdo Fraser's questions.

Allan Wilson: I will answer the easier question first. I had a long discussion on the latter point this morning with my officials until I got my own head round the proposition.

The hours are those that are generally described as being social hours; the description has more universal application outwith this context. It is seen to be more socially just to effect the act of ejection between the hours of 8 am and 8 pm. As I said, those hours are used for attachment, so it is a general rule of thumb—if that is a legal term—that that time period is used to deal with such issues.

On violent profits, you will know that in most cases a creditor can recover their actual loss in breach of a contract such as a lease. For example, they can claim the rent that they would have been paid. The law on violent profit is different. A landlord on a lease can, in some cases, recover penal damages in addition. For example, a landlord might be able to claim double the rent that would have been paid. Violent profits can be claimed only for the period when the tenant has no legal right to be on land or in buildings, such as when a lease has ended but the tenant stays on without permission.

The law on violent profits is very old; it has its roots in a time when penal damages were more common. We argue that it no longer applies across the board. For example, it does not apply to modern leases of homes, although it is still an issue in commercial leases. Part of the policy intention of the amendments is to modernise the law and make it more transparent.

In addition, as you are probably aware, the Scottish Law Commission recommended that violent profits should be abolished. We agree that that seems sensible. However, the bill is not about damages but about debt enforcement and related things. We will consider abolishing the law on violent profits at some other time. Until then, we are reforming the law by abolishing caution for violent profits. We think that that change will at least make it easier for defenders to oppose a

claim for violent profits in the interim, until such time as the appropriate legislative opportunity for us to abolish the law on violent profits arises.

Amendment 20 agreed to.

Amendments 21 to 23 and 30 moved—[Allan Wilson]—and agreed to.

The Convener: That concludes consideration of amendments until after the summer recess. I thank the minister and his officials. We will now move into private session to consider item 3. Clear the gallery.

14:28

Meeting continued in private until 15:25.

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