JUSTICE 1 COMMITTEE

Wednesday 17 September 2003
(*Morning*)

Session 2

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JUSTICE 1 COMMITTEE
5th Meeting 2003, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Mr Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE MEMBERS

*Bill Butler (Glasgow Anniesland) (Lab)
*Marlyn Glen (North East Scotland) (Lab)
Michael Matheson (Central Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Mrs Margaret Smith (Edinburgh West) (LD)

*attended

COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)
Helen Eadie (Dunfermline East) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

THE FOLLOWING GAVE EVIDENCE:

Colin Imrie (Scottish Executive Justice Department)
Louise Miller (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Alison Taylor

SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Douglas Thornton

LOCATION

Committee Room 1

Scottish Parliament

Justice 1 Committee

Wednesday 17 September 2003

(*Morning*)

[THE CONVENER *opened the meeting at 09:48*]

Item in Private

The Convener (Pauline McNeill): Good morning, everyone. I welcome you to the fifth meeting of the Justice 1 Committee in this session. As usual, I ask members to turn off all mobile phones and so on. I have received apologies from Michael Matheson, who is unable to join us this morning.

Item 1 is to ask the committee to agree to consider item 2 in private. Item 2 is discussion of our lines of questioning on justice and home affairs in Europe. Is that agreed?

Members *indicated agreement*.

The Convener: Thank you. We move now into private session for item 2.

09:49

Meeting continued in private.

10:00

Meeting continued in public.

Subordinate Legislation

Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2003 (Draft)

The Convener: I welcome the Deputy Minister for Justice, Hugh Henry, to the committee. I ask the minister to speak to and move the motion on the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2003.

The Deputy Minister for Justice (Hugh Henry): It is an unusual experience for me to be allowed out without Executive officials beside me. I can fly solo and do what I want this morning—I have a degree of freedom. The draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2003 will make ABWOR available for certain proceedings in the youth courts. It may be useful if I give a brief explanation of the instrument that we are considering.

The regulations will make ABWOR available—subject only to the financial eligibility test—to accused persons who are not in custody for proceedings in the youth courts, and for appearances by the accused in the youth courts after they have been found guilty, but have not been granted summary criminal legal aid. Solicitors will provide ABWOR directly after carrying out a simple and quick financial eligibility test and ignoring the other statutory tests that normally apply to ABWOR for summary criminal proceedings.

The changes that we propose simply put into effect the recommendations of the youth court feasibility project group. Separate negative instruments have been lodged recently to implement other recommended changes to the legal aid regulations. The instrument is, therefore, part of a legal aid package that will ensure legal representation for most appearances in the youth courts.

I move,

That the Justice 1 Committee, in consideration of the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2003, recommends that the regulations be approved.

The Convener: Do members have any questions? I remind members that this is a debate on the regulations, although the minister will allow us to ask for clarification of any points that arise.

What is the position before the passing of the draft regulations? Do young people who appear in the youth courts not necessarily receive advice by way of representation?

Hugh Henry: Because of the difficulty of introducing the regulations—due largely to the parliamentary elections and the setting up of committees—we took certain steps to ensure that assistance was available. The draft regulations just confirm the procedure. We gave ministerial direction to that effect.

The Convener: So, the draft regulations just formalise the situation.

Hugh Henry: Yes. They confirm formally what we have already done and give it the proper administrative and legal standing.

The Convener: You said something about the procedure's departure from the normal statutory test of financial eligibility. Can you tell us any more about that?

Hugh Henry: We are making legal aid available to more people who come before the youth courts. Financial eligibility is not the only issue; there are certain other hoops that people have to go through before they qualify for legal aid. We have dispensed with those hoops for the purposes of the youth courts. The financial eligibility test will still apply, but the other tests will not.

Motion agreed to.

That the Justice 1 Committee, in consideration of the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment Regulations 2003, recommends that the regulations be approved.

Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2003 (Draft)

The Convener: Members have before them a note on the instrument. I ask the minister to speak to and move motion S2M-261.

Hugh Henry: The transfer of functions that is covered by the order will enable the Scottish Executive to authorise incoming or outgoing requests for mutual legal assistance in interception matters where the requests relate to the prevention or detection of serious crime in or as regards Scotland. The functions are an extension of the powers that are currently exercised by ministers.

Before I go into the detail of the order, it might be helpful to outline the context. The Scotland Act 1998 recognised that, in some cases, it would be appropriate for the Scottish Executive to be able to exercise executive powers in areas where primary legislation continues to be a matter for Westminster. The concept is commonly known as executive devolution. Section 63 of the Scotland Act 1998 allows functions in reserved areas to be transferred to the Scottish ministers.

Agreement to propose the orders under the Scotland Act 1998 is not about degradation of the boundaries of the devolution settlement but is part of sensible evolving management. The key criterion is whether better government would result from the transfer of functions arising from the order. I argue that the order is about sensible use of the act's provisions. It is an example of the Executive and the UK Government continuing to make devolution work and co-operating where we can.

The committee might find it useful if I go into a little bit of detail on the relevant sections of the Scotland Act 1998, which are sections 30(3) and 63.

Section 63 confers a power on Her Majesty to provide, by order in council, for any statutory or non-statutory function of a UK minister of the Crown, in so far as such functions are exercisable in or as regards Scotland, to become exercisable by the Scottish ministers, either instead of or concurrently with a UK minister of the Crown. In this instance, the Scottish ministers would exercise the functions instead of the ministers of the Crown.

Article 2 of the order, together with schedule 1, sets out the extent to which the functions concerned are to be regarded as affecting Scotland for the purposes of the order. That procedure is provided for in section 30(3) of the Scotland Act 1998 and is commonly known as a paving provision. Members will have seen the Executive note that sets out in detail the policy objectives, the legislative effect and the content of the order that we are considering.

The order executively devolves to the Scottish ministers certain functions relating to international mutual assistance under section 5 of the Regulation of Investigatory Powers Act 2000. It will enable the Scottish ministers to authorise interception warrants in response to requests for mutual assistance in interception matters relating to serious crime in Scotland. Such warrants would be issued in response to requests from abroad for interception of targets located in Scotland, or to requests from Scottish police or HM Customs and Excise that interception be conducted abroad in furtherance of an investigation that is being conducted in Scotland.

For example, a Scottish police force or the Scottish Drug Enforcement Agency might be targeting a major drug trafficker who operates wholly or partly in another European Union member state. Interception of that person's

communications abroad could be integral to the success of the domestic operation to detect or prevent serious crime in or as regards Scotland. Alternatively, Dutch authorities might wish to intercept the communications of a major criminal whose illegal activities bring him into Scotland. In recent years, of course, there has been increasing internationalisation of criminal activity, in particular in relation to drugs; increased air links make it easier for criminals to move quickly between various jurisdictions. In either scenario, the Scottish ministers would authorise interception only if the request met the strict criteria that are laid down in the Regulation of Investigatory Powers Act 2000.

The proposed transfer of functions is in line with current practice in two ways. First, as a result of the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2000 (SI 2000/3253), the Scottish ministers may sign interception warrants that relate to serious crime in Scotland. Secondly, the Scottish Executive, mainly through the Crown Office, deals with all other requests for mutual assistance in criminal matters as they relate to Scotland.

In practical terms, article 3 of and schedule 2 to the draft order will transfer functions in relation to the issue of interception warrants pursuant to section 5(1)(b) and (c) of the 2000 act. Those functions will be exercisable in or as regards Scotland for the purposes of preventing or detecting serious crime, or, in equivalent circumstances, for the purpose of giving effect to the provisions of any international mutual assistance agreement.

Under section 5(1)(b) of the 2000 act, the Scottish ministers will be able to issue a warrant that authorises Scottish police or HM Customs and Excise to request that interception be conducted abroad in furtherance of an investigation that is being conducted in Scotland. Under section 5(1)(c), the Scottish ministers will be able, in response to requests from abroad, to issue warrants that authorise interception of targets that are located in Scotland.

Warrants under section 5(1)(b) and (c) can be issued only in accordance with an international mutual assistance agreement that is designated under the 2000 act. The first agreement to be so designated is the European Union convention on mutual legal assistance in criminal matters. The Executive note that is available to members summarises the convention, only part of which deals with interception matters, which are the subject of the order before the committee. In simple terms, title III of the convention provides for the first time multilateral arrangements that allow a competent authority in one member state to ask a competent authority in another member state to intercept communications in that member state. In the absence of specific international agreements, such co-operation between member states has been unsystematic and largely unworkable. The provisions of the convention are designed to remedy that situation. As members may have seen from the Executive note, the Crime (International Co-operation) Bill that is currently being considered by the Westminster Parliament will implement the provisions of the convention that are not already in legislation.

The order also transfers to the Scottish ministers supplementary functions under sections 9, 10 and 15 of the Regulation of Investigatory Powers Act 2000. Those concern the outgoing administration of the functions that are transferred under section 5 of the 2000 act and include the duration, cancellation and renewal of warrants, the modification of warrants and general safeguards on restrictions on the use of intercepted material.

To enable the Scottish ministers to deal with requests for mutual assistance in interception matters as they relate to Scotland is pragmatic and entirely consistent with existing practice and the spirit of the EU mutual legal assistance convention. Moreover, the transfer of those functions to the Scottish Executive will ensure that the Scottish ministers have oversight of and responsibility for authorising this extremely important form of intrusive surveillance when it is sought in a devolved context. Members should be in no doubt that the Scottish ministers do not take their role in interception lightly. Interception warrants are issued by the Scottish ministers only where their use is absolutely justified and only in cases that fall squarely within the definition of serious crime. That has been acknowledged by the interception of communications commissioner, who provides independent statutory oversight of this activity. I commend the order to the committee.

I move,

That the Justice 1 Committee, in consideration of the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No.2) Order 2003, recommends that the order be approved.

The Convener: It is open to the committee to debate the order and to seek clarification of any points.

Bill Butler (Glasgow Anniesland) (Lab): The order seems to be a wholly sensible transfer of functions. However, are there any financial consequences in transferring the functions?

10:15

Hugh Henry: There is none of which we are aware—we do not believe that there would be any additional financial consequences.

The Convener: I agree with Bill Butler that the order represents a very sensible transfer of functions to the Scottish ministers. Within the Justice 1 Committee remit, we have taken a great interest in the regulation of investigatory powers because we also scrutinised the act. Because we see so many such regulations, which all seem to add to the good functioning of the act, we want to be sure that Parliament is kept up to date and that it has as much information as possible. If one has not been involved with the regulations, the subject can be confusing.

Will you give us information about, for example, the duration of a warrant that a Scottish minister will grant? Would a minister determine that according to the evidence that was received from the relevant authority?

Hugh Henry: The initial warrant would be for three months. Beyond that, although the matter could be renewed, it would be a matter of deciding on individual cases after careful scrutiny. Ministers would not sign a warrant lightly; there are not many such warrants and all are considered carefully.

The Convener: Which minister would sign such a warrant? Would it be you or the Minister for Justice?

Hugh Henry: The Minister for Justice would sign such a warrant in the first instance. Technically, the power to sign the warrants applies to all the Scottish ministers; in the absence of the Minister for Justice, the power would fall either to the First Minister or to the Deputy First Minister. The warrants are significant enough to justify such tight operation.

The Convener: Do you have any idea about what standard of information would be required? For example, if the Italian authorities wanted the Scottish ministers to sign a warrant for phone tapping, would that require a certain standard of information?

Hugh Henry: We would require a standard of information that satisfied our procedures, regulations and legislation. Different authorities might work in different ways, but we would have to satisfy ourselves that the standard of information justified signing a warrant. There would have to be domestic authority before we would consider an application.

Mr Stewart Maxwell (West of Scotland) (SNP): Have you any idea what would be the likely annual number of interception orders that might occur? Following that, you said in your response to Bill Butler that there would be no financial implications. If it turns out that there is an ever-increasing number of orders on the basis of requests from abroad, surely there will—given the fact that there is some internationalisation of crime, particularly in relation to drugs—be some financial implication for Scottish authorities.

Hugh Henry: We are not in a position to comment on the likely number of incoming requests—the service is demand-led. If things get to the stage at which thousands of requests are arriving every month, there would be financial implications. However, the warrants are used so rarely that we do not expect a significant burden.

However, we have to balance the advantage that comes with the proposal. The proposal not only gives an advantage to other authorities that ask us to carry out work on their behalf; it provides us with the advantage of being able to follow through investigations of criminality. Also, the order will, arguably, allow us to move more swiftly than would otherwise be the case, especially in dealing with international drug dealers, who launder money and move drugs across boundaries very quickly. It is important that we are able to use whatever means are at our disposal in targeting what is clearly an international trade.

I should also clarify that, although there will be certain financial implications for us which we think will be negligible, foreign agencies would need to pay for any costs that we incurred in complying with their requests.

Mr Maxwell: You may not be able to anticipate the number of up and coming orders, but will you tell us how many orders are currently made each year? Can you expand on how the process would work in practice? Who would carry out the interceptions? I presume that it would be the local police forces in Scotland.

The convener has already asked about what evidence would be required before warrants were signed, but will you explain that in more detail? If the authorities in Italy or Greece or wherever make a request, will we simply accept that? How much evidence will be required before you are satisfied that you should sign the order and allow the interception to go ahead?

Hugh Henry: On the numbers, the Crown Office and Procurator Fiscal Service deals with non-interception requests for mutual legal assistance. It received 62 incoming requests from EU countries during 2001-02. However, we cannot anticipate future numbers. Some 41 applications were processed for outgoing requests from law enforcement agencies in Scotland, including the Scottish Drug Enforcement Agency.

On who would carry out the request and how that would be done, it would not be appropriate within the context of our discussion to discuss operational issues about who does what and how they do it. It would not be competent of me to go into that.

On how we would satisfy ourselves that the request had been properly processed, the EU convention makes it clear that the requesting member state must always satisfy its domestic law before it makes a request. In practice, that means that requests from the UK would be based on a warrant that was issued by the Secretary of State for Scotland or the Scottish ministers. The warrant would be issued in accordance with the same criteria that apply to applications from UK law enforcement agencies for serious crime warrants against targets in the UK.

Where requests are made under the EU convention, the target of the interception would be protected by the domestic law of both the member state making the request and the member state in which the target was present. For example, if the application came from Italy, Italian law would protect the person but we would also need to satisfy ourselves that the process was working properly, so there would be protection under Scottish law as well. Interception would take place only if the criteria for interception in both states were met. We would apply our own rigorous tests and we would apply them to our standards. That double-lock system of safeguards was endorsed by the House of Lords Select Committee on European Communities in its report on the draft convention in 1998.

The Convener: Thank you. That information has been very useful.

Margaret Mitchell (Central Scotland) (Con): Will the minister go into the criteria for issuing a warrant and explain how such a warrant would operate within domestic law? He has covered that to an extent, but is there anything else that he could add that would give us a fuller picture of how the system will operate?

Hugh Henry: The criterion is that any warrant must meet the serious crime threshold tests, which are laid down in the Regulation of Investigatory Powers Act 2000. If the warrant is justified in those terms, it will proceed.

According to section 81(3) of the 2000 act, the tests are:

"that the offence or one of the offences that is or would be constituted by the conduct is an offence for which a person who has attained the age of twenty-one and has no previous convictions could reasonably be expected to be sentenced to imprisonment for a term of three years or more"

or

"that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose".

Margaret Mitchell: That will be helpful in ensuring that there is no obvious abuse of the measure in what is quite a delicate issue.

The Convener: I know that we have wandered a wee bit away from the order, but the discussion has helped members to understand a little better aspects of interception of communications. After all, I am sure that this will not be the last such order that will come before us. Who knows?

Motion agreed to.

That the Justice 1 Committee, in consideration of the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No.2) Order 2003, recommends that the order be approved.

The Convener: The committee is now required to report to Parliament on the instruments. However, as the report will be short, we should perhaps simply summarise what is said in the *Official Report*. We have nothing else other than that to report.

I thank the minister, Hugh Henry, and his officials for attending this morning.

Justice and Home Affairs in Europe

10:27

The Convener: The fourth item on the agenda concerns justice and home affairs in Europe. I remind members that the purpose of this item is to examine the issue in public and perhaps to identify one or two European proposals that the committee might like to scrutinise over the next 12 months.

I welcome to the meeting Colin Imrie, who is the head of the access to justice division, and Louise Miller, who is the head of branch 2 of the civil justice international division, of the Scottish Executive Justice Department. We have a number of questions for our two witnesses that will allow us to investigate further any issues that might be important to the committee.

Mrs Margaret Smith (Edinburgh West) (LD): I will start with a general question. What key areas of justice and home affairs policy is the European Union legislating on? What are the drivers behind that policy and which of its aspects will impact most on the Scottish Parliament's work?

On a more structural issue, can you provide any guidance on how we can best work with the EU to ensure that something that we did not see coming along the tracks and that could affect the Scottish justice system does not slip through? How do we get in there as quickly as possible to ensure that we know whether anything is coming along that will affect Scotland?

Colin Imrie (Scottish Executive Justice Department): The aim of European Union co-operation in the field of justice and home affairs is the creation of an

"area of security, freedom and justice"

by 2004. That aim has been adopted to underpin security for freedom of movement, which has been strengthened considerably in the EU over the past 15 years. As a result, the aim is to promote effective security co-operation between EU countries while respecting fundamental rights. The fact that cross-border security and justice measures can be pursued while individual rights are respected is an essential guarantee for member states and citizens.

A large work programme was launched in 1999 and it will be reviewed in 2004. A lot of work is being done to tackle cross-border crime, which is of direct interest to Scotland, and to promote cross-border access to justice in the criminal and civil fields, which is equally important.

10:30

Another key element, and one that is probably the most important to the Italian presidency, is the work to tackle illegal immigration and to promote the strengthening of the common borders of the EU. The Italian presidency has stressed that particular focus.

Another area of work is the development of a common asylum policy in the EU. The matter is largely reserved, but we are interested in a small number of measures such as the provision of legal aid to asylum seekers.

We are interested in a number of those areas in so far as they affect Scotland. First, we are interested in ensuring that Scotland does not become a haven for criminals. For example, the measure that was just being discussed is clearly related to ensuring that we can play a similar role to that which is played by other parts of the EU in tackling that cross-border crime effectively. Secondly, we have a direct interest in promoting cross-border access to justice. Louise Miller, who is head of the team dealing with civil judicial co-operation, can say something about the work that is being done to promote access to children across borders under the parental responsibility regulation that is due to be agreed as early as the next European Council meeting. That will be in early October, assuming that all the negotiations are complete.

It is just as important that Scottish bodies play a full and active role in EU co-operation in the field of justice and home affairs. A particular priority for us at the moment is to promote more active involvement. Another of our priorities is to ensure that EU laws are compatible with the principles of Scots criminal and civil law, so that when measures are agreed in Brussels, they can be implemented in Scotland in a way that complements and strengthens our systems and does not undermine them in any way.

I could say something about what is coming up in the current work programme if that would help. I suggested that a document that was prepared by ministers on ministerial priorities for justice and home affairs be circulated

The Convener: We have that.

Mrs Smith: Colleagues will probably pick up on individual points, but it is good to have them set in context. The other issue is how we can get involved and where we can add most to the process. Presumably you would suggest that that should happen as early as possible.

Colin Imrie: Definitely. We have just had an internal review of the way in which we operate, and we are sketching out a work programme in EU justice and home affairs for the next four years.

Many of the measures that are being proposed will not be agreed for three or four years; they will certainly not be implemented within that time. It is therefore important that we look ahead as well as considering the immediate priorities.

To be honest, it is far more effective to intervene at an early stage. If difficulties and problems are included in a Commission proposal, it is easier to deal with them at that stage rather than allowing them to become a political problem at the last minute because we have just woken up to them. The earlier that we are involved the better, and we would like to work with the committee to help to identify areas that are of particular interest to Scotland.

For example, we expect the Commission to make a proposal for a framework decision on minimum standards in criminal proceedings. That proposal, which we expect to see later in the autumn, could have substantial implications for the way in which Scots criminal law operates. The framework could have benefits for Scots abroad who are accused of criminal acts and for foreigners in Scotland who might not understand the way in which our system works. That is an example of an area in which early action could be useful.

Mrs Smith: Thank you. That has teed up the convener's question quite nicely.

The Convener: Thank you, Margaret.

My question is on the draft proposal on procedural safeguards for suspects and defendants in criminal proceedings. Has the Executive responded to the original consultation?

Colin Imrie: The Executive has contributed to the UK response to the original consultation. The Executive also sent an official to the public hearing that took place in Brussels earlier this year. The answer, therefore, is yes. Our aim is to ensure that, when the proposal is released, our views are fully reflected in the United Kingdom response.

The Convener: As far as you know, should the Executive or the Scottish Parliament have any concerns about the contents of that document?

Colin Imrie: We have flagged up areas in which we think that it is important to ensure that what is proposed provides the guarantees and assistance that people will need if they are accused of crimes in another jurisdiction. Those areas include access to interpretation, a basic understanding of the system and some form of recognition that the system is compatible with the basic rights that people would expect to have in their own jurisdiction—that is to say, compatible with the rights that are guaranteed by the European convention on human rights. The UK does not, however, foresee any need for substantial harmonisation of criminal procedural law. The main aim will be to ensure that the rights that are guaranteed are compatible with the European convention on human rights.

The Convener: Are all the EU member states signed up to the convention?

Colin Imrie: Yes. At the moment, our particular area of interest in Europe is ensuring that the new member states—which are signed up to the convention—can implement the EU rules and the convention and can give the guarantees that are expected in other countries. A lot of work has been done, over the past few years, to support the new member states in those areas. When the proposals are released, it will be important to ensure that they can be implemented throughout the EU of 25, as well as throughout the current EU.

Bill Butler: The European Parliament has given its support to an attempt by the Hellenic Republic to clarify the application of the double jeopardy principle. How is the Executive minded at this stage? What are its views on that proposal? Does it throw up any issues that the Executive might want to address?

Colin Imrie: I am not an expert on the details of the proposal, but it is my understanding that the aim of the measure is to provide recognition of the rules against double jeopardy throughout the EU jurisdiction, so that someone who is accused of a crime in one country and is found innocent cannot be subject to pursuit in another jurisdiction. As we already apply that measure in Scotland, we do not foresee any difficulties in its application.

Bill Butler: So, that particular harmonisation proposal is not viewed with any dismay.

Colin Imrie: As far as we are concerned, in Scots law the measure is relatively straightforward. I understand that there is a proposal in the Criminal Justice Bill, which is currently under scrutiny in England and Wales, for a new prosecution to be allowed in certain circumstances, when new evidence is produced. There might, therefore, be difficulties in looking after the interests of the proposals in England and Wales. We do not think that the measure will cause us any problems in the Scottish jurisdiction, given the nature of Scots law, although I gather that we may have to do something with regard to reporting requirements under the decision.

Bill Butler: Thank you. We will resist the temptation to investigate further the possibly interesting situation with regard to England and Wales.

The Convener: From what you know about the proposal, would the double jeopardy principle apply if a person who had lived in Scotland but

was an EU national of another member state committed mass fraud throughout Europe? Or is there a grey area? We would want the Scottish authorities to be able to go after someone who had committed a crime in Scotland, even if the Greek authorities were dealing with that person under their law.

Colin Imrie: The basic principle of mutual legal assistance and co-operation in the criminal justice field is that, when cross-border crimes are committed, the prosecution authorities of the countries will co-operate. They will work together using the mechanisms that are available, such as Eurojust, the body that brings together the prosecutors to ensure that all the prosecution authorities agree on the way forward and that, by comparing the evidence that is available, the prosecution can take place in the country where the most evidence exists. In that context, evidence from abroad that is relevant to crimes that have been committed in the country concerned can be pursued. The basic expectation is that, because of the co-operation measures that are already in place, we will work with the Hellenic prosecuting authorities and others to ensure that any difficulties in that regard are avoided.

The Convener: Do you know what stage the proposal is at? That information will help us when we discuss which of the measures we want to look at.

Colin Imrie: The double jeopardy proposal?

The Convener: Yes.

Colin Imrie: It is my understanding that the proposal is to be considered at the next Council meeting, but I am not sure that agreement on it is expected then. There are specific difficulties in some areas. Nevertheless, it could be decided by the end of the current presidency. If it would help, I would be happy to get some more details for the committee.

The Convener: Would you regard this as early or late in the process, or in the middle?

Colin Imrie: Late.

Margaret Mitchell: I am reassured by what you have said so far about the Scottish Executive taking care to ensure that the EU proposals, as they affect Scotland, will strengthen rather than undermine Scottish law. Given the fact that the European Commission is expected to produce a green paper on the harmonisation of criminal law penalties by the end of October, does the Executive plan to make any representation or become involved in the consultation? For example, will the Executive consult other interested bodies? I ask that specifically because I and others share a concern about any move towards establishing a Europe-wide criminal justice system as part of a wider federalist agenda.

Colin Imrie: As I understand it, the proposal for a common understanding of sanctions is being made to provide a basis on which a sentence that is imposed in one country can be recognised in another country. When I was at the Commission recently, it was explained to me that somebody who is sentenced to two years in one country may expect to serve the full two years, whereas in other countries they might expect to be released after half that period. There are difficulties in the definition of sentences.

10:45

The recognition of sentences across borders is important if, for example, prisoners are to be allowed to serve their sentences in their home countries. In such cases, there should be a basic expectation regarding the length of the sentence that is imposed. Another reason behind the proposal is the need to have approximately similar sentences for serious crimes. If we want to ensure that Scotland is not a haven for criminals, we will want to ensure that the sentence for a particular crime, such as serious drug dealing, is comparable with—not necessarily the same as, but comparable with—the sentence in another country. We should have a common understanding of what criminal penalties mean in one country as opposed to another.

Those are the reasons behind the proposal. It has practical benefits, but we and the UK Government have made it clear that we do not support moving beyond the proposal towards a wholesale harmonisation of criminal law. Our aim should be to provide basic minimum standards that will allow the effective enforcement of judgments across the European Union, allow effective co-operation against serious crime, and protect individuals' human rights. However, the basic principles behind our criminal, procedural and substantive law operating in the same way as in England and Wales should not be undermined by unnecessary harmonisation.

The United Kingdom white paper on the intergovernmental conference made some clear points about the extent to which harmonisation should be pursued in criminal and procedural law. On harmonisation, the UK Government and the Executive are clear that the aim should be to provide what is needed but not to go beyond that.

Margaret Mitchell: I want to be clear on this. Will you be involved in consultation, and will you be consulting other interested bodies in Scotland?

Colin Imrie: With measures that affect Scots law, such as this one, we certainly expect to consult and to be involved in consultation. I will have to consider that with colleagues.

The Convener: I am entirely behind the idea of the harmonisation of criminal law when it comes to

dealing with serious international crime. There are very good reasons for harmonisation. However, I get worried when the EU steps into areas in which there is no justification for its involvement. Its reasons are not to do with international crime but to do with harmonising our procedures with other countries' procedures. Does Scotland, or the UK, ever express concerns over the necessity for harmonisation or the speed at which the EU wants to achieve it? The idea seems to be a million miles away from freedom of movement. If we take the view that freedom of movement means that, wherever you move in the European Union, your rights should be the same, we may as well have a federal Europe. Does the UK ever express concerns about how far it is digging into the idea of harmonisation?

Colin Imrie: As I said in my previous answer, the best and most recent expression of that is in the white paper on the IGC, which was published just a couple of weeks ago. The white paper sets out the UK's views on how far we should go towards achieving mutual recognition and basic standards in criminal, procedural and substantive law. The aim is to provide basic rights across borders but not to harmonise. That is the UK's view and, given the implications that harmonisation may have for our system, the Scottish Executive shares that view.

There will always be debate in Europe about the extent to which we need to harmonise in all areas. That debate is normally healthy, active and interesting. People's views can depend on where they sit. If you are sitting in Aachen—near the borders with the Netherlands and Belgium, and with the Luxembourg and French borders only about 20 miles away—perhaps your interest in cross-border crime is much stronger than it would be if you were further away. It is true that some German and French lawyers are especially keen on harmonisation. That said, the points that the UK Government and the Scottish Executive make are not made on their own. Many other member states see benefits in maintaining a system that is based on national jurisdictions, rather than moving to federal law.

Mr Maxwell: Does the green paper on alternative dispute resolution present any particular implications for Scotland? What is the Scottish Executive's view, if it has a view at the moment, on alternative dispute resolution, particularly the green paper's proposals on it? It is an important area and obviously has implications for Scots law. Do you know when the European Commission is expected to produce proposals on alternative dispute resolution?

Louise Miller (Scottish Executive Justice Department): I have not been dealing directly with the green paper on alternative dispute resolution, but the civil justice and international division deals with it, so I know something about it. The UK response to the green paper, which reflected the Scottish Executive's contribution and views, stressed strongly that we would prefer not to have a lot of regulation of alternative dispute resolution at EU level. That is partly because alternative dispute resolution is voluntary by nature—it is an attempt to persuade the parties to settle their differences in an amicable, mediated way. There is an element to it of, "You can take a horse to water, but you can't make it drink." It is also partly because many alternative dispute resolution procedures are still in the developmental stage in a number of member states, and we do not want the gradual development and exchange of best practice, and the lessons that we can learn from that, to be interfered with by regulating too hastily.

The latest position, as far as I understand it, is that the presidency produced a discussion paper for the informal justice and home affairs council in Rome, which I think was held on 12 and 13 September. That dealt with delay in civil trials and discussed ADR in that context. There was quite a lot of support for the view that we did not want to go too far down the regulatory route. From that decision, exchanges of best practice and information and the possibility of codes of conduct were talked about. So far, the Commission has made no formal proposal and, as far as I am aware, there are no indications of when it is likely to do that. I think and hope that the Commission appreciates that it needs to think a little bit more about what is involved and what would be the best route to go down.

Mr Maxwell: I hear what you say, but I reiterate the point that the convener made. Alternative dispute resolution sounds like an area in which Europe is getting involved when there is no real reason for it to do so.

Alternative dispute resolution has been around for a long time, but it is new in the sense that it is only now coming to the forefront in many countries, not only in Europe but elsewhere in the world—I am thinking in particular of examples from the United States of America. It seems strange that the EU would immediately want to jump in and legislate on something that, as you have said, is developing in most member states. We are at an extremely early stage of dealing with alternative dispute resolution in Scotland.

Is it your view that the Commission will step back from regulation and not make a proposal, or do you think that it will go ahead? I know that that is a difficult question.

Louise Miller: I would not like to guarantee that the Commission will step back. I think that it might go ahead and do something, but what it will do is up in the air. We hope that it will propose

something along the lines of using the civil judicial network to exchange information and, perhaps, introducing codes of conduct. However, we cannot say until and unless the Commission proposes something.

Marlyn Glen (North East Scotland) (Lab): What are the latest developments on the draft regulation on parental responsibility? Is the Executive satisfied with the agreement reached?

Louise Miller: The Executive and the UK Government have no major policy issues left outstanding on the text as we have it so far. Adoption of the regulation at the October justice and home affairs council will be a bit of a challenge logistically. The presidency is clear that it wants politically to adopt the regulation then.

A number of technical drafting issues are still to be resolved. Various member states have raised a small number of policy issues, which may have disappeared from the picture by October. There will be one more meeting of the Committee of Permanent Representatives before the October council. A meeting of jurist linguists is scheduled to sort out problems with the text. If the matter is dealt with at the October council, there may be some minor tidying up after political adoption. However, the Executive is happy with the broad lines of what has emerged.

Marlyn Glen: I realise that we are dealing with a short time scale and that we are late in the process. What effect will the draft regulation have on family law in Scotland? Are there any concerns of which the committee should be aware?

Louise Miller: The regulation will not alter domestic substantive family law in Scotland. It is about regulating which courts should have jurisdiction in a dispute and how a judgment can be recognised and enforced across borders when more than one EU member state is involved. The regulation does not tell member states what law they should apply to the dispute when the case is before their courts. There may be situations in which there is another international instrument in existence that does that. For example, in international parental child abduction cases our courts would normally apply the Hague convention, which operates in that area. The regulation makes no change to internal Scots family law. It is about whether Scottish or other courts in the EU should deal with particular cases, and if they do, how their judgments can be recognised and enforced elsewhere.

The Convener: In the previous session, the Justice 2 Committee considered this area of European law. I picked up many concerns from the UK delegation about where we were heading, especially in relation to the Hague convention. Have all those issues been resolved? You answered Marlyn Glen's question by saying that the regulation would have no practical effect on Scots law, but does it have other effects—on the way in which the Hague convention is applied, for example?

Louise Miller: The major problem with the Hague convention was that at one stage there was an attempt to communitarise the Hague child abduction convention. That would have meant that its rules would have been repeated in the text of the regulation. The UK could see no advantage in that, as it would have made no difference to the rules—they would simply have been transposed into the regulation. The only change that we believed would result was that the Community would acquire external competence in this area. Member states would no longer be able to negotiate on their own account at The Hague about the convention. We did not regard that as a step forward. The UK jurisdictions have a good record of implementing the convention effectively and we felt that it was far more appropriate for member states to continue to be able to negotiate and to exchange best practice at The Hague.

To a large extent, fears on that score have been dispelled. The current text of the regulation does not communitarise the Hague convention. Eventually member states split down the middle on the proposal, so it had to be dropped.

Some provisions, such as the possibility following a return order of reopening substantive proceedings in the state from which the child has been abducted, are bolted on at the edges of the Hague convention. However, the Hague convention itself is no longer communitarised by the regulation. We are reasonably happy with the deal that we have secured.

The Convener: You said that there might be a change in the courts that will deal with this area of law. What does that mean for Scotland?

11:00

Louise Miller: There is no vast change. On the matrimonial issues, the regulation provides a wide range of choices of jurisdictions. That reflects the fact that it may be convenient and right for spouses who want to divorce to be able to litigate in a variety of jurisdictions with which they have a connection. The rules are expansive, rather than restrictive.

On issues relating to children, the basic rule is that jurisdiction should be where the child's habitual residence is, which reflects what would happen at the moment. Special rules have been introduced that will be helpful where a child moves residence lawfully from one EU state to another. Those rules allow the state of origin to retain jurisdiction for a short period in order to modify

access rights where a parent is being left behind in the original state. There is also a special provision to deal with international child abduction cases. The basic rule with which we are already familiar is that the child's habitual residence determines the jurisdiction.

The Convener: It worries me that somewhere along the line people whom we represent will be affected, but there seems to be no mechanism for telling the public about changes that might affect them. I am talking not just about this area of law but about all the subjects that the committee has talked about. We have had a fleeting look at the measures, but we have had no say. There is certainly no mechanism whereby we are told what that change—albeit a minor change—will mean. I am seriously concerned about that. Could we see the text or be sent a note to say what the Council is going to adopt in October?

Colin Imrie: That is at the hub of the discussion that we have had already. The measures seek to provide practical benefits by making it easier to enforce access rights across jurisdictions. At the same time, they must be framed in such a way that they do not impact unnecessarily on the way in which individual countries' courts and legal systems work.

Given the fact that the measure has been under negotiation for some time and will affect many people, it is important that we communicate effectively what it will mean for Scotland. We can provide a note, but providing the text at this stage would be difficult. The text changes daily as the presidency, the Council secretariat and others try to put it into a form where it will meet all the technical, legal and linguistic concerns that are being raised. A note that expresses exactly what the measure is about can certainly be produced at some point before the Council meeting in October, once we know when that will be.

Louise Miller: I would be happy to produce that.

I agree that the proposed measure has potential practical benefits for people in Scotland. It is important not to be unnecessarily negative about a proposal just because it emanates from Brussels. The measure provides swifter recognition and, in many cases, enforcement than is currently available in other EU countries. For example, it will benefit a Scottish parent who wants to enforce access rights in another EU state. There are advantages to the proposed change.

When the new measures are up and running, there will be a central authority that will have responsibility for providing administrative co-operation between Scotland and countries throughout the EU on parental responsibility issues. That central authority will be able to give out information, and information might also be available through the EU's civil judicial network, which has a publicly accessible website and is a useful mechanism for finding out about EU law and law in other member states.

The Convener: I am sure that you appreciate that we are trying to get the issue on the record and we hope to move on from here. As the Parliamentary committee responsible for justice and home affairs, we are not in a position to make any judgment about whether there are practical benefits to the measures. We might trust our officials but, as politicians, we can see the net result but we cannot judge the practical effects and we certainly cannot do an awful lot about it. That is one of the important things to come out of this process.

Mrs Smith: I believe that the Commission intends to publish a white paper on divorce in January 2004. Can you give us a general sketch of what that will mean for people in Scotland and tell us what input the Executive has had to it? A family law bill is to be introduced in the Scottish Parliament. What is the thinking behind the divorce white paper and what input will the Executive have at the October council? The white paper will obviously have an impact on Scottish family law.

Louise Miller: The white paper on divorce is likely to be a paper on applicable law in divorce. That means that it may suggest a proposal for a regulation that would cover which country's law should apply in a multinational divorce. If, for example, a couple of different nationalities were married in France and now live in Germany, which country's law should apply to regulate their divorce if they wish to divorce? As I understand it, the white paper will not affect domestic Scots law or the law of any other EU member state on divorce. That will remain as it is. The white paper is an attempt to regulate the way in which international divorces are handled.

An experts' meeting on the issue took place in Brussels some time ago, which my head of division attended and at which a fair amount of scepticism was expressed about the need for the proposal. We will see what the thinking underlying it is and what the justifications for it are when the white paper comes out. The Executive will want to reserve judgment on the proposal until then. The white paper should not affect internal Scots law, but we will be interested to hear what justifications the Commission comes up with for the proposal.

Mrs Smith: Thank you. That is reassuring.

Margaret Mitchell: So the proposal will have no implications for matrimonial property. You are quite clear about that.

Louise Miller: There should be no implications for domestic Scots law. As I understand it, the

white paper is likely to concern applicable law in divorce and would apply only when there was a multinational element to a divorce. It would not apply to a purely internal Scottish divorce.

Margaret Mitchell: But the proposal would have implications for matrimonial property in a multinational marriage.

Louise Miller: There could be implications in that the proposal would regulate which law would apply to the dissolution of the marriage. Whether that would extend to financial property issues as well remains to be seen. We know that there is, on the back burner, the possibility of a separate proposal being produced on matrimonial property during the marriage. The Commission has been undertaking research into that. That would raise questions for us, depending on what is proposed, as we do not really have a matrimonial property regime of the type that many countries in continental Europe have. However, it may be that the white paper that is produced shortly will be restricted to divorce.

Margaret Mitchell: You will be monitoring that closely, as it is important.

Louise Miller: Yes.

Margaret Mitchell: Your briefing also mentions the law applicable to inheritance and wills. Will those issues be included in the white paper, or will the white paper be purely on divorce?

Louise Miller: As far as we know, the white paper is likely to be purely on divorce. However, the Commission has been carrying out comparative research into the way in which different member states deal with wills and succession, probably with a view to thinking about future activity in that area.

Margaret Mitchell: We would want to be quite clear that our law on succession and matrimonial property would not be affected. That is a major part of Scots law.

Louise Miller: Any proposal would be likely to be restricted to situations involving an international element. It would probably be about either applicable law or recognition, enforcement and jurisdiction. It is unlikely that the Commission would attempt to rewrite the succession laws of all the member states. Nonetheless, we will monitor the situation closely.

Margaret Mitchell: I am gratified to know that.

The Convener: That is the end of our list of questions. Do members have any further questions?

Mr Maxwell: I have a very quick one. A question was asked earlier about alternative dispute resolution, and a similar question was asked about another point that was raised. What stage in the process of discussing that area has Europe reached—an early or a late stage? What is the potential for the involvement of the Parliament?

Louise Miller: That depends on which proposal is being discussed. The discussions on parental responsibility are almost at a conclusion.

Mr Maxwell: Sorry, I was referring specifically to alternative dispute resolution.

Louise Miller: Sorry, I did not hear the first part of your question. We are very much at an early stage in that discussion. There is no formal proposal and there may not be one for some time.

The Convener: I do not think that there are any other questions. Would you like to say something in conclusion?

Colin Imrie: The committee raised several points on which it asked for further clarification, especially concerning our plans to consult. I would be happy to get back to you on those. We can also provide a note giving the information that we have about what is to be decided on parental responsibility. If the committee would like further information on anything else that we have discussed, we would be happy to provide it.

The Convener: Thank you both very much. It has been an excellent and informative session, and I am sure that we will be in touch with you to ask you to help us to identify which of the proposals are at the earliest stages. We will take your advice and get in there at an early point. I thank you also for the papers that you have given us, which are very useful. They allow us to see a bit better how things are done at the European end. The paper on the Italian presidency gives us a chance to see how the Council of the EU picks up on issues that arose under previous presidencies.

Work Programme

11:11

The Convener: Item 5 is the committee's work programme. I refer members to the report that has been prepared by the clerks outlining our work programme. It sets out the proposed programme for 2003-04—I say that liberally, as some of the work might spill over. Committee members are requested to have a look at the issues in the paper that the clerks were asked to prepare and to talk about them with the intention of forming a view as to which areas of work the committee considers its priorities. That will give us a guide to which issues members would like to scrutinise in more detail.

I also ask members to consider the formalisation of a suggestion on petitions, which came out of our away day. It is suggested that we deal with petitions on a quarterly basis mainly—although, if a petition concerned an urgent issue, we would deal with it immediately.

Realistically, there is room for one new inquiry, but that is not to say that members cannot lay down markers regarding issues in which they are interested. Often, in the past, we have invited a witness to speak on a topic to update the committee. Members do not always know all the issues behind a subject, and it can help to hear from someone who is an expert on it.

I leave the debate open for members' comments.

Bill Butler: The suggestion that we consider petitions quarterly is eminently sensible. I suggest that we might also consider a new inquiry under the heading of sentencing. There are issues around sentencing that we might examine productively.

11:15

The Convener: We had a discussion about that subject at our away day. We need to ensure that we can do something useful that has not been done before. That is the difficulty in our simply picking up the alternatives to custody inquiry that was undertaken by the previous committee. There are some issues on which we could make progress, but we need to be clear about what they are.

It occurs to me that if the committee is committed to considering the sentencing issue—a live issue at the moment—there would be nothing to stop us pulling out some of the material on alternatives to custody. For example, women's offending could come under the banner of sentencing. Michael Matheson is interested in pursuing the issue of weekend detention that came out of the report on alternatives to custody.

If we are clear about our remit, we could mix the two issues if there is merit in doing so.

Bill Butler: It would be good to have the in-built flexibility of using the word "sentencing" in the title of the inquiry but ensuring that we have latitude. That would allow us to range over the various live issues.

Marlyn Glen: Just to complicate things, Margaret Smith has charged me with putting her bid in for considering the efficiency and resourcing of the police service. However, if there is to be further research into alternatives to custody, she will not want to leave that out.

I like the idea of combining sentencing and alternatives to custody. That might be a wide remit, but it would be interesting.

Margaret Mitchell: I am interested in finding out more about the flexibility of sentences and how that relates to alternatives to custody. We could bring in aspects of women's offending and alternatives to custody. That would complement our work on High Court of Justiciary reform and give us a fuller picture.

Mr Maxwell: At the away day, I expressed some concerns about those issues, particularly alternatives to custody. Although it is an interesting issue, I want us to be careful to ensure that we have a clear focus on what we are doing. I am concerned that we would be examining areas that have been examined previously and we would not gain anything from that. It is a big issue and I am concerned that we could be spreading ourselves too thin. As has already been suggested, we could be mixing sentencing and alternatives to custody and the danger might be that the area that we are considering could get too wide.

Having said all that, it is an interesting issue and I am quite supportive of the idea. I came to today's meeting keener on the idea of starting a new inquiry into the efficiency and resourcing of the police service. As has been mentioned before, there were no inquiries into that subject during the first four years of the Parliament, but there have been inquiries into such areas as alternatives to custody. I would not like the committee to dismiss the idea of an inquiry into the police service and we should discuss it further.

The Convener: I would not like the committee to dismiss that idea either because it looks like an attractive option and it is something completely new. We could start at the beginning. No one else is doing it, so we would have a clean slate.

I see no reason why we cannot have a scoping paper prepared that has a bit more detail about the focus for an inquiry into sentencing and alternatives to custody. That would allow us to see

how long or short such an inquiry might be. The inquiry might not be very long because we might only be able to go so far, particularly given that we do not have any information on the proposed new sentencing commission. However, we might be able to do a short piece of work.

If we took up the suggestion made in the report on alternatives to custody, we would be commissioning a report that would be done over 12 months. We would not be directly involved in that report; it would just come back to us. That would not preclude us from picking up a new inquiry afterwards, but the work would have to be done that way round. If we lose the thread of sentencing and alternatives to custody—unless the Justice 2 Committee is going to pick up on that issue—we will probably lose the opportunity to consider sentencing.

Could we scope both those issues to see which fits in logically?

Mr Maxwell: If it is possible, we could scope both the issues and then take a formal decision. If we start the new inquiry into the police, the other one would have to be dropped. If you are saying that it is feasible to start off the inquiry into sentencing and alternatives to custody and then commission the external research—in effect putting the issue to one side until the research comes back to the committee—that would give us the opportunity to start a fresh inquiry. That might be the way to go. Perhaps the clerks could help us to make that decision.

The Convener: Is anyone minded otherwise?

Bill Butler: I am not. If it is possible to do what has been suggested, that would be a sensible approach, as we could build in some areas while noting the time constraints under which the committee works.

The Convener: Other ways of proceeding would be open to us if we came under time pressures. A reporter could be appointed. We could keep things going. Obviously, we will be bound by the legislation with which we will be dealing, which will be fairly substantial, but in the past we have certainly managed to keep big inquiry and big petition work going while we have been dealing with legislation. That work has been heavy but productive. The previous Justice 2 Committee did a short report on women's offending and simply invited the chief inspector of prisons and the Executive to update us. We did not do an inquiry. It is possible to proceed in that way.

I want to discuss in more detail what areas members want to be covered. Who should adopt the previous Justice 1 Committee's report on alternatives to custody? It has been suggested that someone must do something about that report. Although Michael Matheson was a member of the Justice 1 Committee, I am a wee bit concerned about the lack of continuity and about how things can be done. It is a shame that Michael Matheson is not here, as he is concerned about our adopting a report into which we have had no input. We need to think about that. There must be a debate and the Executive must respond to the report—we would not want the process to be lost. However, we need to think through the mechanism by which the Executive should respond.

It has been suggested that we can simply ask the Executive to respond and bid for a debate, but not adopt the report. To be honest, I do not see how we can adopt it. The Justice 2 Committee is in the same position as we are—it would look equally weird for that committee to adopt the report, as it has not been directly involved with it.

We could commission external research on the use of alternatives to custody in other jurisdictions—that would be an obvious volume 2 for the report. Alternatives to custody are apparently working well in other countries. It might be useful to commission research and find out how well those alternatives are working.

Issues that members are interested in pursuing from the inquiry into alternatives to custody are the use of fines by Scotland's courts and sanctions for non-payment of fines, the use of alternatives to custody in other jurisdictions—including the use of weekend prisons—and reasons for the increasing number of female offenders in prison. It would be useful to invite the minister to a meeting to ask about the Executive's strategy for reducing the population of women in prison. There are some things in the pipeline, but we can take that issue only so far. As individual back benchers, we could probably do more to put pressure on the Executive to speed things up. If we do so, things might come to a sudden stop for the committee in that respect.

Are there any other issues that are not covered in the paper that members would like to be in the scoping paper?

Margaret Mitchell: The issue of female offenders has been bandied about for many years, but we have never really got to grips with it. If the committee were to take up the issue, that would give it greater prominence and bring it more into the public domain. Perhaps something good would materialise from that. On that basis alone, it would be good to home in on it.

The Convener: A lot could be discussed in respect of sentencing—for example, its purpose, recent decisions and whether inconsistent sentencing is a perception or a reality. What do members want the focus to be?

Bill Butler: Consistency of sentencing and the use of sentencing guidelines could be focused on.

We could consider ways of refining those, if that is needed.

Margaret Mitchell: Perhaps we could also look at early remission. That is a key issue, given the recent figures on how many people reoffended or breached their licence when they were released on early remission.

Mr Maxwell: Could we include something about the sentencing information system? The presentation that we received at our away day seemed to suggest that the system was just not used. Perhaps we need to look at that.

The Convener: So we would cover consistency of sentencing and perhaps the issues surrounding the Parole Board for Scotland and early release. We would start on that by getting a briefing on how the system works, which would give us an idea about where to go. I also think it important that we find out why more use has not been made of the sentencing information system and why, given that the system has been in operation for 10 years, it has not been more effective.

Mr Maxwell: I agree entirely that consistency of sentencing is important. I do not want to stray into areas that we should not go into, but would it be appropriate to look at the applicability of sentences? As well as looking at consistency, can we also consider whether the right sentences are being given? Sentences across Scotland may be consistent without being right. There are two sides to that coin. Would it be reasonable to include that issue as part of our consideration of sentencing?

The Convener: We might need to consider which courts' sentencing we wanted to look at. I am more concerned about inconsistency in the lower courts. I know that people may have views about a particular case, but I do not have a big concern about the High Court being inconsistent in its sentencing, whereas there are probably wide disparities in sheriff and district courts and in summary procedure.

Mr Maxwell: I absolutely agree. The sheriff courts would probably be the main focus of such an inquiry, particularly as they deal with the bulk of the work. Perhaps we would also look at district courts, but my number 1 priority would be to look at the sheriff courts.

11:30

The Convener: Okay. That gives us something to do in a bit more detail. We will combine that issue with an inquiry into sentencing and alternatives to custody, although we will need to pick out the issues.

I am clear about what aspects of sentencing we want to cover, but I want to be sure that we have agreement about our approach to alternatives to custody. We will not adopt the previous Justice 1 Committee's report because we do not think that that is particularly sensible. However, we will look to make a bid for a debate and ask the Executive to respond. In that way, members of the Justice 2 Committee and other members who are interested in the matter can comment on the report.

We can draw out the issues that arise from the report, consider examining the effectiveness of alternatives to custody in other jurisdictions and think about commissioning research. The Conveners Group would have to agree the budget for commissioning external research.

Issues that we would consider that specifically come under sentencing but relate to alternatives to custody are women's offending and the use of weekend prisons, although that issue—which Michael Matheson put on the agenda—would probably be covered when we consider other jurisdictions, because the idea comes from other jurisdictions. The committee might want to hear either from the Minister for Justice or from the relevant agencies about what is happening in the time-out centre in Glasgow and one or two other on-going initiatives so that we are up to speed on those matters. Does that sound like a proposal with which we can move forward?

Margaret Mitchell: Have we covered early release?

The Convener: I put that under sentencing.

Margaret Mitchell: We should not concentrate only on the sheriff courts, because much of the impact of early release relates to the High Court.

The Convener: We would kick off by having a briefing on how the system of early release operates and take the matter from there. There would be no barrier on which courts we would consider in order to get more information. Inconsistency in sentencing is the key point. Unless we are clear about the focus, the inquiry will be massive. We are talking about looking at sheriff courts, but members can change their minds if they see a different focus.

Margaret Mitchell: We can establish how the system works and consider what we need to focus on.

Mr Maxwell: We will also consider the sentencing information system.

The Convener: Yes.

That draws the issues together. The scoping of the inquiry will let us see how long it will take. There seems to be consent that, after we have finished that inquiry, we will start a new inquiry on the efficiency and resourcing of the police service. Is that agreed?

Members *indicated agreement*.

The Convener: A few members mentioned family law. I know that there is a lot of interest in the matter and there are many issues that could be examined. Although the legislation is some time away, that would not necessarily preclude us from considering family law at some point. As some members mentioned it in the consultation, I thought that we should have a preliminary discussion on the matter.

Margaret Mitchell: I note that the work programme mentions a petition about grandparents' access to their grandchildren. I think that I have raised the issue of custody orders and fathers' rights. When we discuss the petition about grandparents, can we also consider other related issues or are we limited to examining the issue that the petition addresses?

The Convener: The petition becomes the property of the committee. As long as the other issue is within the justice and home affairs remit and we see the connection between the issues, there is nothing to prevent the committee from considering them together, if we can justify doing so. In the Justice 1 Committee's final discussion in the first session about the petition, it came to the conclusion that access to children by all groups would have to be considered, as the Children (Scotland) Act 1995 does not specify anyone in particular. The 1995 act is the legislation that grandparents or anyone else would be expected to invoke in order to get access to children. It is clear that we could move in that direction on that petition. We have agreed that we will take on the petition, because Bill Butler is particularly interested in the issues that it raises.

According to information that I received from the Scottish Parliament information centre, the latest announcement is that consultation on family law will begin at the end of 2003 or the start of 2004. I presume that a consultation document is to be published at the end of this year or the beginning of next year, so we can constantly review the subject.

We have a couple of outstanding reports—they are outstanding in both senses of the word. One is our report on the regulation of the legal profession and the other is on legal aid. The Justice 2 Committee was keen for us to work on the regulation of the legal profession and I said that I would put that suggestion to members. We have a wee bit of unfinished business that needs to be followed up, something that we must consider in the light of our agendas for the next few weeks. I have no particular objection to reviewing the report. One reason for the suggestion is that the committee has no practising lawyers. Am I wrong about that?

Members: No.

The Convener: I do not have a strong view on the matter. I suppose that our doing the work would tidy up the work programmes, as the Justice 2 Committee is keen to consider legal aid. I do not propose that we should commit to a time scale for the follow-up. However, if we made a decision, that would make it easier to allocate statutory instruments in principle between the Justice 1 Committee and the Justice 2 Committee and would mean that we picked up correspondence on the subject, which comes to me anyway.

Mr Maxwell: That seems reasonable.

The Convener: Okay.

The Parliamentary Bureau has said that it is not happy for us to meet jointly with the Justice 2 Committee, because it is worried about duplication. However, we might try to persuade the bureau to agree to a joint meeting, because both committees have many new members who would like to hear from the new chief inspector of prisons. In fact, none of us has had a dialogue with him. A joint meeting with him would give people an introduction to his work. We will have to return to that.

I have been told that we could follow up the inquiry into the prison estates review. No one has expressed a strong interest in that, so I am canvassing opinion. If we pick up alternatives to custody, the Justice 2 Committee might want to cover the prison estates review report in the longer term.

Bill Butler: That could be put to the Justice 2 Committee.

The Convener: Does the committee agree to that?

Members *indicated agreement*.

The Convener: It is worth spending a few minutes on European matters, as members have just heard about the big issues. Would members like to pursue any of the legislative issues? How will we deal with them, given the advice that we should act early? One option is to liaise more regularly with members of the European Parliament. We could try to influence the European Commission early and pursue a dialogue with it.

We could also take steps towards creating a closer relationship with the Westminster European Scrutiny Committee and the Select Committee on Home Affairs. Videoconferencing could be used to meet our counterparts in Europe and to take evidence on legislation. The paper makes good suggestions about hosting a European justice and home affairs seminar and visiting the European Union institutions. My feeling is that we must devise a formula, because there is so much

European legislation that we need a format that will work for us.

Margaret Mitchell: I thought that the pre-council and post-council briefings, which include the agendas for the justice and home affairs council, were very helpful. Of all the papers that were issued, they contained the most information and got to the source of things.

Marlyn Glen: In Margaret Smith's absence, I would like to add her support for the convener's idea about hosting a European justice and home affairs seminar, which she is keen on. I agree with that, too.

The Convener: I take it that no member dissents from that suggestion in principle. I am not committing us to a specific time scale.

I agree with Margaret Mitchell—I think that pre-council and post-council briefings on issues that relate directly to our work are an absolute must for the committee. I wonder how we can ensure that we get those documents when they appear. If it is left to us to request them, we will not necessarily know when they are available. The clerk tells me that that could be sorted out. It is essential that we get the briefings. I presume that members would want a regular discussion with the Executive to find out its attitudes on European issues.

Mr Maxwell: When we took evidence, we ranged over various green papers and white papers and forthcoming proposals from the EU and it was mentioned that we could examine one or two issues. Quite frankly, there is so much stuff that it is difficult to choose. I do not know whether anyone has any suggestions about how to go about selecting one or two issues out of an immense amount of material.

From the questions that I asked about alternative dispute resolution, I noticed that consideration of that issue is at an early stage. Given that getting in early is the best way forward, I wondered whether members felt that that was one of the areas that we should consider. It is an up-and-coming area here and internationally. The fact that proposals on alternative dispute resolution are at an early stage might mean that we could have some discussions with MEPs and others and make our voice heard in Europe on that issue at least. I know that we cannot choose everything, although it would be nice if we could.

The Convener: How do members feel about the specific suggestion that we should consider dispute resolution, because we know that proposals on that are in their early stages?

Bill Butler: That would seem sensible. Consideration of dispute resolution is a possibility.

The Convener: The white paper on divorce is also in its early stages.

Margaret Mitchell: The witnesses were a bit vague on that subject. One of the papers said that the white paper on divorce would have implications, but that was not the impression that was given today. I would like that to be clarified.

The Convener: If the committee agrees that we should examine those two issues, along with the note on the conclusion of the discussions that will take place at the October council, perhaps we could ask for the relevant documents now and find a space on a future agenda for each of those areas. We could also ask the Minister for Justice to discuss either of those topics. That might help us to devise a formula to work our way through the relevant stages as they emerge at EU level.

It is my guess—I do not understand fully the timings—that it might be early next year before we need to pick up on the relevant proposals, but we could indicate now that we wish to consider those issues as they progress. We would expect to receive any relevant updates, reports and documents that relate to those areas. From that, we will be able to assess whether we are being told about things in sufficient time to allow us to make an input. The objective would be that, at some stage, the Justice 1 Committee could do a report for Scottish ministers that would give our view on such matters.

We agree on the seminar. We can discuss further when and how it should be organised. What about a visit to Brussels? Is there any interest in that?

11:45

Marlyn Glen: I am not sure about the practicalities, but I would be interested in such a visit. It is important to set up the working dialogue with the Scottish MEPs one way or another. That dialogue could be a shorthand way of doing some of the European work, because the MEPs are informed about procedures.

Margaret Mitchell: Are the justice and home affairs council meetings open? Could we sit in on them and listen to how proceedings are conducted?

The Convener: No. The meetings are not open.

Margaret Mitchell: The EU is not open and accessible like the Scottish Parliament.

The Convener: The committees are open. You can talk to the Commission, which is quite useful, and you can go to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, which is the relevant committee. I attended a wee bit of the meeting at which the committee discussed harmonisation. You become aware of a different dimension when you see it happening. I take Marlyn Glen's point that there are practical

difficulties in fitting a visit into members' timetables, but we can examine the possibility of arranging a trip for those who wish to go.

Mr Maxwell: I agree with Marlyn Glen's comments. We are all feeling our way with this European stuff. I am slightly confused by it all. There is a lot of material out there and I am not sure where the focus should be. It is good to get the briefing papers—they are helpful—but it would be beneficial if we could cut through a lot of the stuff and make direct contact with MEPs and officials at an early stage and say what we are interested in, what we are thinking of looking at and what our concerns and views are. In the long term, meeting MEPs and officials, and saying what we are about in relation to Europe, might prove to be valuable.

The Convener: We could examine the possibility of videoconferencing with the Commission and MEPs. I do not know the practicalities of that. We could also consider a visit at some stage in the future. If we cannot set up a videoconference, going to Brussels will become more important, but if we manage to set up a videoconference, it will be a bonus if we can organise a visit. Does that meet your objective, Stewart?

Mr Maxwell: I am not keen on videoconferencing, because it results in a stilted atmosphere, but I do not have any particular problems with it. However, I am slightly concerned about the time scale. I understand that we have a problem with fitting in a visit, but it would be helpful for us all to get together in one room and discuss where we are coming from. The earlier we do that the better, because I would like to get to grips with a lot of this European stuff, which is very important for this committee. I emphasise that earlier would be better than later.

The Convener: Okay. The deadline for bids for visits is 25 September, after which we will not be able to bid until January. We could submit a bid on the basis that we are hoping to have a visit. As is always the case, not everyone will be able to go on the dates that are agreed to. We could examine the possibilities and come back to the committee to reach a final agreement. I have been told that we do not have another meeting before 25 September. Would the Conveners Group accept a bid in principle if we say that we are keen to have a visit but are not certain when we can fit it in?

Alison Taylor (Clerk): Yes.

Mr Maxwell: I support that.

The Convener: If we do that, the committee can decide when and where the meeting will be. Are you happy with that, Marlyn?

Marlyn Glen: Yes.

The Convener: There is one final thing. I ask the committee to agree to the working principles paper, which sets out the way in which we will work alongside the Justice 2 Committee. I do not think that there are any concerns about that. Are members happy with the paper?

Members *indicated agreement.*

The Convener: We took a formal decision to consider petitions on a quarterly basis, which will make the process easier for the committee, but if there is anything that the committee thinks is urgent, we will not be precluded from dealing with it. However, that is generally how we will operate the system.

I thank members, because that takes us quite far in determining exactly what we are likely to be doing over the coming few months. The decisions will be worked up for members for the next meeting so that they can see in black and white what they need to do.

That brings us to the end of our meeting. I remind members that there is an informal briefing on the budget about now. After the briefing, there will be a short joint meeting of the justice committees so that we can consider the witnesses that we wish to call on the budget process.

Meeting closed at 11:51.

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