



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 4 October 2016

Session 5



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Pàrlamaid na h-Alba

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JUSTICE COMMITTEE
6th Meeting 2016, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Mairi Evans (Angus North and Mearns) (SNP)

*Mary Fee (West Scotland) (Lab)

*John Finnie (Highlands and Islands) (Green)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Oliver Mundell (Dumfriesshire) (Con)

*Douglas Ross (Highlands and Islands) (Con)

*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Annabelle Ewing (Minister for Community Safety and Legal Affairs)

Denise Swanson (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Committee

Tuesday 4 October 2016

[The Convener opened the meeting at 11:30]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning, everyone. Welcome to the sixth meeting of the Justice Committee in session 5.

Under item 1 on the agenda, are members content to take in private agenda items 6 and 7, on consideration of our draft report on the legislative consent memorandum on the Investigatory Powers Bill and consideration of our programme of work?

Members indicated agreement.

Subordinate Legislation

Legal Aid (Scotland) Act 1986 Amendment Regulations 2016 [Draft]

11:31

The Convener: We come to agenda item 2. It is my pleasure again, for the second week in a row, to welcome Annabelle Ewing, Minister for Community Safety and Legal Affairs, and her officials to the committee to speak to a draft Scottish statutory instrument, which is to be dealt with under the affirmative procedure. With the minister this morning are Denise Swanson, head of the access to justice unit, and Alastair Smith, from the Scottish Government's directorate for legal services.

I remind members that this is an affirmative instrument. Officials are permitted to give evidence under this item but not to participate in the formal debate under item 3. I refer members to paper 1, which is a note by the clerk, and I invite the minister to make a short opening statement.

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): Good morning and thank you, convener. I am very pleased to be here today to speak to the draft regulations, which make provision for legal aid to be available in the new Upper Tribunal for Scotland, as we discussed last week. They will enable legal aid to be available when the first of the jurisdictions, covering housing matters, transfer to the Scottish tribunals on 1 December 2016. As legal aid is available for appeals to the sheriff court in the two housing jurisdictions that are transferring to the Scottish tribunals, a commitment was made to lay regulations to allow the status quo to continue, and therefore to ensure that access to justice can be delivered.

The Convener: I invite questions from members.

Oliver Mundell (Dumfriesshire) (Con): I understand that the Law Society of Scotland welcomed the proposals, but that it raised a question over the fees that would be available for its members' work. Is there a plan to make regulations in relation to fees? If so, when do you expect that to happen?

Annabelle Ewing: We are now at 4 October, and we hope that this will be in place so that legal aid will be available come 1 December to maintain the status quo.

The fees will be the existing fees. I believe that there is a negative instrument on those fees later on the agenda.

The Convener: You refer to the negative instrument, and some information came in yesterday: a business and regulatory impact assessment. I understand that there was a draft BRIA, which was changed. Under the second paragraph, on the legal aid provision, the current provision makes civil legal aid available for appeals. The previous provision covered appeals and judicial review. Would you like to clarify that?

Annabelle Ewing: Yes—and thank you for giving me the opportunity to do so. Legal aid will be available for judicial review in due course, when the judicial review mechanism transfers to the Upper Tribunal. The Lord President felt that we should let the Upper Tribunal and the new tribunal structure bed in before the judicial review function is moved, in the first instance, from the Court of Session to the new tribunal structure. That is why we have not introduced a legal aid provision today to cover a transfer that will happen in due course. Such a provision will be brought forward when the judicial review mechanism transfers from the Court of Session to the Upper Tribunal.

The Convener: So it is not a case of judicial review not being a formal proceeding—it is nothing to do with terminology.

Annabelle Ewing: My understanding is that it is simply to allow the new structure to bed in, and to maintain the judicial review mechanism in the Court of Session in the first instance. That is my understanding, but my officials might wish to flag up something else.

Denise Swanson (Scottish Government): Judicial review is not going to be dealt with in the Upper Tribunal at the moment, so there is no need to make legal aid available for that process. Legal aid is available for judicial review in the Court of Session. The legal aid provisions will be made when that process transfers to the Upper Tribunal.

The Convener: Okay. The bottom line, then, is that there is no change in the provision of legal aid—

Annabelle Ewing: —for judicial review at this time. That is correct.

The Convener: Okay. If there are no questions from members, I ask the minister whether she wants to make a closing statement.

Annabelle Ewing: No, thank you.

The Convener: We will therefore move straight to formal consideration of the motion, which I invite the minister to move.

Motion moved,

That the Justice Committee recommends that the Legal Aid (Scotland) Act 1986 Amendment Regulations 2016 [draft] be approved.—[Annabelle Ewing]

Motion agreed to.

The Convener: That concludes consideration of the draft regulations. The committee report will note and confirm the outcome of our debate. In the meantime, I invite the committee to agree to delegate authority to me, as convener, to clear the final draft of the report.

Members indicated agreement.

The Convener: It only remains for me to thank the minister and her officials for attending the meeting. We will have a brief suspension.

11:37

Meeting suspended.

11:37

On resuming—

Scottish Fire and Rescue Service (Framework) Order 2016 (SSI 2016/249)

Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2016 (SSI 2016/257)

The Convener: The fourth item of business today is consideration of two negative SSIs. I refer members to paper 2. If members have no comments, does the committee agree that it does not wish to make any recommendations in relation to the instruments?

Members indicated agreement.

Act of Sederunt (Simple Procedure) 2016 (SSI 2016/200)

Act of Sederunt (Lay Representation for Non-Natural Persons) 2016 (SSI 2016/243)

The Convener: Item 5 on the agenda is consideration of two instruments that are not subject to any parliamentary procedure.

I refer members to paper 3. We do not normally take no procedure instruments, but the clerk's paper explains why it was thought that these two instruments should be placed on the agenda. Usually, that happens for a couple of reasons: there are drafting issues, or there has been a change of policy that we think is worth noting. Both instruments are, in fact, riddled with drafting errors, both fairly careless errors and more substantial ones. One such error potentially changes the meaning or causes confusion. I think that we will most certainly want to draw attention to that and have it on the record.

I invite members' comments.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I welcome the fact that one of the errors will be fixed so that it will have no effect on the operation of the instrument. However, it appears from the clerk's paper that a number of errors will remain to be fixed at a later date. We should always try to extract an exact date in such cases, rather than simply leaving the date open-ended. I am not in any sense doubting the willingness of the Lord President's private office to make the required changes, but I think that it would be a helpful focus for those in that office to think about and give us a date. I am not suggesting a date—that is for the Lord President's private office.

The Convener: Okay. We will note that and write a letter to the Lord President's private office.

The issue of errors in no procedure instruments came up fairly regularly in the previous parliamentary session, as John Finnie will know, and I thought it important to continue to look at such instruments. We do not expect them to come to the committee very often, but I think that it is important to comment on them. The two that are before us today are particularly bad examples, I have to say. I think that we are sending out a very clear message that we are, at best, disappointed by what has been put in front of us and that we hope that it will not continue to happen.

We now move into private session.

11:41

Meeting continued in private until 12:33.

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