

JUSTICE 2 COMMITTEE

Tuesday 3 February 2004
(Afternoon)

Session 2

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JUSTICE 2 COMMITTEE

† 5th Meeting 2004, Session 2

CONVENER

*Miss Annabel Goldie (West of Scotland) (Con)

DEPUTY CONVENER

*Karen Whitefield (Airdrie and Shotts) (Lab)

COMMITTEE MEMBERS

*Jackie Baillie (Dumbarton) (Lab)

*Colin Fox (Lothians) (SSP)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Mike Pringle (Edinburgh South) (LD)

*Nicola Sturgeon (Glasgow) (SNP)

COMMITTEE SUBSTITUTES

Ms Rosemary Byrne (South of Scotland) (SSP)

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Michael Matheson (Central Scotland) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Margaret Smith (Edinburgh West) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Hugh Henry (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Gillian Baxendine

Lynn Tullis

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Richard Hough

LOCATION

Committee Room 2

† 4th Meeting 2004, Session 2—held in private.

Scottish Parliament

Justice 2 Committee

Tuesday 3 February 2004

(Afternoon)

[THE CONVENER opened the meeting at 14:04]

Antisocial Behaviour etc (Scotland) Bill

The Convener (Miss Annabel Goldie): Good afternoon. I welcome members to the fifth meeting of the Justice 2 Committee in 2004.

Before I proceed to the first item on the agenda, it is with regret that I raise with the committee a matter that I regard as extremely serious. The clerks have just brought to my attention an article that appeared in *Scotland on Sunday* on Sunday 1 February. It appears to have been written with knowledge of the committee's private discussion at last week's meeting. That discussion concerned the draft report that the committee is required to prepare on the Antisocial Behaviour etc (Scotland) Bill.

I repeat that it is with great regret that I raise this matter. I wish to make it crystal clear that I personally, as convener, take a very dim view of something like this happening. This committee, like any other parliamentary committee, is effective if we act collectively and with integrity. Frankly, we do one another a great disservice if any one of us is minded to depart from that principle, which I think is sensible and laudable. I am very disappointed that this has happened.

I remind members of the terms of section 9.4 of the code of conduct for members of the Scottish Parliament, which relates to confidentiality requirements. Paragraph 9.4.3 outlines the difficulties for committees should an unauthorised disclosure take place. Paragraph 9.4.4 states, in relation to confidential committee material:

"such documents should not be circulated, shown, or transmitted in any other way to members of the public, media"

and so on.

Not only does a breach of that obligation impact on the committee as a whole; it places the lead committee on the bill in a very difficult position. That committee—the Communities Committee in this case—should be entitled to rely on the integrity of this committee to present to it, in confidence, an adjusted report, the terms of which

become public only once the Communities Committee so determines. I am both irritated and extremely disappointed that such an incident has occurred in this committee.

It is competent for the committee to decide to make a formal referral to the Standards Committee, which would involve the committee conducting its own leak investigation and then preparing a short report for the Standards Committee. I am open to comments from committee members in order to ascertain whether there is a view that such action should be taken.

Karen Whitefield (Airdrie and Shotts) (Lab): I agree that this is a very serious matter. I was very concerned when I read the *Scotland on Sunday* article. It undermines every single member of the committee and brings our respective integrities into disrepute. It undermines the work of the committee collectively, because it puts a question mark over all the members of the committee, over the work that we do and over the way in which we work collectively. It is important that we send a signal to whoever saw fit to leak the report to the newspapers that such behaviour will not be tolerated. For those reasons, it is important that we consider referring the matter to the Standards Committee. It may well prove impossible to discover who was responsible for the leak. However, it is important that we make the point that leaks of this nature are unacceptable, that they bring the committee and the Parliament as a whole into disrepute and that we should not conduct ourselves in that way.

Jackie Baillie (Dumbarton) (Lab): I associate myself with your remarks, convener, and with those of Karen Whitefield. It is a discourtesy to you, to the committee and to the principles upon which the Parliament was founded. Clearly, the member responsible had an opportunity to reflect on what was, to all intents and purposes, a private meeting, and chose to breach the confidence of the committee. I find it quite cowardly that there was no name attached to the inferences that were made. Indeed, some of the inferences that were made in the article are inaccurate and do not reflect the committee report. I would support any move to have the matter investigated and reported to the Standards Committee, as I feel strongly about a breach of this nature.

Nicola Sturgeon (Glasgow) (SNP): I will not repeat the comments that have already been made; I am happy to agree with them. I am happy to refer the matter to the Standards Committee, which I think is what should happen in all such cases.

Colin Fox (Lothians) (SSP): I associate myself with the remarks that have already been made, so that it is on record that I concur.

Maureen Macmillan (Highlands and Islands)

(Lab): I concur too. It is one of the most blatant examples of a private discussion of a report being leaked to the press. For similar articles in the past, the reporter has perhaps listened to the evidence or looked at the *Official Report* and used guesswork, but Sunday's article has obviously come straight from a private meeting of the committee. I very much regret that and am disappointed that it has happened.

Mike Pringle (Edinburgh South) (LD): I agree entirely. I have to say that Eddie Barnes spoke to me and asked me what the report said. I said that he would need to get and look at the evidence that was public so far; that he could decide what evidence had been led; and that the document that we dealt with last week was private and would be discussed further this week. He asked me whether the document that we would discuss this week would be published, and I said, "Frankly, I don't know when it's to be published." I also said that this was the first time that we had been involved in a stage 1 report as a secondary committee; that, because we are not the lead committee, the report would go to the Communities Committee; and that at some point whatever this committee says will be made public. It was a general conversation. I gave him no indication whatever of what the paper said; I said, "You will need to go away and have a look."

I read the article on Sunday as well, and I think that most of it is inference; I think that Eddie Barnes has jumped to conclusions. He has mentioned the various bits of evidence that we were given when witnesses came to public committee meetings, which is a matter of public record. I did not say anything about what the report said. I said, "You will need to go away and investigate that yourself."

I am honest enough to say that I spoke to him, but I said, "You will have to go away and look at the evidence that has been given so far. You can draw any conclusions that you want yourself, but the report will not be made public until such time as the committee makes it public." I then spoke to one of my colleagues, who said that the normal course of action is that our report will go as a private document to the Communities Committee, and that it will be up to that committee to make it public at some point.

The Convener: Do you have a view about referral to the Standards Committee?

Mike Pringle: I agree entirely. I have no problem with that at all.

The Convener: I thank you for that comment.

The committee is obviously unanimous that we will refer the matter to the Standards Committee, so that is what I shall arrange to do as convener. I

will refer to the matter again when we come to the Antisocial Behaviour etc (Scotland) Bill later on in the agenda. That discussion will be in private, but I emphasise to every member here that I do not expect a leak to recur, and I expect the confidence of the committee's discussions to be sacrosanct and respected by every committee member.

Item in Private

14:12

The Convener: I ask the committee to consider whether it wishes to take in private item 5, which concerns proposals for the seminar concerning our youth justice inquiry. Are we agreed?

Members *indicated agreement.*

Energy Bill (UK Legislation)

14:13

The Convener: Item 2 concerns the Energy Bill, which is currently before the United Kingdom Parliament. I welcome Hugh Henry, the Deputy Minister for Justice, and colleagues from his department to our meeting.

I am sorry, Mr Henry, that we had to delay your participation because of what I think we are all agreed is an unfortunate incident, but I felt that it should be addressed at the earliest opportunity. Would you care to make some introductory comments about the bill?

The Deputy Minister for Justice (Hugh Henry): There are two justice elements to the bill. The first is to be found in chapter 3 of part 1 of the bill, which sets up an independent statutory civil nuclear police authority. The authority will oversee a new civil nuclear constabulary—the CNC—which the bill also sets up and which will be reconstituted from the present United Kingdom Atomic Energy Authority constabulary. The CNC's primary role will be, just as before, to protect civil nuclear material at certain licensed sites and in transit. Those sites include Dounreay and Chapelcross in Scotland. The constabulary has full police powers within its jurisdiction, but it has very little contact with the public or with general crime, for which regional forces continue to have responsibility.

Although nuclear security is reserved, the constabulary elements are included in the Sewel memorandum because only the Scottish Parliament can determine the powers and privileges of a constable in Scotland. The Parliament could thus competently confer devolved functions on the constabulary, but only in respect of the rare occasions on which it becomes involved in civilian policing activities. Similarly, when inspections take place in relation to those civilian functions, they will be a devolved matter, and if members of the CNC were to enter into collaboration agreements with other Scottish forces in relation to civilian policing matters, those agreements would be devolved.

14:15

At present the constabulary is overseen by a non-statutory police authority, which is in effect a committee of the UKAEA. That authority operates in Scotland under reserved powers, has no legal authority and is only indirectly accountable to the secretary of state. The proposals seek to separate the constabulary from the UKAEA and to reconstitute it as a stand-alone force, in order to make it independent of the nuclear industry. The

bill provides for a modern statutory framework that is appropriate to the needs of a modern police force. No practical change is proposed to the basic role of the constabulary, to employees' conditions or to the nuclear security regime.

Scottish police forces work well with the constabulary in Scotland. The Association of Chief Police Officers in Scotland and Her Majesty's inspectorate of constabulary for Scotland support the measures, which strengthen the independence of the policing arrangements for nuclear sites and are broadly in line with what has been done in relation to other special police forces in Britain.

The second justice element of the bill can be found in chapter 1 of part 2, which contains provisions for the establishment of an offshore renewable energy zone. Provision is made for the extension of police powers to investigate alleged offences that occur on or around any renewable energy installation that might be situated in internal or territorial waters or in waters that are in the renewable energy zone. The proposals on the policing of such installations form part of the provisions for the establishment of a comprehensive legal framework to support renewable energy development beyond territorial waters and to augment the regime for inshore waters.

The Convener: Thank you very much for that. Members have received an explanatory note on the bill with their papers. Are there any questions for the minister?

Maureen Macmillan: I have a question, but I am not sure whether the minister will be able to answer it, as it refers to a matter that might be in another minister's remit—

The Convener: We are all impressed that Maureen Macmillan has a question on a matter that has baffled the rest of us.

Maureen Macmillan: What is a fast-track transfer from a nuclear site? Of course, the police would have to accompany any such transfer.

The Convener: Where is the reference to fast-track transfers?

Hugh Henry: I presume that Maureen Macmillan is referring to the transfer of licensed nuclear material between installations. What is her specific question?

Maureen Macmillan: I cannot find the reference now. I noticed it when I was skimming through the papers and wondered when such transfers would happen.

The Convener: I think that I can say with confidence that the rest of us cannot help.

I am being directed to paragraph 7(c)(i) of the Executive memorandum.

Maureen Macmillan: Yes. The paragraph says:

"Fast-track' transfer will be allowed when there is a new operator for a nuclear site".

Does that refer to the transfer of ownership of or responsibility for the site or to the transfer of material? I had visions of nuclear stuff being rushed up and down the road with a police escort on motorbikes.

Hugh Henry: If the question is about the transfer of material between installations, I can confirm that the CNC would have a security role. It would liaise with the local constabulary in each area if there was a need to supervise the transfer of material between different areas.

Fast-track transfers of ownership of the site are an entirely different matter, on which it would be beyond my competence to comment.

Maureen Macmillan: It was just that the use of the word "transfer" led me to imagine that it referred to the physical transfer of nuclear waste.

The Convener: The word "transfer" seems to refer to the operation, rather than the ownership of the site. It is about transfers from one operator to another.

Hugh Henry: The transfer of ownership—or the fast-tracking of a change in ownership—would be a matter for other ministers.

Maureen Macmillan: I agree. When I asked the question, I thought that the matter was probably not in your remit. Thank you very much for your contribution to my fund of knowledge, such as it is.

The Convener: The minister referred to the existing arrangements vis-à-vis our police forces in Scotland and how they relate to the Scottish Executive's role. I just want to be clear that the proposed new civil nuclear police authority will work smoothly in the practical sense and that it will have regard to what happens already. In other words, following the creation of the new authority, will the minister feel free to have a dialogue with ACPOS on any issues that might arise in relation to how the new authority operates within Scotland?

Hugh Henry: We do not anticipate any change to the operational procedures or to the efficiency with which the constables operate. There are local arrangements, and dialogue with ACPOS and others will continue. We would expect to be apprised of any concerns that arise from discussions between the relevant agencies. I want to stress that the proposed change will be a seamless transition; it is a change of organisational structures rather than of operational procedures. We will liaise closely with our

colleagues in the UK Government on the accountability of the civil nuclear police force.

The Convener: Thank you. Are there any other questions on the issue? Does the committee have any objection to Westminster legislating on what is a devolved matter?

Members: No.

The Convener: Technically, in such a situation it would be competent for the committee to draft and publish a report, but I think that the Parliament will debate the matter tomorrow—if my memory serves me correctly. Therefore, it would be totally impractical for the committee to produce a report. Does the committee agree simply to note the bill?

Members *indicated agreement.*

Asylum and Immigration (Treatment of Claimants, etc) Bill (UK Legislation)

14:22

The Convener: Before the minister can rise from his seat, we must move on to consider the Asylum and Immigration (Treatment of Claimants, etc) Bill, which will be dealt with under another Sewel motion. I will let the minister's colleagues change positions and, once his officials from the Justice Department are ensconced, he might like to make some introductory remarks.

Hugh Henry: The issue that we are debating today is important and I would argue that the committee's consideration of it is welcome. The proposals fulfil an obligation that we made to the previous Justice 2 Committee and to Parliament when the Criminal Justice (Scotland) Bill was being considered that we would reflect on any potential weaknesses or loopholes in Scots law and move to close them down. I believe that the measures before the committee will improve our ability to deter criminals from targeting Scotland as a destination for human trafficking.

As the committee will be aware, most of the measures that are contained in the Asylum and Immigration (Treatment of Claimants, etc) Bill relate to reserved matters. However, the bill includes new provisions to help the fight against human trafficking, and the criminal law on trafficking is a devolved matter. I am therefore asking the committee to agree that we should take the opportunity to ensure that the deterrents and protection in Scotland are equal to those in England and Wales.

As members know, section 22 of the Criminal Justice (Scotland) Act 2003 created an offence of trafficking for the purposes of prostitution and so on, which was widely welcomed at the time. The new measures in the UK bill will help us in our continued fight against organised crime by introducing a new offence of trafficking for non-sexual exploitation and, as I have said, they will also fulfil the commitment that we gave during the passage of the Criminal Justice (Scotland) Act 2003.

Trafficking and the subsequent exploitation of victims create and perpetuate human misery and we should not tolerate such abhorrent crimes. Those who are involved in trafficking, whether for sexual exploitation or for forms of non-sexual exploitation, should feel the full force of the law.

The penalties that will be available to the courts for the new offence reflect the seriousness with which we view such crimes. Without legislation, a

potential loophole could be created, as trafficking in human beings for non-sexual exploitation could be a crime in England and Wales but not in Scotland. It is important that we do not allow that to happen. We do not want to create a potential safe haven for traffickers in Scotland and I do not think that the public would accept that either.

In general, asylum and immigration are reserved matters, but the provisions to which the motion refers relate only to matters that are within the Scottish Parliament's devolved competence. I hope that the committee agrees to extend the provisions in the UK bill to ensure that no safe havens for the perpetrators of trafficking crimes exist anywhere in the UK.

The Convener: Thank you, minister. Again, members have a cover note in their papers. Are there any questions?

Nicola Sturgeon: I have two questions about clauses in the bill that the minister has not discussed, but which appear to me to have relevance for our devolved responsibilities. My first question relates to clause 7, which deals with the withdrawal of support from failed asylum seekers with children. There has been speculation in the media that withdrawal of support would pave the way, or make possible, the removal of children from parents who are failed asylum seekers. How does that fit with the Children (Scotland) Act 1995, which makes the welfare of children the paramount consideration?

My second question relates to clause 11, which deals with the unification of the appeals system. Will the minister comment on the views that have been expressed by the Law Society of Scotland and by a number of leading Scottish lawyers in a letter to *The Herald*? They said that the proposals represent a serious attack on the rule of law, as decisions by the immigration and asylum tribunal would be immune from review by the courts. Given that the jurisdiction of Scottish courts is a devolved matter, it seems to me that the matter is relevant to the Parliament.

Hugh Henry: Both matters that Nicola Sturgeon has identified are reserved. I am here to discuss a specific issue that is within our devolved competence, and I do not believe that the issues that Nicola Sturgeon mentions are competent as part of consideration of a Sewel motion. There might be other issues in the bill that should also be considered at Westminster, which is where such debates should properly take place.

Jackie Baillie: I do not want to ask specifically about the minister's presentation, as I think that there is unanimous agreement that we also want to halt any possibility of trafficking in human beings. However, the Law Society of Scotland has made a number of points. Those points are not for

us to consider, but we would be grateful if ministers reflected on them with their counterparts at Westminster to ensure that such concerns are at least considered and addressed as the bill progresses.

Hugh Henry: Any issues in this bill—and in any bill—that impinge on our responsibilities will be carefully considered. I assure Jackie Baillie and Nicola Sturgeon that any implications for us in the bill will be taken up.

Nicola Sturgeon: I do not want to prolong the discussion unduly, but will the minister explain from a human point of view how a matter that impacts so centrally on the welfare of children—which is clearly devolved to the Scottish Parliament—cannot be a matter of concern for the committee and the Parliament? I dare say that the minister has a very technical legal explanation.

Hugh Henry: The issue that Nicola Sturgeon seeks to address has its roots in legislation that is the United Kingdom Parliament's responsibility. We have made it clear that we will act on any matters for which we have responsibility as ministers. Indeed, a number of my colleagues have made comments on such issues over a long period, but I do not seek to enter into a wider debate—which is clearly contentious—on the respective responsibilities of each jurisdiction in relation to asylum seekers. We are asking for the Sewel mechanism to be used for a specific issue and we will not go any wider than that.

14:30

The Convener: Do members have any objection to Westminster legislating on this devolved matter?

Nicola Sturgeon: Yes.

Colin Fox: I accept much of what the minister has said about the competence of the Sewel motion, but I have grave reservations about the situation. The point is that other parts of the bill relate to devolved issues. Will the motion be debated in Parliament next week or the week after?

The Convener: I am informed that this week's business motion will propose that the Sewel motion be debated in the Parliament next week.

Colin Fox: Like Nicola Sturgeon, I dissent.

The Convener: I take it that Colin Fox and Nicola Sturgeon are the only committee members present who dissent from Westminster handling the issue.

Nicola Sturgeon: I want to put on record the fact that I have no objections to the provisions on human trafficking. My concern is that the terms of the Sewel motion do not comprehensively cover

all aspects of the bill that may have implications for devolved areas. That is why I want to put on record my opposition to the Sewel motion.

The Convener: For the sake of clarity, we had better have a formal division. The question is, that the committee is content for Westminster to legislate on the devolved aspects of this bill. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Baillie, Jackie (Dumbarton) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Macmillan, Maureen (Highlands and Islands) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Fox, Colin (Lothians) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)

The Convener: The result of the division is: For 5, Against 2, Abstentions 0.

Therefore, the committee's decision is that it is content for Westminster to legislate on the devolved aspects of the bill.

It is competent for the committee to prepare a report, in which the committee may wish simply to note the position that has been discussed. We should perhaps emphasise to the minister the points that Jackie Baillie made that were highlighted by the Law Society of Scotland. The committee would regard it as helpful if the Scottish Executive could consider the points that the Law Society of Scotland has raised.

Hugh Henry: We will consider such issues in the way that I have indicated.

The Convener: I thank the minister for attending the meeting.

Budget Process 2005-06

14:33

The Convener: Agenda item 4 is consideration of our approach to the budget process for 2005-06. A paper has been circulated to all committee members to give some background detail on the process. The first principal issue that we must determine is whether to seek permission from the Parliamentary Bureau to meet jointly with the Justice 1 Committee to consider the expenditure proposals. Is that agreed?

Members indicated agreement.

The Convener: Secondly, we must decide whether to seek the appointment of a joint adviser for the two justice committees. Is that agreed?

Members indicated agreement.

The Convener: Thirdly, we must decide whether the joint adviser on the budget should be a standing adviser.

Karen Whitefield: It would be helpful to have a standing adviser on the budget. As a new member of the Justice 2 Committee when it was reconstituted last year, I found it helpful to have Professor Main to advise us on the budget, as he had a degree of knowledge and expertise that many committee members did not have. It was helpful that he was able to point us in the right direction and give a focus to our deliberations and thoughts on the justice budget.

If we had the same adviser throughout the process, we would be able to track the recommendations that the justice committees make on the budget. That would offer some continuity to our deliberations throughout this session of the Parliament and might allow the budget process to be meaningful in a way that was sometimes lacking in the previous parliamentary session.

The Convener: Those are helpful comments. Are we agreed that we should seek the appointment of a joint standing adviser?

Members indicated agreement.

The Convener: I thank you all for that. We now move into private session to deal with the next item, which is on our inquiry into youth justice.

14:35

Meeting continued in private until 16:49.

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