

# **JUSTICE 2 COMMITTEE**

Tuesday 13 June 2006

Session 2

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## JUSTICE 2 COMMITTEE

17<sup>th</sup> Meeting 2006, Session 2

### CONVENER

\*Mr David Davidson (North East 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)

\*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

### COMMITTEE SUBSTITUTES

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

Carolyn Leckie (Central Scotland) (SSP)

Mr Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Paul Martin (Glasgow Springburn) (Lab)

### THE FOLLOWING GAVE EVIDENCE:

Cathy Jamieson (Minister for Justice)

Daniel Jamieson (Scottish Executive Justice Department)

### CLERKS TO THE COMMITTEE

Tracey Haw e

Alison Walker

### SENIOR ASSISTANT CLERK

Anne Peat

### ASSISTANT CLERK

Steven Tallach

### LOCATION

Committee Room 2



# Scottish Parliament

## Justice 2 Committee

*Tuesday 13 June 2006*

[THE CONVENER *opened the meeting at 14:10*]

### Petition

#### Justice System (Child Sex Offenders) (PE862)

**The Convener (Mr David Davidson):** Good afternoon, ladies and gentlemen, and welcome to the 17<sup>th</sup> meeting in 2006 of the Justice 2 Committee. We have only one apology, which is from Colin Fox, who must leave the meeting early. I welcome Paul Martin to the meeting. I remind everyone in the room that all mobile phones, pagers and BlackBerrys must be switched off now.

Agenda item 1 is petition PE862, which the Public Petitions Committee has passed to us. This item has been carried forward from the previous committee meeting, at which the committee agreed to defer further consideration of its approach to the petition pending discussions with the Public Petitions Committee and the Minister for Parliamentary Business. The clerk has circulated a paper, which notes that the Public Petitions Committee no longer accepts the referral of petitions from subject committees.

The clerk, the deputy convener and I met the Minister for Parliamentary Business last week. Members will remember that I flagged up at our previous meeting the fact that a large burden is being placed on this committee in relation to legislation that is to be dealt with before the next election. We sought hints from the minister as to whether further legislation will come to the committee, and it looks as though it will. I am anxious to ensure that anything that the committee takes on is done thoroughly and properly, with full scrutiny—that is the committee's role.

The Minister for Justice has sent an update, copies of which have been circulated to members. The clerks have kindly produced a paper on what we have discovered, which has also been circulated to members. A series of options is suggested for discussion at this meeting. The first is to seek further written evidence on any of the matters raised in the petition. The second is to hold an evidence session with the Minister for Justice to examine the progress that the Executive has made on the issues raised by the petitioner. Of course, we do not know whether the proposed sentencing bill, which will probably come to the committee, will cover some of those issues, so

that would be a reason for choosing the second option.

The third option is to seek oral evidence from the petitioner and other, wider interest groups on the issues that the petitioner raises. If the committee decides to take that option, it is suggested that the clerks and the Scottish Parliament information centre be asked to report back to the committee before the summer recess with a suggested programme of evidence and proposed timings for any inquiry.

The fourth option is to identify the issue in a legacy paper as an outstanding issue that warrants further scrutiny. That paper would be passed to our successor committee after next year's parliamentary elections although, of course, our successor committee would be under no obligation to pay heed to a recommendation from this committee. To all intents and purposes, parliamentary business finishes before the election; there is completely fresh business in the next session.

The final option available to us is to take up any other suggestions that the committee and those present at this meeting might make.

I open up the discussion to take members' views.

**Bill Butler (Glasgow Anniesland) (Lab):** It almost goes without saying that the petitioner raises a serious issue. As colleagues will remember from our meeting of a fortnight ago, the petitioner identified outstanding areas of concern in her response to the Scottish Executive's letter of November 2005. I think that in many of those areas the update that we have received from the Minister for Justice is helpful, but I still feel that there needs to be an exploration of areas such as the reclassification of child sex offenders in order to make a distinction between paedophiles and sex offenders and to reduce confusion in dealing with sex offences against adults and sex offences against children. That may or may not be a distinction that can be made; it would take a full inquiry to establish that.

A thorough inquiry would also be necessary to consider the relevant housing matters. There is also the issue of people assuming an alias, although the minister seems to have met that concern, along with others, fairly reasonably. Given the burden of legislation that the committee must deal with, I am not sure whether, as a full committee, we could carry out an inquiry that would be as thoroughgoing and effective as demanded by the serious nature of those concerns. If other members have a way round that, we should listen to what they have to say, but I do not have an instant solution.

14:15

**The Convener:** At our meeting two weeks ago, I took the committee's view to be that the matter that had been raised was serious and was worthy of further consideration—that was certainly my view. Obviously, we do not want any work that we do to overlap with work on legislation that will be scrutinised by us or by the Justice 1 Committee, as and when that legislation is introduced. We cannot take lightly a decision to hold a full inquiry.

Do other members have a view?

**Paul Martin (Glasgow Springburn) (Lab):** I thank the committee and, in particular, the convener and the deputy convener, who met the Minister for Parliamentary Business to discuss the petition.

I have a suggestion about how we can make progress and do all the things that are helpfully suggested in paragraph 25 of the committee's paper. We could achieve those aims by setting up an ad hoc committee of three or four members. Members of the justice committees could sit on it and the Communities Committee could have an input on housing registered sex offenders, which Margaret Ann Cummings raised in her petition. The Public Petitions Committee, which has already taken a significant amount of evidence on the issue, could also be represented and a reporter could be appointed to gather evidence.

I have spoken informally to the Minister for Parliamentary Business about the possibility of an ad hoc committee being established. She has advised me that she would give such a proposal serious consideration in a short timescale of a matter of weeks. Obviously, the setting up of an ad hoc committee has to be agreed to by Parliament, but that should not be a problem, given that we all agree on the seriousness of the issue. If an ad hoc committee were established, that would deal with some of the committee's concerns about the pressures that it faces. Under my suggestion, the committee would be able to share the burden of an inquiry and the various committees that have dealt with the petition would be able to have an input. Moreover, Margaret Ann Cummings would be given reassurance that Parliament was continuing to take her petition seriously.

**The Convener:** When we had our meeting with the Minister for Parliamentary Business last week, she raised the issue of whether it was possible to divide the work into chunks. Similarly, the letter from the Minister for Justice subdivides the petition into different issues, including housing. The Minister for Parliamentary Business said that she would reflect on the matter further, but made it clear that she understood the committee's concerns. I thank Paul Martin for what was a positive suggestion.

**Jackie Baillie (Dumbarton) (Lab):** I endorse what Paul Martin said, although I seek clarification on two points. I agree with him that Margaret Ann Cummings has waited a long time and that it would therefore be inappropriate to delay consideration of the issues that the petition raises until the next session of Parliament. We should attempt to make progress in whatever way we can.

Ad hoc committees report directly to Parliament, but perhaps it is the intention that the committee that Paul Martin proposes would report back to the Justice 2 Committee, with which the petition resides. That would obviously have implications for the workload not just of the committee, but of the clerks. I would want us to make a specific request for additional temporary resources to deal with that, because if we are to do the subject justice, we require not only MSPs' time, but the valuable help that allows us to undertake such inquiries.

**The Convener:** That is a very positive comment. Members may think that the committee has a lot to do, but the clerks—who are invaluable—have even more to do in assisting us in going wherever it is we wish to go. Jackie Baillie touched on the issue of the status of the committee that Paul Martin proposes. I wonder whether it would, in fact, be a beast of the Parliament. The Parliamentary Bureau would deal with the question of establishing such a committee in line with the decisions that it takes on membership of private bill committees and so on. I seek further views from the committee.

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

In effect, the options that are laid out before us summarise everything that we were trying to come to a conclusion on. We want to do all those things, but the timetabling prevents us from doing so. The suggestion that Paul Martin made is extremely helpful; I had not considered it before.

If it was agreed that an ad hoc committee could be formed, we would have a committee that would deal exclusively with this one issue. It would have the time to take the right evidence, do the proper research, get all the background stuff together and produce a serious report, and it could do that in a relatively short timescale.

If we are talking about an ad hoc committee that was properly established by the Parliament, it would also be resourced separately; the burden would not fall on our clerks. I assume that the ad hoc committee would report to the Parliament and not to a subject committee. Although that is a procedural point, the way in which a committee is established has an effect on its status; it would have greater status if it was established by the Parliament. An ad hoc committee may also be able to seek an early opportunity for a

parliamentary debate on its report, in the same way that other committees do. We may be able to move things forward more quickly in that way than we could if we tried to do things ourselves. Paul Martin's suggestion is sensible.

**The Convener:** I take the point. Since the matter was referred to us by the Public Petitions Committee, I seek advice from the clerks on whether the matter would come back to us or go straight to the Parliament.

**Tracey Hawe (Clerk):** That would depend on the nature of the committee that was set up by the Parliamentary Bureau. If it was a free-standing ad hoc committee, it could report to the Parliament. I am sure that it would be possible to find a mechanism by which it could also report back to the Justice 2 Committee, the Communities Committee and the Public Petitions Committee.

**Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD):** We need further discussion on the issues. Characteristically, Paul Martin's suggestion was very constructive, and I endorse it. However, I suggest a slightly alternative model. I hear what Stewart Maxwell said, but an ad hoc committee could be the slower of the options. We would have to get it established, arrange slots for the discussions with the Parliamentary Bureau and set up the arrangements for clerking staff, timetabling of meetings and so forth.

I am very attracted by the idea of the three committees appointing reporters who, under the commission of this committee, would be given a remit for the work that they would undertake. We could hold in reserve the possibility of having an evidence session with the Minister for Justice after the report was published. I like Stewart Maxwell's idea of seeking time in the chamber to debate the report. If we did the work in that way, we could be looking at completing it before the end of this calendar year. That would be the quickest way of doing things. My fear in taking the ad hoc committee route is that that committee would report to the Parliament in the next session. It would be useful if we were to achieve a mechanism by which we could secure parliamentary time before next spring. We would still have to address Jackie Baillie's point about clerking support.

We should not go to the extent of entering into discussions on establishing a committee. It is inevitable that all the parties would want to discuss their representation on such a committee. As it stands, most members sit on two committees. I would not like things to get bogged down in that way. I hate to call the other proposal an informal grouping of reporters, but whatever we call it, I believe that we could quickly establish its remit, give notice to the Minister for Justice and work to a timeframe that we would agree on at the outset.

**Colin Fox (Lothians) (SSP):** I am mindful of the committee's previous discussion of the petition a fortnight or so ago. I think that all of us are agreed on the seriousness of the issue and that our earnest wish is not to have a perfunctory look at it but to make meaningful progress. At the same time, we are also aware of how the work would fit into the rest of our workload.

Paul Martin's suggestion about an ad hoc committee has one great advantage: the issue would be that committee's sole area of work. When such issues come on our agenda, we consider them for perhaps only half an hour or 45 minutes out of a three or four-hour meeting.

I realise that establishing an ad hoc committee would be an unusual route to take. On the suggestion of having reporters, I would like to know what their role would be and how they would report to Parliament. I looked through the options in the paper, and the idea of this committee meeting twice a week frightens me to death. With the other options, we would run the risk of just having a glance at the issue but not doing any sufficiently in-depth work to make a meaningful contribution. An ad hoc committee that would deal with this issue alone strikes me as the right middle way. This committee would have input and all members would have the opportunity to debate the issue in the Parliament when a report was produced.

**Maureen Macmillan (Highlands and Islands) (Lab):** I am not sure whether it would be quicker to appoint reporters or to set up an ad hoc committee. However, if we are going to do anything, we must ensure that we do a thorough job. I am pleased to see the suggestion that the Communities Committee should be involved, because a large part of the petition is about housing and communities. We must bring in the Communities Committee. I am not sure whether that committee has been approached about the matter—we obviously have to know its views.

On the issue of whether we should have an ad hoc committee or appoint reporters, I presume that an ad hoc committee would be set up by the Parliament and members would be put on it, whereas, if reporters were appointed, we might find that the opposite of what Jeremy Purvis hopes for would happen—we might find it difficult to get volunteers from committees. It might be easier to get members for an ad hoc committee. However, all those issues are up for discussion. We must consider them further and then come back to decide the approach.

**Bill Butler:** The discussion has been positive, but there are some issues that we must explore further, which might best be done by the convener and the clerks. I know that that would cause another week's delay, but questions arise that we

cannot answer now. Jeremy Purvis thinks that his suggestion would be more expeditious. We must consider whether that is the case, but I tend to think that Maureen Macmillan will be proved right and that an ad hoc committee could be set up fairly quickly. Another point about an ad hoc committee is that it would have more status. The seriousness of the issues that have been raised demands that extra status. If Jeremy Purvis is right that it would take an age to set up such a committee, we would have to reconsider, because the process must be expeditious and thorough. However, if an ad hoc committee could be set up quickly, we should choose that route, as it would have added status. That should be explored, given the seriousness of the issues.

**The Convener:** It was in my mind to suggest to the committee that we hold off from making a decision until next week and that, in the meantime, the deputy convener and I, with the clerk, could meet the Minister for Justice and the conveners of the other committees that have been mentioned. We could then return to the issue next week. The other conveners need to have time to come to a view and to sound out opinion among their committees. The Parliamentary Bureau will have to be involved, too.

I have a feeling that we could end up with a slight cross, with some of Jeremy Purvis's ideas feeding into a formal committee of the Parliament. Such a committee would have far more power in taking evidence. There is also a need for input from the Minister for Justice. Despite the meeting that we had last week with the Minister for Parliamentary Business, we still do not have absolute clarity about what the proposed sentencing bill will cover. The housing issue is almost an issue in its own right. The Minister for Justice's letter identifies several risks, such as those that relate to aliases and pushing people underground.

I am minded to ask committee members whether they agree to the deputy convener, me and the clerks meeting the people I have just mentioned during the coming week, to see whether we can come to some formal agreement among the different bodies in the Parliament as to how we can best proceed. I take Jeremy Purvis's point—we do not want the situation to go on and on. If everybody is prepared to play their part, we could be focusing, by the end of this calendar year, on a response or a result, although it is not for us to predetermine what that result might be at this stage. I am also aware that the committee was charged with the task of helping in that process, so it must have a role, along with the Parliament itself. Jackie Baillie is quite right to talk about resourcing, as that is something that we would have to take care of one way or another.

Does the committee agree with that suggestion?

**Members** *indicated agreement.*

**The Convener:** The clerks have a full note of what has been discussed. We will keep in touch informally with all members during the week. It is a question of trying to get people to come together so that we can draw up an action plan for next week, hopefully with the help of the Parliamentary Bureau and the ministers. I thank Paul Martin for his suggestion.

14:30

*Meeting suspended.*

14:31

*On resuming—*

## Subordinate Legislation

### International Criminal Court (Immunities and Privileges) (No 2) Order 2006 (draft)

### International Criminal Court (Immunities and Privileges) (No 1) Order 2006 (draft)

**The Convener:** I welcome the Minister for Justice to the committee. We have two affirmative instruments to consider. I invite the minister to speak to both draft orders before committee members ask questions. After that, we will follow the usual procedures for formal motions and debates.

**The Minister for Justice (Cathy Jamieson):** I shall take a few minutes to explain what the draft orders are about and why they are necessary to enable the United Kingdom to meet its obligation to confer certain privileges and immunities on the International Criminal Court and on specified categories of individuals connected with the court.

As members will be aware, the obligations are contained in the Rome statute, which is the international treaty that established the ICC, and in a separate agreement on privileges and immunities, which was finalised in September 2002 and which has been signed by the UK. The central purpose of the agreement is to seek to ensure that the staff of the International Criminal Court can carry out their duties, which will often be in connection with difficult situations, without undue external influence and in the wider interests of justice.

The precise details of the privileges and immunities that it is proposed will be conferred, and on whom they will be conferred, are set out in detail in the draft orders. However, it is perhaps most relevant to highlight in the context of the ICC the immunity from arrest and detention, the immunity from legal process and the inviolability of papers and documents.

People might consider it unlikely that the ICC will have occasion to sit in the United Kingdom or, in particular, in Scotland. However, the international obligations that the draft orders implement create a pattern of protections that give the court and the individuals connected with it, such as witnesses and victims, a comprehensive structure of protection across jurisdictions without making discriminatory distinctions or judgments about where such protections might be considered necessary. There is a parallel with the diplomatic immunities that are granted by host states throughout the world in their mutual interest.

The convener noted that the committee has been asked to consider two draft orders today. Two orders are required because of the restrictions with the legal base that became apparent when the first order went through Westminster. That is a consequence of the nature of the 2002 privileges and immunities agreement, which goes into considerable prescriptive detail. That could not have been foreseen, of course, when the enabling legislation—the International Criminal Court Act 2001—was passed. The gap was subsequently fixed by the International Organisations Act 2005, to which the Scottish Parliament gave legislative consent under the Sewel procedure in February of that year, following which a second order was drawn up to complete the picture.

The draft orders are lengthy and technical, but in considering them today it is helpful briefly to remind ourselves of the wider reasons why they are needed, beyond the fact that they are simply to do with an international obligation that we are required to meet. The ICC, which was inaugurated in March 2003, is the world's first permanent court with the power to try serious crimes of international concern, such as war crimes, crimes against humanity and genocide. Unfortunately, history has shown that such a court is needed. It is now operational and it has begun investigations into events in northern Uganda, the Democratic Republic of Congo and Darfur in Sudan.

The United Kingdom, including the Scottish Executive, is a strong supporter of the ICC. Although it is located in The Hague and therefore, as I mentioned, the practical impact of the draft orders is expected to be limited as far as we are concerned, giving our approval today will, in its own way, send out a signal of our continued support for and commitment to the ICC.

**The Convener:** I thank you for the clarity and brevity of your comments. Members have no questions on the draft orders, and we have received no comments from the Subordinate Legislation Committee.

*Motions moved,*

That the Justice 2 Committee recommends that the draft International Criminal Court (Immunities and Privileges) (No. 2) Order 2006 be approved.

That the Justice 2 Committee recommends that the draft International Criminal Court (Immunities and Privileges) (No. 1) Order 2006 be approved.—[*Cathy Jamieson.*]

*Motions agreed to.*

## Justice and Home Affairs in Europe

14:38

**The Convener:** Under item 3, we will take evidence from the Minister for Justice on justice and home affairs in Europe.

Thank you for your communications to the committee, minister. What is the up-to-date position with the framework decision on certain procedural rights in criminal proceedings? Which issues are still under discussion and what is the likelihood of agreement being reached?

**Cathy Jamieson:** Thank you, convener. I did not anticipate that you were going to move immediately to questions. I assumed that I would have the opportunity to set out some of the issues that are of particular interest to the committee and to expand on them, but as everyone is shaking their heads, that is obviously not the case. *[Laughter.]* So there goes all my work in preparing a wonderful speech for you. I will, of course, try to move straight into answering the questions.

**The Convener:** I think that we should also welcome your colleagues, who I am sure had some part in that extra work.

**Cathy Jamieson:** Yes, indeed. I also welcome those whom I have been allowed to describe as the anoraks, who will deal with the specific issues to be addressed in this session.

We want to get the provisions in this area right. Our position has been that we should not rush negotiations to a conclusion. We know that a fair amount of time has been spent on this already and we think that it is important to ensure that any European Union provision adds value in the correct way and avoids any potential confusion with, for example, the European convention on human rights. That is important for the courts and the practitioners.

From looking at some of the work that has been done in this area, we know that there are concerns about the potential risks to Scotland from the particular dossier that is being considered, depending on how the negotiations go. Mainly, there are concerns about the automatic provision of legal advice or assistance to suspects during the initial six-hour detention period that the police have in which to question suspects, after which they have to be charged or released. If we are not careful and if we are not able to put our views across correctly, we might find ourselves faced with legal aid costs and with a fundamental reorganisation of police procedure. Therefore, it is important that we keep a close eye on the

negotiations, particularly given that potential impact on legal aid and police procedures.

I have recently been in touch with the UK Government ministers to highlight concerns, and Executive officials have attended working group negotiations, liaising closely with the Home Office policy leads on the issue. In this area, as in many others, we have been firm in our defence of the position in Scotland, which we believe to be robust and fair.

**The Convener:** Are there any other issues that are still under discussion, apart from the six-hour rule?

**Cathy Jamieson:** Danny Jamieson may be able to add information on that from the working groups.

**Daniel Jamieson (Scottish Executive Justice Department):** Yes. It would appear that, following the justice and home affairs council meeting of EU justice ministers on 1 June, the dossier was referred back again to the working groups. What was under consideration at that meeting on 1 and 2 June was a document that presented an alternative series of proposals, which were less detailed than the European Commission's original proposal. There was also a suggestion that, given the amount of time that the working groups had already spent on the matter without appearing to be able to arrive at an agreement, an alternative might be to consider a series of practical measures rather than to focus on creating specific rights that might be at variance with the ECHR. That is the latest information that we have. The dossier has been remitted back to the working groups for further consideration of those alternative approaches.

**The Convener:** Does the Executive have any view about changes or a view on the six-hour system as it is operated by the police?

**Cathy Jamieson:** Rather than asking about the implications of the discussions that are going on at European level, you are asking whether there ought to be changes to our domestic system.

**The Convener:** You are not asking me, minister; I am asking you.

**Cathy Jamieson:** I think that the matter would require a great deal of further consideration. If the committee wants to look into that further or thinks that we should explore it further, that is a separate issue from the implications of the directive. I do not mean to be disrespectful, convener, but I think that that is a separate issue.

The line that I have taken is that we want to protect the framework that we have at the moment, which we think is robust. We do not want to have a situation in which there are implications for either the current procedures or the costs when

we have not looked in detail at whether a new provision would produce any better outcomes.

14:45

**Jeremy Purvis:** As you might be aware, when committee members visited Brussels, we discussed with officials the green papers on bail and sentencing. Can you give us an update on progress in respect of the Executive's input in those areas?

**Cathy Jamieson:** This may sound like I am repeating some of what I said in relation to the previous dossier, but we have made representations on those issues and on bail in particular. We have no further recent information from the Commission on when the proposal on the mutual recognition of bail decisions will be presented, but we will scrutinise it closely when it appears. We will take full account of our on-going domestic arrangements before deciding on our approach to the proposal. One issue for us is that we have made a commitment to tighten up our bail and monitoring provisions, so we will need to examine the proposal when it is introduced. I reassure the committee that any proposal that is brought forward will be subject to rigorous scrutiny if that is required to protect the position that we have decided is best for our domestic arrangements.

**Maureen Macmillan:** You mentioned your concerns about the proposal to make it necessary for the police to allow people to have legal advice immediately when they are arrested rather than after a wait of six hours. Do you have any thoughts about the proposals on free interpretation and translation when someone is arrested? One issue that has been raised with me locally is that there is a lack of capacity to provide such services for migrant workers. Is that a problem?

Does the Executive have any other concerns in the area of criminal procedure? Are there concerns about definitions?

**Cathy Jamieson:** I am not sure whether you are referring to the practicalities of ensuring that someone is available who can interpret and translate or to the creation of a right that would enable people to access those services at an earlier stage. The practicalities of the issue have not been brought to my attention, but if officials have further information on the issue, I will be more than happy to provide that to you.

**Maureen Macmillan:** Obviously, if such a right were created, the practicalities would kick in because we would need to be able to provide such services for people.

**Cathy Jamieson:** Sorry, I may have misunderstood the question. Obviously, if there

were such a right, we would need to ensure that the resources could be put in place. I thought that the question was perhaps suggesting that there might be issues to do with people being detained beyond the six hours at present when access to interpretation or translation is an issue. Obviously, if that were a problem, we would need to look at it.

**Jackie Baillie:** I assume that some areas of EU work are always likely to have resource implications for criminal justice bodies in Scotland. One obvious example is that police and procurators might need resources and training for the European evidence warrant. How will that be factored in and what is the likely scope of it?

**Cathy Jamieson:** Sorry, I did not catch the question.

**Jackie Baillie:** How will those implications be factored into our normal budget considerations and what is the likely scope of the additional resource requirement?

**Cathy Jamieson:** At this point, I cannot give a figure about the likely scope. We are dealing with a whole range of issues. In preparation for today's meeting, I counted more than 20 different dossiers of work that is on-going. We have simply highlighted the areas that we think have the most immediate implications for us.

Obviously, when decisions are taken forward, it is incumbent on us to ensure that resourcing is available. However, we must also accept that if we are serious about fighting organised crime—globalisation brings with it challenges as well as opportunities—we need to ensure that we have the resources and capability in place to be able to apply the mutual recognition principle so that we can work across borders. We have seen evidence of that being done in the work that the Crown Office is taking forward. We also need to ensure that, for example, we have the relevant people in place to take forward that work. However, I cannot at this stage give a figure for that. Obviously, the issue needs to be factored into any budget considerations.

**Bill Butler:** Obviously, co-operation is important. Is progress on some matters slower than you would like? If so, does that have implications for public safety? For example, the latest Hague work programme describes work on the mutual recognition of prohibitions from working with children as slow. Does that cause you concern?

**Cathy Jamieson:** Overall, it is fair to say that, for various reasons, timescales on several parts of the Hague programme have slipped. One reason why progress on the prohibitions from working with children has been slow is the complexity of the systems. Member states operate different systems and some are much more prescriptive than others.

Some may use lists and some may consider the situation case by case when people apply for jobs.

Here in Scotland, we are undertaking processes to make improvements following the Richard report—for example, we now have a list. Some issues are of concern, but it is important to recognise that we have some work to do here to put our own house in order. We must proceed on the basis of the mutual recognition principle. To try to establish one single system throughout all the member states would be a very difficult task. It is important that we can recognise the different systems and co-operate across borders.

**Bill Butler:** I accept that difficulties exist and that the task takes time—perhaps longer than any of us wishes. What is being done in the interim to ensure that children in Scotland are protected from any individuals who may have been convicted of sexual offences in other member states?

**Cathy Jamieson:** Some concerns are obvious. More people are moving around; people move for jobs and education and to do business. It is important that our system is as robust as possible. We will obviously rely on obtaining appropriate information when people apply for jobs here that involve working with children and we will want to ensure that checks are done. That can sometimes take time, which causes frustrations. Even in our own system, checks south of the border can sometimes take a long time. Members frequently write to ask me to speed up the process. As always, we must achieve the right balance. We must do our bit and ensure that we can access appropriate information when possible. I am sure that further improvements will be made.

**Bill Butler:** In the work on the transfer of sentenced persons between member states, an outstanding issue is the extent to which prisoners should have a say in transfers. What is the Executive's position on that?

**Cathy Jamieson:** In some situations, prisoners can request a return to Scotland to serve a sentence. In my time as Minister for Justice, I have dealt with several such requests. Some have seemed reasonable. When a person has family connections or a link to an area, it is logical and sensible to allow the transfer to take place. Other requests have not involved the same family connections. In broad terms, I understand that we would probably collect more people than would want to leave as a result of such arrangements.

**Bill Butler:** The Executive makes decisions case by case rather than taking a general stance.

**Cathy Jamieson:** People can apply to return and some people take up that opportunity. We would be wary if it were expected that a transfer would happen without any reference to our prisoner numbers and a range of other matters.

**Bill Butler:** So the Executive says that it must have input and flexibility. You would resist a directive that removed flexibility and said that you had to take a quota, for instance.

**Cathy Jamieson:** Our general approach on all these issues is to ensure that we have a degree of flexibility rather than to impose complete harmonisation on everything. Also, as I have just been reminded, we try to ensure that the transition of prisoners who will return to this country at some stage is managed smoothly. For example, if a UK national wants to return to live in this country permanently, it may be better that we deal with that in a phased and managed way, rather than waiting until the person turns up at the end of a sentence served elsewhere. We take account of those kinds of considerations case by case.

**Bill Butler:** Are you saying that, although the development of a framework is important, it must have some in-built flexibility?

**Cathy Jamieson:** Generally speaking, we take the approach that frameworks ought to be helpful in solving problems and securing better outcomes. From the point of view of making our streets safer, the rationale for a framework that allows people to return to Scotland to serve part of their sentence is that we can then ensure that they get the correct supervision and support when they move back into the community. If it were simply a numbers game, I would be concerned about that.

**Bill Butler:** I am obliged for those answers.

**Mr Maxwell:** I want to ask about the exchange between member states of the information that is contained in criminal records. It has been pointed out to us that some member states are concerned about the fact that, for obvious reasons, the UK has more than one central authority for holding such records. What stance has the Executive taken in addressing concerns about the fact that we have a separate judicial system?

**Cathy Jamieson:** Let me explain the process. Under the Council decision on the exchange of information extracted from criminal records, which is basically intended to improve information sharing among member states for policing and judicial purposes, each member state must designate a central authority to receive requests for information from other member states. The Association of Chief Police Officers provides that service for the UK. Member states have not agreed to there being more than one central authority in each member state. Obviously, we need to ensure that all our systems for collecting information both in Scotland and more broadly in the UK are able to feed into one another so that they can provide that information. However, each member state has only one point of contact or

central authority for the passing on of that information.

**Mr Maxwell:** In effect, the pressure from other member states is that the UK should have, for want of a better phrase, one point of contact, rather than that it should centralise all records.

**Cathy Jamieson:** If the concern is that all Scottish criminal records will be held at a central point in the UK, I can confirm that I do not think that that will be an issue. In fact, under one proposal that could have been considered, the central authority for the UK could have been based in Scotland. There would have been nothing to stop that. Indeed, I was happy to pursue that proposal at various stages.

**Mr Maxwell:** I accept that the point of contact could be based anywhere within the UK, but that was not the question. My question is whether there was pressure from other member states for centralisation of criminal records. Were other member states happy for the UK simply to have a single point of contact?

**Cathy Jamieson:** It is important to recognise that, in Scotland, the Scottish Criminal Record Office will be an authority for the purpose of replying to requests for records that are held in Scotland. Although there will be a single UK point of contact, the SCRO will still have a central purpose in that.

**The Convener:** If another member state—for the sake of argument, let us say Germany as that happens to be where the football is being played—asks the UK for information on a person without knowing where the person is from, can the interchange systems among the police forces in the UK simplify that request in a way that allows it to be processed rapidly?

**Cathy Jamieson:** I suggest that the answer is yes. If a request for information were made on that basis, the various police forces in Scotland and throughout the UK would be able to access the details and pass on the appropriate information.

**The Convener:** What timescales would be involved in handling a request that was received in the UK?

15:00

**Cathy Jamieson:** It must be understood that information might be sought for different purposes. There would probably be one timescale for dealing with a request for information on a person's previous convictions that was intended to be used in a court abroad, for example, but I am sure that the relevant authorities would be able quickly to supply information that was needed immediately. I could not say off the top of my head how many hours and days would be involved in dealing with

requests, but I expect that the timescale would be affected by the urgency of the request. In fact, my officials have just advised me that requests ought to be replied to within 10 working days.

**Jeremy Purvis:** I have a couple of brief questions on implementation. Will the Executive monitor the performances of other member states from which information is requested in order to determine whether they have met requirements? Sometimes in the Parliament too much is said about our duties to meet requirements. What would happen if other member states did not meet our law enforcement agencies' requirements? What position would the Executive take if a member state such as Germany did not provide information in good time to us?

**Cathy Jamieson:** I am sure that we would want to follow such things up. Perhaps my officials could say whether we have not received information within the appropriate timescales.

**Daniel Jamieson:** I will make a general point. Where there are no infraction proceedings, the implementation of EU Council third pillar framework decisions is monitored by the Commission, which routinely requires member states to indicate what measures they have taken to implement dossiers and regularly reports on them. An individual member state cannot assess another member state.

**Jeremy Purvis:** I appreciate that, but I wondered whether there was a mechanism in Scotland that would assist the Executive in making representations to the Commission after our police forces had made requests. However, I think that that point is on the record and I see the minister nodding to acknowledge what I have said.

We are talking about information on criminal convictions. Of course, there is now the DNA database and there are concerns about the security of information that is given to other member states. There is a robust system in this country, although whether it can be made more robust can be debated. What confidence exists that the information that is provided to other member states will be secure and that it will not be transferred to and used by third parties? I am thinking about potential organised crime in some areas, especially if profile information from DNA samples is given over. Under the decision, can DNA profiles and samples be given over? How satisfied is the Scottish Executive that information about Scottish citizens will be secure and will not be given to third parties in other member states?

**Cathy Jamieson:** It is important to remember that we are talking about the exchange of information about criminal records and that the primary intention is to improve information sharing for policing and judicial purposes. Information will

not be stored in a random fashion. When requests are received, they will obviously have to be responded to, but the information that is provided will primarily be about where a record is held on the criminal history system. The appropriate member state will be notified if one of its nationals is convicted in a Scottish court, for example. My understanding is that we will not supply a whole range of information about people; as I say, we are primarily talking about information that is held on the criminal history system.

**Jeremy Purvis:** Does that mean that it would not be possible to send DNA samples?

**Cathy Jamieson:** We have already discussed DNA samples and profiles in another context. I am not aware of any suggestion that samples would be sent.

**Daniel Jamieson:** This stream of work deals exclusively with criminal convictions. Other proposals further back in the stream relate to what Jeremy Purvis asks about and there is a draft framework decision on the principle of availability, which covers DNA information. However, that is a considerable way off and negotiations have not yet started on it.

**Cathy Jamieson:** Nothing in the orders before us today would allow the exchange of DNA samples and profiles.

**Jeremy Purvis:** The framework decision on financial penalties is to be implemented in March next year. I understand that the Executive has stated that it needs to liaise with the Home Office on technical matters so that a fine that is imposed in one member state can be enforced in another and to ensure consistency throughout the UK. Have those matters been addressed successfully?

**Cathy Jamieson:** I cannot provide much of an update today on whether we have resolved those issues. There have been concerns about the compatibility of financial penalties. Officials might be able to give us news from the latest working group meetings.

**Daniel Jamieson:** The framework decision has been agreed and the relevant division in the Justice Department is considering issues that it raises. It will continue to liaise with the Home Office.

**Jeremy Purvis:** Perhaps you will be able to come back and update the committee on those discussions.

**Cathy Jamieson:** We will certainly be able to do that. Although we can pursue matters to an extent, we are in the hands of others as far as timescales are concerned. I recognise that that is not particularly satisfying for the committee, but I cannot give you an answer to your question today. We will supply the information when we can.

**The Convener:** You have highlighted two or three matters that are works in progress. Perhaps you will write to both justice committees at the next opportunity about the generality of what comes out in the wash, so to speak.

**Cathy Jamieson:** I certainly hope to do so. One of the things that I planned to say in my opening remarks was that I have tried to keep to my previous commitment that whenever I attend justice and home affairs council meetings, I write to the committees thereafter to update them on decisions taken and progress made. I will continue to do that.

**Maureen Macmillan:** The draft Council decision on the improvement of police co-operation between EU member states seeks to improve co-operation between law enforcement authorities, for example in the prevention and detection of crime, at international events and in operational planning. What is the current status of that draft Council decision?

**Cathy Jamieson:** Again, I understand that this will sound as if progress has ground to a halt. We have been in touch with Home Office officials about the draft Council decision. We did not identify it as a key area on which we want to focus, but one of the Westminster select committees has picked up some issues about the decision. I am not aware of any recent meetings of the working groups about the matter. I am sorry that I cannot give the committee any further information about how it is likely to be progressed.

**Maureen Macmillan:** Okay, but you will keep us informed as and when information comes along.

**Cathy Jamieson:** Indeed.

**The Convener:** We turn now to civil judicial co-operation. The small claims procedure in Scotland sets the limit of a claim at £750. A number of organisations consider that to be low. The equivalent limit in England and Wales is £5,000. The proposed limit under the compromise text for the European small claims procedure is €2,000. Has the UK Government been successful in its efforts to amend the text, so that individual member states have the flexibility to set a higher limit?

**Cathy Jamieson:** You referred to the current position in Scotland. As you are aware, that has been the subject of on-going discussions since the previous session, but we have not yet managed to reach a consensus on how to deal with our small claims procedure. You referred to the European situation. People now travel more widely to do their business and families tend to move around. We want consumer issues to be dealt with in a more satisfactory way. Rather than harmonising procedures to create one system across the whole EU, we want to ensure that where cross-border

issues come into play, they can be dealt with more quickly than was the case in the past.

**The Convener:** Do you intend to alter the current Scottish limit as a result of the intended creation of the European small claims procedure?

**Cathy Jamieson:** As you and other committee members may be aware, there have been a number of discussions about our small claims procedure, whether it is fit for purpose and whether the current limits are correct. We have been reviewing the position here, rather than reacting to developments in a European context. The discussions are on-going.

**The Convener:** The UK Government was concerned that the version of the small claims procedure on which it consulted in 2005 applied to internal cases as well as cross-border cases. Does the compromise text still include internal cases?

**Cathy Jamieson:** No. I understand that it is restricted to cross-border cases. That is the basis on which I answered the previous question.

**Bill Butler:** You will be aware that three strands of policy work are being pursued at EU level in relation to family law. Given that the proposals on divorce, maintenance obligations and matrimonial property are regarded as being closely interlinked, does the UK Government's decision not to formally opt into negotiations on the maintenance obligations proposal mean that it must take the same approach to the work on divorce and matrimonial property?

**Cathy Jamieson:** It is for the UK Government to decide how to proceed case by case on all the issues that you raise. The Commission has not issued a final proposal on the applicable law on jurisdiction in divorce. That is not likely to happen until later this summer. At this point, it is unclear what the final Scottish Executive and UK Government position will be. In parliamentary debates, members indicated strongly that we should seek to protect the current position in Scotland and to ensure that, by adopting a different model, we do not create situations in which families are subject to less certainty within a new structure than is the case at present.

**Bill Butler:** I understand that the UK Government can opt into the finalised instrument and that, in practice, it will participate in negotiations. Can you keep us up to date on all three strands? That would be helpful to the committee.

**Cathy Jamieson:** We can do that. Paul Cackette is the expert on these matters and will keep me apprised of the progress that has been made. We will be more than happy to provide the committee with information on that.

**The Convener:** As there are no further questions, I thank the minister and her colleagues for attending this afternoon's meeting and I thank her for the openness and fullness of her answers. We look forward to receiving the notes that she has promised in due course.

**Cathy Jamieson:** I am sorry that on many occasions I had to tell the committee that it appeared as if little progress had been made. I hope that the committee will bear with us as we attempt to provide further information on matters whose timescales are outwith our control. I put on record the fact that, during the UK presidency, we achieved a great deal. I did not have the opportunity to speak about that today.

**The Convener:** The committee is grateful for the update that you have provided.

## Subordinate Legislation

15:15

*Meeting continued in private until 16:55.*

### Scotland Act 1998 (Agency Arrangements) (Specification) Order 2006 (SI 2006/1251)

15:15

**The Convener:** Item 4 is consideration of subordinate legislation. There is one negative instrument to be considered. Do members wish to comment on the order?

**Members:** No.

**The Convener:** Are members content with the order?

**Members** *indicated agreement.*

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