



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 25 April 2017

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Tuesday 25 April 2017

CONTENTS

	Col.
CRIMINAL FINANCES BILL	1
SUBORDINATE LEGISLATION	7
Damages (Personal Injury) (Scotland) Order 2017 (SSI 2017/96).....	7
JUSTICE SUB-COMMITTEE ON POLICING (REPORT BACK)	8

JUSTICE COMMITTEE

15th Meeting 2017, 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:

Linda Hamilton (Scottish Government)

Michael Matheson (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 25 April 2017

[The Convener opened the meeting at 10:00]

Criminal Finances Bill

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 15th meeting of 2017. Liam McArthur has been delayed at Kirkwall airport but hopes to join us later this morning.

Agenda item 1 is consideration of a legislative consent memorandum to the Criminal Finances Bill. It is a supplementary memorandum resulting from amendments that have been tabled to the bill at Westminster. Our aim is to report to the Parliament on the supplementary memorandum in time for the relevant motion to be considered. We understand that the motion will be considered at decision time this afternoon, so time is extremely limited. Nevertheless, we will do what we can in the time we have to scrutinise the memorandum.

I welcome Michael Matheson, the Cabinet Secretary for Justice, and his officials from the Scottish Government: Linda Hamilton, the deputy director for defence, security and cyber reliance; Alastair Crerar, the head of organised crime policy; and Craig French, the director of legal services. I refer members to paper 1, which is a note by the clerk, and invite the cabinet secretary to make a brief opening statement.

The Cabinet Secretary for Justice (Michael Matheson): Thank you, convener. I will try to keep my introductory remarks brief. I will first explain the accelerated timescale that we now find ourselves working to with the LCM.

The Criminal Finances Bill has always had a tight legislative timetable, and the Prime Minister's decision to hold a United Kingdom general election on 8 June has forced the process to be expedited further. Although that may be unsatisfactory, the Scottish Government is keen to see the bill's provisions apply in Scotland and is supportive of the supplementary legislative consent motion being agreed in line with that accelerated timescale and in advance of the dissolution of the UK Parliament.

The bill is intended to strengthen the capabilities and powers that law enforcement agencies and partners have to recover the proceeds of crime, tackling money laundering, corruption and counter-terrorism financing. The Scottish Government shares those objectives. Indeed, in

our programme for government for 2016-17, we committed to press the UK Government to strengthen proceeds of crime legislation, including by enabling the police to seize betting slips and casino chips from criminals. It is good to see those changes now being delivered.

The committee previously considered and reported on the original LCM, alongside my letters to you of 20 January and 24 February, and the Parliament voted to pass the original motion on 2 March. The supplementary LCM sets out relevant amendments that have been tabled since my letter of 24 February.

This is probably a good moment to confirm that the possible amendment to what was clause 51 and is now clause 53, concerning the power to make consequential provisions, which I referred to in the supplementary LCM, has now been lodged by Home Office ministers and will be considered by the House of Lords today. In addition, amendments to part 10 of the Proceeds of Crime Act 2002, which concerns information sharing, which are flagged up in my letter of 24 February and in the supplementary LCM, have been expanded to include information sharing about two additional aspects of civil recovery: the recovery of listed assets and the forfeiture of bank accounts. I now make clear that proceeds of crime-related information can be shared with HM Revenue and Customs and the Financial Conduct Authority. Those amendments are intended to further strengthen and improve recovery of the proceeds of crime, as is the bill as a whole. I encourage the committee to support them.

I thank the committee for agreeing to consider the supplementary memorandum at such short notice, which ensures that a vote can take place in Parliament this afternoon on the supplementary motion.

The Convener: Thank you very much, cabinet secretary.

John Finnie (Highlands and Islands) (Green): Good morning. Those are positive enhancements to the position that we were in earlier. How is the Magnitsky amendment likely to manifest itself?

Michael Matheson: The Magnitsky amendment—now clause 12 of the Criminal Finances Bill—was voted on on 21 February. It allows for proceedings to be taken forward in Scotland or the UK against an individual who may have been associated with breaches of human rights in another country. For example, if the individual has been involved in the abuse of human rights in a foreign country and lives in Scotland, or elsewhere in the UK, and their lifestyle does not reflect what we would expect given their tax returns in this country, that will allow our law enforcement agencies to take action

against them and to pursue their assets, which may be associated with human rights abuse in our country.

John Finnie: What is the level of co-operation between law enforcement agencies and between countries? Is there any threat to that because of Brexit?

Michael Matheson: I do not think that it will be a matter for Brexit, as this part of the legislation comes originally from legislation in the USA that followed the principle of the Magnitsky amendment. Under that principle, where individuals who were involved in the abuse of human rights in Russia had assets in another country, that fact allowed the law enforcement agencies in that country—in that case, America—to pursue those assets.

It is not co-operation from another country that will allow our courts to make a determination; that is based on information that is laid before them about assets that are held here in Scotland or somewhere else in the UK.

John Finnie: In an entirely Scottish context, do you envisage that the Crown Office and Procurator Fiscal Service and Police Scotland would liaise with such organisations as Amnesty International and Human Rights Watch to initiate inquiries?

Michael Matheson: I have no doubt that they would use a range of stakeholders to draw together an evidential base about concerns relating to whether an individual has been abusing someone's rights in another country. The evidence would then be brought together for the Crown Office to determine how to take that forward. I ask Linda Hamilton to expand on the process that it would use, given that she previously dealt there with some of these issues. It would use a range of information sources to put together a case to take forward in the Scottish courts.

Linda Hamilton (Scottish Government): The cabinet secretary is absolutely right on those points. The Crown Office will liaise with international partners, as will Police Scotland, to get information from a state as required for any investigation.

The unexplained wealth order will allow further investigation and will strengthen powers if, for example, a country is not willing to share information. We can imagine that more hostile countries may not want to share information with the Crown Office or Police Scotland if there have been human rights abuses. The UWO powers give a stronger investigators' tool to collect information at a Scottish level.

On John Finnie's question about Brexit, the negotiations are important to make sure that Scotland is in at least as strong a position as it is

now for investigations abroad and working with international partners.

John Finnie: Will a conviction be required to initiate an unexplained wealth order?

Linda Hamilton: No, it will not require a conviction—it is civil based.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I have a wee technical point about timescale. It is proposed that the House of Commons be dissolved on Wednesday next week. Have we had assurances from the UK Government that it expects to complete the bill process before dissolution?

Michael Matheson: We have.

Stewart Stevenson: That is fine. Thank you.

The Convener: Paragraph 17 of the supplementary LCM provides for the payment of compensation if property is wrongly frozen under an unexplained wealth order. Compensation would be paid by the Scottish ministers. Under the Proceeds of Crime Act 2002, is there provision for the Scottish ministers to make compensation payments for wrongful orders? If so, how much does the Scottish Government typically pay out in compensation each year?

Michael Matheson: These provisions are similar to the provisions that are in the Proceeds of Crime Act 2002. The individual would have to show that a loss has been suffered and that there has been a serious default by the Crown Office or the Scottish ministers when pursuing the matter in applying for an interim freezing order. That process is in place under the Proceeds of Crime Act 2002, so this is not a new process; the bill extends the process into this area.

The Convener: Do you have an idea of how much the Scottish Government typically pays out in compensation each year?

Michael Matheson: At present, I do not have that information to hand. We are talking about matters that would have to be raised in court by the applicants themselves. I do not know whether Linda Hamilton can expand on the extent to which that happens.

Linda Hamilton: The compensation provisions in the Proceeds of Crime Act 2002 are there to protect people whose property has been wrongly frozen. They are rarely used. People will sometimes ask for compensation, but the courts will decide whether that is appropriate. Arguments tend to be about whether the state has acted properly and in good faith. Just because someone has their property frozen and that property is thereafter shown to be legitimate does not necessarily create a case for compensation.

The Convener: There is another intriguing element to the LCM. Will the cabinet secretary expand on the comments in paragraph 18 of the supplementary LCM about the

“increasingly sophisticated ways in which criminals try to prevent the recovery of their criminal gains”,

including the use of betting slips?

Michael Matheson: Yes. As you can imagine, individuals who are involved in such activity will seek to identify ways in which they can circumvent the provisions in the Proceeds of Crime Act 2002. Originally, provision was made in the bill to cover casino chips, because they were being used to circumvent the legislation. The former Lord Advocate raised the issue of betting slips being used in that way—fixed-odds betting terminals and ticket in, ticket out processes are being used in ways that could almost be considered to be the laundering of cash. The Crown Office identified a growing concern that they were being used to circumvent the legislation. That is why I raised with the UK Government the need to ensure that we close down that loophole. The amendments will assist us in doing that by allowing us to pursue these issues through the Proceeds of Crime Act 2002, as we do with other areas where we are trying to pursue such assets. It is an example of how individuals who are involved in such criminality will always try to find loopholes. We need to continue to close them down as and when they arise.

The Convener: Having met representatives of the gambling industry, I was particularly interested to find out how alert they are to, and how aware they are of, the possibility of laundering and what measures they put in place to prevent that, so I was intrigued to find out what that element of the supplementary LCM referred to.

Finally, for the avoidance of doubt, are the cabinet secretary and his officials satisfied that they have had sufficient time to look at the provisions in the supplementary LCM?

10:15

Michael Matheson: To be frank, convener, it would be stretching it to say that we have had sufficient time. It has been very difficult to deal with this piece of legislation because of the very constrained timeframe from the outset. Although we have been working hard with Home Office officials on the areas that we have been looking to have addressed, the timeframe has been challenging. I would certainly not hold the process up as an example of how things should be done between the two Parliaments. The calling of the general election has added to that and has constrained the timetable even further.

The Convener: I suppose that the main point is that you are satisfied that—even in the shortened timeframe that you have had to look at the provisions—the powers are appropriate, sufficient and legally robust.

Michael Matheson: As I said in my opening comments, the reason why we want the committee and Parliament to support the supplementary LCM is that we think that the provisions that are being taken forward that require the supplementary LCM are very useful to our law enforcement agencies in Scotland. Although the process is not a good example of how things should be done, I believe that the benefits that will come from the legislation are of value to, in particular, the police and the Crown Office.

The Convener: I thank the cabinet secretary and his officials for attending the committee today at very short notice and for providing information.

As I have said, the clerks understand that the debate on the motion is to be taken in the chamber this afternoon. Are members content to delegate authority to me as convener to clear the final draft of the report, which should be published before the motion is taken in the chamber this afternoon. The draft report will also note any comments from the Delegated Powers and Law Reform Committee, which is meeting to consider the supplementary LCM at the same time as this committee. Do we agree to that approach?

Stewart Stevenson: Convener, given that this is being done in a very short time period, can I ask that you consult at least one other member of the committee, just to make sure? I am not saying who that should be.

The Convener: Why do I not consult the deputy convener?

Stewart Stevenson: That is fine. Thank you, convener.

The Convener: I am happy to do that.

I suspend the meeting briefly to allow the witnesses time to leave.

10:17

Meeting suspended.

10:17

*On resuming—***Subordinate Legislation****Damages (Personal Injury) (Scotland)
Order 2017 (SSI 2017/96)**

The Convener: Item 2 is consideration of a negative Scottish statutory instrument. I refer members to paper 2. If members have no comments, does the committee agree that we have no recommendations to make in relation to the order?

Members *indicated agreement.*

**Justice Sub-Committee on
Policing (Report Back)**

10:18

The Convener: Item 3 is feedback from the Justice Sub-Committee on Policing on its meeting on 20 April. I refer members to paper 3, which is a note by the clerk. I invite Mary Fee to provide feedback.

Mary Fee (West Scotland) (Lab): The Justice Sub-Committee on Policing met on 20 April, when it took evidence from the Scottish Police Federation, Unison Scotland and the Association of Scottish Police Superintendents on financial planning and policing 2026. The sub-committee heard that the unions and staff associations would like to be more involved in financial planning discussions and to see their members' views taken on board. The sub-committee hopes that that will be the case going forward.

The next meeting of the sub-committee is scheduled for Thursday 11 May 2017, when it will hold a round-table evidence session on local policing and the role of local police commanders.

The Convener: Thank you. As members have no questions, we move into private session. The next committee meeting will be on 2 May, when we will consider public petitions and our future work programme.

10:19

Meeting continued in private until 12:47.

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.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba