



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 10 March 2020

Session 5



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JUSTICE COMMITTEE

10th Meeting 2020, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP)

*John Finnie (Highlands and Islands) (Green)

*James Kelly (Glasgow) (Lab)

*Liam Kerr (North East Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Liam McArthur (Orkney Islands) (LD)

*Shona Robison (Dundee City East) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Ash Denham (Minister for Community Safety)

CLERK TO THE COMMITTEE

Steven Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 10 March 2020

[The Convener opened the meeting at 10:03]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning, and welcome to the Justice Committee's 10th meeting in 2020. We have received no apologies.

Agenda item 1 is consideration of whether to take item 8, on our work programme, in private. Do we agree to take that item in private?

Members *indicated agreement.*

Subordinate Legislation

Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020 [Draft]

Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 [Draft]

10:31

The Convener: Agenda item 2 is consideration of two draft affirmative instruments: the Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020; and the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020.

I welcome Ash Denham, who is the Minister for Community Safety, and her Scottish Government officials Walter Drummond-Murray, who is the head of the reserved tribunals and civil courts team; and Martin Brown, who is from the legal directorate.

I refer members to paper 1, which is a note by the clerk. I invite the minister to make a short opening statement.

The Minister for Community Safety (Ash Denham): Good morning. The amendment order is made in exercise of the powers conferred by paragraph 2(5) of schedule 3 to the Judiciary and Courts (Scotland) Act 2008. This is the first of two amendments that I will bring before you today. Together, they allow the appointment of summary sheriffs to the board of the Scottish Courts and Tribunals Service.

The order seeks to amend paragraph 2(2)(e) of schedule 3 to the Judiciary and Courts (Scotland) Act 2008, to broaden the existing category of membership from those

"holding the office of sheriff"

to those

"holding either the office of sheriff or of summary sheriff".

The office of summary sheriff was, of course, established by the Courts Reform (Scotland) Act 2014, and summary sheriffs are now a well-established part of the judicial landscape in Scotland. The 2008 act currently makes no provision for those holding the office of summary sheriff to be appointed to the board of the Scottish Courts and Tribunals Service. The Lord President has requested that that anomaly be rectified.

The board has 14 members in total, eight of whom hold judicial office. Currently, the categories of judicial office listed in schedule 3 allow for

“two persons holding the office of sheriff”

to be appointed to the board. By broadening the existing category of sheriff to include that of summary sheriff, neither the overall number of persons on the board nor the judicial majority is altered.

In order to ensure that summary sheriffs are able to apply for membership of the board, an additional amendment is required to regulation 2(3)(a) of the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015—which detail the process to be followed when filling vacancies—as those currently refer only to sheriffs.

The SCTS board is led by the Lord President and has a collective responsibility for setting the strategic direction of the SCTS and ensuring its good governance. One of the policy intentions of the 2008 act is to ensure that the board has a judicial majority in its membership—including representation from each level of the Scottish judiciary. The amendment order, in conjunction with the consequential amendment to the appointment procedure regulations, will fulfil that policy intention.

Should I move on to the draft regulations, convener?

The Convener: Yes, please.

Ash Denham: The Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 are made in exercise of the powers conferred by paragraphs 3(2) and 3(3) of schedule 3 to the Judiciary and Courts (Scotland) Act 2008.

The regulations seek to amend the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Regulations 2015, which set out the procedure for the selection and nomination for appointment of members of the SCTS. Specifically, the amendment provides that summary sheriffs are to be notified of relevant vacancies for members of the board.

The regulations, in conjunction with the amendment order, will fulfil the policy intention of allowing summary sheriffs to be appointed to the board of the SCTS.

The Convener: As no members have any questions or comments on either of those instruments, we move to agenda item 3, which is formal consideration of the motions on the two affirmative instruments.

The Delegated Powers and Law Reform Committee considered and reported on the instruments and had no comments to make.

The motions will be moved, with an opportunity for formal debate, if necessary.

Motions moved,

That the Justice Committee recommends that the Scottish Courts and Tribunals Service (Judicial Members) Amendment Order 2020 [draft] be approved.

That the Justice Committee recommends that the Scottish Courts and Tribunals Service (Procedure for Appointment of Members) Amendment Regulations 2020 [draft] be approved.—[Ash Denham]

Motions agreed to.

The Convener: I suspend the meeting briefly to allow a change of Government officials.

10:09

Meeting suspended.

10:09

On resuming—

First-tier Tribunal for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020 [Draft]

First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020 [Draft]

First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020 [Draft]

First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 [Draft]

The Convener: Agenda item 4 is consideration of four affirmative instruments. The Minister for Community Safety is already with us, so I welcome her officials Paula Stevenson, head of devolved tribunals, and Jo-Anne Tinto, from the Scottish Government’s legal directorate.

I refer members to paper 2, which is a note by the clerk, and I invite the minister to make a short opening statement.

Ash Denham: This suite of four fairly technical regulations will transfer the parking and bus lane adjudicators into the Scottish tribunals structure that was created by the Tribunals (Scotland) Act 2014. For brevity, I will refer to the tribunal as the PBLA.

The first two instruments before the committee are the draft First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020 and the draft First-tier Tribunal

for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020.

The regulations simply transfer the functions and members of the PBLA to the First-tier Tribunal for Scotland. In addition, the regulations set out the transitional procedure for cases that are in progress on the date of transfer. The regulations also make consequential amendments to primary and secondary legislation resulting from the transfer of the PBLA into the Scottish tribunals.

As the parking adjudicators and bus lane adjudicators are listed separately in the 2014 act, each group needs to be dealt with in separate instruments.

The third set of regulations are the draft First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020, which specify the type of member who will hear parking and bus lane cases.

The provisions for the First-tier Tribunal mirror the existing composition of the PBLA. The instrument sets out the composition of the Upper Tribunal when hearing appeals from parking and bus lane cases that are heard in the First-tier Tribunal. The regulations also allow for a sheriff to hear an appeal in the Upper Tribunal. The president of tribunals will determine who hears those appeals.

The final set of regulations are the draft First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020. The 2014 act authorises rules to be made to regulate the practice and procedure of both the First-tier and Upper Tribunals. Paragraph 4(2) of schedule 9 to the 2014 act requires rules to be made by the Scottish ministers until such time as responsibility for rule making passes to the Scottish Civil Justice Council and the Court of Session.

The regulations establish rules of procedure for the First-tier Tribunal General Regulatory Chamber when it hears parking and bus lane cases. The rules of procedure have, in so far as possible, been drawn from the existing rules of procedure for appeals that are heard by parking and bus lane adjudicators.

There are a number of areas in which the new rules of procedure differ from the existing parking and bus lane adjudicator rules. The policy intent of that was to bring the various rules together into one document that would apply to both parking and bus lane cases, which is intended to aid consistency in the Scottish tribunals.

The main change from the existing rules lies in new draft rule 18, which makes provision for consideration of an application for permission to

appeal to the Upper Tribunal. Under the current system, no onward right of appeal from the decisions of parking and bus lane adjudicators exists, but, on transfer, the provisions of the 2014 act will apply and the Upper Tribunal will be available to those who seek to appeal.

Other substantive changes from the existing rules involve incorporation, throughout the rules, of the use of the online case management system as a means of communication between the parties and the First-tier Tribunal. In addition, specific provision has been made for the signing of documents electronically.

Each of the four instruments plays a part in enabling the transfer of the PBLA to the new structure.

I understand that the Delegated Powers and Law Reform Committee considered the regulations in February and had no points to raise.

10:15

Liam Kerr (North East Scotland) (Con): It all seems terribly sensible. There are a couple of matters that I would like some clarification on.

According to the policy note, those people who are currently adjudicators

"will transfer to the First-tier Tribunal to become legal members as long as they meet the relevant eligibility criteria as set out in regulations (2015/381)".

Is there a possibility that some existing adjudicators might not transfer if they do not meet the new eligibility criteria, whatever those are?

Ash Denham: There are only two existing adjudicators, and they both meet the eligibility criteria. I reassure you that there are no plans to replace the eligibility criteria for any members. That is why no specific eligibility criteria regulations have been laid as part of the transfer process.

Liam Kerr: I see. Thank you.

A business and regulatory impact assessment has been done, and it says that the impact will be "minimal", but there is one thing that I would like to clear up. There is a new right of appeal to the Upper Tribunal, which means that the Upper Tribunal will hear appeals in general regulatory chamber parking and bus lane cases. One would have thought that a new right of appeal could have a significant cost and resource implication. Is that the case, and, if so, has it been taken into account in the regulatory impact assessment?

Ash Denham: It has. You are quite right to point that out. Local authorities already undertake that duty, and they have to fund the system. However, as the system is bringing in the new possibility of referral upwards, to a higher level, local authorities

will not be expected to cover that cost. We anticipate that there might be a very small number of such cases and, at the moment, the costs that are associated with those will be covered by the Scottish Government until it is able to update the legislation.

Liam Kerr: Hence why you have concluded that the impact will be minimal. That makes sense.

The Convener: As there are no other questions, that concludes agenda item 4.

Agenda item 5 is formal consideration of the motions that relate to the four affirmative instruments. As the minister confirmed, the DPLR Committee has considered and reported on the instruments and has made no comments. The motions will be moved, with an opportunity for formal debate, if necessary.

Motions moved,

That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of Bus Lane Adjudicators) Regulations 2020 [draft] be approved.

That the Justice Committee recommends that the First-tier Tribunal for Scotland (Transfer of Functions of Parking Adjudicators) Regulations 2020 [draft] be approved.

That the Justice Committee recommends that the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Cases and Upper Tribunal for Scotland (Composition) Regulations 2020 [draft] be approved.

That the Justice Committee recommends that the First-tier Tribunal for Scotland General Regulatory Chamber Parking and Bus Lane Appeals (Rules of Procedure) Regulations 2020 [draft] be approved.—[*Ash Denham*]

Motions agreed to.

The Convener: That concludes consideration of the affirmative instruments.

Is the committee agreed to delegate authority to me, as the convener, to clear the final draft of the report on the affirmative instruments that we have considered today?

Members indicated agreement.

I thank the minister and her officials for attending. I will suspend the meeting briefly, to allow them to leave.

10:20

Meeting suspended.

10:21

On resuming—

Air Traffic Management and Unmanned Aircraft Bill

The Convener: Agenda item 6 is consideration of a United Kingdom Government bill and the issue of legislative consent. I refer members to paper 3, which is a note by the clerk.

If members have no comments to make, are we agreed that the Scottish Parliament should give its consent to the relevant provisions in the Air Traffic Management and Unmanned Aircraft Bill?

Members indicated agreement.

Petition

Judiciary (Register of Interests) (PE1458)

10:21

The Convener: Agenda item 7 is consideration of petition PE1458, which is a proposal to establish a register of judicial interests. I refer members to paper 4, which is a note by the clerk. Do members have any questions or comments?

John Finnie (Highlands and Islands) (Green): We have had some very interesting contributions from the Cabinet Secretary for Justice and from various representatives of the judiciary, as well as comments on each of those from the petitioner.

The debate seems to be polarised. The petition has been open for a considerable number of years, and an issue remains. The public would expect some measure of accountability. I note the comments about intrusion into the independence of the judiciary, and I wonder if there is any opportunity to investigate that further as a way forward. I am conscious that the petition has been around for a long time.

I am supportive of the principle, and I note everything that has been said. However, we seem to have hit an impasse. I am keen to hear the views of different people—constitutional lawyers, for example.

Liam McArthur (Orkney Islands) (LD): I agree with John Finnie. Intuitively, I am supportive of the idea of a register. However, I do not underestimate some of the concerns that have been raised by the cabinet secretary and representatives of the judiciary—particularly on the independence of the judiciary.

The debate is rather polarised, and it is difficult to see where compromise might be possible. However, I wonder whether we might proactively elicit views from academics in the area, with a view to testing some of the arguments that they made to us in their helpful evidence.

Rona Mackay (Strathkelvin and Bearsden) (SNP): It is a very important issue, and it will not just disappear. As a committee, we should investigate it further and take some wider evidence to inform our views. I would be in favour of doing that at this stage. Albeit that we have—as John Finnie says—reached an impasse, it is incumbent on us to take a wider look.

Dr Alasdair Allan (Na h-Eileanan an Iar) (SNP): It is clearly an important issue, which merits our having a conversation or a discussion about it in the committee.

On principle, as the petition has been in the system for eight years, we should take evidence with a view to bringing the matter to a conclusion. It is not fair to have petitions in the system for that length of time without bringing them to some kind of conclusion. However, I would be happy to hear evidence on it.

James Kelly (Glasgow) (Lab): Over the period for which the committee has been examining the issue, I have become convinced by the case for a register of interests for the judiciary. I note the responses from the cabinet secretary and Lord Carlaway; there is clearly a bit of a stand-off here. Members' suggestions of taking additional evidence to take the issue forward are sensible. We should not park the issue; it is important and we should continue to press it.

The Convener: I should note that there is a petition that we have been dealing with for in excess of eight years—the Megrahi case petition. However, as members have said, it is not an ideal situation. Given the impasse and the diametrically opposed views, does the committee wish to seek further information on the record in a formal meeting with constitutional lawyers and others, in an effort to move forward and with a view to looking at the pros and cons of the petition? We could then take a formal decision on it. We could also ask the Scottish Parliament information centre and the clerks for a note on the wider issues, perhaps even taking into account any conflict-of-interest issues that might have a bearing on how court decisions are taken.

Liam McArthur: I agree with that. Such an evidence session might be better using a round-table format, rather than having a more traditional evidence session. Due to the fact that the cabinet secretary and, previously, the petitioner referred to the situation in New Zealand, which has now taken a different course, it would certainly be useful in the information that is to be provided by SPICe to have an understanding of the thought process that the New Zealand Parliament went through to arrive at the decision that it reached in relation to the same issue.

The Convener: Are we all agreed that that is the way forward?

Members indicated agreement.

The Convener: That concludes the public part of today's meeting. Our next meeting will be on Tuesday 17 March, when we will begin consideration of the Defamation and Malicious Publication (Scotland) Bill.

10:27

Meeting continued in private until 11:02.

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