

JUSTICE AND HOME AFFAIRS COMMITTEE
SUPPLEMENTARY PAPERS FOR MEETING ON 19 SEPTEMBER 2000

Item 3 – Protection of Wild Mammals (Scotland) Bill

Memorandum by the Law Society of Scotland (marked 'to follow' on the Agenda) JH/00/28/6

Papers for information circulated for the 28th Meeting, 2000

Letter to the Convener from the Deputy Minister for Justice on the Budget Process 2001-02 JH/00/28/9

Sarah Aitcheson
15 September 2000



The Law Society of Scotland

Tel. No: 0131 476 8203

Fax No: 0131 225 4243

TO ALL MEMBERS OF THE
RURAL AFFAIRS COMMITTEE
OF THE SCOTTISH PARLIAMENT

Our Ref: LS/222MM/agk/eb
LS/74/10

Date: 15 September, 2000

Dear Member,

Protection of Wild Mammals (Scotland) Bill

The Criminal Law and Rural Affairs Committees of the Law Society of Scotland have had the opportunity of considering the Protection of Wild Mammals Bill.

The Committees have no comment to make in relation to the policy issues arising from this Bill. However, they have the following observations to make on certain legal issues:-

Section 4 (Arrest, Search and Seizure).

The Committees have two areas of concern which relate to the drafting of Section 4. That section currently provides that a constable would have the power to arrest without warrant if he or she had reasonable cause to suspect that a person

- (a) has committed an offence;
- (b) is committing an offence; or
- (c) *is about to commit an offence.*

The Committees are concerned that in practical terms, this last provision would enable a constable to deprive a person of his or her liberty in circumstances where no criminal offence has or is being committed. In the Committees' view, this represents a radical departure from the standard provisions of Scots criminal law, which entitle a constable to act only where there are reasonable grounds for suspecting that the commission of a crime has taken place or is in the course of taking place.

The detention provisions of the Criminal Procedure (Scotland) Act 1995 (section 14) do not envisage a constable's powers being extended to allow for preventative detention.



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Detention cannot be used to inquire into an offence which has yet to occur. Accordingly, the Committees would recommend the deletion of the words, "is about to commit an offence" from this section of the Bill.

In Scots law, any attempt to commit a crime is an offence in itself (section 294 of the Criminal Procedure (Scotland) Act 1995). If a person, therefore, attempts to hunt a wild mammal with a dog or attempts to carry out any one of the offences referred to in section 1, that in itself would be an offence punishable under this legislation. Accordingly, a person in the process of attempting to hunt a wild mammal with a dog, will for the purposes of section 4(1) be deemed to be committing an offence and an amended section 4 (as outlined above) would still entitle a constable to use of the full range of powers referred to in that section.

The Committees question the inclusion of section 4(1)(d) in the Bill.* In practice, constables seize and detain goods, which may be evidence of the commission of an offence. Part II of the Proceeds of Crime (Scotland) Act 1995 enables the procurator fiscal to apply to the sheriff for the power to seize and detain property which may subsequently be the subject of a forfeiture order. In the Committees' view, therefore, the existing legislative provisions satisfy the policy intention behind section 4(1)(d).

The Society has met with Mike Watson M.S.P. to discuss these concerns.

I hope these comments are of some assistance to you in your consideration of this Bill and should you wish to discuss any aspect further, please do not hesitate to contact me.

Yours sincerely,

Anne G. Keenan,
Deputy Director.



SCOTTISH EXECUTIVE

JH/00/28/9

Deputy Minister for Justice
Angus MacKay MSP

Saughton House
Broomhouse Drive
Edinburgh EH11 3XD

Telephone: 0131-556 8400
scottish.ministers@scotland.gov.uk

Ms Roseanna Cunningham, MSP
Convener
Justice and Home Affairs Committee
C/O Clerk to the Committee
Room 3.09
Committee Chambers
George IV Bridge
EDINBURGH
EH99 1SP

/4 September 2000

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JUSTICE AND HOME AFFAIRS COMMITTEE'S REPORT TO THE FINANCE COMMITTEE ON THE BUDGET PROCESS 2001-02

In its report on Stage 1 of the 2001-02 budget process the Finance Committee included a recommendation that the Executive responds generally to each of the subject committees' reports prior to the announcement of the Stage 2 expenditure proposals. I am now writing in response to that recommendation and offer the following comments on the recommendations contained in the Justice and Home Affairs Committee's report to the Finance Committee.

As I noted in my letter of 17 May which provided additional information on various points the Committee had raised, the new Budgetary consultation process has meant a steep learning curve for us all; this was a first attempt and lessons will be learned. As you will know, the Finance Committee intends to conduct a full review in the late autumn of the Budget process and Jack McConnell has suggested that he might meet Conveners of individual committees to learn directly from their experiences.

Summary of Committee's Main Recommendations

1. *We cannot understand why, if the Executive recognises that victim/witness support requires funding of £1.5m each year, it does not allocate that amount in its forward plans.....We believe that VSS should be allocated in advance each year the amount it needs to perform the basic services asked of it – and the same principle should apply to other organisations funded by the Executive to provide key services. In addition, we do not think it reasonable to expect VSS to meet the Executive's target of an increased number of referrals without being given an overall increase in funding.*

We are intending to regularise Victim Support Scotland's baseline versus grant situation in the spending review currently underway, but I should point out that the fact that the full VSS provision has not been reflected in the baseline has had no impact at all on the level of funding they have

received. The organisation has budgeted on the grant offered, and the difficulty has been contained within the Scottish Executive's accounting system.

It is important to recognise that the Scottish Executive grant of £1.57m funds both Victim Support local services as well as VSS's headquarters activities. Local authorities and local and national fundraising also contribute to VSS, but the bulk of the cost of VSS (85%) is borne by the Executive. The Executive encourages voluntary organisations to seek funding from a range of sources to prevent them from being unduly dependent on central government funding. This protects the interests of these organisations by safeguarding their independence, which is at risk if entirely funded by central government. It also protects their charitable status.

In regard to the number of referrals, the grant to local services is already set at a level that builds in a substantial margin so that it is well above the actual amount the current level of referrals would necessitate. This provides a buffer in areas where the level of referrals fluctuate from year to year to ensure stability in service provision, and it provides paid staffing resources to facilitate development work to increase the number of referrals. There is no question of any increase in referrals overwhelming the local services.

2. *The Committee is concerned that the legal aid figures show a decrease in expenditure, when it is clear that the system is not at present delivering adequate and prompt access to the justice system to all those who need it.*

Legal aid expenditure dropped for the first time in 1998-99 and this continued into 1999-2000. This is not necessarily as a result of restricted access. The availability of other ways of funding civil cases may have increased, for example insurance policies/companies and Trade Union assistance and no-win no-fee arrangements. The Scottish Legal Aid Board is undertaking some research into the reasons behind the decrease in the number of civil legal aid applications and we shall be looking at their findings with great interest.

The principle underlying our approach is that justice should be accessible to all. To take forward our policy on legal services in the community we will be holding discussions this month with key organisations such as Citizens Advice Scotland and the Scottish Consumer Council. In addition to these discussions the Scottish Legal Aid Board has been asked to devise and introduce pilots covering different ways in which legal services in the community can be provided. Further announcements will be made as we develop our proposals.

3. *Without an indication of what this year's SPS targets are, it is difficult for the Committee to assess whether the expenditure that is planned is appropriate. There must be a danger that, since it has already been decided that funding is, effectively, to be reduced, the targets will be set at a lower level just to ensure they can be met. We believe the budget should be gauged against the targets, not the other way around.*

We believe there needs to be a greater allocation of funding to the Scottish Prison Service, with the additional money allocated to improving prison conditions, particularly for remand prisoners and to prevent any further slippage in the timetable for ending 'slopping out'. Without this, we do not believe the service can achieve its stated aim of 'caring for prisoners with humanity'.

SPS is currently implementing changes to its strategic planning processes. The intention is that these will result in the agreement and publication of annual targets before the start of the financial year to which they refer.

In regard to SPS's level of funding, we are aware of the pressures on the Scottish Prison Service and we will consider this as part of the Spending Review 2000, currently underway.

4. *We would like to see the inclusion, as an objective of the Scottish Courts Service, of a programme of refurbishment of court buildings, particularly with a view to improving facilities for witnesses and others who have to attend them. Appropriate additional allocation of funding would be needed to allow this objective to be met. This would in turn help the Executive achieve its aim of securing 'ready access to justice'.*

Over the last 10 years the Scottish Court Service (SCS) has been engaged in an extensive programme of court refurbishment to bring courts up to the standards first set out in the Justice Charter in 1991. Considerable improvement has been made in the facilities available to court users as a result. The main priority for the future will be the redevelopment of the Supreme Courts at Parliament House to bring them up to modern standards. Nevertheless, the SCS will continue to invest resources in the remainder of the court estate to maintain its operational effectiveness.

The requirements for court accommodation change over time. Future demands which can already be foreseen include making the courts more accessible to disabled court users and improving the services to witnesses. To assist it in developing its future investment plans the SCS intends to undertake a review of its current accommodation across the country in 2001-02. When the results of that review are available it will enable the SCS and Ministers to determine what additional investment needs may be required and what, if any, targets it would be appropriate to apply to this activity.

I hope that the Committee find this information useful.

I am copying this letter to Jim Wallace and Jack McConnell.

A handwritten signature in dark ink, appearing to read 'Angus Mackay', is written above the printed name.

ANGUS MACKAY