



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 13 May 2014

Session 4

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JUSTICE COMMITTEE
15th Meeting 2014, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
*Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*John Pentland (Motherwell and Wishaw) (Lab)
*Sandra White (Glasgow Kelvin) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Roseanna Cunningham (Minister for Community Safety and Legal Affairs)
Jan Marshall (Scottish Government)
Luke McBratney (Scottish Government)

CLERK TO THE COMMITTEE

Irene Fleming

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 13 May 2014

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning, and welcome to the Justice Committee's 15th meeting in 2014. I ask everyone to switch off completely mobile phones and other electronic devices, as they interfere with the broadcasting system even when they are switched to silent. No apologies have been received.

Under agenda item 1, the committee is invited to agree to consider item 4, on its work programme, in private. Do we agree to take item 4 in private?

Members *indicated agreement.*

Subordinate Legislation

Judicial Pensions and Retirement Act 1993 (Part-time Sheriff, Stipendiary Magistrate and Justice of the Peace) Order 2014 [Draft]

10:00

The Convener: Item 2 is consideration of an affirmative instrument. I welcome Roseanna Cunningham, the Minister for Community Safety and Legal Affairs, and two Scottish Government officials: Jan Marshall, deputy director, civil law and legal systems division; and Luke McBratney, solicitor, constitutional and civil law branch.

The minister will give evidence in advance of our formal consideration of the order. I understand that you wish to make an opening statement, minister.

The Minister for Community Safety and Legal Affairs (Roseanna Cunningham): I do, but it will be fairly brief, because this is not a huge, long statutory instrument.

The order will provide for equal treatment in relation to retirement, and the opportunity to work in retirement, for part-time sheriffs, stipendiary magistrates and justices of the peace. It will make the same provision for those office-holders as already exists for other judicial office-holders. The order is not about a general increase in the retirement age, which will continue to be 70 across the judiciary; instead, it will provide equal treatment across salaried, permanent and fee-paid or non-paid members of the judiciary.

If approved by the Parliament, the order will do two things. First, it will remove the current provisions that prevent part-time sheriffs, part-time stipendiary magistrates and justices of the peace from being reappointed if their five-year term of appointment ends while they are 69. That will address an anomaly in the current law that, in effect, requires some part-time sheriffs, part-time stipendiary magistrates and justices of the peace to retire at 69 rather than 70.

Secondly, the order will enable part-time sheriffs, stipendiary magistrates and justices of the peace to sit after leaving office, at the request of a sheriff principal. That will enable the courts to take advantage of the skills and experience of retired part-time sheriffs, stipendiary magistrates and justices of the peace, where the business needs of the sheriffdom make that appropriate. It will also enable the Scottish ministers, in limited circumstances, to authorise a continuation in office up to the age of 75.

That is a brief overview of the order and its context. I am happy to answer any questions, as are my officials.

Roderick Campbell (North East Fife) (SNP): My question is perhaps not directly related to the statutory instrument but is to seek clarification as to the Government's position on the O'Brien decision. Is the Government still—

The Convener: Could you just tell us what that is first?

Roderick Campbell: It was a decision on equal treatment for judges. The Supreme Court said that a recorder in England is entitled to be paid a pension in the same way as a full-time judge. What is the Government's view on the impact of that decision in Scotland?

Roseanna Cunningham: This order is the Government's response to that. We saw that judgment and decided that we would need to ensure that our systems are in line with it. In a sense, the judgment is the reason why we are here.

Roderick Campbell: Can you clarify the impact of the change on the public purse?

Roseanna Cunningham: There is not expected to be much of an effect. Our view is that the change will be cost neutral.

Roderick Campbell: Will it have any impact on the proposals that we are considering in the Courts Reform (Scotland) Bill?

Roseanna Cunningham: There is some interplay. Section 12 of the bill contains provisions that will replace some of the amendments that the order will make. Obviously, we have to deal with the issue in the bill. When the bill comes into force, the re-employment of former part-time sheriffs will take place under section 12 of the bill rather than under the Sheriff Courts (Scotland) Act 1971, which was the original founding legislation. Section 118 of the bill will abolish the office of stipendiary magistrate, and the office-holders will, unless they decline appointment, be reappointed as summary sheriffs.

We are dealing with an historical situation. When the bill becomes law—I suppose that I ought to say "if"—that law will make certain changes to the historical situation, but we still need to address the anomaly at the moment, because of the question of when the bill's provisions will come into force.

Jan Marshall (Scottish Government): I have a supplementary point on Mr Campbell's question about the implications of the O'Brien judgment. It has wider implications beyond what we are doing in the order in relation to fee-paid judiciary and their pensions. There will be financial implications

for the Government, but that is not specifically relevant to the order.

Elaine Murray (Dumfriesshire) (Lab): My question is along similar lines. Schedule 4 to the Courts Reform (Scotland) Bill will amend the Judicial Pensions and Retirement Act 1993, and the order does that, too. Is there any particular reason why the order is needed now? Would there be a problem if we left it until the bill is enacted, or do we need to implement the order within a timeframe? Do we require some of those provisions to be in force now?

Roseanna Cunningham: I do not know whether there is a technical issue.

Luke McBratney (Scottish Government): There is no immediate requirement to do it, but the Government's position is that it should be done as quickly as possible. The bill contains equivalent provision, but that provision will no longer be needed because of the changes that the order will make.

Elaine Murray: It was felt that there is a need to make the changes prior to the enactment of the Courts Reform (Scotland) Bill.

Roseanna Cunningham: We will call it good government and acting timeously.

The Convener: I am just glad that the order does not apply to politicians.

John Pentland has the next question. He, too, will be glad that it does not apply to politicians, young though he is.

John Pentland (Motherwell and Wishaw) (Lab): Correct.

I notice that an informal consultation was carried out with the Lord President's office, the sheriffs and others who are involved. Why was it informal rather than a public consultation? In general, in a public consultation, we would know what was said.

Roseanna Cunningham: In general, if we launch a full-scale public consultation, that is not a cost-neutral exercise—it costs money. Some things are of such narrow interest and applicability that it is considered appropriate to consult but not in that formal way. As long as we ensure that all relevant stakeholders are spoken to informally, we feel that consultation by that method is as valid as putting something out to public consultation. If we held a public consultation on the issue, the likelihood is that the same group of stakeholders would respond. It is difficult to see how the issue is of much interest to anybody beyond that narrow circle of stakeholders. Occasionally, such informal consultations take place for that reason.

John Pentland: Is a transcript or report of the consultation available for the general public to see?

Roseanna Cunningham: There is not really any record. The fact that it was not a formal consultation means that there is no formal output. However, the process of undertaking the informal consultation ensured that all stakeholders are sighted on the issue. The nature of the order is such that it is highly unlikely that anybody will oppose it. The informal consultation was more about advising people that we are proceeding with the changes and of the smaller issues contained within the order. In effect, that small group of people who are around the 69 and 70-year-old mark are the ones who will be the most concerned.

The Convener: I think that John Pentland was asking whether any of the groups had problems with the proposals, notwithstanding that the consultation was informal.

Roseanna Cunningham: No—there are no issues with the order.

Jan Marshall: I just reinforce the point that the order is being made in consequence of the O'Brien judgment, as Mr Campbell said. We are doing it as a legal requirement. The order will equalise retirement ages across the judiciary, and we took soundings from those who have an interest in it.

John Pentland: I understand that, but sometimes informal consultations can mean that decisions are being made behind closed doors. However, I am happy to accept the assurances that the minister has given.

Roseanna Cunningham: Well—

The Convener: He is accepting it—he is content.

Roseanna Cunningham: The difficulty is that a formal consultation has cost implications. It is difficult to see how anybody other than the people who are directly involved, who have been consulted informally, would be bothered to respond.

The Convener: John Pentland was right to make that point, but I take it that he is now content.

John Pentland: I am very content.

The Convener: My goodness—it must be the sunshine.

Margaret Mitchell (Central Scotland) (Con): I welcome the order, which will end anomalies and give consistency, as the minister pointed out. Importantly, it will allow the re-employment of talented people, should that be necessary to facilitate the disposal of court business. I think that the order is excellent, and we welcome it.

Roseanna Cunningham: Thank you.

The Convener: That brings us to the end of our questions, so we will move on to agenda item 3, which is the formal debate on whether to recommend approval of the order. I invite the cabinet secretary to move motion S4M-09957.

Roseanna Cunningham: Convener, you have inadvertently promoted me, and I would not want that to stay on the record.

The Convener: Oh—I will put “to be confirmed” next to that in my notes.

Roseanna Cunningham: I am happy to move the motion in my capacity as Minister for Community Safety and Legal Affairs.

I move,

That the Justice Committee recommends that the Judicial Pensions and Retirement Act 1993 (Part-time Sheriff, Stipendiary Magistrate and Justice of the Peace) Order 2014 [draft] be approved.

The Convener: I hope that I have not in some way blighted your prospects, minister, because a recommendation from me does not always help people.

As no member wishes to speak in the debate, the question is, that motion S4M-09957 be agreed to.

Motion agreed to.

The Convener: As members are aware, we are required to report on all affirmative instruments. Are members content to delegate authority to me to sign off the report?

Members indicated agreement.

The Convener: Thank you, minister.

As previously agreed, we now move into private session.

10:12

Meeting continued in private until 10:41.

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