



OFFICIAL REPORT
AITHISG OIFIGEIL

Education, Children and Young People Committee

Wednesday 30 November 2022

Session 6



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Pàrlamaid na h-Alba

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EDUCATION, CHILDREN AND YOUNG PEOPLE COMMITTEE **30th Meeting 2022, Session 6**

CONVENER

*Sue Webber (Lothian) (Con)

DEPUTY CONVENER

*Kaukab Stewart (Glasgow Kelvin) (SNP)

COMMITTEE MEMBERS

*Stephanie Callaghan (Uddingston and Bellshill) (SNP)

*Graeme Dey (Angus South) (SNP)

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

*Ross Greer (West Scotland) (Green)

Stephen Kerr (Central Scotland) (Con)

*Ruth Maguire (Cunninghame South) (SNP)

*Michael Marra (North East Scotland) (Lab)

*Willie Rennie (North East Fife) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Clare Haughey (Minister for Children and Young People)

CLERK TO THE COMMITTEE

Pauline McIntyre

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Education, Children and Young People Committee

Wednesday 30 November 2022

[The Convener opened the meeting at 10:15]

Subordinate Legislation

Police Act 1997 (Offences in Schedules 8A and 8B) Amendment (Scotland) Regulations 2022 [Draft]

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No 2) Order 2022 [Draft]

The Convener (Sue Webber): Good morning, and welcome to the 30th meeting of the Education, Children and Young People Committee in 2022. We have received apologies from Stephen Kerr.

The first item on our agenda is evidence from the Minister for Children and Young People, Clare Haughey, and her officials on the draft Police Act 1997 (Offences in Schedules 8A and 8B) Amendment (Scotland) Regulations 2022 and the draft Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No 2) Order 2022.

I welcome the minister to the committee, along with her officials: Alison Martin, a solicitor for the Scottish Government, and Kevin Lee, the head of policy at Disclosure Scotland.

I invite Ms Haughey to speak to the draft instruments.

The Minister for Children and Young People (Clare Haughey): Good morning, and thank you for inviting me to give evidence to the committee on two draft Scottish statutory instruments: the Police Act 1997 (Offences in Schedules 8A and 8B) Amendment (Scotland) Regulations 2022 and the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment (No 2) Order 2022. I hope that the following will be of help to committee members.

The instruments make amendments to the offence lists in the legislation covering disclosure. Those lists contain the offences that must be included when disclosure checks are carried out on individuals. The SSIs are required in order to ensure that there is consistency between state disclosure and self-disclosure.

Most of the amendments made to the offences lists by the instruments are intended to bring them into line with the equivalent lists passed by the Scottish Parliament in the Disclosure (Scotland) Act 2020. The changes made by the instruments will remain in place until that act is fully commenced.

If an offence is not included in the lists, a conviction for that offence cannot be disclosed on any level of disclosure once it is spent according to the Rehabilitation of Offenders Act 1974.

Higher-level disclosures are used for roles involving a high degree of sensitivity, or where there is an expectation of integrity, or for the purpose of public protection. The offence lists therefore serve an important safeguarding purpose by ensuring that information about serious and relevant spent convictions can continue to be disclosed once the convictions are spent.

The legislation contains two lists of offences: list A and list B. Offences in list B are for convictions that must be disclosed in accordance with the rules and include those such as fraud or theft. An individual can apply to have spent convictions from that list removed from their disclosure. To do that, the individual must apply to the sheriff court.

There are some offences that must be disclosed regardless of how long has passed since the conviction. Those are the offences in list A, which include serious offences such as rape and other sexual offences as well as certain terrorism and firearms offences. An individual can apply to have those offences removed only after a certain amount of time has passed and depending on their age at the time of conviction. That application must be made to the sheriff court.

When the offence lists were reviewed for the purposes of the Disclosure (Scotland) Act 2020, some offences were moved between list A and list B, some were removed entirely from list B and new statutory offences that had been created since the offence lists were established in 2015 were added to both lists. For example, the offence under section 1 of the Domestic Abuse (Scotland) Act 2018 of abusive behaviour towards a partner or ex-partner is specified in list A of the Disclosure (Scotland) Act 2020, but it is not specified in the offence lists in the legislation that is currently in force. That means that a spent conviction for such an offence cannot currently be disclosed on any form of higher-level disclosure. I have introduced the instruments in advance of the full commencement of the Disclosure (Scotland) Act 2020 to remedy that and to reduce any safeguarding risks that might arise in the interim period.

In addition to the changes made to align the existing legislation with the Disclosure (Scotland) Act 2020, some further changes are being made to the offence lists to take us through the interim period. Those changes relate to amendments that could not be made during the bill process due to the onset of the pandemic; new offences created since the Disclosure (Scotland) Act 2020 completed its passage through Parliament; and a general review of the offence lists. The factors that informed the creation of the offence lists and the review for the purposes of the Disclosure (Scotland) Act 2020 were revisited in order to classify offences as either serious, and therefore on list A, or less serious and on list B. Full details of the amendments are set out in the policy notes, which I believe members have.

Any corresponding amendments that are necessary to update the Disclosure (Scotland) Act 2020 offence lists will be made as part of the implementation of those provisions in 2024.

My officials and I are happy to take questions on the draft regulations and order.

The Convener: Thank you, minister. Do members have any questions or comments on the draft instruments?

As there are no comments, we move to agenda item 2, under which I invite the minister to move motion S6M-06431.

Motion moved,

That the Education, Children and Young People Committee recommends that the Police Act 1997 (Offences in Schedules 8A and 8B) Amendment (Scotland) Regulations 2022 [draft] be approved.—[Clare Haughey]

Motion agreed to.

The Convener: Is the committee content to delegate responsibility to the deputy convener and me to agree the report on the draft instrument on behalf of the committee?

Members indicated agreement.

The Convener: Our next item of business is to invite the minister to move motion S6M-06432.

Motion moved,

That the Education, Children and Young People Committee recommends that the Rehabilitation of Offenders Act 1974 Exclusions and Exceptions (Scotland) Amendment (No. 2) Order 2022 [draft] be approved.—[Clare Haughey]

Motion agreed to.

The Convener: Is the committee content to delegate responsibility to the deputy convener and me to agree the report on the draft instrument on behalf of the committee?

Members indicated agreement.

The Convener: I thank the minister and her officials for attending today, and I thank everyone for their time.

10:23

Meeting continued in private until 11:34.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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