



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 5 February 2019

Session 5



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Pàrlamaid na h-Alba

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JUSTICE COMMITTEE
5th Meeting 2019, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*John Finnie (Highlands and Islands) (Green)

*Jenny Gilruth (Mid Fife and Glenrothes) (SNP)

*Daniel Johnson (Edinburgh Southern) (Lab)

*Liam Kerr (North East Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

Liam McArthur (Orkney Islands) (LD)

*Shona Robison (Dundee City East) (SNP)

*attended

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 5 February 2019

[The Convener opened the meeting at 10:00]

Decisions on Taking Business in Private

The Convener (Margaret Mitchell): Welcome to the Justice Committee's fifth meeting in 2019. We have received no apologies.

Under agenda item 1, does the committee agree to take in private today and at future meetings consideration of its draft report on post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012? Does the committee also agree to take in private today consideration of its future work programme?

Members indicated agreement.

Subordinate Legislation

Licensing (Amendment) (EU Exit) (Scotland) Regulations 2019 (SSI 2019/6)

10:01

The Convener: Agenda item 2 is consideration of a negative Scottish statutory instrument. I refer members to paper 1, which is a note by the clerk. If members have no comments, is the committee agreed that it does not wish to make any recommendations in relation to the instrument?

Members indicated agreement.

European Union (Withdrawal) Act 2018

Draft Jurisdiction and Judgments (Family, Civil Partnership and Marriage (Same Sex Couples)) (EU Exit) (Scotland) (Amendment etc) Regulations 2019

10:01

The Convener: Agenda item 3 is consideration of whether a Scottish statutory instrument, made under the powers conferred on devolved authorities in the European Union (Withdrawal) Act 2018, has been laid under the appropriate procedure. I refer members to paper 2, which is a note by the clerk, and paper 3, which is a private paper.

The Scottish Government has indicated that the instrument will be laid under the affirmative procedure. The Scottish Government has also categorised the instrument as "medium". The committee will consider the policy content of the instrument at a future meeting.

If members have no comments, is the committee agreed that the affirmative procedure is the appropriate procedure for the instrument, and that the categorisation of "medium" is also appropriate?

Members indicated agreement.

The Convener: The clerks will make arrangements to report the committee's views to the Parliament and to the Scottish Government.

Petitions

Judiciary (Register of Interests) (PE1458)

10:03

The Convener: Agenda item 4 is consideration of two petitions. I refer members to paper 4, which is a note by the clerk, and paper 5, which is a private paper. Paragraph 5 of paper 4 provides the options that are available to the committee when it considers petitions.

The first petition that the committee will consider is PE1458, by Peter Cherbi, on a register of interests for members of Scotland's judiciary. The petition calls on the Scottish Parliament

"to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill (as is currently being considered in New Zealand's Parliament) or amend present legislation to require all members of the Judiciary in Scotland to submit their interests & hospitality received to a publicly available Register of Interests."

This is the committee's third consideration of the petition. I refer members to annex A of paper 4, which details the response that was received from the Scottish Courts and Tribunals Service. The committee is asked to consider what, if any, further action it wishes to undertake in relation to the petition. The options available include: keeping the petition open; keeping it open and taking additional action, such as writing to the cabinet secretary and/or others; or closing the petition. I seek members' views.

Daniel Johnson (Edinburgh Southern) (Lab): As was the case when we considered the petition previously, I think that there are reasons to examine it. In everything that I say, I bear in mind our duty to uphold the independence of the judiciary, but I do not believe that openness and transparency contradict that. The Public Petitions Committee took evidence on the issue, but that was some time ago—I believe that it was in 2013—so I wonder whether the committee might want to pull together information regarding how other countries approach the issue. Given that we have a new Cabinet Secretary for Justice, we could perhaps also request his views on the matter.

John Finnie (Highlands and Islands) (Green): I fully endorse Daniel Johnson's view, and particularly the comment about independence. However, there is an obvious tension here. There is a public expectation—it is not unreasonable, in my view—that there should be no conflicts of interest. Our papers refer to the recusal register, but that does not seem comprehensive enough to me. I agree with the proposal that we should find out about the approach in other countries, particularly New Zealand, as that would be helpful.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I totally agree with Daniel Johnson and John Finnie. More information would be helpful. It is an important issue, and transparency has to be key.

Daniel Johnson: For information, I point out that the bill on the issue that was before the New Zealand Parliament was either withdrawn or defeated, but I understand that a register exists in other jurisdictions. I think that Norway has been mentioned.

The Convener: Clearly, there are huge issues at stake, and a fine balance has to be struck. I would like to know a little more about how the recusal code or policy works. When a conflict of interest is declared, how much detail is recorded and is it in the public domain? It would be good to look at that.

I get the impression from members that they would like to at least explore legislation in other countries. Norway has been mentioned. New Zealand did not proceed with the proposals, but it would perhaps be good to look at what was said there. As Daniel Johnson rightly points out, we have a new cabinet secretary, so it would be good to seek his views.

Are members content to progress by doing those three things?

Members indicated agreement.

Private Criminal Prosecutions (PE1633)

The Convener: The next petition is PE1633, by Bill Alexander, on private criminal prosecution in Scotland. The petition calls on the Scottish Parliament

"to urge the Scottish Government to change the law to give the people of Scotland the same legal rights as the rest of the United Kingdom by removing the requirement that the Lord Advocate must first give permission before a private criminal prosecution can be commenced in Scotland."

Before today's consideration of the petition, the clerk sought views from the petitioner and from the Lord Advocate. I refer members to annex B of paper 4, which contains the responses. The committee is asked to consider the responses and decide what further action, if any, it wishes to take in relation to the petition. The options available include: keeping the petition open; keeping it open and taking additional action; or closing the petition. I seek members' views.

Rona Mackay: I declare an interest, in that the petitioner is a constituent of mine.

There is definitely an issue. I read the Lord Advocate's letter to the convener and I understand the points that he makes. However, of the six questions that the petitioner poses in his

submission, I think that it would be reasonable to follow up questions 1 and 4. The Health and Safety Executive is a reserved body. In question 1, the petitioner asks:

“If the Health and Safety Executive will not be accountable to the Scottish parliament, then can the relevant committee at the Westminster Parliament be asked to enquire from the Health and Safety Executive why they have adopted a different policy in regard to risk assessments and reporting injuries for sporting event workers from all other workers, and what evidence they have to support their decision.”

Question 4 asks whether the Lord Advocate can clarify

“whether or not the policies of the Health and Safety Executive in regard to sports workers being considered in a different manner to all other workers is compatible with Article 2 of the Human Rights Act.”

Obviously, there are other questions, but those are the ones that I thought that it would be most pertinent for us to follow up. I think that the matter is worth pursuing, but I am open to comments from other members.

John Finnie: Certain issues around health and safety may indeed be reserved, but that does not preclude this committee from writing to the HSE and cutting out a middle committee. Asking about the policy position with regard to that specific group of workers is a reasonable—indeed, neutral—question. I suggest that, rather than writing to a Westminster committee, we simply write to the HSE ourselves. I am sure that we will get a courteous answer; if, for any reason, we do not, I am sure that we can follow that up.

The Convener: I seek some clarification. It is my understanding that the petition was originally set out on the basis that the Lord Advocate had to give permission before a private prosecution could go ahead. However, if my understanding is correct, the Lord Advocate has now clarified the position and has stated that he will give a view but that he does not have a veto, and that there can be an appeal. Effectively, that means that he does not have to give permission, although obviously his opinion carries great weight. Is my understanding correct?

Stephen Imrie (Clerk): The original terms of the petition covered whether the permission of the Lord Advocate was required for a private prosecution. We have set that out in various papers, and the Lord Advocate’s letter to the committee touches on that point, too.

The Convener: Yes. The difficulty for me is that we have been given a petition whose premise has not proved to be the case. Therefore, I have some difficulty with carrying on and making inquiries. It seems to me that perhaps a new petition should be submitted if there are other issues that people want to follow-up. Of course, I will defer to

members’ views, but had you considered that point, Rona?

Rona Mackay: As the clerk was talking, the possibility of there being a new petition was going through my mind. I do not know whether it is administratively possible to continue with inquiries in relation to this petition.

The Convener: Again, the difficulty that I have is that we might be setting a precedent if we go on and look at issues that are related to a petition even though the assertion in the original petition is not correct. If we do that, where will we end up?

The question that was asked has been answered: the Lord Advocate has said that he can choose to give a view, which will carry a lot of weight, but that he cannot refuse permission. In view of what has been said, are we content to close the petition and notify the petitioner that, if he wants to bring up other issues, he could choose to submit a fresh petition?

Rona Mackay: I think that the points that the petitioner has raised with regard to the safety of sports workers are important. However, perhaps they would be better pursued through a new petition.

Daniel Johnson: Is there perhaps a middle way? I accept the points that you make, convener, about the premise of the petition and the question having been answered. However, surely if issues have been raised with us by whatever means, it is open to us to ask questions about them. We might choose to close the petition, but it might be relevant for us to pursue with the HSE the issue that has been raised, and to pursue with the Lord Advocate the issue in question 4, regardless of where the suggestion came from.

John Finnie: I agree with Daniel Johnson. In relation to the legislation that we are discussing, there is the potential for both criminal and civil matters to arise. When we examined the role that health and safety legislation plays in relation to fatal accident inquiries, we encountered similar issues. Out of what is, at the very minimum, idle curiosity on my part, it would be helpful to understand more about the issues, although I accept that the petition could be closed.

The Convener: That might be a useful halfway house. We could close the petition and write letters to get the answers that the petitioner seeks to those questions, which are not directly connected to his petition, and ensure that he gets a response. Are we content with that approach?

Members indicated agreement.

Justice Sub-Committee on Policing (Report Back)

10:15

The Convener: Agenda item 5 is feedback from the Justice Sub-Committee on Policing's meeting on 31 January. Following John Finnie's verbal report, there will be an opportunity for members to make brief comments or to ask questions. I refer members to paper 6, which is a note by the clerk.

I invite John Finnie to provide feedback from the meeting in question.

John Finnie: As paper 6 is quite a detailed paper that is in the public domain, I will summarise some of the points that it makes about the Justice Sub-Committee on Policing's meeting on 31 January, at which we considered Police Scotland's draft budget for 2019-20 and the chief constable's priorities for the coming year.

The chief constable told us about the preparations that Police Scotland is making in relation to Brexit. On officer numbers, the significant point to note is that the force is delaying the reduction of 300 officers that it had intended to make as part of the efficiency savings process. In addition, it has accelerated the recruitment of 100 new officers. Therefore, it will have 400 officers available to support its response to any Brexit-related situations, including those that arise elsewhere in the United Kingdom, given that there are reciprocal arrangements in place with other forces. We heard that Brexit presents the biggest short-term demand that Police Scotland faces, not least because of the uncertainty that exists.

Specific longer-term risks associated with Brexit include the loss of access to European Union-wide mechanisms such as Europol, Eurojust and the European arrest warrant, but the chief constable said that work is already under way to build bilateral arrangements with other countries.

We talked about the information and communications technology strategy. On cyberkiosks, the chief constable acknowledged that the organisation had not gone about the process properly. We were told that the Crown Office and Procurator Fiscal Service's advice to Police Scotland on the legal basis on which cyberkiosks can be used had come in on the morning of our meeting. That information is not yet available, but it will be shared with the sub-committee. We received an assurance that the roll-out of cyberkiosks would not take place unless there was absolute certainty about the legal basis for it.

A number of questions were asked about the capital budget, which was felt to be inadequate,

given that it equates to only 40 to 50 per cent of what a force of Police Scotland's size would anticipate receiving by way of capital investment. It was felt that, without additional capital, the force would not be able to realise the full revenue benefits of its strategy and that there would be challenges for the fleet and the estate, which would become acute.

We heard that the VAT money is now mainstreamed into Police Scotland's budget. The other issue that was discussed in some detail was that of the community police officers who are funded by local authorities, of whom there are about 145. The chief constable stated that he had an ethical duty to ensure that they continued to undertake the community policing functions that local authorities fund them for, but that there would be a challenge if that funding were removed.

I am happy to take any questions.

The Convener: Do members have any questions or comments?

The sub-committee had a very good evidence session with the chief constable. We are all pleased that a huge volume of mobile devices are being used for front-line policing, but concerns still exist about the slow progress that is being made on the funding of the IT system, which is a tool that the police need, and on the deficit in relation to the fleet and the estate, which needs to be addressed. Nonetheless, it was a worthwhile and encouraging session.

Before we move into private, I would like to record Liam McArthur's apologies, which were submitted after all.

That concludes the public part of today's meeting. Our next meeting will be on Tuesday 19 February, when we will continue our consideration of our draft report on our post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012.

10:19

Meeting continued in private until 11:46.

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