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Public Petitions Committee
T3.40
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22 January 2014

Dear Stuart

PETITION PE1491 – SECRET SOCIETY MEMBERSHIP (DECLARATION)

Please find the Scottish Government's response to the issues raised in Petition PE1491.

The petition calls on the Scottish Parliament to urge the Scottish Government to amend the law or codes of practice to make it compulsory for decision makers such as sheriffs, judges, and juries at their courts, arbiters, and all panel members of tribunals that are convened and held in Scotland and governed by devolved legislation, custom and practice, to declare if they have ever been members of organisations, such as the Masons, that demand fraternal preference to their brethren over non-brethren, or organisations which have constitutions or aims that are biased against any particular sect, religion or race.

That a register of such membership is held by the various bodies that supervise such judicial and quasi-judicial tribunals and that access to these registers is given on demand to the defendant, litigant, or plaintiff wishing to exercise their rights to a fair hearing in accordance with Article 6 of the ECHR.

The Committee has asked:

- What are your views on what the petition seeks and the discussion that took place at the meeting on 12 November?
- Does the Scottish Government support the proposal; and further on the practicalities of the proposal.

For the reasons outlined below, the Scottish Government does not support the proposal. The Scottish Government considers there are sufficient safeguards in place to ensure the impartiality and integrity of the judicial system in Scotland. These are detailed below.

Judicial oath

First, all judges must take a judicial oath under which they must swear that they will do right to all manner of people without fear or favour, affection or ill-will.

Statement of Principles of Judicial Ethics

Second, a Statement of Principles of Judicial Ethics for the Scottish Judiciary was issued in 2010 by the Judicial Office for Scotland as guidance for all holders of judicial office in Scotland. This framework of judicial ethics is to ensure that both judges and the public are aware of the principles by which judges are to be guided in their personal and professional life. Chapter 5 deals with the principle of impartiality and states that “a judge should strive to ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and the judiciary”.

Judiciary and Courts (Scotland) Act 2008

Third, the Judiciary and Courts (Scotland) Act 2008 provides, at section 28, the Lord President with a power to make rules for the investigation of “any matter concerning the conduct of judicial office holders.” The detail of how such complaints are to be handled is contained in the Complaints about the Judiciary (Scotland) Rules 2011 which came into force in February 2011. These rules provide that complaints regarding the judiciary are to be made to the Judicial Office of the Scottish Court Service.

Sections 35, 40 and 41 of the 2008 Act also provide a mechanism whereby the fitness for office of various members of the judiciary may be investigated.

Tribunals Bill

The Tribunals (Scotland) Bill, currently before the Scottish Parliament, creates a new simplified landscape for devolved tribunals by establishing a First-tier Tribunal for first instance decisions and an Upper Tribunal, primarily for appeals. The judicial leader of the Scottish Tribunals will be the Lord President. The Tribunals Bill requires all members of the Scottish Tribunals to take the judicial oath. It also places a duty on the Lord President to make rules for the investigation of “any matter concerning the conduct of members of the Scottish Tribunals”.

We would expect that the Statement and Principles of Judicial Ethics will be adopted by members of the Scottish Tribunals but that will be a decision for the Lord President.

Conclusion

The Scottish Government does not consider there is currently any evidence to suggest that existing safeguards are not effective and does not therefore consider that a register such as that advocated in the Petition is necessary. A similar Petition was considered by the Parliament in 2003. The then Justice Minister said that he had no indication that, aside from the petition, there were concerns that membership

of the freemasons may influence the judiciary in dispensing justice. This remains the case.

I hope the information in this letter, the terms of which have been cleared by the Cabinet Secretary for Justice, is of assistance in the Committee's consideration of the petition.

Yours sincerely,

KAY MCCORQUODALE
Head of Courts Team