JUSTICE 2 COMMITTEE

AGENDA

33rd Meeting, 2004 (Session 2)

Tuesday 23 November 2004

The Committee will meet at 2.00 pm in Committee Room 2.

1. **Youth Justice Inquiry:** The Committee will take evidence from—

   **Panel 1**
   Sandra Patterson, Children and Families Standing Committee, Association of Directors of Social Work;
   Assistant Chief Constable Norma Graham, Central Scotland Police, Association of Chief Police Officers Scotland; and
   Jackie Robeson, Head of Practice and Tom Philliben, Reporter Manager, West Region, Scottish Children's Reporter Administration.

   **Panel 2**
   Gerry McGeoch, Chair, Forth Valley youth justice strategy group;
   Liam McPherson, Borders youth justice strategy group;
   Councillor Henry Blythe and Michele Miller, Senior Manager, Children & Families and Criminal Justice Services, Fife youth justice strategy group; and
   John Carney, Child Care Manager and Chair, Moray youth justice strategy group.

   **Panel 3**
   Jon Bannister, Senior Lecturer, Department of Urban Studies, University of Glasgow; and
   Professor Gill McIvor, Director, Social Work Research Centre, University of Stirling.

2. **Subordinate legislation:** The Committee will consider the following negative instruments—

   The Land Registration (Scotland) Amendment Rules 2004 (SSI 2004/476);
   The Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004 (SSI 2004/477);
   The Abolition of Feudal Tenure etc. (Scotland) Act 2000 (Prescribed Periods) Order 2004 (SSI 2004/478); and
   The Lands Tribunal for Scotland (Title Conditions Certificates) (Fees) Rules 2004 (SSI 2004/479).
Agenda item 1 – Youth Justice Inquiry

Proposed areas for questioning (PRIVATE PAPER – MEMBERS ONLY) (To follow) J2/S2/04/33/1
Written submission from the Association of Directors of Social Work J2/S2/04/33/2
Written submission from the Association of Chief Police Officers in Scotland J2/S2/04/33/3

Agenda item 2 – Subordinate legislation

Note by Clerk SSI 2004/476 (not available electronically) J2/S2/04/33/4
Note by Clerk SSI 2004/477 J2/S2/04/33/5
Note by Clerk SSI 2004/478 J2/S2/04/33/6
Note by Clerk SSI 2004/479 J2/S2/04/33/7

The following documents are circulated for information only:

- Provisional Agenda – Justice and Home Affairs Council, Brussels, 2/3 December 2004

Forthcoming meetings:

- Tuesday 30 November – 2pm
- Tuesday 14 December 2pm

Gillian Baxendine / Tracey Hawe
Clerks to the Committee
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JUSTICE 2 COMMITTEE

33rd Meeting 2004 (Session 2)

Tuesday 23 November 2004

Youth Justice Inquiry
Submission from the Association of Directors of Social Work
ADSW welcome the opportunity to contribute to the Justice 2 Committee’s Youth Justice Inquiry.

There are a number of challenges in youth justice. The plethora of initiatives and range of short term funding for this, such as fast track, anti social behaviour, integrated community schools and health-promoting schools have all created different planning fora. These all have different priorities and targets that fragment strategic planning for youth services.

The continued financial emphasis on the process of managing offending behaviour rather than the development of interventions is also a challenge. Furthermore, we operate in a media and political climate where young people are deemed to be ‘neds’.

Local authorities are aiming to make certain that planning mechanisms and financial arrangements are regularly reviewed in line with Best Value and continuous improvement. We need to ensure there continues to be a balance in the deployment of resources for both processes and intervention with services properly costed and the resource implications reflected in the comprehensive spending review. On top of this we are developing robust communication strategies, which emphasise the positives of young people, dispel popular myths and give clear factual information to the general public. We believe the Scottish Executive should take a lead in promoting young people positively in the media.

Local authorities would be greatly helped if there was clear and prescriptive joint planning guidance including outcomes issued to authorities tackling youth justice and a mandate for joint inspection of the service that covers all stakeholders.

In late 2002 Audit Scotland made a number of key recommendations in its summary report ‘Dealing with Offending by Young People’ which the Scottish Executive are yet to implement. These include:

- **Recommendation 30** which said that the Scottish Executive should review the balance of resources from the process of reaching decisions to the provision of services for offenders.
- **Recommendation 32 and 33** which says the Scottish Executive should address the inconsistencies between GAE and budgets so that local authorities have a clearer lead at what levels of expenditure are expected of social work services for children and whether the financial arrangements for supporting criminal justice social work services could be used to assist services for offenders in the children’s system.
- **Recommendation 35** to examine staffing requirements.
- And progress on **Recommendations 36, 37 and 38** which deal with standards of supervision reviewing professional social work training and collecting social work staffing data.

ADSW, like many others, would like to see a well-resourced and integrated youth justice system which can efficiently and effectively meet the welfare needs and address the offending behaviour of individual young people and provide good short and long term outcomes for the community and the young person.

**Review of the effectiveness of multi agency working in the youth justice field.**

**How well are current planning mechanisms working? Are Youth Justice Strategy Groups Working effectively – especially in relation to leadership and agency participation?**

Joint Planning of services is extremely important and that is reinforced by the current consultative guidance in children’s service planning that has been issued by the Scottish Executive. It, in fact,
recognises a significant number of barriers to joint planning and makes realistic proposals about the way that the agenda should be taken forward.

There has been a growing recognition in local authorities since 1996 and the implementation of the Children’s Scotland Act that the delivery of effective services relies on good inter agency co-operation. The barrier to effecting this level of co-operation is that to date the responsibility of other agencies to contribute to youth justice developments has not been explicit. This is exacerbated by the different departments of the Scottish Executive who have responsibility for Youth Justice Services displaying poor joint planning at national level. The most recent guidance recognises that.

One of the obstacles to effective working in the joint strategy groups is that agencies round the table have different priorities and targets. The youth justice agenda has also grown over the recent years to incorporate a much wider working group of young people. There are also a number of other strategies that impact on youth justice such as developments within integrated community schools, health promoting schools and community learning and development strategies in relation to good citizenship and, most recently, the anti-social behaviour strategy. The lead responsibility for that can lie within different strategy groups and, across the country, there are variations to the extent that the youth justice steering group is involved in determining the planning of services for those young people whose involvement in anti-social behaviour could link them to youth justice developments. In more general terms, there is a need to rationalise the planning processes and make sure that these strategies are coherent and linked as they deal with young people who may present difficulties on a very wide continuum from truancy to persistent offending behaviour. There is also probably the need to redefine what the “youth justice field" means as the term is not readily recognised by the partner agencies whose focus is an early intervention and preventative work.

New initiatives tend to shift focus away from the primary responsibility of the youth justice development. It would help if there were more explicit guidance on how the links should be established.

The fragmented approach to planning is also reflected in the fact that funding for related activities comes from different funding streams. The new draft guidance for Children’s Services Planning will provide the context within which Youth Justice Planning can take place and this guidance is welcomed. Finance is also a key issue in relation to how well multi agency working may function. There have been recent improvements in relation to how some funding streams have been allocated with different services being required to planning jointly and all sign off the proposals. However some, such as Rough Sleepers, requires a separate and resource intensive data correction system.

There has in many areas been less local movement in the realignment of mainstream budgets. It would be helpful to have joint financial targets built into the annual youth justice report and the children’s services plan.

Effective joint planning is also affected by the availability of key individuals. In each agency they also have a multiplicity of responsibility for the development of related services and therefore it can be difficult to make the commitment to all the meetings that they require to attend. On the whole though our experience is that agencies are committed to this agenda, lack of participation from time to time is not because of lack of commitment but because of the difficulty in prioritising with other demands.

To what extent are services being delivered and on a multi-agency basis? How effective is this?

In our experience, there is little co-location although some examples of different agencies working together. By and large people operate in virtual teams i.e. there is a commitment to joint working across the agencies to shared objectives. That works effectively particularly where there are working agreements in place and different agencies are clear about the aims and objectives and need to report jointly on outcomes. There are also examples of where the joint assessment process contributes to joint working and undoubtedly the development of the integrated assessment framework will progress this further.

In our experience actual teams can be an inhibition or constraint to good practice. If you consider children aged 8 to 18 the partners will change as the child’s age and needs alter. Therefore you need the opportunity to bring together relevant people to the child’s at any stage. The most important issue is to have someone who can bring the relevant people together and that these people are clear about their role and are freed up to undertake it. Again, the role of the coordinator in the integrated assessment framework could take on this responsibility.
It is important that commitment at strategy level is reflected at operational level and that those responsible for developing the strategy ensure that time and commitment is given to properly briefing staff on their multi-agency responsibilities, ensuring that they are given the training and support necessary to carry out the role and that time is protected to carry out the new responsibilities.

What helps joint working between agencies? Some examples of good practice.

Joint working is undoubtedly aided by shared priorities and a joint agreement to provide funding for a particular purpose. The changing children’s services fund has been able to demonstrate evidence of this.

Being able to recruit suitably experienced staff also helps, although current recruitment and retention difficulties across all sectors are a significant barrier.

Joined up guidance from the Scottish Executive such as the integrated assessment framework would certainly help as would clear and unequivocal guidance on information sharing.

Joint accountability is important. There should be agreed outcomes and there should be agreed reporting mechanisms for these outcomes. The proposals for joint inspection will undoubtedly assist this process as will the use of ‘staged intervention’ models where people are clear about their roles and responsibilities. The use of police tracking systems to ensure relevant information is quickly available allowing speedy action to be taken will be valuable.

Some good examples of working between agencies are demonstrated in the fast track pilots in the children’s hearing system. The youth court development in Lanarkshire, which also integrates with children’s hearing system, and some diversion activities that have been developed in conjunction with the police are beginning to prove themselves. One of the reasons that the fast track and the youth court have been effective is because specific additional funding has been made available both to aid process and the delivery of services.

What are the barriers to joint working? This might include different working practices and organisational cultures, incompatible information systems, data protection issues, budgetary/funding arrangements.

Barriers to joint working are:-
- Where there are no shared national objectives though effective joint planning mechanisms aid this process.
- The difficulty in recruiting and retaining staff experienced in this field.
- Individuals having other priorities and responsibilities within their individual organisations such as the conflicting/competing national targets for example in schools.
- The funding of services. There can be a lack of flexibility in being able to use funding available to cover gaps in service because it is earmarked for specific purposes. Short-term funding creates problems with sustainability particularly for the voluntary sector. There can also be difficulties about pooled budgets and the issue of budget ownership can create barriers.
- A lack of monitoring and evaluation that means few opportunities to build on what works.

Improved information systems may help information sharing but in practice where people trust each other sharing of information, data protection is not seen to be a major problem. It has only become a problem or is used as a barrier where, on the whole, there is distrust between agencies about what we are trying to achieve.

To identify and assess the impact of gaps in service provision in the youth justice field.

What is the extent and impact of schemes to divert young people before they reach the hearings system e.g. those offered by police and voluntary agencies? What is available and what do young people think of such schemes.

Currently this is an underdeveloped area of activity. The lack of research and guidance has meant that in some areas it has been more difficult than others to establish some such schemes or where schemes have been established there has been a difficulty in getting referrals. The current development of restorative justice in which there are clear guidelines that encourage agencies to work together to a common agenda will undoubtedly help this process.
What are the needs of young people while they are in secure care/custody and on release into the community? Are these needs being met?

Need vary depending on the individual. For example, those in secure care can be both victims and/or offenders. There are different degrees of maturity amongst young people and there are problems where young girls and young men are placed together. There is also a range of intellect including those who will have learning difficulties and significance additional support needs. Young people in secure care also need access to the same sort of services as all children and young people including good quality education.

Being in secure care can cause problems where young people are distant from their families and communities. Although this can offer some initial respite it can create real difficulties in terms of future re-integration to their home or community.

We don’t like the term ‘release into the community’. In principle, young people should have the flexibility to move through different stages of care according to their needs. The need for security should therefore be seen as a support service and then young people are supported towards appropriate independence within the community. In order to achieve this we need good quality throughcare services that support integration. Social work has a responsibility to case manage this service but education, health, careers, youth services, housing, etc all need to understand their responsibility to providing packages of support to aid young people’s re-integration, including alternative, residential or community based provision.

There is a significant problem about good health support for young people with continuing emotional or mental health needs and there is a lack of quality housing provision that can support young people to achieve independence within the community.

Are the needs of young people with mental illness or learning disability being met within the Youth Justice system?

No. We understand that there is a commitment to change services to make them more accessible but this has been an under-funded and under-developed service for a considerable period of time. The implementation of the SNAP report would help and local child and adolescent mental health services are being redesigned in response to that. However again there are recruitment issues – a lack of suitably trained and qualified staff both in psychiatric and psychology services. There is also a problem for young people at the upper age limit who are on the cusp of adult services. There is not an easy transition between adolescent and adult services.

There is a particular lack of service to support emotional well being and we need to train other groups of staff - not just health staff - to support young people with these needs. It needs to be recognised that some young people need an intensity of provision that services under pressure have difficulty offering. Primary Care Health Services are often poor in recognising the needs of this group of young people and that requires to be addressed.

For those young people who require inpatient services, services are totally inadequate. There are only a few young people who require access to these services but there is a need across Scotland to consider what type of services would best meet their needs. As we have said before, these are young people with very different needs that often need to be responded to on an individual basis. Recent information has indicated that a high proportion of young people are accessing adult care services not suitable to their needs.

There is no formal dual diagnosis service for young people with mental health and substance abuse issues.

What is the extent and impact of the shortage of suitably qualified social workers? Are the steps that have been put in place to address this issue adequate?

While the number of social workers in Scotland has increased, the percentage of qualified workers in children and families services is around 42% compared to many years ago when this was approximately 70%. Whole rafts of posts have been created by new initiatives and these have lured social workers out of core children and family social work posts. The problems of recruiting and
retention is felt most acutely within these core services who cannot function as well as they could if properly staffed.

There is no doubt that the commitment to encourage people into social work is beginning to have an impact in the field and there are examples where people are beginning to fill vacancies. However, there remains a problem in attracting people with suitable experience into children and family services. That lack of experience then has an impact on staff that have been encouraged into children and families but need the support of more experienced workers in order to develop a level of expertise in delivering this service.

It is important that the impact of the changes is kept under review so that the improvements in attracting people into the profession are not short-term.

**What are the particular needs of rural areas compared to urban areas? In service planning, development and delivery? Are the needs of both urban and rural areas being met?**

It is more difficult to deliver comprehensive services within a rural area and young people in rural areas are much more likely to be isolated. There are problems with transport links and access to services. Staff working in rural areas often require to multi-task and one of the particular challenges in delivering services in rural is the difficulty to bringing together the right mix of skills in order to deliver a particular type of service. They need to be supported and have access to appropriate training opportunities to allow them to undertake this role.

It is also important to recognise that within rural areas there can be a stigma associated with offending that can have an impact on the reintegration into the community that is less apparent within an urban area. Young people can be pulled into the system much more quickly because there is less tolerance of behaviours that are anti-social rather than criminal. This requires to be addressed so that young people do not end up in the system unnecessarily.

Similar problems can exist in small authorities that are essentially urban in nature but are composed of separate small urban communities. Relatively small numbers of referrals can mean that the best use of youth justice resources would be to bring young people together across the authority but difficulties with transport and overcoming rivalries between different areas can make this a very difficult task.

**What mechanisms exist for sharing and rolling out best practice and what are the barriers to this?**

The Youth Justice Network and the Criminal Justice Development Centre both enable the sharing of best practice and provide a link role encouraging dialogue between individuals from different parts of the country. Both of these have encouraged the development of informal links that support individuals in each local authority area. The mapping exercise and annual report undertaken helps to identify activity undertaken in other parts of the country. The major barriers are time to participate and reflect on the work. Staffing shortages can make it difficult to free people up to take the time to participate in such events. We also need better nationally agreed tools for the evaluation of effective services.

Attached are just a few examples of good practice involving a range of partners. We are happy to supply more or further information.

**Aberdeenshire**

Operation Youth Advantage 'The Army Challenge' for young people at risk of offending or who have offended - 14-18 yrs. Delivered with Grampian Police.

'Kickstart' for those at risk and who have offended, 14-18 yrs. Multi-agency project (led by social work) provides individual and group work through a motorbike project

Joint Sex Offender Project has a seconded children's services worker to provide a structured programme for those manifesting inappropriate/abusive behaviour. For 7+ yrs.

Barnardo's Restorative Justice project - New Directions project for persistent young offenders, 14-18 yrs Intensive Support scheme for those 'close' to entering secure accommodation
Fife
Youth Drugs Team, a multi agency commitment to delivering services to young people. Focuses on drugs, solvents and alcohol misuse. Run preventative and diversionary services including the Junction 14/16 programme, the 12/13 Programme and the Alcohol Programme.

South Lanarkshire Council
Restorative Justice Services being developed in partnership with key agencies and voluntary sector including Victim Support and Sacro.

Partnership work with Includem on young people who are most chaotic and at highest risk of residential secure or custody. Supports transition back into the community to sustain desistance from offending.

Clackmannanshire Council
The use of a staged intervention model which is useful in assisting agencies to understand both their own role and that of other agencies in delivering services individually and in partnership.

The development by central Scotland police of a tracking system for individual young people which ensures that these young people are identified quickly and services employed timeously.

The establishment of the referral purchasing group for young people which brings together representatives from Housing, Social Services and a voluntary provider of housing support for young people who have been in custody or in secure accommodation.

Falkirk Council
The development of the youth justice referral group, which provides a single point of access for referral and whose main membership includes education, social work, police, Reporter and voluntary sector.

North Ayrshire Council
The development of a mentoring service, which meets the individual needs of young people as identified in their care plan.

The development of parenting programme ensuring that every case where there is persistent offending is serviced by two workers, one of who must have training in relation to programme work.

The establishment of the Fast-track pilot that has ensured that Standard 3 of the Youth Justice Standards has been met.

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JUSTICE 2 COMMITTEE

33rd Meeting 2004 (Session 2)

Tuesday 23 November 2004

Youth Justice Inquiry
Submission from the ACPOS
Dear Mr Hough

YOUTH JUSTICE INQUIRY

I refer to your correspondence dated 21 May 2004 in relation to the above subject, which has been considered by members of the General Policing Standing Committee and can now offer the following by way of comment.

Are youth justice strategy groups working effectively?

The joint planning of services is vital to the success of multi-agency working ensuring that it is both effective and efficient. Strategic groups are key for inter-agency planning, providing a forum to promote, support and develop youth justice at a local level. At present the structure of strategy groups varies throughout the country. The groups tend to be large with representation from a variety of stakeholders. While groups of this size are useful for networking, information sharing and for consultative purposes, there may be value in identifying two levels of the group; a high level group with the authority to make decisions and a wider consultative forum to inform local policy development and strategic planning. Most groups consist of representatives from the necessary relevant bodies, however, it is important to secure ownership and responsibility from services and agencies whose remit with young people falls outwith the justice arena.

To what extent are services being delivered on a multi-agency basis? How effective is this?

Social Work Departments usually take the lead in relation to youth justice and whilst most agencies and services are receptive to joint working, there is a need to identify the roles and
responsibilities of all the agencies involved in youth justice within the public, private and voluntary sectors. However, it is important to recognise that there are excellent examples of multi-agency partnerships, for example joint referral/resource groups, which exchange information across services and identify relevant support and diversionary programmes or initiatives and monitor progress.

**What helps joint working between agencies?**

The focus provided by National Standards, the flexibility afforded in finding local solutions to local problems and the sharing of information are all key elements in promoting joint working between agencies. The joint agency Youth Tracking Systems established in Grampian, Fife and Central Scotland Police areas are examples of effective and efficient data sharing and monitoring systems. The Fast Track Team in the Scottish Borders is also a good example of multi-agency working with the co-location of practitioners from mental health and social work departments.

**What are the barriers to joint working?**

Members agree that a lack of information sharing, including incompatible data sharing systems, is a significant barrier to joint working. It is, therefore, important to address the procedural and ethical issues giving rise to these barriers in order that agencies are confident and willing to share “their” clients’ information. A fully integrated and co-ordinated approach to youth justice and anti-social behaviour is paramount.

Funding, particularly in relation to funding applications, may also create difficulties in joint working, either by individual services vying with each other for project funding or existing programmes competing with new initiatives for the same funding streams. A lack of sustained funding also hinders long term planning and fiscal management.

**What is the extent and impact of schemes to divert young people before they reach the hearing system? What is available and what do young people think of such schemes?**

Restorative Justice projects are reported to be making a significant impact in reducing the number of young people being dealt with by the hearing system. It is anticipated that all police warnings will be delivered in a restorative manner by April 2006 which will further enhance this position. Initial evaluation indicates that the restorative approach to youth justice is welcomed not only by partner agencies, but all those involved in the process, including young people, their families and victims.

**Are the needs of young people with mental illness or learning disability being met within the youth justice system?**

The difficulties encountered by all agencies when dealing with vulnerable persons is not restricted to the youth justice system. It is difficult to identify and access a service equipped to address what are specific and often acute and specialised needs. The most vulnerable within our communities who are dealt with by youth justice and other criminal justice agencies may therefore be inappropriately stigmatised.
What is the extent and impact of the shortage of suitably qualified social workers? Are the steps, which have been put in place to address this likely to be adequate?

Members acknowledge that the lack of qualified social workers can have a direct and significant impact on the delivery of youth justice services. Staff shortages increase the workload for existing staff and delays the establishment of specialist youth justice teams. This also impacts on service provision out with normal working hours, which has consequences for operational policing and the young people and their families. Cognisance should also be given to the various initiatives implemented across Scotland by local authorities to attract and retain qualified social work staff, which can create imbalance for local authorities who are unable to offer such attractive incentives.

What are the particular needs of rural areas compared to urban areas in service planning, development and delivery? Are the needs of both urban and rural areas being met?

Both urban and rural areas have their own unique problems, although ensuring parity of service across rural and urban areas can have financial and resource implications. In the north of Scotland, for example, youth teams are required to cover extensive geographical areas which creates challenges in time and distance, not only for the agencies involved in delivering the service but also for service users.

What mechanisms exist for sharing and rolling out best practice and what are the barriers to this?

Currently best practice tends to be shared through single agency forums such as ACPOS and ADSW, or at local level through Youth Justice groups, as there are no national Youth Justice forums, other than those led by the Scottish Executive. Youth Justice Strategy Groups have a limited capacity to co-ordinate a genuinely inter-sectoral Youth Justice service or ensure the full accountability of all key players. Therefore, there requires to be recognised ownership of youth justice by all statutory agencies. Agencies should operate in a consistent manner, guided by a framework which is subject to effective evaluation and best practice should be identified and evidenced. The publication of such evaluations would ensure that the suitability of the youth initiatives currently in place throughout Scotland for implementation at local levels could be assessed.

I trust that the foregoing is of assistance to you.

Yours sincerely

[Signature]

Chief Constable
(Hon. Secretary)
The Instrument

1. The main purpose of the Title Conditions (Scotland) Act 2003 is to clarify and reform the law relating to real burdens. A real burden is a form of obligation that either restricts an owner’s use of his or her land, or obliges him or her to do something in relation to that land, and which benefits another piece of land in both instances.

2. The Register of Sasines and the Land Register of Scotland contain a record of the ownership of property and of property rights in Scotland. The Keeper of the Registers of Scotland has responsibility for the management and maintenance of the Land Register. The Land Registration (Scotland) Rules 1980 make detailed provision regulating how the Keeper is to maintain the Land Register and provides forms and sets out procedures for the Keeper to follow.

3. These rules amend the Land Registration (Scotland) Rules 1980 to take account of the Title Conditions (Scotland) Act 2003 and the Abolition of Feudal Tenure etc (Scotland) Act 2000 by requiring the Keeper to enter additional information relating to burdens and benefits and to adapt existing forms and procedures.

Procedure

4. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 6 December 2004.

5. The Subordinate Legislation Committee considered this instrument on 9 November 2004 but no points of substance arose. The instrument was laid on 4 November and comes into force on 28 November 2004.

6. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

18 November 2004                  Clerk to the Committee
The Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004
(SSI 2004/477)
Note by the Clerk

The Instrument

1. The main purpose of the Title Conditions (Scotland) Act 2003 is to clarify and reform the law relating to real burdens. A real burden is a form of obligation that either restricts an owner’s use of his or her land, or obliges him or her to do something in relation to that land, and which benefits another piece of land in both instances.

2. The Title Conditions (Scotland) Act 2003, as amended by the Tenements (Scotland) Act 2004, gives Ministers the power to designate a list of “rural housing bodies” who will be able to enforce “rural housing burdens”, a right of pre-emption which can be included in the title deeds of a property to ensure that the rural housing body will have the right to repurchase the property in the event of it coming up for sale. The object of this provision is to allow rural housing bodies to control future sales in a reasonable, but not unduly restrictive, way.

3. This Order prescribes 19 bodies as rural housing bodies.

Procedure

4. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 6 December 2004.

5. The Subordinate Legislation Committee considered this instrument on 9 November 2004 and no points of substance arose. The instrument was laid on 4 November and comes into force on 28 November 2004.

6. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

18 November 2004

Clerk to the Committee
The Instrument

1. This Order prescribes time periods for two provisions within the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (“the Act”).

2. Where a notice or agreement is rejected by the Keeper, section 45 of the Act makes provision for an application to be made to a court or to the Lands Tribunal to determine that such a rejected notice or agreement is registrable. Applications have to be within a prescribed period. Article 2 of this Order prescribes the period; for rejections before 28 November 2004, the application must be made on or before 21 January and for rejections after that date the application must be made within 8 weeks of the date of rejection.

3. The second provision relates to section 46 of the Act which provides for Scottish Ministers to prescribe the period of years within which it will not be competent to request or order the Keeper to remove a real burden. This Order prescribes that period as 10 years, while it remains possible that the notice or agreement may yet be registered.

Procedure

4. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 6 December.

5. The Subordinate Legislation Committee considered this instrument on 9 November 2004 and again on 16 November 2004 but did not draw attention to any matters. The instrument was laid on 4 November and comes into force on 28 November 2004.

6. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

18 November 2004     Clerk to the Committee
The Lands Tribunal for Scotland (Title Conditions Certificates) (Fees) Rules 2004  
(SSI 2004/479)  
Note by the Clerk

The Instrument

1. The main purpose of the Title Conditions (Scotland) Act 2003 (“the Act”) is to clarify and reform the law relating to real burdens. A real burden is a form of obligation that either restricts an owner’s use of his or her land, or obliges him or her to do something in relation to that land, and which benefits another piece of land in both instances.

2. This Order sets out the fees chargeable by the Lands Tribunal for Scotland in respect of issuing a certificate by virtue of Sections 23, 34, 37, and 73 of the Act at £25.

Procedure

3. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 6 December 2004.

4. The Subordinate Legislation Committee considered this instrument on 9 November 2004 and no points of substance arose. The instrument was laid on 4 November and comes into force on 28 November 2004.

5. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

18 November 2004     Clerk to the Committee
Provisional Agenda
Justice and Home Affairs Council
Brussels– 2/3 December 04

Please note that this Pre Council Report is based on a provisional agenda set in July and will be subject to substantial change.

Asylum and Immigration

Community Readmission agreements – political agreement – It is highly unlikely that this will be on the final agenda

Introduction of the common application of biometrics in visa and in residence permits – political agreement – It is highly unlikely that this will be on the final agenda

Conclusions on “Access to durable solutions for refugees – political agreement- It is highly unlikely that this will be on the final agenda

Proposal for a Council Regulation on the establishment of a regime of local border traffic at the external borders of the Member States and proposal for a Council Regulation on the establishment of a regime of local border traffic at the temporary external land borders between Member States – political agreement –It is highly unlikely that this will be on the final agenda

(poss) Common Principles of integration + handbook on integration – orientation – It is highly unlikely that this will be on the final agenda

Draft Council Directive on minimum standards for return procedures and mutual recognition of expulsion decisions – orientation – It is highly unlikely that this will be on the final agenda

(poss) Evaluation of joint flights for the removal of third country nationals illegally present in the territory of two or more Member States- It is highly unlikely that this will be on the final agenda.

(poss) Draft Regulation on the establishment and operation of VIS- It is highly unlikely that this will be on the final agenda.

(poss) Annual report on illegal immigration – It is highly unlikely that this will be in on the final agenda.

(poss) Conclusions on links between the legal and illegal immigration – It is highly unlikely that this will be on the final agenda

(poss) Council Regulation establishing a Community Code on the rules governing the movement of persons across borders (recast of common manual) – orientation – It is highly unlikely that this will be on the final agenda.
(Poss) First report on the monitoring and evaluation of co-operation with third countries in the area of illegal immigration – orientation – It is highly unlikely that this will be on the final agenda.

(Poss) Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status – It is highly unlikely that this will be on the final agenda.

The Executive has a co-ordination role with regard to the provision of services for asylum seekers and refugees. Any changes to operations in Scotland will be for the Home Office to implement.

GENERAL

Evaluation of EU Drugs/Action Plan 2000-2004 – It is highly unlikely that this item will be on the final agenda

Key findings of the evaluation is that there is no evidence to suggest that over the last four years the prevalence of drug use has reduced, or that the availability of illicit drugs has reduced. The UK supports the evaluations conclusions that the plan should be focused on delivering concrete and measurable action. The Commission is in the process of drawing up a new action plan.

Strategy on Drugs 2005-2012 – political agreement

The Strategy on Drugs for 2005-2012 will set out the EU’s twin aims of reducing supply and demand.

Draft Framework Decision on the Retention of data (LA) – It is highly unlikely that this item will be on the final agenda

There has been difficulty in determining the objective of this draft Framework Decision whether it is to cause the extended retention of data ordinarily retained for business purposes or is it to cause the extended retention of data, or date of a type, not ordinarily retained for business purposes. This has, to date, not been resolved in Working Group

CRIMINAL AND JUDICIAL CO-OPERATION

Terrorism

The EU Anti-Terrorism Co-ordinator will give his regular briefing to the Council.

Draft Council Framework Decision on procedural rights in criminal proceedings – progress report

This measure proposes certain minimum standards in criminal proceedings throughout the EU. A Scottish Executive official is attending Working Group meeting in Brussels as part of the UK delegation. There are implications for Scots law in a range of areas arising from these particular proposals.
(poss) Council Framework Decision on the European Evidence Warrant – orientation

This proposal relates to the provision of mutual legal assistance in criminal proceedings. The Evidence Warrant is an order which would be issued by a judicial authority in one Member State to obtain evidence in another Member State, based on the principal of mutual recognition, and would have repercussions for the way in which mutual legal assistance is provided within the EU. Executive Officials have been involved in the formulation of the UK negotiating line on this dossier and have attended Working Group meetings in Brussels as part of the UK delegation.

POLICE AND JUDICIAL CO-OPERATION

Exchange of information and intelligence between intelligence authorities and police (including contra strategy recruitment) – It is highly unlikely that this item will be on the final agenda.

No particularly Scottish issues.

Decision on Cross Border Police Co-operation – political agreement – It is highly unlikely that this item will be on the final agenda.

No particularly Scottish issues.

Future of CEPOL – It is highly unlikely that this item will be on the final agenda

This relates to a proposal for a Council Decision establishing CEPOL as a body of the European Union. The UK is broadly supportive of this proposal.

CIVIL AND JUDICIAL CO-OPERATION

(poss) Proposal for a regulation of the European Parliament and the Council on the law applicable to non-contractual obligations (Rome II) – It is highly unlikely that this item will be on the final agenda

This Regulation will decide which country’s law would apply to resolve an international dispute concerning a non-contractual obligation – anything from a negligence action arising from a road traffic accident to defamation to a claim based on environmental pollution. A final set of discussions will take place during November and the Working Group is still considering the revised provision on defamation. Scottish Executive official is attending Working Group meetings as part of the UK delegation.

(poss) European Payment Order – It is highly unlikely that this item will be on the final agenda

This is a proposal for a simplified procedure for obtaining and enforcing a judgement in uncontested claims. The UK is seeking to restrict the proposal to cross-border cases. Still
being discussed in Working Group where Executive Officials have been attending meetings and working closely with DCA on UK negotiating line.

JD: EU JHA STRATEGY UNIT
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