

# **JUSTICE 2 COMMITTEE**

Tuesday 9 November 2004

Session 2

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## **JUSTICE 2 COMMITTEE**

**† 30<sup>th</sup> Meeting 2004, Session 2**

### **CONVENER**

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

### **DEPUTY CONVENER**

\*Bill Butler (Glasgow Anniesland) (Lab)

### **COMMITTEE MEMBERS**

\*Jackie Baillie (Dumbarton) (Lab)

Colin Fox (Lothians) (SSP)

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

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

\*Mike Pringle (Edinburgh South) (LD)

### **COMMITTEE SUBSTITUTES**

Ms Rosemary Byrne (South of Scotland) (SSP)

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Kenny MacAskill (Lothians) (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:**

Danny Jamieson (Scottish Executive Justice Department)

Mrs Valerie Macniven (Scottish Executive Justice Department)

Fergus McNeil (Scottish Executive Justice Department)

### **CLERK TO THE COMMITTEE**

Gillian Baxendine

Tracey Hawe

### **SENIOR ASSISTANT CLERK**

Anne Peat

### **ASSISTANT CLERK**

Richard Hough

### **LOCATION**

Committee Room 4

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



## Scottish Parliament

### Justice 2 Committee

*Tuesday 9 November 2004*

[THE CONVENER *opened the meeting at 14:06*]

### Subordinate Legislation

#### **Draft Abolition of Feudal Tenure etc (Scotland) Act 2000 (Consequential Provisions) (Scotland) Order 2004**

**The Convener (Miss Annabel Goldie):** I welcome everyone to the 30<sup>th</sup> meeting this year of the Justice 2 Committee. I have received apologies from Colin Fox, but, as far as I am aware, Jackie Baillie hopes to be with us.

I welcome to the meeting the Deputy Minister for Justice, Hugh Henry, and his departmental colleagues Joyce Lugton and Norman Macleod. Agenda item 1 is subordinate legislation and the minister is here to move a motion in respect of a Scottish statutory instrument on the abolition of feudal tenure.

**The Deputy Minister for Justice (Hugh Henry):** Section 128 of the Title Conditions (Scotland) Act 2003 gives Scottish ministers the power to make incidental or consequential amendments to enactments. The draft order before us today falls into that category.

The Abolition of Feudal Tenure etc (Scotland) Act 2000 changed the procedure for recording deeds in the register of sasines. As I am sure we are all aware, the new procedure makes it necessary to make consequential changes to the Land Registers (Scotland) Act 1868 and the Titles to Land Consolidation (Scotland) Act 1868, which is what the draft order does. The new process will require an application for recording to be made and the amendments to the acts reflect the requirement that an application will always be needed. Without the proposed changes to the acts, it could be argued that there are circumstances in which a deed would have to be recorded even if no application was made.

The amendment to the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 is a consequential one to remove a section that was made obsolete by the 2000 act. In essence, the three amendments are tidying-up measures that were overlooked at the time that the 2000 act was passed.

I move,

That the Justice 2 Committee recommends that the draft Abolition of Feudal Tenure etc (Scotland) Act 2000 (Consequential Provisions) (Scotland) Order 2004 be approved.

**The Convener:** Thank you. Members do not seem to have any questions. Clearly this has been keeping you from your sleep at night, minister.

**Hugh Henry:** It has indeed.

**The Convener:** The demise of warrants of registration will be seared to your soul.

**Hugh Henry:** When we get into this sort of detail, I can see why you became a lawyer, convener.

**The Convener:** Life has certainly been made simpler in some respects. Given that there are no questions, I ask the committee to agree that we recommend to the Parliament that the draft order be approved.

**Members indicated agreement.**

**The Convener:** I thank the minister and his colleagues for attending.

## Justice and Home Affairs in Europe

14:10

**The Convener:** Agenda item 2 concerns justice and home affairs in Europe. I welcome our witnesses from the Executive: Mrs Valerie Macniven, who is head of the civil and international group; and Danny Jamieson and Fergus McNeil, both of whom are from the Justice Department's criminal procedure division and European Union JHA team. We are pleased to have you with us.

Among the papers that were circulated to members are an updated statement from the Minister for Justice on the ministerial priorities for the Dutch presidency of the European Council and a response from the Executive to the green paper on sentencing. On behalf of the committee, I express our appreciation for those helpful documents, although few of us—to be honest—have been able to digest in detail the response on sentencing.

Before members ask questions, I am happy to allow Mr McNeil to make some brief introductory comments.

**Mrs Valerie Macniven (Scottish Executive Justice Department):** If I may, I will make a few general remarks to give members a brief overview of the Executive's priorities for the Dutch presidency. I think that the committee was interested in what is happening currently as well as in specific issues, so I can run over that briefly. If the committee is interested, I will indicate how we have dealt with matters that have a particular Scottish perspective.

The top priority of the Dutch, who took up the presidency on 1 July, was to get agreement to a programme of future work under the JHA overview that has become known—as it arose under the Dutch presidency—as the Hague programme. As a multi-annual programme, the Hague programme is not set for a particular number of years, unlike the previous five-year Tampere programme. We had the opportunity to contribute on behalf of Scottish interests to the discussions over the programme, which was finally agreed by the Council of Ministers at its meeting on 5 November. The next stage is that further detail will be made available in an action plan, which we expect to see during the forthcoming Luxembourg presidency.

In parallel with that process of getting agreement to the Hague programme, the Dutch presidency has focused on improving working arrangements among the many agencies that are responsible for security in Europe. The Dutch have also

progressed several Tampere programme projects on criminal justice and civil justice. Along with the Crown Office and the police forces, the Scottish Executive has been actively involved in all that work.

The paper on the Scottish Executive's priorities for the Dutch presidency has been annotated to bring the committee up to date with some of the detail of the Scottish Executive's direct involvement in the various negotiations. Before picking out a few highlights from that, I emphasise that we always work closely with our opposite numbers in the Home Office and the Department for Constitutional Affairs. We also keep in close touch with the Cabinet Office and the Foreign Office for a general overview.

14:15

We have continued to work on the civil side, where we have long been involved in the direct contribution of Scottish points and have taken part in various justice and home affairs council working groups such as those on the Rome II negotiations, which related to a contract measure, the European order for payment and the European small claim order. We have also kept in touch with emerging plans, which are yet to be seen in detail, for a proposal on alternative dispute resolution. Since we formed our action team, we have significantly increased our engagement on the criminal side and we now take part in justice and home affairs council working groups on criminal matters and the framework decision on procedural rights, which you will hear more about from my colleagues.

Other projects are at a much earlier stage and a major development over the past few months has been that we now submit separate Scottish responses—keeping in line, of course, with the overall United Kingdom policy position. We have done that twice now. You have seen our sentencing paper, but we have recently submitted a paper on maintenance obligations on the civil side. A paper on bail will follow. The due date for that is the end of November.

We are clear—and the minister is committed to this idea—that it is important to engage as soon as possible. By investing time and effort now in gathering views and submitting them on behalf of Scottish interests, we will have already indicated our position when situations develop at a later stage. Of course, it is often some time before firm proposals emerge.

We have been engaged in other important areas. The Minister for Justice has attended two justice and home affairs council meetings during 2004, one in each presidency, the most recent of which took place in Luxembourg a couple of

weeks ago. Our action team is fully up and running and both Danny Jamieson and Fergus McNeil are members of the team but have day jobs, as it were, in the criminal procedure division. Other members of the team are elsewhere in the Justice Department and the Crown Office.

We have some help from Scottish academics with expertise in European matters, who help us to understand some of the more intricate aspects of the law as regards the European matters before us. We also keep in close touch with the European Commission and the UK permanent representation to the European Union through the Scottish Executive office in Brussels. People are out there all the time engaging in discussions and we keep directly in touch in that way. All that enables us to get early alerts on forthcoming business. That is important because, as well as the agenda before us, all sorts of things will arise under the Hague programme with which we will want to become involved as early as possible.

**The Convener:** That was extremely helpful.

**Bill Butler (Glasgow Anniesland) (Lab):** You said that the Hague programme was agreed on 5 November and you talked about some of the implications of that for the Scottish Executive, including matters relating to improving working arrangements in terms of security and so on. Could you go into more detail about that implication and other implications?

**Mrs Macniven:** The Hague programme set out new areas that will be taken forward. As I said, it is a multi-annual programme rather than, for example, a five-year programme. There is quite a broad agenda. As we know, for the past couple of years, the European agenda has been strongly focused on security measures, anti-terrorism measures and measures to combat international crime. In a number of those areas, the Scottish Executive's interest is more operational, through its partners on operational fronts, rather than on a policy level, because most of the issues relating to those matters are reserved. However, the fact that a matter is reserved does not mean that there will not be a Scottish interest, because the policies will be delivered through our agents such as the Crown Office, the police and the courts. There is a considerable amount of joint working in terms of the mutual recognition agenda, which means that, increasingly, we have a concept of a European area of freedom, justice and security.

That is a long, complicated way of saying that, even when the matter is reserved, we can still have an operational interest. When the items in the programme are perhaps more on the devolved side, but the negotiating position is within the UK, we would be concerned with implementation and would expect to be involved directly at all stages. As I said, we have yet to see the timetable for the

various measures. The agenda is ambitious and some of the items on it will come sooner and some later. We will also see the continuation of the Tampere programme, and there are still some measures that are further down the track. On the civil side, for example, we are at a more advanced stage on the Rome instrument on contractual obligations.

**Bill Butler:** When are we likely to see the finalised timetable?

**Mrs Macniven:** We expect the timetable, which will be called an action plan, during the Luxembourg presidency, so not until some time next year. We will keep in close touch and keep the committee up to date with that.

**Bill Butler:** You mentioned that there is Scottish representation on various working groups. Could you give us a bit more detail on those groups? How does the Executive keep track of what is happening in all the working groups?

**Mrs Macniven:** My colleagues may be able to contribute; Mr McNeil and Mr Jamieson are on working groups, so they have first-hand evidence. People go to meetings in Brussels and colleagues are out there taking part most weeks.

**The Convener:** How many working groups are there?

**Mrs Macniven:** Oh gosh, that is a difficult question. Danny Jamieson may be able to say something about that.

**Bill Butler:** Mr Jamieson, how many working groups is the Scottish Executive involved in?

**Danny Jamieson (Scottish Executive Justice Department):** On the criminal side, there are two council working groups—the co-operation on criminal matters working group and the substantive criminal law working group. As a general principle, the latter group tends to look at proposals for harmonisation of the criminal law, whereas the co-operation on criminal matters working group, as its title implies, looks at judicial co-operation. The co-operation on criminal matters working group, which I attend, is looking at the European evidence warrant and at various initiatives that are starting to appear on the exchange of information in relation to criminal convictions. Those are the current priorities.

Ironically, because things are so busy, the substantive criminal law working group is looking at minimum standards in criminal proceedings, which is more on the co-operation on criminal matters side. Fergus McNeil attends that working group.

**Bill Butler:** Would Mr McNeil like to add something about his working group?

**Fergus McNeil (Scottish Executive Justice Department):** My working group, as my colleague said, is the substantive working group on criminal law. The group is dealing with the minimum standards framework decision on minimum rights in criminal proceedings, which is quite a lengthy title. I am involved in that working group and have been to two meetings so far. More meetings are scheduled and I shall be attending them in the future.

**Mrs Macniven:** On the civil side, as I mentioned, we have the Rome II committee, the order for payment and the European small claim. There is also a general questions committee. My colleagues have mentioned the general committees on the criminal side, but there are such committees on the civil side too. We have been able to get people out there participating in those committees pretty directly. For example, the Rome II committee is meeting next week. We do not expect it to meet again during the Dutch presidency, but we expect it to resume after the new year.

**Bill Butler:** You said that you work closely with Whitehall. Will you say a wee bit more about the work that is taking place with your Whitehall colleagues in preparation for the UK presidency?

**Mrs Macniven:** Things are warming up on that front. Various things will be taking place and there will be early thinking about the UK priorities. Just as the Dutch and the Luxembourg people have had priorities, so will we. Taking forward the key programme is the broad umbrella priority, but there will be priorities within it. There will be targets for where we expect to get to during the presidency. Machinery, such as in the working group structure, will continue to need to be in place.

During the presidency, the UK will not only be in the chair but will continue to keep its seat at the table. We are in discussion with our UK counterparts on how to deploy the various resources that are available to us at official level, so that we can fulfil both roles during the period of the presidency. Various events will take place in the UK and early discussions are taking place about the events that will take place in Scotland.

**Bill Butler:** Can you give us a bit more detail about the events?

**Mrs Macniven:** Not really. Some discussions have taken place about events on the criminal side and there might be something else to balance that on the civil side. We are in discussion with the Home Office and the DCA about how the events will be distributed around the country.

Council meetings will be held across the range of activities; some of them will be in the justice area. It will be a little while before the programme

starts to firm up, although that should happen pretty soon now, given that the presidency is only seven months away.

**Bill Butler:** How long do you estimate "pretty soon" to be?

**Mrs Macniven:** I think that things will firm up around the end of the year. We should be able to give the committee an update early in the new year.

**Bill Butler:** I am obliged to you.

**The Convener:** You mentioned the input that is being made not only by the Executive but by the Crown Office and—I think—the police. What is the route by which they can participate? Are they on the working groups or do they input independently?

**Mrs Macniven:** That would very much depend. My colleagues, who are working on the criminal procedural matters, work closely with colleagues in the Crown Office. The views of those colleagues are therefore taken on board when we make an input. There may be cases in which colleagues would also participate directly.

Another of our colleagues, who is not with us today because we thought that we would keep to the issues in which the committee had expressed an interest, plays a similar role in the police co-operation working group. He links closely with police forces in Scotland and with the Association of Chief Police Officers in Scotland and the Scottish Police College. The discussion is around joint working and joint training. The working group enables people to make an input into policy; they advise on the operational consequences of policy proposals.

One of the main items of focus under the Dutch presidency was how to make everything work and how to get down to the practical detail of what policy means in real life. Members can imagine that the Crown Office makes an input in terms of prosecution and the police in terms of international exchanges of information—I could go on. There are institutions such as Europol and Eurojust that look at closer working between the institutions. On a future occasion, we could give the committee a briefing on them.

**Mr Stewart Maxwell (West of Scotland) (SNP):** I am slightly confused about the number of working groups. In reply to a question on the subject, you said that there were two working groups on the criminal side. Did you mean that there are two in total or two on which there is Scottish representation? How many groups are there? How are they split between criminal and civil? What is the level of Scottish representation? Are we represented on 100 per cent, 50 per cent or 10 per cent of the groups?

**Danny Jamieson:** I confirm that there are two working groups on the criminal side, which is the area that we are in. At the moment, because the groups are dealing with initiatives that we think are priorities on which we should spend time, we are attending both.

14:30

**Mr Maxwell:** But the representation is not permanent.

**Mrs Macniven:** There are general groups, which have an on-going agenda; we mentioned the committee on criminal matters, and I mentioned the general questions committee on the civil side. When an idea first emerges, there is a sequence of processes through the green paper stage and the white paper stage, which is followed by firmer proposals. At that point, working groups are formed for specific purposes. Therefore, as well as the general groups, there are specific groups that have detailed discussions and negotiations on an agenda item. Once that bit of work is done and the group has moved forward to final decisions, the implementation stage is reached. The working group is then finished and it is disbanded.

**Mr Maxwell:** Perhaps it is just me who is still not clear. In the interests of clarity, may I ask whether we are on all or some of the general groups and whether we are on all the specific groups?

**Mrs Macniven:** We are on the general questions group and the criminal matters general group. I cannot think that there is anything of significance to Scotland at working-group level in which we are not currently directly participating. If, following your question and on closer inspection, I find that there is an issue, I will be happy to follow up with a letter.

**The Convener:** That would help the committee to understand the extent of the practical engagement.

**Mrs Macniven:** Increasingly, we are trying to cover all the areas that are of interest to Scotland. You have identified clearly the great range of activity, and there is a huge agenda to cover, but we have increased our capacity to deal with it.

**Mike Pringle (Edinburgh South) (LD):** I will continue on that line. I think that Fergus McNeil is dealing with this issue, given what he said earlier. On criminal proceedings, and the framework decision on procedural rights within criminal proceedings, what has been your involvement in contributing to the UK and Scottish lines? Are there any issues that are of particular importance or concern to Scotland?

**Fergus McNeil:** We have had various meetings with the Home Office, which acts as the UK

spokesperson at the substantive working group on criminal law. We have made the Home Office aware of certain issues that cause us some concern. It would be for the UK spokesperson to make those views known at the working group meetings. We convey our concerns to the Home Office, which in turn puts them forward at working group meetings.

On the framework decision, we have a number of concerns, the first of which is about the right of a suspect to receive legal advice before answering questions from the police. Under our law as it stands, suspects have no right to receive legal advice. They are entitled to have a lawyer notified, but the lawyer is not entitled to come along and chat to them before they speak to the police. If the framework decision is agreed as drafted, we would have to change our law.

In addition, we are concerned about the articles that deal with legal advice and legal aid, because they are a bit vague and require clarification. When they are clarified, we will be in a better position to assess—

**The Convener:** So that area is still shrouded in doubt.

**Fergus McNeil:** Yes.

Article 9, which requires an audio or video recording to be made when proceedings are conducted through an interpreter, is also causing us concern. We have two trial procedures in Scotland: summary procedure and solemn procedure. Proceedings under solemn procedure are tape recorded; proceedings under summary procedure are not recorded, but article 9 would require them to be, which would require another change in the law and might have resource implications.

Article 16, which provides a duty to collect data and to monitor the operation of the framework document, is also of concern. We consider that that is disproportionate in scope as it asks for a lot of information to be gathered, which has significant resource implications for us.

In general, the framework decision articles need to be sharpened up so that we can see properly what is being said and the implications for the Scottish legal system.

**Mike Pringle:** I presume that, given that you are on the working group, it is not just our representative from Whitehall who has the opportunity to voice opinion on these matters, because you have a direct input into what is being said. Is that right?

**Fergus McNeil:** I do not have a direct input, but an indirect input, because there is only one spokesman for each member state and the spokesman for the UK is the Home Office chap. I

attend meetings beforehand and tell him our concerns. If it is appropriate and if the opportunity arises, he will voice those concerns.

**Mike Pringle:** Are you satisfied that the Scottish perspective is being heard? Are we getting a fair hearing on what we want in Scotland?

**Fergus McNeil:** There have been only two meetings of the working group so far, although there are many more to come. My Home Office colleagues have reassured me that there will be plenty of opportunities to get Scotland's point across.

**Mike Pringle:** Good. Have you discussed the ability of defendants to pay for representation? Have you seen enough in the document to say that defendants will be able to pay through legal aid, which you talked about?

**Fergus McNeil:** There is provision for legal aid in articles 3 and 5 of the framework document. Article 3 covers circumstances in which the member state should offer legal advice and article 5 states that where the suspect cannot pay, he will be entitled to have his costs met by the member state.

**Mr Maxwell:** Before I move on to the question that I was going to ask, I want to take you back to one of your responses to Mr Pringle. I am sorry if it is just me, but I am confused about the working groups. I thought you said earlier that we had Scottish representation on the working group and I took from that that you were at the table having an input from the Scottish Executive's point of view. In your response to my colleague you said that you did not have direct representation, but indirect representation through UK ministers. Which is it?

**Fergus McNeil:** It depends on the working group. In my working group, there is one spokesman. I can contribute indirectly, as I explained—

**Mr Maxwell:** So you are not actually on the working group, as such. You do not sit at the table and—

**Fergus McNeil:** I sit behind the spokesman. There are only two seats at the top table and I sit behind my Home Office colleague. I do not speak directly. That is the practice on that working group, which has only one spokesperson for each member state. However, I believe that things are different on the working group with which my colleague Mr Jamieson is involved.

**Danny Jamieson:** No.

**The Convener:** Just to clarify matters, Mr Jamieson, what is the position on the working group on which you sit?

**Danny Jamieson:** It is very similar to the arrangement that Fergus McNeil has described.

What generally happens is that we meet as an overall UK delegation in advance of the working group itself commencing. When it commences, for practical reasons, there is one spokesperson for the United Kingdom, but we are there in the room and can respond to requests for advice from the UK spokesperson if there is a specific Scottish aspect that needs to be highlighted.

**Mrs Macniven:** It might be helpful to indicate the differences that have come about since enlargement. The move from 15 to 25 member states has made a significant difference to the working arrangements and the numbers of seats available at the front desk. As you can imagine, when there were 15 members there were 15 delegations times however many people were in each delegation—perhaps two or three. However, with 25 times two or three, there are obviously practical difficulties. The rooms are no bigger and the working arrangements for all the committees have changed and the numbers involved have had to be dealt with in proportion to the numbers of delegations and the space available.

**Mr Maxwell:** I understand that the number of member states in the EU has gone from 15 to 25. I am not sure that I would accept that the Scottish legal system should therefore be downgraded in its representation on those committees. You seem to be telling me that we do not have direct representation at those meetings, but that we have indirect representation and that we whisper in the ear of the minister from London. That would be my interpretation of what you have said. Surely you are there to represent the Scottish legal system. Given that the UK has two separate legal systems, does not it seem slightly strange that one legal system has direct input and the other legal system—ours—has no direct input?

**Mrs Macniven:** I do not really think that that is quite how it works. I think that—

**Mr Maxwell:** I think that that is exactly how it works. That is what—

**The Convener:** I think, Mr Maxwell, that we should give the witness time to explain.

**Mrs Macniven:** I simply wanted to say that there is one person speaking for the UK, and the lead department on that committee is the Home Office. The role for Scotland is to ensure that the Home Office, at official level or at ministerial level, is fully briefed at all times, particularly where there are distinctive Scottish features. We have had no difficulty in putting Scottish points across, either through the Home Office in advance, or during the course of the meetings.

It would be instructive, perhaps, to look at how proceedings were conducted during the recent council meeting, when Cathy Jamieson was part of the UK delegation.

**The Convener:** Which meeting was that, Mrs Macniven?

**Mrs Macniven:** That was the JHA council on 25 and 26 October. I think that you have now had a letter about that.

**The Convener:** You said that there was another meeting on 5 November.

**Mrs Macniven:** The meeting on 5 November was the one that the Prime Minister was at. That was the meeting with senior ministers. There were some concerns about an aspect of the Hague programme that was of particular concern to Scotland with regard to prosecution, given the distinctive role of the independent prosecutorial service in Scotland, and there was great necessity to represent the Scottish position. At times, Caroline Flint spoke on our behalf. At other times, Cathy Jamieson spoke for the UK when there was an opportunity for two ministers to be at the front desk. It was kind of interchangeable.

14:45

**The Convener:** I am anxious to push on. Do you have further questions on that subject, Mr Maxwell?

**Mr Maxwell:** We will push on. Obviously, we will agree to differ on whether the process is adequate.

I want to ask about the formal mechanism for ascertaining whether a suspect or defendant understands the language of legal proceedings. Clearly, legal language can be complicated. Should there be a formal mechanism for the translating of such language for the defendant?

**Fergus McNeil:** I am sorry. I am not sure of the question.

**Mr Maxwell:** Most suspects and defendants would have great difficulty in understanding legal language. Should there be a formal procedure for ensuring that suspects and defendants fully understand the process?

**Fergus McNeil:** Are you talking about a Scottish suspect?

**Mr Maxwell:** The suspect needs to be able to understand the legal language of the court, which must be translated into—for want of a better phrase—plain English.

**Fergus McNeil:** In Scotland, a suspect is represented by a solicitor. The solicitor must explain matters to the suspect if the suspect does not know what is going on.

**The Convener:** There might be two different stages: the questioning of a suspect in a police office and the questioning of a person who has been charged with and accused of a crime. As I understand it, the court will intervene to ensure that an accused person understands what he is

charged with. However, I think that Mr Maxwell is talking about the interrogation in a police station of an individual who might not have two words of the indigenous language of the country in which he finds himself. How does such a person know what is going on?

**Fergus McNeil:** It would be for the police to explain the procedure to him in words that he understands. Initially, the police have powers to detain for a maximum of six hours a suspect whom they have taken to the police station. In their questioning, the police must be fair and must not be oppressive. The suspect has a right to silence, which will be explained to him. He will also be asked if he understands that right. If he wants, he can sit there and say nothing for six hours, after which he must be released. The procedures at the police station are very basic. In my opinion, they do not require all that much explanation.

**Mr Maxwell:** Is there a register or formal list of translators who can translate legal language into the language of people whose first language is not English?

**Fergus McNeil:** When police detain someone who does not speak English well or does not speak the language at all, they have lists of translators whom they can call on at short notice to sit in on the interview when the suspect is being questioned.

**Mr Maxwell:** Are those general translators or are they people who have expertise in legal affairs?

**Fergus McNeil:** I think that they are usually general translators, but they will have some experience of legal issues and terminology.

**Mr Maxwell:** Is there no formal list or register of translators with that expertise who could be called upon to provide that translation? The initial point that I was trying to make—which I did badly—was that the language of the law can be quite complicated for those who have no experience of it. I imagine that most translators are people who know another language well, rather than people who have legal expertise.

**Fergus McNeil:** When the police question a suspect for those six hours, they do not use the language of the law to any great extent. They would be pursuing simple questions as to where he was and what he was doing at a particular place—simple questions of that nature. I do not think that he would need a lawyer to translate questions of that nature into language that he would understand.

**Mr Maxwell:** On the point that the letter of rights must be translated into all Community languages—which is standard—would the requirements also apply to third-country

languages, such as Chinese or Urdu, which may be spoken by people who live here who do not have one of the Community languages?

**Fergus McNeil:** I am not sure about that. If the police have contact with ethnic community groups, such as Chinese or Pakistani groups, I think that they will already have documents—

**Mr Maxwell:** But as far as you are aware there is no requirement to have them.

**Fergus McNeil:** There is no requirement to give the suspect a letter of rights, but there are notices in cells listing their rights. I confess that I am not entirely sure, but I think that they may be available in other languages.

**The Convener:** Could that be investigated and a letter sent to the committee?

**Fergus McNeil:** Yes, I can certainly look into that.

**The Convener:** It is an interesting point, on which the committee would welcome guidance.

**Mr Maxwell:** Is the Executive satisfied that the framework adequately covers all those who may be considered vulnerable? For example, are you confident that adequate resources are in place in the criminal justice system in Scotland to identify a suspect's potential vulnerability?

**Fergus McNeil:** That issue is still to be discussed by the working group. At present, we are relatively content that most groups are covered.

**Mr Maxwell:** Perhaps again, if clarification is given—

**The Convener:** It would be helpful if that could be clarified, Mr McNeil, and the two points encompassed within a letter to the committee.

**Mrs Macniven:** Some of the points related to domestic procedure, rather than the terms of the framework decision. Some of the issues about minority languages perhaps are as relevant to communities that are not covered by the 25 member states. Would you like something wider than simply the terms of the framework decision?

**The Convener:** I think I speak for the committee when I say that our principal interest lies in understanding how the topics engage with Scots law and persons in Scotland. Our first port of call would be to clarify the extent to which, in a police station in Scotland, a suspect who may not be a native Scot is aware of what is going on, if that individual does not speak Scots or English. On the letter of right, does it apply in Scotland? If so, what are the translation requirements? Mr Maxwell is correct that people who do not speak English or a principal Community language—they might speak a dialect—could find themselves the subject of procedures.

I would like to pose a few questions on sentencing. Which one of you is the expert?

**Mrs Macniven:** That would be Mr Jamieson.

**The Convener:** Right, Mr Jamieson, I will direct my remarks to you. First, I skimmed through the Executive's response, which is a robust representation of our position in Scotland, which is heartening. Is there a separate UK response?

**Danny Jamieson:** Yes, there is.

**The Convener:** Are there similarities? Are there differences?

**Danny Jamieson:** The Scottish response and the UK response are part of the overall UK package. On the key issues that were dealt with in the green paper, we were in agreement on the general approach to take.

Within the Scottish response, we endeavoured to highlight and put into sharper focus the particular matters of Scots law and to underline where we thought that a particular aspect to do with Scotland arose.

**The Convener:** Did the response that the Executive made follow from a consultation process or an attempt to consult? Was it a broad consultation? How do you know who to consult?

**Danny Jamieson:** That was difficult because this was the first green paper that we had responded to in that fashion. Needless to say, we could improve on what we did. We tried to involve the people who had a key interest in the matter as well as distributing the document with a request for views from people who might be termed the usual suspects, such as the Law Society of Scotland, the Association of Directors of Social Work and Safeguarding Communities-Reducing Offending, as well as people who had a more direct interest in some of the key issues, such as the Scottish Prison Service and the Crown Office. Indeed, within the individual answers, you can see where some of the contributions have come from.

**The Convener:** I am aware that the Scottish Executive has constituted the Sentencing Commission, which is presently deliberating on various matters. However, I am not clear about what impact the green paper will have on the work that the commission is endeavouring to do. Does it change the pace at which things move?

**Danny Jamieson:** It is important to underline the fact that the document is a green paper and that, at this stage, it is therefore not proposing anything in particular. Indeed, despite the wide-ranging scope of the green paper, the European Commission was at pains to point out the fact that it is simply a preliminary document that is designed to elicit views and engender a debate on various matters that are raised.

Obviously, the European Commission will consider the responses and, at some stage, there might be a more definite proposal, perhaps in the form of a white paper, on which further views might be sought, or a definite draft framework proposal. Anything of that nature might appear in the implementation programme, which Mrs Macniven referred to as being the follow-up to the Hague statement of intent.

**The Convener:** So the Sentencing Commission will continue with its deliberations with a view to adhering to whatever timetable it is adhering to.

**Danny Jamieson:** As far as I am aware, that is correct. The Sentencing Commission is fully aware of the green paper on sentencing—it was one of the bodies to which it was sent—and of what the European Commission is interested in in that regard.

**The Convener:** The response is quite a bulky document. For the benefit of the committee and, perhaps, the *Official Report*, could you summarise the Executive's main concerns about the green paper?

**Danny Jamieson:** Unlike some of the other green papers, such as that on bail, this green paper was wide-ranging. I think that we identified around half a dozen areas in which there were particular concerns. First, there is a suggestion that there might be a uniform prosecution system across the European Union. Secondly, the idea has been floated of having Europe-wide sentencing guidelines. Thirdly, the suggestion has been made that it might be the right time to consider the abolition of the life sentence in the European Union. Fourthly, proposals have been made for the approximation of alternative community sanctions and fifthly, the suggestion has been made that the comprehensive approximation rules should govern early release across the EU. At a more general level, the suggestion has been made that it might be appropriate to adopt a more wide-ranging approach to approximation—by which I mean approximation across the board and not focused approximation on a particular initiative or area.

15:00

**The Convener:** That is helpful. It gives us an overview of the issue. You indicated that the green paper might go off and repose somewhere while people think about it. You also said that, if it resurfaces, it would do so either in the form of a white paper or a draft framework proposal. At that point, will the Executive be geared up to re-engage in the process through a working group or other means?

**Danny Jamieson:** Yes.

**Mrs Macniven:** What we are giving the committee is a kind of snapshot. As we have

explained, in one place we are doing a green paper and, in another, where we are a bit further on, we are at the white paper or framework decision stage. I spoke about the ad hoc groups that are formed at the detail stage. In light of what Mr Jamieson said, what might emerge from the process is not one initiative but a number of them—the subject is wide ranging and we do not know as yet how it will be broken up.

**Maureen Macmillan (Highlands and Islands)**

**(Lab):** I have one or two questions on the green paper on bail. Issues of equality would seem to be involved in the treatment of Scottish residents and other EU residents who find themselves charged with a crime in Scotland. Were any of you involved in the process of mapping out the green paper from the start? Who was consulted? I assume that it was the usual suspects, but wonder if the Sentencing Commission was involved or whether it has expressed any views.

**Fergus McNeil:** The green paper is still at a very early stage. We were not involved in its preparation; the matter was entirely for the European Commission. We knew that the green paper was coming along, as it was signalled on a number of occasions; in fact we expected it to be issued last year. As I said, the Executive was not involved in the preparation of the green paper.

The document was sent out to a wide range of bodies; I think that over 20 of the usual suspects, as you called them, received a copy. The Sentencing Commission received a copy both of the green paper and the European Commission staff working paper, which contains all the meat. We have until the end of the month to finalise our response and we are working towards that end.

**Maureen Macmillan:** Will that start the negotiating process? You said that this is something that is very new and yet you have only until the end of the month to respond. What happens after that?

**Fergus McNeil:** Our response will be submitted to the European Commission, together with the UK—the England and Wales—response. We will probably hear nothing about it for another year or so, during which time the European Commission digests and formulates its proposals, which might be a white paper or a draft framework decision.

**Maureen Macmillan:** So that is the timescale.

Can you indicate whether this is a problem in Scotland? Do we have numbers of other EU nationals who find themselves remanded in custody because they are other EU nationals, when somebody resident in Scotland would not find themselves remanded in custody? Vice versa, what is the situation for Scots abroad?

**Fergus McNeil:** Unfortunately, our bail order statistics do not identify the nationality of those

who are granted bail. We can identify the nationality of those on remand, however. On 30 June 2003, 11 other EU nationals were on remand in Scotland. I am afraid that I do not have a clue about the other side of the coin—the individuals of Scottish residence who are remanded in custody abroad. We would have to write to every member state and ask them, which would be quite a task.

**Maureen Macmillan:** So it would be quite difficult to gather those statistics at present.

**The Convener:** Usually the media would play a role in that respect. I cannot imagine that we would not know that a Scot was remanded in custody in another EU country.

**Fergus McNeil:** Wearing my extradition hat, I know of offenders who have been arrested in other EU member states—from my experience mainly in Spain or Holland—but that is for offences committed in Scotland, rather than for offences committed in the country in which the offender is remanded.

**Maureen Macmillan:** How is that dealt with in a UK context? Part of the problem seems to be that people might abscond and it is all about distance. What if someone from England is charged in Scotland? Are they more likely to find themselves on remand in a prison in that city than a native Scot would be?

**Fergus McNeil:** I do not think so. We can always get people back quickly if they abscond to England. We know where they live in England and we have backing of warrants legislation in place. If we want an offender in England to be returned, we issue a warrant, which a judge in England will back, and they will be arrested and brought back to Scotland.

**Maureen Macmillan:** How difficult is it to get them back from Europe? I suppose it depends on the country, or is it impossible?

**Fergus McNeil:** Arrangements are in place to have offenders returned to Scotland. Within Europe, the European arrest warrant applies. Although the process is relatively quick compared to the old extradition arrangements, the aim of the European arrest warrant is to return the offender within 70 days.

**Maureen Macmillan:** That is a lot of days.

**Fergus McNeil:** It is.

**Jackie Baillie (Dumbarton) (Lab):** I have a couple of brief questions. You said earlier that you were not involved in the preparation of the green paper. Does it therefore reflect any understanding of Scots law?

**Fergus McNeil:** Sorry, I have probably misunderstood you. We submitted responses to questionnaires, but it was so long ago that it slipped my mind. It must be three years ago that

the Commission issued questionnaires, which asked about Scots bail procedures. We filled in the questionnaire, sent it back and forgot about it. I apologise for that. In that respect, we have had an input, but not in the drafting of the proposals.

**Jackie Baillie:** I will pose the question slightly differently. On the basis of what you have seen of the green paper, has the Commission reflected on your completed questionnaire? If it has, that is great, but if it has not, what needs to be changed?

**Fergus McNeil:** A completely new system is being proposed. In a sense, it is building on the existing system, rather than reflecting existing law, if I can put it that way.

**Jackie Baillie:** That is helpful. Finally, what impact are the proposals likely to have on the work of the courts or other agencies, such as the police, which might be tasked with supervising suspects?

**Fergus McNeil:** It would add a little to their work load. A large number of offenders in Scotland are already on bail. Adding offenders who are on bail from foreign jurisdictions will increase the work load, but not to a huge extent.

**Jackie Baillie:** You said earlier that there were 11 at one point.

**Fergus McNeil:** That was foreigners here who would be returned overseas, rather than people overseas who would be coming back to the UK.

**Jackie Baillie:** Okay. Thank you.

**The Convener:** There are no other questions from members. I thank Mrs Macniven, Mr McNeil and Mr Jamieson for being with us this afternoon, which has been extremely helpful. We shall await the letter clarifying the points that arose in the course of the evidence taking.

We have heard evidence on the papers before the committee. I need to ascertain whether the committee wants to do anything further, which would probably mean focusing on the green paper on bail. The committee might be minded to take an interest in that, but the time constraint is strict, as the deadline is 30 November. This has really been a fact-finding session for us. I am inclined to suggest that we might welcome being copied into the Executive's response to the green paper. We might reserve the right to ask Mrs Macniven to return to discuss the matter further. Is that agreed?

**Members indicated agreement.**

**The Convener:** We now move into private session to consider item 3, which is on the Fire (Scotland) Bill.

15:11

*Meeting suspended until 15:16 and thereafter continued in private until 16:45.*

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