

# **JUSTICE 2 COMMITTEE**

Tuesday 2 March 2004  
(*Afternoon*)

Session 2

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## JUSTICE 2 COMMITTEE

### † 8<sup>th</sup> Meeting 2004, Session 2

#### CONVENER

\*Miss Annabel Goldie (West of Scotland) (Con)

#### DEPUTY CONVENER

\*Karen Whitefield (Airdrie and Shotts) (Lab)

#### COMMITTEE MEMBERS

\*Jackie Baillie (Dumbarton) (Lab)

Colin Fox (Lothians) (SSP)

\*Maureen Macmillan (Highlands and Islands) (Lab)

\*Mike Pringle (Edinburgh South) (LD)

\*Nicola Sturgeon (Glasgow) (SNP)

#### COMMITTEE SUBSTITUTES

Ms Rosemary Byrne (South of Scotland) (SSP)

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Michael Matheson (Central Scotland) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Margaret Smith (Edinburgh West) (LD)

\*attended

#### THE FOLLOWING ALSO ATTENDED

Hugh Henry (Deputy Minister for Justice)

#### THE FOLLOWING GAVE EVIDENCE:

Susan Herbert (Scottish Executive Justice Department)

Colin Imrie (Scottish Executive Justice Department)

#### CLERK TO THE COMMITTEE

Gillian Baxendine

Lynn Tullis

#### SENIOR ASSISTANT CLERK

Anne Peat

#### ASSISTANT CLERK

Richard Hough

#### LOCATION

Committee Room 1

† 7<sup>th</sup> Meeting 2004, Session 2—joint meeting with Justice 1 Committee



## Scottish Parliament

### Justice 2 Committee

*Tuesday 2 March 2004*

*(Afternoon)*

[THE CONVENER *opened the meeting at 14:04*]

### Justice and Home Affairs in Europe

**The Convener (Miss Annabel Goldie):** Good afternoon everyone and welcome to the eighth meeting in 2004 of the Justice 2 Committee. The first item on the agenda is justice and home affairs in Europe. On behalf of the committee, I am pleased to welcome Colin Imrie, head of the access to justice division, and Susan Herbert, who is head of the European Union justice and home affairs strategy unit in the Scottish Executive. Mr Imrie will make a short opening statement.

**Colin Imrie (Scottish Executive Justice Department):** Thank you, convener, for the invitation. I clarify that I am here in my capacity as head of the EU justice and home affairs action team. I am dual-hatted, if that military allusion is appropriate. That position is one of the consequences of the work that we have been doing in the Justice Department to try to give more focus to European justice and home affairs issues: we have created a self-standing team and brought together people from different parts of the Justice Department and the Crown Office and Procurator Fiscal Service to give more time to EU issues.

Susan Herbert, who is next to me, has been working on EU justice and home affairs issues for a couple of years. She has been a centrepiece in the team and she heads up the team's strategy side. One of Susan's tasks is to work on the scrutiny materials that are produced regularly before and after justice and home affairs councils. There are four or five justice and home affairs councils in every EU presidency. We would certainly be interested—in discussion with the clerks, now or subsequently—to find out about the committee's use of the scrutiny materials and the value that it attaches to them, because the process is clearly an important one.

One of the points to make about the justice and home affairs council at this stage is that its focus for the past three or four months has been on asylum issues. It has been focusing on the asylum procedures directive, which deals very much with how asylum applications are handled across the different EU countries. Our only direct interest in

that is in legal aid. Consequently, we have been following most of the justice and home affairs council's activities and ensuring that Scottish interests are represented. The council's activities have not been of direct interest to us, but that will change in the coming months. We will continue to take a close interest in its activities.

I am sure that the committee has seen some of the documentation that we recently produced. The first document that I want to draw attention to is the Executive's European strategy, published in January of this year, which mentions justice and home affairs and stresses the importance that the Executive attaches to that issue, especially in two areas. First, we are ensuring that we engage effectively in the legislation that is being prepared in Europe. As I think the committee has discussed, a very large legislation agenda is being prepared in the justice and home affairs area in the EU, which is designed to promote cross-border access to civil justice and bring about better co-operation between the authorities in the member states in tackling cross-border criminality. The wide legislation agenda was set out back in 1999 in Tampere in Finland. As far as the Executive is concerned, it is important that we ensure that the principles of Scottish procedural law in the criminal and civil fields are protected. A key element in that is to be involved at the start of the process—if possible—which we are working towards. I will speak briefly about some of the things that we are working on.

A second area that is stressed in the strategy is work on the exchange of best practice with EU partners, tackling issues such as youth crime and cross-border access to justice and police co-operation, in which we are very involved. Therefore, best practice in those areas is stressed as an issue in which Scotland has a direct interest and on which the Executive is working.

The second document, which I hope that members have seen, is on Scottish ministerial priorities for the Irish presidency in respect of justice and home affairs. The Minister for Justice has set out her priorities for justice and home affairs council business, for the negotiations that go on before councils and for best practice. I draw the committee's attention briefly to some of the key issues that are set out in that document.

On civil judicial co-operation, members will recall that in October last year an important regulation on parental responsibility was adopted. That sped up the process for dealing with child abduction and similar issues involving different EU member states—a matter that affects increasing numbers of people in Scotland and elsewhere in the EU. Negotiations have been under way on a European enforcement order for uncontested claims, to speed up and simplify recognition and

enforcement of decisions. That order, which could go directly from courts in member states to parties in other countries, is nearing approval.

Negotiations on what are called non-contractual obligations and on a convention that would decide which country's law would apply to resolve disputes about issues such as negligence actions arising from road traffic accidents or defamation claims about environmental pollution are also under way. Those negotiations will take time, but the Executive is closely involved in them. For example, it has contributed to a memorandum that was submitted last year to the House of Lords and of which the committee has copies.

We are awaiting Commission proposals for a European small claims procedure, which will make it easier to enforce small claims accounts across borders. The issue is becoming increasingly important because people are shopping across borders. We are closely involved in that process. The Commission has taken evidence from us, as well as from member states. We expect the proposals soon and expect that they will reflect our position.

The most important proposal relating to criminal law that has been made is a Commission proposal for a framework decision on a European evidence warrant, which would apply the principles of mutual recognition, in the field of mutual legal assistance, to objects, documents and so on that are required by authorities in criminal proceedings. An evidence warrant would be issued by a judge, investigating magistrate or prosecutor and could be applied in another member state to gather evidence in a much simpler manner than is the case at present. We are closely involved with the Home Office in preparing the UK line on that matter.

We are awaiting Commission green papers in relation to mutual recognition of bail and sentencing that reflect the fact that people cross borders and that many crimes have a cross-border dimension. We are seeking consistency in that area. We have met the Commission officials involved in drafting those documents to discuss the issues that they expect to come up with. However, we are still waiting for the green papers to appear. We are also awaiting a proposal for a framework decision on minimum standards in criminal proceedings, which will be relevant to the general principles of Scots law. We will need to watch that closely.

In respect of police co-operation, the Scottish police service, through the Scottish Drug Enforcement Agency, participated last week in a conference in Dublin on joint investigation teams. That is a procedure to improve how police services work together on cross-border crime. In the next couple of weeks, the Executive will be

represented at an Irish conference on crime prevention and youth crime. We are planning in the summer to hold a conference on the policing of youth crime, which is mentioned in the document. More details of that will be available in due course. We hope to bring together people from across the EU countries to discuss how issues can be tackled most effectively.

I will conclude by mentioning a number of other initiatives. I have spoken about the parental responsibility regulation that was agreed in October last year. It will come into force in March 2005, so work on its implementation is under way with some of the key interested parties. That will require new rules of court and a corresponding regulation will have to be introduced here.

14:15

Two new measures came into force on 1 January 2004. First, there is a regulation on the taking of evidence in civil and commercial proceedings, which makes it easier to take evidence across borders, and work is under way to implement that. The second measure is the European arrest warrant, which simplifies and streamlines extradition procedures. The Executive has devolved administrative responsibility to implement that and the Crown Office will be the central authority for implementation. The warrant will make it easier to extradite people who are suspected of crimes in this country. We are still waiting for some member states to implement the procedures, but we expect that to be in place by the summer.

Another area that we are working on is the exercise that we announced at Christmas whereby the Scottish Police College will work with the Latvian state police to help them to prepare for Latvia's accession to the EU by providing police training.

We are involved in a range of activities in a number of fields, including legislation and best practice, and we aim to ensure that we are involved in negotiations from the start—that is when one can have the greatest influence—and that we do not miss out on any issues that are coming up to decision. We are also implementing initiatives to get the various bodies that are involved in justice and home affairs in Scotland more closely involved in co-operation in Europe.

**The Convener:** Thank you. That was a full explanation.

The issue first arose at our away day in September; members of this committee and the Justice 1 Committee were struck by the importance of remaining in touch with the European dimension. We have seen progress, and I thank your department for the provisional information, which has been extremely helpful.

Committee members might want to ask questions on specific areas. To some extent, you have answered my question, although you were talking principally about issues and about particular components that might arise. I wonder about the mechanisms that are in place to ensure that there is Scottish involvement, at the right time, in the legislative process in Europe. Does someone in your department travel to Brussels or are there other mechanisms for contact, meetings and consultation? I am a little unclear about how the machinery works.

**Colin Imrie:** I will start with councils, which are usually the end of the process, when things are coming up to decision, although issues are sometimes taken to councils when there are problems with negotiations and ministers are asked for their view on how the problems can be resolved so that negotiations can continue.

We work closely with the Home Office and the Department for Constitutional Affairs on preparing the agreement on the agenda for councils that we are closely involved in—the agendas are sent to the UK representation—and on preparing for individual items that are to be discussed at the council. We are consulted on the lines to take and we are involved when we have particular issues.

For example, Scottish officials were involved in the negotiations on the regulation on parental responsibility until the last minute. Negotiations went on in parallel with the permanent representatives to tackle the relationship between that regulation and the Hague convention, because there is a close relationship between the two. Where there are particular issues, there are mechanisms whereby we can sit alongside the UK departments and indeed speak for the UK, as we have done on several occasions.

**The Convener:** Would that give rise to ministerial involvement if the issue specifically impacts on Scots law?

**Colin Imrie:** Absolutely. We are closely involved with the minister, who sees the scrutiny documents that are prepared by Susan Herbert. Since October, there have not been any major issues that are of direct interest to us, but we are pretty sure that there will be such issues in future and the minister makes it clear in the document that she has given to the committee that if there is a reason to be directly involved, Scottish ministers will be appropriately represented.

In terms of the continuing negotiations, we are part of the negotiating teams where we need to be, particularly in the civil field but increasingly in the criminal field too—our officials are involved and they can be present when required.

Before the negotiation stage lies the question of how we become involved in commenting on

Commission green papers, which contain initial ideas. It is striking that, in preparing its small claims proposal, the Commission has taken full evidence from Scotland as well as from the rest of the UK. We said in our document on priorities for the Irish presidency that the Executive intends in future to respond directly to Commission green papers. We expect to do that with the green papers on bail and sentencing.

That approach will not be taken once a formal proposal has been made, because the UK has a single negotiating line on formal proposals, but our aim is to ensure that that reflects Scottish positions. That is much easier when we make clear the Scots law position at the initial stages.

**Karen Whitefield (Airdrie and Shotts) (Lab):** I will follow Annabel Goldie's lines of questioning. Does the Justice Department have a formal structure for monitoring proposals for European legislation that would have an impact on the department? If so, how does that work? Will you give examples of your successes in ensuring that Scots law has been taken account of in EU proposals?

**Susan Herbert (Scottish Executive Justice Department):** I will answer your first question about tracking legislation. The Executive has an implementation database—that is a bizarre title—for all departments. Once legislation from Brussels has been agreed, we monitor its implementation so that we are on track to implement it on time, because if that is not done on time, we can be subject to infraction proceedings. That is part of the role of the team with which I work. We monitor that closely in consultation with our colleagues in the external relations division. We work together to track EU legislation and to ensure that Scotland takes steps to implement it on time. That stage follows the negotiations that Colin Imrie spoke about.

**Colin Imrie:** Karen Whitefield asked for examples. Parts of Scots law are different from law south of the border and elsewhere. For example, evidence in Scotland requires corroboration, but that is not necessarily the case elsewhere. We are considering that closely in relation to the evidence warrant, to ensure that that angle of Scots law is recognised.

Civil justice in Scotland operates differently from that elsewhere in the UK. I mentioned small claims, which provide an example of our ensuring that how the situation operates in Scotland is set out clearly in the evidence that is submitted to the Commission. The Commission has told us that it considers it important to ensure from now on that the way in which Scots law operates is recognised at an early stage.

We feel that differences are recognised. More important, proposals are being prepared against a background of knowledge about how the Scots civil and criminal legal systems operate. We are doing all that we can to encourage that.

**Karen Whitefield:** Does the Justice Department monitor the effectiveness of its engagement with the EU to ensure that that engagement is succeeding in realising the Executive's objectives?

**Colin Imrie:** Probably the most effective way to do that relates to the implementation of agreed measures. For example, the implementation procedures for the arrest warrant have been substantial. Much work has been needed up front to ensure that the system works more smoothly. At this stage it is quite difficult to tell whether the system will work as we intend, because we are still waiting for a number of member states to implement the measure, but implementation will be the key to how it works.

We have also been considering whether the regulation on evidence taking, which I mentioned earlier, is working. It is very early days, because the regulation came into force only on 1 January but, so far, the procedures seem to be right. Similarly, as we prepare for the implementation of the parental responsibility regulation, we will have to think carefully about whether it will work effectively and in that context we are working closely with people who are involved in family law in Scotland.

To answer your question: monitoring is done both through the implementation database work and through the consideration of individual measures to ensure that the aims of measures are being met through implementation.

**Mike Pringle (Edinburgh South) (LD):** You mentioned small claims several times. Clearly, in England and Wales the limits in the small claims courts are different from those in Scotland. How will that work in relation to Europe?

**Colin Imrie:** The Commission looked closely at limits and discovered that they vary throughout the different jurisdictions in the EU. The limit in Scotland was higher than in many, if not all, other member states, although—

**Mike Pringle:** It is lower than the limit in England.

**Colin Imrie:** It is much lower than the limit in England. Of course, that is being considered separately.

I am pretty sure that it will be important to have a limit for cross-border claims, but I think that people will consider the range of limits and try to come up with a compromise that allows a limit that is sufficiently high to make a claim worth while, but that is not so high that it breaches the basic principles of most member states' systems.

**Mike Pringle:** Obviously, the limit has not yet been decided, but if it is set higher than the Scottish small claims limit, how will that impinge on our system?

**Colin Imrie:** If that happens, we might have to change our legislation, but that would be picked up during the negotiations. As I said, we are at the start of the process on small claims; the Commission has gathered evidence and we expect it to put forward a proposal soon. It will take some time for the proposal to be negotiated; one of the joys of the European process is that it is very slow burning, although it usually comes home to roost in the end. It is perfectly possible that, as the European negotiations proceed, changes might be made in Scotland to ensure that the situation that you describe does not happen. We expect to have time to act—indeed, the negotiations might bring things to a head, which might be beneficial.

**Maureen Macmillan (Highlands and Islands) (Lab):** To pursue Mike Pringle's point, are you worried that we might reach a stage in the process at which we adopt the lowest common denominator, rather than the best possible legal system?

**Colin Imrie:** In general terms, how the EU works involves qualified majority voting—at least on civil matters if not on criminal procedure. Proposals from an independent body, by which I mean the Commission, rather than member states, counteract the pressure towards accepting the lowest common denominator. When the Commission puts forward its proposals, it seeks to promote a higher objective than simply the bare minimum—that is usually the starting point. Throughout the negotiation process, there will be circumstances in which attempts are made to make proposals more compatible with national situations, which could lead to a watering down of certain proposals. However, most of the proposals that I have been considering are relatively ambitious.

It is important to remember why this work is taking place and what the problems are. We are operating against a background in which an increasing number of people travel, so it is increasingly important to be able to deal with commercial claims and small claims across frontiers. The number of cross-border crimes is rising, which affects Scotland as much as anywhere else. We have a lot of cross-border crime and we and European countries have a shared interest in ensuring that no jurisdiction is an easy bet compared with others.

14:30

Because any legislation would have good reasons behind it, the quality of the legislation



would be higher than the bare minimum. That said, there is no reason why legislation should be necessary if other systems can work. For example, a key part of the negotiation on parental responsibility was to ensure that those aspects of the Hague convention—which brings together countries such as the United States of America and those in the Commonwealth as well as the European Union countries—that work did not need to be negotiated away. There was some resistance to that from the European Commission and other bodies, but, eventually, we came up with a satisfactory compromise that allowed us to maintain a system for protecting the rights of children across frontiers. The system is compatible with the system in the Commonwealth countries, from which most of our cases still come, but certain measures have been put in place that make it easier to access and use the systems in the EU than would otherwise have been the case.

That is very much in line with the objectives relating to cross-border access to justice. Increasingly, Scots are travelling abroad; Scots are going to live in Europe and Europeans are coming to Scotland. Seeing the overall benefits helps us to rise above an attempt to find the lowest common denominator between 15 member states with more than 15 jurisdictions. There will, of course, soon be 25 member states.

**Maureen Macmillan:** That sounds like quite a challenge.

I would like to ask about your relationship with the Parliament's justice committees. An EU justice and home affairs action team has been set up, but it would be helpful to know who is involved in it, how the members were selected and what lines of communication the action team will have with the justice committees.

**Colin Imrie:** The action team, which I head and of which Susan Herbert is a key member, brings together people from across the Justice Department and the Crown Office. It is an internal Executive and Crown Office team that is designed to focus on and create space for the European work. One of the reasons why we set up the team was that, after we had done a best-value review of our operations, we found that if there is no focus for the work and it is treated as part of normal business, it tends to get pushed to the margins. For example, if the person who is dealing with small claims also has to deal with the European stuff, they will deal with it at the margins of their work. However, if a team has a European focus, it will be possible to achieve more and to work to a common agenda.

Most of the people who are involved in the team, apart from Susan Herbert, have a day job as well. One of the advantages in that is that the team brings together on a regular basis people who are

working within criminal procedure, the Crown Office and various areas in the civil part of the Justice Department. Some of our work includes encouraging language development, contact with the Commission and contact with other member states.

**The Convener:** Does the action team meet routinely?

**Colin Imrie:** Yes. We meet once a week on an operational basis and have full meetings every two months. When we started the team in October, we set objectives in agreement with the Minister for Justice and the Deputy Minister for Justice. As I have said, those objectives reflect the Executive's European strategy.

On contacts with the justice committees, much of the regular documentation that we produce—for example, the pre and post-council scrutiny documents—reflect our objectives as well as the information that we are gathering through our contacts with European institutions and United Kingdom Government departments. As I said, we would be happy to take the justice committees' advice on how we should move forward. Obviously, we would have to discuss any suggestions with ministers to ensure that they were compatible with the overall approach but, in general terms, we would welcome the justice committees' comments on and input into much of what we are doing.

**Maureen Macmillan:** So protocols could be set up between you and the committee.

**Colin Imrie:** In formal terms, we work for the Minister for Justice and the Deputy Minister for Justice, who have responsibility in this area. However, when it comes to scrutiny of material, we are working to the practice that has been established by the European and External Relations Committee and recommended to this committee. It is important that we give members material that they find useful. If they can think of ways in which practice could be changed, we would be happy to consider those.

**Jackie Baillie (Dumbarton) (Lab):** Quite rightly, your European strategy describes how you mainstream European Union issues throughout the Executive, across all policy divisions. I appreciate how difficult that is, especially when departments have competing priorities and issues have to be juggled under pressure. I welcome the focus that you have brought to EU issues in the Justice Department through the action team. This may be an unfair question, but is that a common approach in the Executive? Clearly, the minister is closely involved in scrutiny of what the action team does and in taking decisions. Does one minister have oversight across all departments, or is it for individual ministers to focus on their departmental priorities?

**Colin Imrie:** The question goes wider than the Justice Department. I can speak only for the justice team, although I have worked on structural funds and have seen what happens in that area. One reason why we have been able to take the approach that we are taking in the Justice Department is that the subjects with a European dimension run widely across the department. Most aspects of criminal procedure and criminal substantive law are affected by European proposals in one way or another. There is a similar situation in civil areas and in relation to police co-operation. Because there is a balance of interests across the department, the creation of a joint team to progress issues reflects needs in the justice area.

The situation is different in other parts of the Executive. Most matters relating to fishing, for example, are dealt with by a small number of people who address specific issues. I do not know whether the approach that we have developed is appropriate for them, but clearly they are one part of the Executive that is just as involved as we are in European negotiations—perhaps more so.

You asked about overall responsibility for European issues in the Executive. The preparation of the ministerial priorities is co-ordinated by the Minister for Finance and Public Services, who has discussed them in overall terms with the European and External Relations Committee. He is responsible for co-ordination, although the First Minister and the Deputy First Minister take an overall interest in these matters. The European strategy was prepared under their direction.

**Jackie Baillie:** Beyond the implementation tracking system, what is the relationship between the action team and the external relations division, which is responsible for co-ordination of EU policy?

**Susan Herbert:** We liaise very closely with our colleagues in the external relations division on the overall European strategy and on how justice fits into that. We meet staff from the external relations division regularly and have on-going dialogue with them. We are not in our own little box. We have close and open relationships with colleagues in the external relations division. It is important that we fit in and contribute to the overall strategy.

**Mike Pringle:** You have laid out nicely the priorities of the Irish presidency, but the UK will take over the presidency between July and December. Have you any ideas about what the priority will be during that period? Are there plans for the justice and home affairs council to meet in Scotland?

**Colin Imrie:** The UK will hold the presidency of the EU between July and December 2005. Work has already started in London, Brussels and the

Executive on proposals for handling business. Councils always meet in Brussels, although informal councils meet elsewhere. I do not think that final decisions have been taken on which councils will meet where, so I do not know the answer to your question. However, after recent discussion with the relevant Home Office minister, the Minister for Justice is keen to ensure a Scottish dimension to the justice and home affairs element of the programme. As we are a year and a bit away from the presidency, it will take time for that to happen.

**Mike Pringle:** So you have no indications yet.

**Colin Imrie:** Not yet, but once the programme has been set out, it will be announced and communicated to the committee.

**Nicola Sturgeon (Glasgow) (SNP):** I have a two-part question about the green papers on bail and sentencing. The first part is probably the simplest. You have said that you expect the papers to be published during the Irish presidency. Will you be more specific about that? Before making the Scottish Executive's submission to the Commission, do you intend to consult in Scotland on proposals in the green papers? Will the Commission's timescale allow for that?

**Colin Imrie:** We do not have a definitive answer on the publication date, but it will almost certainly be before May. We expect the Commission to make all its proposals before May, after which its work will wind down in the move towards a new Commission. Susan Herbert will be in Brussels on Monday and Tuesday next week, so she might find out the date.

The green paper stage is the consultation stage, so the answer to your question is yes. The procedure will be new for us and we are still working out how to operate it. We are waiting for the green papers to appear. Between now and then, we will ensure that an opportunity for consultation is provided. Mechanisms are already used for informal consultation with stakeholders. For example, we worked closely with Scottish family law practitioners on European family law measures. That has been valuable in making sure that the measures work. On bail and sentencing, we might need to go further. We will need to think about and work on that.

**Nicola Sturgeon:** I note that this is the first time that the Scottish Executive is to respond directly to the Commission rather than responding through the UK. That is a welcome step forward, but it raises the hypothetical possibility of the Scottish Executive taking a different view from the United Kingdom Government on aspects of green papers. Indeed, as we are talking about different legal systems, that possibility is not very hypothetical. The views of the Executive and the UK

Government on an aspect of a green paper might be irreconcilable. Would the Commission give equal weight to the views of the Scottish Executive and the UK Government, or would the UK Government's views be treated a bit more seriously, as the UK is the member state? When a common UK negotiating position is formulated for deliberations in the Council of the European Union, how could you ensure that the Scottish Executive's view was advanced if the UK Government did not agree with it or took a view that diametrically opposed it?

**Colin Imrie:** We have discussed putting forward views with the Commission, which welcomes responses to consultation papers that set out clearly the position in respective countries. As I said, that happened with our response to the small claims proposals. Instead of having at the end of a paragraph about the situation in England a sentence that says that the situation in Scotland is broadly similar—that happened a lot in the distant past but has recently happened much less—we describe the situation in Scotland in full. That is much more valuable to the Commission, because it gives the Commission a clear understanding of the position in the different jurisdictions.

I see no difficulties with setting out the situation in a document. One of the advantages of being able to set out the position at an early stage is that views are not yet fixed. I find it hard to imagine many circumstances in which there would be major policy difficulties at that early stage. If there were to be slight differences in position, flagging them up at an early stage would make discussion about how we resolve such issues much easier.

The Executive made that point last year during the discussions on the role of regions within the EU. Consulting the regions at an early stage would ensure that the proposals, as they eventually emerge, will better reflect the position in the various parts of the EU. As we move towards preparation of the single UK line, which would be presented as the formal proposal is made, we would enter a process of negotiation following the normal procedures. There is not much more that I can say about that. Nevertheless, setting the position out clearly at the beginning would make the process of presenting the Scottish view easier, more transparent and easier to work through.

14:45

**Nicola Sturgeon:** I can see that that would be the case where the Scottish view—arising from our different systems and legal structures—complemented or provided further background to the UK position. I appreciate that you might not be able to comment further but—however hard it is to imagine the following situation arising—it is possible that the opinion of the Scottish Executive

could differ from that of the UK Government on a policy matter of substance. I suppose that what you are saying is that, although there would be negotiations on the common UK line, ultimately the UK line would be presented.

**Colin Imrie:** I did not say that explicitly. We are at the beginning of a new process and we do not know what will happen. As I said, it will be a matter for negotiation and it is the UK that presents the position. I honestly believe that setting out the positions at an early stage will make the process easier. We already have good examples of that process working, particularly in the civil area, where we have produced joint memoranda with the Department for Constitutional Affairs—the Lord Chancellor's Department. One often finds that the more one exposes and sets out the issues, the easier it is to find solutions. I cannot comment in any detail on whether there will be major policy differences, because I do not know. [*Interruption.*]

**The Convener:** Sorry, there is interference with the electronic equipment.

**Nicola Sturgeon:** I apologise; it is my phone, but it is now turned off.

**The Convener:** We will hold off flaying you in public on this occasion.

**Jackie Baillie:** Shame.

**The Convener:** Mr Imrie, in the process that we have just been discussing, will the action team play a pivotal or a peripheral role?

**Colin Imrie:** On the preparation of the responses to green papers, which we do in discussion with our counterparts elsewhere in the UK and with the Commission, we have already started discussions on sentencing with the Commission. The action team will proceed with that work with our colleagues elsewhere in the Executive and the Crown Office and the process will be an integral and central part of our work.

**Jackie Baillie:** Let us consider Nicola Sturgeon's hypothetical situation again. Would it be equally fair to say that it could be the Scottish position that is adopted as the UK position? You do not need to answer that.

**Colin Imrie:** I am trying to think of examples, but I cannot. It is perfectly possible.

**Jackie Baillie:** It is a huge possibility.

**Mike Pringle:** You talked about a new extradition process. I take it that that applies to the EU only. How will it affect our relationships elsewhere?

**Colin Imrie:** Extradition arrangements are governed by treaty with countries outside the EU. The aim of the arrest warrant is to simplify and streamline procedures in the EU. As far as I know,

it will have no direct effect on measures elsewhere.

**The Convener:** On the exchange of best practice, I notice that the minister's statement of priorities says that the Executive is

"Working with partners to host a Policing of Youth Crime Conference in Scotland in July 2004".

With whom is the Executive working in that context?

**Susan Herbert:** The Executive is working with partners from Ireland, Latvia and Bavaria on the youth crime conference, so our partners are a full member state, a new member state and a region. The conference will be an international practitioners' conference on the exchange of member states' best practice in dealing with difficult issues of youth crime and we are developing its programme with our partners. The Scottish police will also play an important part in the conference—we will speak to the Association of Chief Police Officers in Scotland next week about its programme.

**The Convener:** Also on best practice, the statement proposes closer links with the Commission, through visits, presentations to the directorate-general for justice and home affairs on Scots law and the facilitation of a visit to Scotland. Such proposals might increase proximity, but will they strengthen links? Are there more ideas in the pipeline?

**Colin Imrie:** Work with the Commission has already started and it is important that the people who prepare the proposals have a better understanding of Scots law. Jonathan Faull, the director general for justice and home affairs, was here in November—I do not know whether any members met him then. He was conscious that there were no Scots working in his directorate-general and he was keen to change that. It would be helpful to have that direct input.

**The Convener:** Will that happen?

**Colin Imrie:** Yes. We expect to take the issue forward this year.

**The Convener:** Will there be Scots in the directorate-general?

**Colin Imrie:** We are working at the Commission's request on a proposal to send a secondee from Scotland to work there and we hope that someone will be in place later in the year.

The Commission acts as a central point for the promotion of co-operation between different parts of Europe. For example, it is doing great work to make information available about civil procedures in different member states and has just published some excellent stuff on its website about, for

example, how to get access to justice in Scotland. Someone who was working there would be at the centre of an important nexus. The Commission also runs funding programmes for activities around co-operation and we are seeking its support to enable people from other member states to attend the conference on the policing of youth crime in July.

**The Convener:** If members have no final questions for the witnesses, I thank Mr Imrie and Susan Herbert very much for making time available for the committee this afternoon. This has been an extremely helpful session, which has assisted us in understanding how progress is being made and how closer relationships are clearly evolving. We are grateful to the witnesses.

The committee might want, as a result of the helpful session that we have just had, to consider further how it approaches European scrutiny and perhaps one or two specific areas. In that case, the clerks could produce an options paper for the committee's consideration. Sorry, I see that Nicola Sturgeon wants to comment.

**Nicola Sturgeon:** Have you finished, convener?

**The Convener:** Yes. I was just going to comment on the routes that might be available to the committee, but I am happy to hear members' comments.

**Nicola Sturgeon:** My view, given what we have just heard, is that ideally we should try to examine the green papers when they are published, as that would familiarise us with the process as well as enabling us to deal with the substantive matters that are important in relation to Scots law.

**Jackie Baillie:** I agree. Rather than wait for an options paper, we could decide today what we want to do. We should certainly consider the green papers on bail and sentencing.

Equally, I picked up from what Colin Imrie said that the framework decision on minimum standards in criminal proceedings will have a substantive impact on Scots law. I wonder whether we have time to examine that issue, too. The Executive is taking advice from Scots academics on the matter, so it may be useful for us to consider it.

**The Convener:** Those are two positive suggestions. The fact that no other member has expressed a wish to chip in indicates agreement on the part of the committee to pursue those matters. That would be a focused and tangible way of exploring specific issues that have arisen.

I noted Mr Imrie's slight *cri de coeur*—or plea for guidance—on helpful lines of communication between the action team and the justice committees. Perhaps we should apply our minds to that issue. It occurred to me that there may be

avenues that would allow Mr Imrie and his team—without disclosing confidential matters—to report to us regularly on work in the public domain with which the action team has been involved. If the committee is agreeable, I will write a letter to the Executive suggesting that, so that we can put in place a system that allows more regular disclosure about what is happening and when, in so far as that does not conflict with the need for confidentiality to be maintained.

We have moved forward significantly on this issue. If members have no further suggestions to make, we will proceed on that basis. If it seems sensible for us to pursue other initiatives, we can review the situation.

## Fingerprint Evidence

14:56

**The Convener:** The next item on the agenda concerns fingerprint evidence. Committee members have received background correspondence from the clerks and I am happy to receive comment on that. Obviously, the committee will want to consider what further action, if any, it should take in relation to the correspondence.

**Jackie Baillie:** The responses were very full. At this stage, it would serve no purpose for the committee to take specific evidence in this area, given that Her Majesty's inspectorate of constabulary for Scotland is due to undertake an inspection in 2004 in which it will investigate the issues raised by Alex Neil. We should leave the matter at that. If Alex Neil or the committee wants to return to it, we should do so after the inspection has taken place.

**The Convener:** Are members content to proceed on the basis that Jackie Baillie suggests?

**Members** *indicated agreement.*

**The Convener:** As a courtesy, we will write to Alex Neil to confirm the decision that the committee has made.

## Petition

### Clydesdale Horses (Couping) (PE347)

14:57

**The Convener:** The next item on the agenda is petition PE347, from Kenneth Mitchell, which relates to the shoeing of Clydesdale horses. Members have received a background paper from the clerks that includes a significant volume of information that has been passed on to us by the Public Petitions Committee. Members have also received a letter to the committee from Mr Sharp, who is the primary contact for the petition following the death of the original petitioner, the late Mr Mitchell. I invite members to comment on the papers that they have received, as the committee must decide what it wants to do with the petition. In particular, I draw members' attention to the commitment by the Deputy Minister for Environment and Rural Development to include the issue in the forthcoming consultation on the proposed animal health and welfare bill.

**Karen Whitefield:** This issue has been around for some time and was dealt with by the previous Justice 1 Committee. We have finally managed to resolve the matter. It is helpful that the Scottish Executive has agreed that the proposed animal health and welfare bill will include consultation on the shoeing of Clydesdale horses. That would not have happened had it not been for the determination of the original petitioner, Kenneth Mitchell. He was very determined, provided the previous Justice 1 Committee with detailed and considerable information and lobbied his local MSP, Sylvia Jackson, effectively to ensure that she pursued the issue in the Parliament. Now that we have the agreement of the Executive, we should close the matter and send the Executive all the information that we have so that it can be included in its consideration of the consultation responses.

15:00

**Maureen Macmillan:** I echo what Karen Whitefield said. This is a serious animal welfare issue that has not always been taken as seriously in some sectors as it should have been.

I pay tribute to the late Kenneth Mitchell and others who had a hand in bringing this petition to the Parliament and to Dr Sylvia Jackson for the hard work that she did in promoting it. The Justice 1 Committee in the first session and this committee have made good decisions throughout their consideration of this petition in relation to getting more evidence and writing to the minister. I am pleased that the minister has responded to say

that the issue will be included in consultation on the proposed animal health and welfare bill.

**Jackie Baillie:** As well as passing all the information on to the animal health and welfare division of the Executive, it might be useful, in the interests of the avoidance of doubt, if we made it abundantly clear that this committee supports the petition. I note that the Executive is consulting on the matter and I think that it might help to ensure that the Executive makes the right decision if we say that we support the petition.

**Mike Pringle:** I entirely agree with that point, which is important. I also welcome the fact that the minister has agreed to include the proposal in the consultation on the proposed bill.

Sylvia Jackson has done a tremendous amount of work on this petition, and I pay tribute to her, James Sharp and the original petitioner.

I support the action that is proposed in our paper. Sylvia Jackson, who was in a committee with me this morning, told me that she would be pleased if we did that.

**The Convener:** Jackie Baillie's point about the avoidance of doubt is legitimate but, from my position, while I have a great deal of sympathy with the petition, I want to see what is produced by the consultation process. To that extent, I would not personally be expressing a view on the petition.

Because of the Executive's commitment to include the proposal in the consultation process, it is now considered competent for the proposal to be included in the bill, if the Executive is so minded following receipt of the consultation responses. It is important to state that on the record so that there is no ambiguity.

**Jackie Baillie:** For clarity, are we saying that it is the majority view of the committee that we are supporting the petition?

**The Convener:** If that is the view of the majority, so be it. I do not want to create any doubt about my position in relation to this matter.

It is clear that, because of the Executive's welcome commitment, the committee wants to close its consideration of the petition. I understand that the committee is minded to write to the late petitioner's representative advising him of the deputy minister's commitment and to forward the volume of material relevant to the petition to the animal health and welfare division of the Scottish Executive Environment and Rural Affairs Department. I further understand that the majority of the committee—with me remaining in a neutral position—supports the petition. Does that meet with everyone's agreement?

**Members indicated agreement.**

**The Convener:** I know that there will be some discussion on the next item, on the Constitutional Reform Bill, but given that the minister cannot join us for the following item until half past 3, I think that it might be appropriate to take a comfort break at this stage.

15:04

*Meeting suspended.*

15:11

*On resuming—*

## **Constitutional Reform Bill (UK Legislation)**

**The Convener:** Agenda item 4 is the Constitutional Reform Bill, on which members have received background papers. As members know, the bill will be the subject of a Sewel motion, whose timetabling is outwith our control and is determined by proceedings at Westminster.

I talked to Pauline McNeill, who is the Justice 1 Committee's convener, about one justice committee considering the bill before the Parliament has to consider the Sewel motion, which seemed desirable. One aspect of the bill that is a little unusual is the fact that part of it will impact exclusively on Scotland and is not just a United Kingdom measure that will affect Scotland along with other parts of the UK. For that reason, Pauline McNeill and I thought it appropriate that one of our committees should consider the bill in a little more detail.

It was easier to timetable consideration of the bill for this committee rather than the Justice 1 Committee, which has a busy timetable for the forthcoming month. The Parliament might deal with the Sewel motion on 24 or 25 March or possibly 31 March or 1 April. That is why the bill is on the agenda and why members have been deluged with voluminous documentation, whose purpose is to let committee members consider how the committee should approach the bill. If the committee wants to deal with the bill, it should do so with a view to taking evidence.

**Nicola Sturgeon:** I am a wee bit worried about the timescale. I accept that the bill is to be dealt with by Sewel motion, although I do not agree with that, but it remains important to have adequate time to deal with the bill, which has great implications for Scots law. I worry that if we took evidence next week and the week following that and the Sewel motion was dealt with on 24 or 25 March, we would not have time to consider properly our conclusions and publish a report. It is important to publish a report at the end of our deliberations. I know that the motion's timetabling is outwith our control, but could we make representations to the Executive to ask for the Sewel motion to be dealt with on 31 March or 1 April, rather than the previous week? I presume that that would allow us to conclude our report on 23 March and have it published before the Sewel motion was dealt with in the following week.

**The Convener:** I thank Nicola Sturgeon for her suggestion. I am perfectly happy to write to the

Executive with that request. I do not know the extent to which the Executive has room for manoeuvre, but the point is well made. I am conscious that our youth justice seminar takes place towards the end of the period that we are discussing. Nicola Sturgeon is correct that the time constraints are considerable. All that the committee is trying to do is to work within them. If members agree, I am happy to write to find out from the Executive whether the timetabling has any latitude.

**Karen Whitefield:** If sufficient latitude is not available and the Executive cannot push back consideration of the motion by a week, we could meet at lunch time on a Thursday. Last week, two committees met at Thursday lunch time. We want to work on the bill, so most of us would probably be willing to give up a Thursday lunch time to accommodate it.

**Jackie Baillie:** I agree.

15:15

**The Convener:** I have no objection. If members can accommodate such a meeting, I will be happy with it. I thank Karen Whitefield for her suggestion.

Within those parameters, we must consider what we want to do and decide from whom we would like to take evidence. Given the tight timescale, I asked the clerks to approach informally some of the more obvious individuals from whom I thought that the committee would want to hear. Committee members will have views about whom we should ask for oral evidence. Other people who have relevant comments to make might not need to do that orally and might be able to make written submissions. I am open to suggestions from the committee.

**Karen Whitefield:** The suggestions in the clerks' paper are helpful. We should ask both Lord Cullen and Lord Hope to give oral evidence but, if they preferred to give written evidence, that would be equally helpful. It is also important to hear from the Law Society of Scotland and the Faculty of Advocates. I am less bothered about whether academics make written or oral submissions, because we can take their written submissions on board rather than hear from them orally. In addition to the suggested witnesses, we might want to consider asking the Lord Advocate to give oral evidence. It is important to hear from him on the bill.

**The Convener:** Does everyone agree to that?

**Members** *indicated agreement.*

**The Convener:** The other person whom it would be competent to ask is Lord Falconer, although he might not be able to come. What does the committee think?

**Jackie Baillie:** The Lord Advocate and Lord Falconer will argue from the same perspective. Do we want both or would one suffice?

**The Convener:** Lord Falconer is the legislative lead.

**Jackie Baillie:** He is the minister who is responsible for the bill.

**Nicola Sturgeon:** If we have a choice between the Lord Advocate and Lord Falconer, I say with the greatest respect to the Lord Advocate that I would go for Lord Falconer, simply because we know the Lord Advocate's view. As Annabel Goldie said, the Lord Advocate is not the decision maker. He will feed in the Executive's point of view, but on some details, such as the number of Scottish judges and the supreme court's operating conventions, Charlie Falconer could give us answers. The Lord Advocate can say only what he would like Lord Falconer to do.

Otherwise, I agree with Karen Whitefield. I do not know what legal academics the Scottish Parliament information centre has identified, but I throw into the ring Hector MacQueen from the University of Edinburgh, who is an expert on the subject.

**The Convener:** If we are pushed for time, we might ask academics to make written submissions. In principle, we will ask the Lord Advocate and Lord Falconer to give evidence.

**Nicola Sturgeon:** The time constraints are the problem.

**The Convener:** We will ask for what we can obtain and structure the meetings accordingly.

**Nicola Sturgeon:** I am not trying to be mischievous, but I suspect that if we ask for the Lord Advocate and Lord Falconer, we will be offered the Lord Advocate, because his appearing is more practical. If we want to hear from Lord Falconer rather than the Lord Advocate, we will have to make that quite clear.

**Karen Whitefield:** I appreciate Nicola Sturgeon's point, but the two dates are pretty imminent and Lord Falconer might not be able to attend. If he cannot, should we not hear from the Lord Advocate? I am concerned that we might end up hearing from neither Charlie Falconer nor the Lord Advocate, who will certainly be putting forward the Executive's view. We need to invite them both.

**Nicola Sturgeon:** My point is that rather than just invite both and see whom we get, we should express a clear preference. However, I take Karen Whitefield's point.

**The Convener:** Is that agreeable to the committee?



*Members indicated agreement.*

**The Convener:** Is it the committee's preference to hear from Lord Falconer?

*Members indicated agreement.*

**The Convener:** Do members have any other suggestions about witnesses, or have we covered all the potential sources?

**Jackie Baillie:** The paper suggests that we have some dialogue with the Constitutional Affairs Committee. Does that committee have any further locus in the consideration of the bill? I am conscious that it produced a report two or three weeks ago and I am curious as to whether it has any further role in scrutinising the bill and whether there would be any point in our speaking to its members.

**Gillian Baxendine (Clerk):** The Constitutional Affairs Committee's role is complete unless it chooses to continue its inquiry work, because the scrutiny will be done by a separate committee—although the memberships of those committees might overlap. The Constitutional Affairs Committee would have a further role only if the committee that was scrutinising the bill required or felt that it would be helpful to get illumination from it about the issues.

**Jackie Baillie:** I suggest that we just avail ourselves of the Constitutional Affairs Committee's report. We should certainly also send the report of our deliberations to whichever committee will be considering the matter.

**The Convener:** That seems perfectly fair. Members' comments have been helpful and I propose to ask the clerks to compile formal invitations and establish a structure for our next two meetings as a matter of urgency, taking on board the suggestion that we might have to try to fit in an additional meeting—or meetings. I ask the clerks to report back soon with a provisional timetable, which would be helpful to members, who—I guess—are concerned about the timings. We will take the matter further at our next meeting.

## Subordinate Legislation

### Advice and Assistance (Scotland) Amendment Regulations 2004 (SSI 2004/49)

### Civil Legal Aid (Scotland) Amendment Regulations 2004 (SSI 2004/50)

### Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2004 (SSI 2004/51)

15:22

**The Convener:** The next item on the agenda is subordinate legislation. First, the committee must consider three sets of regulations that are subject to the negative procedure. Members have received the papers; are there any comments on the instruments?

**Jackie Baillie:** We should agree the lot, convener.

**The Convener:** That is a very instructive direction. Does the committee "agree the lot"?

*Members indicated agreement.*

**The Convener:** The next pieces of delegated legislation that we have to consider are subject to the affirmative procedure. I am informed that the minister has not yet arrived, but I think that his officials are here. I suggest that we suspend the meeting briefly until he is able to join us.

15:24

*Meeting suspended.*

15:28

*On resuming—*

### Advice and Assistance (Financial Conditions) (Scotland) Regulations 2004 (draft)

### Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2004 (draft)

**The Convener:** I reconvene the meeting and, on behalf of members, welcome the Deputy Minister for Justice, Hugh Henry, along with his colleagues from the Justice Department. I am grateful to you for making time to come before us. You are here in respect of the two affirmative draft statutory instruments to which I referred before we adjourned. Technically, you are here to move the motions, both of which are in the name of Cathy Jamieson, but I am happy to invite you to speak to them as well.

**The Deputy Minister for Justice (Hugh Henry):** Thank you, convener. I will speak briefly. There are four regulations in the package, of which two are negative instruments and two are affirmative. The draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2004 update the financial—

**The Convener:** To assist you, minister, I point out that we have fired ahead and dealt with the negative instruments.

**Hugh Henry:** Oh, right. If you want, you can tell me that you have dealt with the other ones as well. However, essentially, we are uprating in line with the acceptable indices. The affirmative instruments have the effect of bringing in the necessary increases. I will leave it at that, convener.

**The Convener:** I am very grateful to you. Do members have any questions about the regulations? A stereophonic whisper is coming into my left ear from the clerk, telling me that, for reasons of propriety, I should ask you to move the motions.

*Motions moved,*

That the Justice 2 Committee recommends that the draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2004 be approved.

That the Justice 2 Committee recommends that the draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2004 be approved.—[*Hugh Henry*.]

*Motions agreed to.*

**The Convener:** Minister, as ever, that was a pleasant but only too brief interlude. Thank you for attending.

**Hugh Henry:** It is with a certain degree of heartache that I leave you so soon.

**The Convener:** Before closing the meeting, I remind members that stage 3 of the Vulnerable Witnesses (Scotland) Bill is set down for Thursday morning. No doubt members will wish to be in attendance. Our next meeting on Tuesday of next week will, of course, be given over to evidence taking on the Constitutional Reform Bill. I thank members for attending.

*Meeting closed at 15:31.*

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