



JUSTICE 2 COMMITTEE

AGENDA

3rd Meeting, 2003 (Session 1)

Wednesday 29 January 2003

The Committee will meet at 9.45 am in Committee Room 2.

1. **Subordinate legislation:** Hugh Henry (Deputy Minister for Justice) to move S1M-03801—

Mr Jim Wallace: That the Justice 2 Committee, in consideration of the draft Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2003, recommends that the Order be approved;

2. **Subordinate legislation:** Hugh Henry (Deputy Minister for Justice) to move S1M-03800—

Mr Jim Wallace: That the Justice 2 Committee, in consideration of the draft Proceeds of Crime Act 2002 (Disclosure of Information to and by Lord Advocate and Scottish Ministers) (Scotland) Order 2003, recommends that the Order be approved

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

Act of Sederunt (Fees of Sheriff Officers) (No.2) 2002, (SSI 2002/567);
Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No.4) 2002, (SSI 2002/568).

4. **Petitions:** The Committee will consider the following petitions—

PE306 by Mr Thomas Minogue on Freemasonry and the judiciary;
PE438 by Mr George McAuley on behalf of UK Men's Movement on the wilful alienation of siblings;
PE476 by Ms Catherine Harper on behalf of Scottish Women Against Pornography on the display of obscene material.

The following papers are enclosed for this meeting:

Item 1 – Subordinate legislation

SSI and Clerk's Note	J2/03/3/1
SSI and Clerk's Note	J2/03/3/2

Item 2 – Subordinate legislation

SSI and Clerk's Note	J2/03/3/3
SSI and Clerk's Note	J2/03/3/4

Item 3 – Petitions

Clerk's Note on PE306	J2/03/3/5
Letter from Deputy First Minister & Minister for Justice	
Clerk's Note on PE438	J2/03/3/6
Letter from Collins & Co., solicitors and notaries	
Letter from Family Law Association	
Letter from the Law Society of Scotland	
Clerk's Note on PE476	J2/03/3/7
Letter from Deputy First Minister & Minister for Justice	
Letter from the Petitioner	

The following papers are enclosed for information:

Crown Office and Procurator Fiscal Service Inquiry

Response from the Crown Office and Procurator Fiscal Service

Criminal Justice (Scotland) Bill

Letter from the Deputy First Minister & Minister for Justice in relation to Victim Statements

Gillian Baxendine
Clerk to the Committee, Tel 85054

JUSTICE 2 COMMITTEE

3rd Meeting 2003 (Session 1)

Wednesday 29 January 2003

The Proceeds of Crime Act 2002
(Investigations: Code of Practice) (Scotland) Order 2003 (draft)
Note By the Clerk

Background

The Order (attached) is being made in accordance with the powers conferred on the Scottish Ministers by section 410(4) of the Proceeds of Crime Act 2002.

The Order brings in to operation a Code of Practice for the exercise of investigations relating to confiscation, money laundering and civil recovery.

Procedure

The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 17 February 2003.

The Subordinate Legislation Committee considered the instrument at its meeting on 21 January 2003. The relevant Official Report is attached.

The instrument was laid on 16 January 2003 and is scheduled to come into force on 24 February 2003. Under Rule 10.6, the draft Order being subject to affirmative resolution, it is for the Justice 2 committee to recommend to the Parliament whether the instrument should come into force. The Minister for Justice has, by motion S1M-03801 (set out in the Agenda), proposed that the Committee recommends the approval of the Order. The Deputy Minister will attend to speak to and move the motion. The debate may last for up to 90 minutes.

At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee's recommendation.

23 January 2003

Subordinate Legislation Committee

21 January 2003

Extract from Official Report

Proceeds of Crime Act 2002 (Investigations: Code of Practice) (Scotland) Order 2003 (draft)

Ian Jenkins: Again, we have to ask the Executive what arrangements are in place to bring the enabling powers into force.

The Convener: This is perhaps a question of style or of drafting consistency, but there is no reference to human rights obligations. I think that, in the past, the Executive has taken the view that those obligations are implicit in legislation such as this. Perhaps we should ask the Executive. Is that agreed?

Members *indicated agreement.*

Ian Jenkins: Did you mention the possibility that there is some text missing from the last sentence on page 6 of the order?

The Convener: I did not, but I am glad that you were eagle eyed enough to spot that. We will ask informally whether there is text missing. We do not need to make a big deal out of it.

JUSTICE 2 COMMITTEE

3rd Meeting 2003 (Session 1)

Wednesday 29 January 2003

The Proceeds of Crime Act 2002
(Disclosure of Information to and by Lord Advocate and Scottish Ministers)
Order 2003
Note By the Clerk

Background

The Order (attached) is being made in accordance with the powers conferred on the Scottish Ministers by sections 439(6) and 441(9) of the Proceeds of Crime Act 2002.

The Order allows certain specified persons to disclose information to the Lord Advocate and to Scottish Ministers in respect of specified functions. It also allows the Lord Advocate and Scottish Ministers to disclose certain specified information to others.

Procedure

The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 17 February 2003.

The Subordinate Legislation Committee considered the instrument at its meeting on 21 January 2003. The only question that arose was to ask the Executive what arrangements are in place to bring the enabling powers into force.

The instrument was laid on 16 January 2003 and is scheduled to come into force on 24 February 2003. Under Rule 10.6, the draft Order being subject to affirmative resolution, it is for the Justice 2 committee to recommend to the Parliament whether the instrument should come into force. The Minister for Justice has, by motion S1M-83000 (set out in the Agenda), proposed that the Committee recommends the approval of the Order. The Deputy Minister will attend to speak to and move the motion. The debate may last for up to 90 minutes.

At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee's recommendation.

23 January 2003

JUSTICE 2 COMMITTEE

3rd Meeting 2003 (Session 1)

Wednesday 29 January 2003

Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002 (SSI 2002/567)

Note by the Clerk

The Instrument

This Act of Sederunt provides for regulations to apply to the charging of fees by, and for fees of, sheriff officers. It also incorporates amendments following the abolition of warrant sales and poidings and the introduction of the Debt Arrangement and Attachment (Scotland) Act 2002.

Acts of Sederunt are not Scottish Executive instruments. They are made by the Lord President of the Court of Session who is independent of the Executive. The majority of Acts of Sederunt relate to procedure in the courts and are neither laid before the Scottish Parliament nor subject to any parliamentary procedure. It is generally the fiscal element of these instruments which leads Parliament to consider them under the negative resolution procedure.

Procedure

The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 3 February 2003.

The Subordinate Legislation Committee considered this instrument on 7 January and had no comment to make.

The instrument was laid on 23 December and came into force on 30 December 2002. Under Article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999, the Executive is required to provide an explanation to the Presiding Officer whenever a negative instrument comes into force less than 21 days after it is laid (attached). In reporting to Parliament, members might wish to comment on the explanation provided for this failure to meet the 21-day rule.

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.

23 January 2003

Clerk to the Committee

JUSTICE 2 COMMITTEE

3rd Meeting 2003 (Session 1)

Wednesday 29 January 2003

Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No. 4) 2002
(SSI 2002/568)
Note by the Clerk

The Instrument

This Act of Sederunt re-introduces the Table of Fees contained in Chapter IV Part II of the Act of Sederunt (Fees of Solicitors in the Sheriff Court)(Amendment and Further Provisions) 1993. It also re-names the new Tables introduced by SSI 2002/235 (which the Committee considered on 12 June 2002).

Acts of Sederunt are not Scottish Executive instruments. They are made by the Lord President of the Court of Session who is independent of the Executive. The majority of Acts of Sederunt relate to procedure in the courts and are neither laid before the Scottish Parliament nor subject to any parliamentary procedure. It is generally the fiscal element of these instruments which leads Parliament to consider them under the negative resolution procedure.

Earlier Acts of Sederunt relating to the fees payable to solicitors in respect of actions conducted in the Sheriff Court have been considered by the Committee at its meetings on 4 and 18 September as well as on the 12 June and it had no comment to make.

Procedure

The Justice 2 Committee has been designated lead committee and is required to report to Parliament by 3 February 2003.

The Subordinate Legislation Committee considered this instrument on 7 and 14 January. The relevant Official Report is attached.

The instrument was laid on 23 December and came into force on 1 January 2003. Under Article 10(2) of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999, the Executive is required to provide an explanation to the Presiding Officer whenever a negative instrument comes into force less than 21 days after it is laid (attached). In reporting to Parliament, members might wish to comment on the explanation provided for this failure to meet the 21-day rule.

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.

23 January 2003

Clerk to the Committee

Subordinate Legislation Committee

7 January 2003

Extract from Official Report

Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No 4) 2002 (SSI 2002/568)

The Convener: There is a more serious point on the instrument. We probably need to get clarification from the draftsmen about whether the instrument is intended to have retrospective effect. I know that there have been communications between the draftsmen and the committee to find out whether the intention was that it was meant to be retrospective. It would be very serious if it was.

That is not the intention. We have been given an assurance that it would not be retrospective.

Ian Jenkins: We should probably get that in writing.

The Convener: Yes. A wee bit of clarification is required, but we do not need to worry about it.

Subordinate Legislation Committee

14 January 2003

Extract from Official Report

Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment No 4) 2002 (SSI 2002/568)

The Convener: We asked the Executive to comment on a couple of points that we raised and have received a very nice letter. However, we do not really understand the explanation. Do any of the lawyers who are present know anything more about this issue?

Murdo Fraser: Although there was a breach of the rule, it was important that the SSI was made as quickly as possible. As a result, we should simply note the Executive's response and include it in our report to the lead committee.

The Convener: The Executive has put it on record that SSI 2002/568 is not intended to have any retrospective effect. As that is the policy intention, we will draw the matter to the attention of the lead committee and the Parliament.

JUSTICE 2 COMMITTEE

3rd Meeting 2003 (Session 1)

Wednesday 29 January 2002

Petition PE306

Note by the Clerk

Background

1. The petition by Mr Thomas Minogue calls for the Scottish Parliament to oblige/request that all existing members of the judiciary declare whether or not they are Freemasons and oblige all new members of the judiciary to state whether they have any relevant interest in or membership of organisations such as Freemasons. The petitioner also requests that a register of Freemasons in the judiciary be made available to litigants on request.
2. The Committee considered the petition at its meetings on 24 April and 23 May 2001 where it considered submissions from the Scottish Consumer Council and the Sheriffs' Association.
3. The Committee also received a response from the Minister which reaffirmed his position that, aside from the petition, he has no indication of apparent concerns that membership of the freemasons may influence the judiciary in dispensing justice. The Committee agreed at its meeting on 26 September 2001 to note the Minister's response and to make a commitment to revisit the possibility of declarations of interest by the judiciary as part of consideration of the new judicial appointments procedures that were due to be introduced.
4. The petitioner also provided the Committee with information and press cuttings relating to the existence of the Speculative Society to be considered in the context of the petition. A letter was also received from the Speculative Society which stated that the Society was founded in 1764 as a Debating Society "for the purpose of improvement in literary composition and public speaking" and that this remains the aim of the Society. These papers were all considered by the Committee at its meeting on 30 October.
5. At this meeting, the Committee agreed to write to the Minister for Justice acknowledging his previously stated view that there have been no apparent concerns in the Courts that membership of the freemasons may influence a Judge or Sheriff inappropriately. The Committee asked the Minister to reconsider the matter and, in doing so, consider that the requirement to declare an interest be extended to membership of any group or society in which there could be deemed to be a perception of secrecy. The Committee also sought the Ministers view on the suggestion that this issue may be considered as part of new judicial appointments procedure.

6. The Minister for Justice's response dated 27 November 2002 is attached.
7. Members may wish to note that the Minister for Justice has been invited to give evidence to the Committee on Tuesday 4 March on the issue of judicial appointments.

Judicial Appointments Board

8. On 31 May 2002 the Minister for Justice announced the setting up and membership of an independent Judicial Appointments Board which will be responsible for the modernised process for judicial appointments. The Board has been set up on an administrative basis in the first instance. It needs to be established on a statutory basis which will require primary legislation. However, this will not be forthcoming in this session of the Parliament.

Procedure

6. The Standing Orders of the Scottish Parliament make clear that, where the Public Petitions Committee refers a petition to another Committee, it is for that Committee then to take "such action as they consider appropriate" (Rule 15.6.2(a)).

Options

7. In view of the additional evidence received from the Minister, the Committee might wish to—
 - a) write to the Petitioner asking if he knows of any further specific examples of cases where difficulties have arisen over the question of Sheriff/Judicial membership of the freemasons;
 - b) write to the independent Judicial Appointments Board and ask them to consider the inclusion of a declaration of membership of the freemasons, or membership of any group or society in which there could be deemed to be a perception of secrecy, in any future recruitment campaign;
 - c) note the Ministers response and take no further action.

23 January 2003

Clerk to the Committee



SCOTTISH EXECUTIVE

Deputy First Minister & Minister for Justice
The Rt Hon Jim Wallace QC MSP

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Ms Irene Fleming
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Justice 2 Committee
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27th November 2002

Dear Ms Fleming

Thank you for your letter of 13 November 2002.

You invited the Deputy First Minister to reconsider the question of whether the Judiciary in Scotland should be required to declare membership of the freemasons. When my predecessor wrote to you on 13 September 2001, he invited the Committee to share with the Minister the nature and extent of their concerns about this matter. I note that your letter does not identify any further examples of difficulties arising over this point. This chimes with Minister's own understanding that, aside from the Petition by Mr Minogue, no other individual appearing before the Sheriff Courts has challenged a Sheriff to declare his position on the question of membership of the freemasons. The Minister considers that this fact strengthens his argument to the effect that those who appear before the courts do not see this as a problem.

You asked that any request to declare an interest in freemasonry should be extended to membership of any group or society in which there could be deemed to be a perception of secrecy. You do not identify any particular organisations but I note from the minutes of the meeting of the Committee on 30 October that there was reference to the Speculative Society of Edinburgh. The Minister had enquiries made about this body for another purpose a little time ago. He is satisfied that it is simply a debating society with membership drawn from the Judiciary and other professions. He does not believe that the decisions of Scotland's Sheriffs and Judges are in any way influenced by their membership of this organisation.

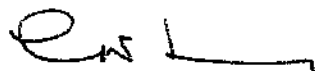
You also raised the question of declaration of membership of the freemasons in the context of the new Judicial appointments machinery. The independent Judicial Appointments Board began its

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work earlier this year. The Board is responsible for drawing up the terms in which application forms should be completed in order to help the Board satisfy itself that individuals are suitable to be recommended for appointment. In their current recruitment campaign, the Board have not included questions about freemasonry or other societies and the Minister is not inclined to offer guidance on the matter at this stage.

The Minister appreciates the concern of the Committee that people appearing in court must have confidence in the impartiality of the Judge hearing the case. Equally he believes that the Judiciary set themselves high standards in this matter and that any Judge who perceived any conflict of interest would declare that to the parties before starting the proceedings. In the absence of any evidence that this process does not work to the satisfaction of court users the Minister is not prepared to take any action on Petition 306.

yours sincerely



GREGOR LINDSAY
Private Secretary



JUSTICE 2 COMMITTEE

3rd Meeting 2003 (Session 1)

Wednesday 29 January 2002

Petition PE438

Note by the Clerk

Background

1. The petition by Mr George McAuley asks the Scottish Parliament to take the necessary steps to establish procedures in order for a minor child to be able to access the resources necessary to establish a right of contact with his or her sibling(s) where such sibling(s) have been wilfully alienated by a parent having custody of those sibling(s).
2. The Public Petitions Committee (PPC) considered the petition at its meeting on 20 November 2001 and 15 January 2002 and originally intended that the Committee consider the petition in conjunction with petition PE 413, which concerned the recognition of Parental Alienation Syndrome as a medical condition. In its response the Executive was not of the view that Parental Alienation Syndrome was a recognised medical condition and therefore the PPC agreed to take no further action in relation to that petition.
3. However, with regard to PE 438, the PPC noted the response from the Executive which stated that the Children (Scotland) Act 1995 already provides for siblings or any other person with an interest to gain access to a child through the courts. The PPC, however, considered that the petition required further investigation perhaps with a view to establishing whether the existing provision are adequate.
4. The petition was referred to the Justice 2 Committee on 21 June 2002.
5. The Committee considered the petition at its meeting on 30 October 2002 and agreed to seek views on whether the existing legislative provisions were adequate with respect to the issues raised in the petition. The Committee wrote to the Family Law Association Scotland, the Law Society and the Scottish Child Law Centre.
6. Responses have been received from the Family Law Association, who indicated that they believe the existing legislation to be adequate, as well as the Scottish Child Law Centre, both of which are attached. The Family Law Committee of the Law Society of Scotland are meeting on 30 January (their last meeting was cancelled) and intend to consider the petition then.
7. The Committee has also received correspondence from Collins and Co., Solicitors and Notaries (attached) who share some of the petitioners concerns.

Procedure

6. The Standing Orders of the Scottish Parliament make clear that, where the Public Petitions Committee refers a petition to another Committee, it is for that Committee then to take “such action as they consider appropriate” (Rule 15.6.2(a)).

Options

7. In view of the additional evidence received, the Committee might wish to—
 - a) await the response of Family Law Committee of the Law Society of Scotland before reaching any conclusion;
 - b) note the petition but agree that existing provisions are adequate and take no further action.

23 January 2003

Clerk to the Committee

Response from the Scottish Child Law Centre

Whilst we acknowledge families have difficulties in relation to establishing contact and cannot support such manipulation of children, we do not consider ourselves sufficiently informed to be able to label such behaviour as a syndrome. We can confirm that anyone with an interest in a child can apply for orders in relation to that child.

Regards,

Fiona Miller
Principal Solicitor
Scottish Child Law Centre

FAMILY LAW ASSOCIATION

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8th January 2003

Ms Irene Fleming
Senior Assistant Clerk
The Scottish Parliament
Justice 2 Committee
George IV Bridge
Edinburgh, EH99 1SP

Dear Ms Fleming

**JUSTICE 2 COMMITTEE – PETITION PE 438 ON THE WILFUL
ALIENATION OF SIBLINGS**

I refer to your letter of 13th November 2002 to the former Secretary of the Family Law Association and to our telephone conversation on 6th January and now attach herewith the Association's response.

If you have any queries please do not hesitate to contact me.

Kind regards.

Yours sincerely



**LESLEY GORDON
SECRETARY**

Petition PE 413 – Parental Alienation Syndrome

Response by Family Law Association Scotland

The Children (Scotland) Act 1995 makes provision for any person with an interest to make an application to Court for contact with a child. When considering such an application the Court must as its paramount consideration consider the best interests of the child. The existing legislation requires the child's views to be taken into account having regard to the child's age and maturity. There is a principle of minimum intervention i.e. the Court should not make an order unless it is better for the child than no order at all.

Accordingly the Association is of the view that legislative procedures are already in place that enable a person (including a minor child) to make an application to Court to establish contact with a child. This would include any application for contact by a sibling. Legal Aid is available for minor children to instruct Solicitors if necessary and the Association feels the current arrangements are adequate.

When assessing such applications the Courts are frequently called upon to make decisions as to the best interests of children taking into account issues such as wilful alienation by the parent with residence of that child. The existing legislation already allows such factors to be taken into account.

Accordingly, in summary, the Association feels the existing legislation is adequate with respect to the issues raised in Petition PE 438.

Response from the Scottish Child Law Centre

Whilst we acknowledge families have difficulties in relation to establishing contact and cannot support such manipulation of children, we do not consider ourselves sufficiently informed to be able to label such behaviour as a syndrome. We can confirm that anyone with an interest in a child can apply for orders in relation to that child.

Regards,

Fiona Miller
Principal Solicitor
Scottish Child Law Centre



The Law Society of Scotland

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YOUR REF:
LS146

DATE:
18 November 2002

Dear Ms. Fleming,

JUSTICE 2 COMMITTEE - PETITION PE 438 ON THE WILFUL ALIENATION OF SIBLINGS

Thank you for your letter of 13th November enclosing Petition PE 438 on the wilful alienation of siblings. I am consulting with the Family Law Committee and hope to reply to you shortly.

Yours sincerely,

Michael P. Clancy
Director



Our Ref: FC/CM.

COLLINS & Co.

solicitors and notaries



Your Ref:

11th November 2002.

The Convenor,
Justice 2 Committee,
The Scottish Parliament,
Holyrood,
EDINBURGH. EH99 1SP

Dear Sir/Madam,

Children (Scotland) Act 1995.

We have been asked by George McAuley, a representative of an organisation known as Families Need Fathers to write to you with some views regarding the issue of contact applications being made by relatives of children other than their mother or father i.e. siblings, grandparents etc.

We have had a number of cases in our own experience where in particular grandparents have sought contact with their grandchildren. This is a relatively rare occurrence because normally grandparents do not have to seek contact with their grandchildren in that their own son or daughter will make sure that there is a relationship between the grandparents and the grandchildren during their own contact arrangements. The most common situation therefore where grandparents have to seek their own contact is where their own son or daughter has been denied contact for some reason. These cases have a mixed level of success. The reason for this is that it is often made a condition of any contact being considered that the grandparents will give a guarantee that their son/daughter who has been denied contact themselves will not be introduced to the child or that information about that parent will not be passed on. Depending on the reason why the parent themselves has been refused contact would determine whether or not such a condition is fair and reasonable. The difficulty is that the courts seem to have a problem in separating the grandparents from their own son or daughter when they should have rights themselves. In our view any such rights should not be dependent on whatever has happened in relation to the son or daughter's contact.

It would appear that grandparents are often handicapped in their own claim for contact by what has happened in their son or daughter's own claim for contact.

A further difficulty with grandparents is that they have to go further in establishing their case than a parent would have. Even with unmarried fathers there is legal authority in the form of the case of Whyte -V- Whyte which states that it can be assumed / ...

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assumed that it will benefit a child to have contact with his or her father. There does not appear however to be any similar assumption in relation to grandparents. In our view it is particularly important for children to have contact with grandparents when they are not having contact with their own mother or father as that allows them to preserve their sense of identity and lets them know their origins. Often there is very good reason why the mother or father has been denied contact but that reason may have absolutely nothing to do with the grandparents who would otherwise be perfectly reasonable people to have contact with the child but they suffer from the fall out of the son or daughter's refusal of contact.

We are currently involved in a case where a sibling is having difficulty getting contact with her younger sisters, it is alleged that the mother, with whom the younger sisters reside, systematically set out to alienate all 3 sisters from their father after separation. When the oldest child decided that she was not prepared to put up with the behaviour of the mother and move to live with her father she then became the alleged victim of the alienation. As a result she is having to actively fight in court to get contact but is having to face the difficulty that the children have been sufficiently alienated from her by her mother as to make it difficult for her to secure contact when faced with an apparent refusal by her sisters to have contact with her. It is not alleged in this case that the oldest child has done anything to her sisters which would cause them not to want to see her and the only objective fact which can be pointed to is the perception by her mother of betrayal by going to move with the father. Again the child would appear to be affected by the fall out of the difficulties between the mother and the father when otherwise there would be no reason why she should not have contact with her younger sisters.

These are obviously anecdotal but in our view this is a very real problem which could helpfully be addressed. Should you require any further information please do not hesitate to contact us.

Yours faithfully,


Francis Collins

JUSTICE 2 COMMITTEE

3rd Meeting 2003 (Session 1)

Wednesday 29 January 2002

Petition PE476

Note by the Clerk

Background

1. The petition by Ms Catherine Harper calls for the Scottish Parliament to take immediate steps to (a) ensure that the Civic Government (Scotland) Act 1982 is fully and effectively enforced in relation to the display of obscene material and (b) review this legislation to determine whether it is adequate or whether it requires amendment.
2. The Public Petitions Committee (PPC) considered the petition at its meetings on 12 March and 25 June. It considered responses from the Scottish Executive, Association of Chief Police Officers in Scotland and the Parliamentary Cross-Party Groups on both Men's Violence Against Women and Survivors of Sexual Abuse.
3. In referring the petition to the Justice 2 Committee, the PPC recommended that the Committee further considers issues raised in particular relating to the lack of definition of 'obscene material' within the context of the Civic Government (Scotland) Act 1982.
4. The Justice 2 Committee considered the petition at its meeting on 30 October 2002 and agreed to seek further information from the Executive and the petitioner. A further submission from Scottish Women against Pornography and a response from the Minister for Justice are attached.

Procedure

6. The Standing Orders of the Scottish Parliament make clear that, where the Public Petitions Committee refers a petition to another Committee, it is for that Committee then to take "such action as they consider appropriate" (Rule 15.6.2(a)).

Options

7. In view of the evidence received the Committee might wish to—
 - a) seek further evidence on the harm caused by pornography from the organisations suggested by SWAP;

- b) write to the Minister to endorse the proposal that research be carried out into violence in its different manifestations and encourage the Minister to include research into the harm caused by pornography as part of such a study;
- c) Agree to take no more action at present.

23 January 2003

Clerk to the Committee