

SJA E-NEWS

Forty-fourth Issue – January 2014

SJA NEWS

No SJA Committees have met since the last E-News, though the new office-bearers had an informal meeting on 16th December, and members of the Executive attended meetings of the SJA/SCS Liaison Committee, the Advisory Board of the Judicial Institute, and the Welfare and Support Committee, and Conduct Committee, of the Judicial Council.

OTHER NEWS

Victims and Witnesses (Scotland) Act 2013

The Victims and Witnesses (Scotland) Bill has now passed all its Parliamentary stages. It is not a particularly lengthy piece of legislation, but contains some significant changes to the law, though it will no doubt be some time before its various parts come into force.

Curiously, it does not define “victim” (though there is something approaching a definition in other legislation); does seem to jump the gun somewhat by assuming that a victim can be identified before it is proved that any crime has been committed (or indeed, before it is decided that there will be a prosecution); and does tend to treat the two categories of “victim” and “witness” as one.

In any event, it sets down certain “general principles” which the Lord Advocate, the Scottish Ministers, the police and the Scottish Court Service must “have regard to”, including that victims should be able to obtain information about criminal proceedings (already done through the Victim Information and Advice service), and that their safety should be ensured. There are also to be rules for reviewing prosecution decisions at the instance of a victim, and guidance about “restorative justice”.

Provisions concerning interviews with children and other vulnerable witnesses are of limited direct interest to JPs (since they are unlikely to be an issue in JP Courts). Similarly with those concerning “victim statements” (since they are not used in JP Courts). Likewise again are those setting up a “National Confidential Forum” for those who were in care as children to describe their experiences, including abusive experiences, in confidence.

Provisions concerning compensation orders are of direct interest to JPs, however. The legislation introduces a requirement to consider making such an order whenever it is competent, and to “take steps to ascertain the views and wishes of the victim” before making one. There is also power to make a “restitution order” on conviction of assaults on police, etc, payable into a Restitution Fund (from which payments may be made by the Scottish Ministers).

Also, no doubt of most interest to JPs, in yet-to-be-prescribed cases, courts “must order” those convicted to pay a “victim surcharge”, payable into a Victim Surcharge Fund, to be paid out in yet-to-be-prescribed situations. Until the Scottish Ministers have prescribed the cases and situations, it is difficult to say more on this, save that this is in imitation of a system used in England and Wales, and the surcharge is in addition to any fine.

“Freemen on the Land”/”Sovereign Men”/”Scottish Freemen” and the like

Apparently, an interesting phenomenon, already known in some other countries, is creeping up over Scotland.

That is the appearance in the dock (with possible supporters on the public benches) of people describing themselves as “Freemen on the Land”, “Sovereign Men”, and the like, using unconventional names (“I am John, the son of David, of the family Burns”), who say, in one way or another, that the court has no jurisdiction over them, and they are not obliged to obey the law (or some laws: “The Road Traffic Act does not apply to me”).

This raises one potential issue and one actual one, both of which are, in principle, easy to deal with.

The potential issue is disorderly behaviour by the supporters. But that is no problem, or rather, it is no different from any other problem is disorderly behaviour in the public benches.

The actual issue is clearly what to do with the person in the dock. You will always, of course, consider the advice from your Legal Adviser (who, with luck, will know of the issue in advance). But in broad terms, clearly, no-one can exempt themselves from the jurisdiction of the court or the law (or parts of it); lengthy speeches from the dock probably ought to be discouraged; and it is highly advisable to avoid getting into an argument: see <http://www.youtube.com/watch?v=qPpRAay8HLE>.

At most stages of the proceedings, it might be advisable to simply treat whatever is said as a Not Guilty plea, with no evidence offered for the defence if it gets to trial.

And ultimately, you probably have a police officer in court who can help keep order, and there might be a question of contempt of court.

There is an interesting judgment on this matter from the Court of Queen's Bench in Alberta, Canada. Nobody will want to read all 188 pages of it, I imagine, but the first dozen pages might be worth a quick look. This case is *Meads v Meads* (which is not a criminal case but one concerned divorce and matrimonial property), which is a decision of Associate Chief Justice JD Rooke, and you can access it at <http://canlii.ca/en/ab/abqb/doc/2012/2012abqb571/2012abqb571.html>

(Mainly female) judicial promotion

Two new judges have been appointed, and both are women.

Rita Rae QC is a Sheriff in Glasgow, and has been a Temporary Judge in the Court of Session, for some years, having first qualified as a solicitor. She was on the Sentencing Commission, and has also been a member of the Parole Board for Scotland and Chair of the Glasgow Branch of the Scottish Association for the Study of Offenders

Sarah Woolfe QC has been an Advocate-Depute, prosecuting in the High Court, and a member of the Faculty of Advocates Disciplinary Tribunal and the Police Appeal Tribunal. She also first qualified as a solicitor before becoming an advocate.

There are also two new Sheriffs appointed in North Strathclyde.

One is Shirley Foran, a solicitor in practice in Ayr, who has been a part-time sheriff for some years, and will sit in Kilmarnock Sheriff Court. The other is Robert Fife, a solicitor-advocate, who was also a part-time sheriff, and will sit in Paisley Sheriff Court.

Judicial independence

An interesting initiative, designed to demonstrate judicial independence, is that the UK Supreme Court is changing its web address from www.supremecourt.gov.uk (with its suggestion that the Court is part of the Government), to www.supremecourt.uk.

The Scottish Judiciary website (<http://www.scotland-judiciary.org.uk/1/0/Home>) takes the same line, but Scottish courts are usually accessed through the SCS "Scottish Courts" website (<http://www.scotcourts.gov.uk/>), which does, of course, contain the "gov".

Another court done gone ...

The programme of court closure continues. The Kirkcudbright JP Court (and Sheriff Court) are no more (business being transferred to Dumfries).

On the other hand ...

A survey of court users indicates that almost 90% of those surveyed were satisfied overall, and most of those were very satisfied. In particular, they found SCS staff were polite and helpful, and tried to keep those waiting people updated.

Where there was dissatisfaction, it concerned waiting times, information about court proceedings and the comfort of courtrooms, interview rooms and waiting areas.

The Scottish Court Service Court User Satisfaction Survey 2013 report is at http://www.scotcourts.gov.uk/docs/default-source/scs---court-users/2013-scs-court-user-satisfaction-survey_final-report.pdf?sfvrsn=2&utm_source=Newsletters&utm_campaign=66526699ee-SLN_16_12_13&utm_medium=email&utm_term=0_1eedb22a32-66526699ee-65406933.

Another questionnaire

Concern has been raised concerning the involvement of judicial office holders in sporting organisations, particularly in a decision-making role. This is clearly of some interest to JPs, for whom community engagement has traditionally been an important criterion for appointment.

The Conduct Committee of the Judicial Council is considering the matter, and is sending out a short questionnaire to all judicial office holders in the New Year. This will be sent out on the SCS webmail system, so please check your account.

Clearly, if the JP view is to be heard (whatever it is), a high response rate is desirable.

And PS, Happy New Year

Robin M White
Editor, E-News
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