



**JUSTICE 2 COMMITTEE**

**AGENDA**

**5th Meeting, 2005 (Session 2)**

**Tuesday 22 February 2005**

The Committee will meet at 2.00 pm in Committee Room 6

- 1. Items in private:** The Committee will consider whether to take item 6 in private.
- 2. Subordinate legislation:** The Committee will consider the following negative instrument—

The Community Reparation Orders (Requirements for Consultation and Prescribed Activities) (Scotland) Regulations 2005 (SSI 2005/18).

- 3. Petition PE752:** The Committee will consider correspondence from the Convener of the Equal Opportunities Committee in relation to PE752 on behalf of Scottish Women Against Pornography, calling for the Scottish Parliament to define pornographic material as incitement to sexual hatred and to make such incitement an offence similar to that of incitement to racial hatred.
- 4. Procedures Committee Inquiry on the Sewel Convention:** The Committee will consider a paper by the Clerk.
- 5. Scottish Prison Service:** The Committee will receive a briefing from Bob Leishman, senior manager performance audit and Phil Grigor, project manager performance audit, Audit Scotland, on the report by the Auditor General for Scotland entitled “Scottish Prison Service: Correctional opportunities for prisoners”.
- 6. Forthcoming Management of Offenders etc. (Scotland) Bill:** The Committee will receive a briefing from Scottish Executive officials.

Gillian Baxendine / Tracey Hawe  
Clerks to the Committee

Agenda item 2 – Subordinate Legislation

Note by the Clerk (Note by the Clerk [SSI 2005/18](#) attached) [J2/S2/05/5/1](#)

Agenda item 3 – Petition PE752

Note by the Clerk [J2/S2/05/5/2](#)  
Letter from Cathy Peattie MSP, Convener, Equal Opportunities [J2/S2/05/5/3](#)  
Committee

Agenda item 4 – Procedures Committee Sewel Convention Inquiry

Paper by the Clerk [J2/S2/05/5/4](#)

Agenda item 5 – Scottish Prison Service

[Auditor General for Scotland Report “Scottish Prison Service: Correctional Opportunities for Prisoners \(AGS/2005/1\)”](#) [J2/S2/05/5/5](#)

**Circulated for information**

Letter of February 2005 from Hugh Henry on the Inquiries Bill

**Forthcoming meetings:**

- Tuesday 1 March – 2pm
- Tuesday 8 March – 2pm
- Tuesday 15 March – 2pm
- Tuesday 22 March – 2pm

**JUSTICE 2 COMMITTEE**

**5th Meeting 2005 (Session 2)**

**Tuesday 22 February 2005**

The Community Reparation Orders (Requirements for Consultation and Prescribed Activities) (Scotland) Regulations 2005 (SSI 2005/18)

Note by the Clerk

The Instrument

1. Section 120 of the Antisocial Behaviour Etc. (Scotland) Act 2004 ("the Act") introduced Community Reparation Orders (CROs). A CRO can require an offender to carry out such tasks as the supervising officer, who will be appointed by a local authority, may direct for a specified number of hours.
2. The Act places a requirement on local authorities to consult with appropriate agencies and bodies. Regulation 2 lists the persons or classes of person that a local authority is required to consult before making, revising or modifying provisions in a community justice scheme.
3. Regulation 3 lists the activities that an individual who is subject to a Community Reparation Order may be required to undertake.

Procedure

4. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 28 February 2005. The instrument was laid on 19 January and came into force on 10 February 2005.
5. The Subordinate Legislation Committee considered this instrument on 25 January and again on 5 February and no points of substance arose.
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.

17 February 2005

Clerk to the Committee

**JUSTICE 2 COMMITTEE**

**5th Meeting 2005 (Session 2)**

**Tuesday 22 February 2005**

Petition PE752  
Note by the Clerk

1. At its meeting on 2 November 2004 the Equal Opportunities Committee considered the following petition—

PE752 Petition by Catherine Harper, on behalf of Scottish Women Against Pornography, calling for the Scottish Parliament to define pornographic material as incitement to sexual hatred and to make such incitement an offence similar to that of incitement to racial hatred.

2. The Equal Opportunities Committee then agreed to write to the Justice 2 Committee to obtain information on the following two matters—

- Has the Justice 2 Committee undertaken or does it plan to undertake work in relation to the findings of the Working Group on Hate Crime?
- Does the Committee have a view on the Executive's decision not to commission research in the area of links between violence and pornography?

3. Members will wish to note that the Justice 2 Committee of the previous Parliament considered petition PE476 by Catherine Harper which called for the Scottish Parliament to take immediate steps to (a) ensure that the Civic Government (Scotland) Act 1982 is fully 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.

4. At its meeting on 29 January 2003 the Justice 2 Committee of the previous Parliament agreed that no further action was appropriate at that stage in light of the Scottish Executive's research commitments in this area.

Options

5. The Committee is invited to

- i. consider whether it wishes to undertake any work in relation to the findings of the Working Group on Hate Crime (as it has not already done so); and
- ii. consider whether it wishes to take a view on the Executive's decision not to commission research on the links between violence and pornography,

and advise the Equal Opportunities Committee accordingly.

## Extract from the Official Report

Justice 2 Committee – 29 January 2003

### Civic Government (Scotland) Act 1982 (Obscene Material) (PE476)

**The Convener:** The final petition under consideration is petition PE476, from Mrs Catherine Harper on behalf of Scottish Women Against Pornography. The petition calls for better enforcement and a full review of the legislation on the display of obscene material. We have received a note of the additional information that the Minister for Justice sought in accordance with the committee's request. As the minister's response points out, no research has been undertaken on the matter, but research on a similar topic is in the pipeline. I invite members to consider the merits of the issues contained in the petition and to suggest possible action.

**Stewart Stevenson:** In view of the indication that research on this matter is in prospect, I think it inappropriate to take any action on the petition until the results of that research are available.

**Mr Morrison:** I agree wholeheartedly with Stewart Stevenson's comments.

**Bill Aitken:** I, too, concur with his remarks.

**The Convener:** We note that, as research is on-going, it would be inappropriate for the committee to take any action. However, that is not to say that, once the results of the research are available, it would not be an important subject to pick up in a successor committee's future work plan. Are members agreed?

**Members** *indicated agreement*

16 February 2005  
Clerk to the Committee

**J2/S2/05/5/3**

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January 2005

### **Petition PE752**

The Equal Opportunities Committee, at its meeting of 2 November 2004, considered the following petition—

PE752 Petition by Catherine Harper, on behalf of Scottish Women Against Pornography, calling for the Scottish Parliament to define pornographic material as incitement to sexual hatred and to make such incitement an offence similar to that of incitement to racial hatred.

The Committee has agreed that I should write to you to request information in relation to two matters which arose during consideration of the petition.

Firstly, the Committee noted that the petition, given its reference to discrimination against a particular social group, fell within the remit of the Working Group on Hate Crime, established by the Scottish Executive in summer 2003. The Committee therefore took careful note of **Recommendation 3** of the Working Group on Hate Crime's recent report which includes the statement that the Scottish Executive should "investigate the link between the undermining of women in society and crimes of violence against women with a view to combating both."

"The Scottish Executive should review the area of criminal law on violence against women and continue to investigate the link between the undermining of women in society and crimes of violence against women with a view to combating both. A statutory aggravation for domestic abuse should also be considered by the Executive."

The Equal Opportunities Committee would be grateful to be informed of any work the Justice Committees have undertaken or plan to undertake in relation to the findings of the Working Group on Hate Crime.

Secondly, the Committee's attention has been drawn, via the work of its Gender Reporter, to the Justice 2 Committee's consideration of petition PE476 in 2002/03, also from Scottish Women Against Pornography, which called for a review of legislation relating to the display of obscene material. The Committee noted that the Justice 2 Committee agreed to take no further action on the petition, following a commitment by the Executive to consider undertaking research on the links between violence and pornography.

Since this consideration was undertaken, the Equal Opportunities Committee has been advised by the Executive that there are no current plans to commission research in this area. Correspondence from the Minister on this matter is attached to this letter. The Committee requests the views of the Justice Committees in relation to the position adopted by the Executive since Justice 2's consideration of PE476.

I would be very grateful to receive the Committees' views on both of the matters raised.

**Cathy Peattie MSP**  
Convener  
Equal Opportunities Committee

## LETTER FROM THE MINISTER FOR COMMUNITIES

### **DISPLAY OF PORNOGRAPHIC IMAGES IN RETAIL OUTLETS**

1. Thank you for your letter of 11 March. I apologise for the delay in replying to you.
2. You ask in your letter whether there are any recent developments in terms of the Scottish Executive's position in relation to this matter and whether any further research has been undertaken or commissioned. You also ask whether we have any information in respect of public attitudes to the prominent display of such material in retail outlets.
3. On the research question, the Gender Reporter's Report attached to your letter sets out the most current position. This is that the Justice Department has agreed to consider whether it would be useful to commission new research on possible links between pornography and violence against women. However a literature review of existing research in this area showed that for every study that purports to demonstrate a harmful effect associated with the consumption of pornography, there was another study which rejected any such effects. It was concluded in the circumstances that further research would not be a beneficial use of the limited Scottish Executive research budget. I am advised that the Justice Department has no current plans to commission research in this area. However, the Executive will keep this issue under review.
4. I am copying this letter to Annabel Goldie, chair of Justice 2 Committee.

Margaret Curran MSP  
Minister for Communities  
7 May 2004



**JUSTICE 2 COMMITTEE**

**5th Meeting 2005 (Session 2)**

**Tuesday 22 February 2005**

Procedures Committee: Sewel Convention Inquiry

Note by the Clerk

**Purpose**

1. The Procedures Committee is currently conducting an inquiry into the operation of the Sewel Convention. The inquiry is focussing on the Scottish Parliament's procedures and practices surrounding the Sewel Convention and Sewel motions, but will also consider wider issues such as how the Convention operates at Westminster.
2. The Procedures Committee has called for submissions of written evidence by Wednesday 13 April. This Committee is invited to consider whether it wishes to make a submission to the inquiry.

**Background: Justice 2 Consideration of Sewel Motions**

3. To date, during session 2, the Justice 2 Committee has considered 5 Sewel motions in respect of the following Bills:

*Energy Bill*

Considered by the Committee at its meeting on 3 February 2004 when evidence was taken from the Deputy Minister for Justice. The Committee noted the Bill.

*Asylum and Immigration (Treatment of Claimants etc.) Bill*

Considered by the Committee at its meeting on 3 February 2004 when evidence was taken from the Deputy Minister for Justice. The motion to agree to Westminster legislating was agreed to by division (5 for, 2 against)

*Constitutional Reform Bill*

Prior to receipt of the Sewel motion, the Committee took written and oral evidence during March and May 2004 and made a preliminary report in May 2004. In December 2004, on receipt of the Sewel motion and memorandum, the Committee considered further written and oral evidence and reported to the Parliament. The motion to agree to Westminster legislating was agreed to by division (4 for, 3 against).

*Inquiries Bill*

Considered by the Committee in January 2004 when oral evidence was taken from two witnesses (including the Deputy Minister for Justice). The motion to agree to Westminster legislating was agreed to by division (5 for, 2 against).

*Serious Organised Crime and Police Bill*

A call for written evidence was made and the Committee considered written evidence received and took evidence from the Deputy Minister for Justice in January

2005. Subsequently, the Committee took further evidence from the Minister for Justice and reported formally to the Parliament. The motion to agree to Westminster legislating was agreed to by division (4 for, 3 against).

### **Background: Procedures Committee Inquiry**

4. The call by the Procedures Committee for written evidence suggests that respondents may wish to address some or all of the following questions:

- Given the nature of the devolution legislation, how important is it to have a convention to the effect that Westminster should not normally legislate on devolved matters without the consent of the Scottish Parliament?
- Should such a convention continue to operate primarily by agreement between the UK Government and the Scottish Executive, or should it become more directly a convention between the two Parliaments? If the latter, how would this be achieved, and what might it involve?
- At what stage in the passage of a UK Bill affecting devolved matters should an approach be made to the Scottish Parliament for consent, and how quickly should the Parliament be expected to reach a decision? In what circumstances would it be appropriate for Westminster to proceed without consent on the grounds that the Parliament has not had time (for example, because of a recess) to consider the request?
- What information should be provided to assist the Parliament in reaching a decision? Are the existing Executive memorandums sufficient for this purpose?
- To what extent is it appropriate for the Parliament to subject the relevant provisions of a UK Bill to detailed scrutiny before deciding whether to give consent? In particular, should a Scottish Parliament committee always (time permitting) be given an opportunity to take evidence and report to the Parliament before a Sewel motion is taken in the Chamber? Or should the detailed scrutiny be left to Westminster (and Scottish MPs in particular)?
- How should it be decided whether a request for Sewel consent should be referred to a committee? Should there always be an opportunity for a debate in the Chamber on a Sewel motion before a formal decision is taken?
- Is it appropriate for the Parliament to impose conditions (through the wording of the Sewel motion) on the extent of any consent it gives, or should consent generally be unqualified?
- What process should there be to monitor Westminster Bills as they progress through their amending stages, so that the Parliament's consent can be sought for any amendments that substantially affect the Bill's impact on devolved matters (beyond the scope of any Sewel resolution already agreed)? Should this be done at the time amendments are tabled, or only after they are agreed to? What are the procedural implications if the amendments are for a later amending stage at Westminster, when the time available to seek the Parliament's consent before the Bill is finally passed may be very limited?

### **For Decision**

5. The Committee is invited to consider whether it wishes to submit written evidence to the inquiry and if so, what points it wishes to cover, to allow the clerks to draft a paper for the next meeting.

**AGS/2005/1**

**SCOTTISH PARLIAMENT AUDIT COMMITTEE**

**TUESDAY 8 FEBRUARY 2005**

**REPORT BY AUDITOR GENERAL FOR SCOTLAND**

Scottish Prison Service – Correctional opportunities for prisoners

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The report records the results of an Audit Scotland study of the Scottish Prison Service's (SPS) provision of correctional opportunities for prisoners to reduce the risk of re-offending by improving prisoners' skills, addressing their offending behaviour, tackling addictions and preparing prisoners for release. SPS estimates that it spent around £30 million on correctional opportunities in 2003-04, some 12% of the full cost of prison operations.

The report found that while SPS had done much to improve the rehabilitation of prisoners, it could do more to demonstrate the effectiveness and value of the opportunities provided in reducing the risk of re-offending.

Key findings include:

- Although SPS has no statutory duty to rehabilitate prisoners, it has increased the provision of education, vocational training and behaviour management programmes
- prisoners' access to appropriate opportunities is variable, and often depends on available resources at each prison and the duration of a prisoner's sentence
- SPS should develop better budgeting information for services such as correctional opportunities to strengthen the management of financial resources
- in 2004, SPS introduced a range of initiatives to improve its business planning, performance measurement and appropriate targeting of opportunities for prisoners
- SPS has undertaken only limited evaluation of the success of its correctional opportunities and has yet to evaluate the effectiveness of its correctional work on reducing re-offending
- SPS should continue to establish links with relevant external organisations to promote the effectiveness of the opportunities provided in custody.

SPS accepts the need for improvement. It has introduced systems to ensure that such opportunities are appropriately targeted and it monitors each

prison's performance in delivering correctional opportunities. SPS has also recognised the need to better evaluate the impact of its correctional work in order to demonstrate value for money.