

# **JUSTICE AND HOME AFFAIRS COMMITTEE**

Tuesday 28 November 2000  
*(Morning)*

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## JUSTICE AND HOME AFFAIRS COMMITTEE

35<sup>th</sup> Meeting 2000, Session 1

### CONVENER

\*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

### DEPUTY CONVENER

\*Gordon Jackson (Glasgow Govan) (Lab)

### COMMITTEE MEMBERS

\*Scott Barrie (Dunfermline West) (Lab)

Phil Gallie (South of Scotland) (Con)

\*Christine Grahame (South of Scotland) (SNP)

\*Mrs Lyndsay McIntosh (Central Scotland) (Con)

Kate MacLean (Dundee West) (Lab)

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

\*Pauline McNeill (Glasgow Kelvin) (Lab)

Michael Matheson (Central Scotland) (SNP)

Euan Robson (Roxburgh and Berwickshire) (LD)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Iain Gray (Deputy Minister for Justice)

### CLERK TO THE COMMITTEE

Andrew Mylne

### SENIOR ASSISTANT CLERK

Alison Taylor

### ASSISTANT CLERK

Fiona Groves

### LOCATION

Committee Room 2



# Scottish Parliament

## Justice and Home Affairs Committee

Tuesday 28 November 2000

(Morning)

[THE CONVENER *opened the meeting at 09:31*]

**The Convener (Alasdair Morgan):** Okay folks, we will start. I have received apologies from Phil Gallie and Euan Robson. Michael Matheson is running late because his train was cancelled. I welcome Lynn Tullis to the meeting as an observer. She will take over part of the clerking role when Andrew Mylne moves on to greater things.

I have other administrative arrangements to draw to members' attention, but I will do that later when the turnout is greater.

### Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2000 (SI 2000/draft)

**The Convener:** The first item on the agenda is for Iain Gray, the Deputy Minister for Justice, to move motion S1M-1339, on the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2000 (SI 2000/draft). Iain Gray has 90 minutes, but he need not use all that time.

**The Deputy Minister for Justice (Iain Gray):** If I get close to running over time, I am sure that the convener will let me know. I will need not 90 minutes but, perhaps, 90 words to give a brief explanation of the purpose of the order and what it covers. I will be happy to answer any questions.

The Scotland Act 1998 recognised that, in some cases, it would be appropriate for Scottish ministers to be able to exercise executive powers in areas for which primary legislation continued to be reserved to Westminster. That has become known as executive devolution. Section 63 of the Scotland Act 1998 allows functions in reserved areas to be transferred to Scottish ministers, or for Scottish ministers to be given a role by introducing requirements to consult them or to obtain their agreement to the exercise of functions by United Kingdom ministers. The functions that are stipulated in the order that we are discussing are being transferred to Scottish ministers.

The powers that the order covers fall under

three headings, to which it is worth drawing the committee's attention. Members will have seen the note that was prepared to explain the entries in the order in detail. First, under sections 5 and 32 of the Regulation of Investigatory Powers Act 2000, the secretary of state can exercise functions in or as regards Scotland, in relation to the issue of warrants. Those functions will be transferred by the order to Scottish ministers. For the purposes of preventing or detecting serious crime, section 5 of that act provides for the issue of warrants that authorise the interception of communications by the police and HM Customs and Excise. Section 32 provides for the issue of warrants that authorise intrusive surveillance by the intelligence services.

Broadly, the effect of the order will be that only Scottish ministers will be able to issue warrants under the specified sections of the Regulation of Investigatory Powers Act 2000. Those sections authorise the interception of communications in respect of a person or a set of premises that are located, or are believed to be located, in Scotland at the time that the warrant is issued. They will also be able to authorise intrusive surveillance by the intelligence services in relation to residential premises in Scotland, or a private vehicle that is, or is believed to be, located in Scotland at the time that the warrant is issued.

The second area that the order covers concerns pipelines. The order transfers functions to Scottish ministers to enable them to give developers consent to lay certain gas pipelines that begin and end in Scotland. It also gives Scottish ministers powers to approve compulsory purchase orders that are associated with those pipelines.

The third topic concerns schedule 12 to the Poisons Rules 1982. That schedule allows the secretary of state to authorise persons to purchase strychnine for the killing of moles and to authorise officers of the then Department of Agriculture and Fisheries for Scotland to purchase strychnine for the killing of foxes. The order will transfer those functions to Scottish ministers and, at the same time, will change references to officers of the obsolete department to references to members of the Scottish Administration.

That was a swift description of the three main areas that are covered by the order. I am happy to respond to any comments or questions that the committee has.

I move,

That the Justice and Home Affairs Committee recommends that the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2000 be approved.

**The Convener:** Do any members wish to contribute to the debate?

**Christine Grahame (South of Scotland) (SNP):** May I ask the minister a question?

**The Convener:** We are in formal debate, but you can ask your question in the form of a short speech to which the minister will reply in summation.

**Christine Grahame:** That will be a bit tricky for me at this time of the morning, but I will try to formulate my question as a statement.

Further orders might be on the way to deal with devolved matters—will the minister give us notice of any other such orders that might be en route to the committee, apart from the order we are debating?

I would also like to request from the minister a point of information on something that I do not know about. Paragraph 5 of the Executive note on the order states:

“The Order also transfers powers under the Utilities Act 2000, when it comes into force, to permit the Scottish Ministers to make orders to put in place a renewables obligation in Scotland.”

I will be interested to hear the minister explain what that means.

**Pauline McNeill (Glasgow Kelvin) (Lab):** The functions that will be transferred to Scottish ministers were held by the Secretary of State for Scotland. How will the transfer work? To which ministers will the powers fall, and in which cases? I presume that the powers do not fall to the First Minister—if that were so, the order would specify it. Will the deputy minister clarify the position?

**The Convener:** Do any more members want to contribute to the debate? If not, I invite the minister to sum up.

**Iain Gray:** I am aware of two similar orders that will be subject to scrutiny by the Westminster Parliament and the Scottish Parliament. Orders that are made under section 30(3) of the Scotland Act 1998 come up from time to time. I might be stepping beyond my knowledge, but I think that the matter depends on new legislation from Westminster, which might require a further order. As the orders are presented to Parliament, they are assigned to a relevant committee that has the most significant interest. The order that we are discussing was assigned to the Justice and Home Affairs Committee probably because it affects powers on interception of communications and surveillance. The two further orders might not be assigned to the committee. I have no more information than that.

The renewables function is an important aspect, to which I should have referred. When the Utilities Act 2000 comes into force, the order will transfer powers under it to Scottish ministers, to permit them to make orders to put in place a renewables

obligation in Scotland. That will allow the Scottish Executive to discharge its commitment to promoting renewable energy and to acknowledge the role that renewable energy has in matters such as tackling climate change. We intend to release a consultation paper soon, which will cover the implications of the imposition of such a renewables obligation. I am sure that that will become a topic of debate among the public and members of Parliament.

Pauline McNeill asked which minister the powers would be devolved to. Technically, any Scottish minister could exercise the powers. However, it is relatively clear which would be the appropriate minister to take the decision in most instances, but it is perhaps less clear for the intrusive surveillance powers. The importance of those powers means that either the First Minister, or the Deputy First Minister deputising, would take such decisions. For some of the pipeline orders or poisons functions, I imagine that the decision would be likely to devolve to the Minister for Rural Development. However, the transfer is technically to Scottish ministers collectively.

**Pauline McNeill:** Transferring the exercise of a function from one person to a number of people—however many there are in the Cabinet—is a significant change. A range of people could exercise the function. If any Scottish minister can issue a warrant, I want to be assured that some mechanism will check that process. Perhaps some guidance would be in order, to make it clear who would issue warrants and in what circumstances. The matter is controversial.

**Iain Gray:** The position that Pauline McNeill describes follows from the Scotland Act 1998. The powers are vested in the Scottish ministers collectively. Another example that occurs to me is planning legislation. Planning decisions that were previously considered by the secretary of state have passed to the Scottish ministers collectively. I imagine that practice and convention will develop over time. It is certainly the Executive's intention that only the First Minister or Deputy First Minister should take decisions on intrusive surveillance.

**The Convener:** The question is, that the motion be agreed to.

*Motion agreed to.*

That the Justice and Home Affairs Committee recommends that the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 2000 be approved.

**The Convener:** I thank the minister for attending.

The committee will publish a report on the order, which will set out its recommendation. The report will be brief and in a standard form. We will e-mail that report to the committee and if any member

has any problems with it, the member should notify the clerks right away. The time scale does not allow us to consider that short report at the committee's next meeting, but there should be no problems—the report is formulaic.

## European Documents

**The Convener:** The first two documents on the list of those to consider are 972 and 1600, which replaces 1190. Those documents were referred formally to the committee. The other documents were simply notified to the committee for information, but as a result of discussions at our previous meeting, we decided to put all the documents on the agenda for today's meeting. We also have more explanatory information from the clerks.

Do members who raised points at last week's meeting have anything to add as a result of the additional information?

**Pauline McNeill:** I am none the wiser. My reading of document 972 is that—as we discussed at last week's meeting—it is an attempt to make uniform throughout Europe the legislation on criminal offences in competition law. The conclusion is that Scots law is probably sufficient as it stands. I picked out from the clerk's note the sentence that reads:

“In this case separate implementation may be required in Scotland”.

I am not clear about how we decide whether that would be required. Are we supposed to take evidence, or do we make a decision now?

09:45

**Christine Grahame:** I missed that meeting, unfortunately, but I agree with Pauline McNeill. We are supposed to scrutinise material that comes from the Executive; I do not want us to act as a rubber stamp. We hear that Scots law is already sufficient to deal with these matters, but I wonder whether we should ask for outside advice from an academic in Scots law, both criminal and commercial. That would allow us to check the view that we have been presented with. I feel that I am quite ignorant on these matters and would like to have some guidance other than—with all due respect—the guidance that comes from the Parliament. For instance, is outside consultation being sought on these documents?

**The Convener:** The documents are not sent to us for our approval—they are not like a statutory instrument for which we have the role of saying yea or nay. We are free to write to ministers to seek their comments or to ask to be kept informed of what is going on. It is open to us to take evidence either on the general implication for our processes of European documents as a whole or to hear views on any particular document.

We will have to watch that we do not become swamped with European documents and spend

our time doing nothing else. However, I will take the committee's advice. Do members wish to take further action on any individual document or on the whole principle of European documents? I am in your hands.

**Maureen Macmillan (Highlands and Islands) (Lab):** Did the documents come to us from the European Committee?

**The Convener:** Yes. The first two in the list on the agenda were formally referred to us; the others were sent simply for us to note, which is why they are attached at the end of the agenda.

**Maureen Macmillan:** If we have concerns, we can indicate them to the European Committee without necessarily holding an investigation ourselves. Both committees could then write to the European Commission and the United Kingdom Government to raise any concerns.

**Christine Grahame:** I want to press the point that we require further information—especially given that the revised drafts of documents 1600 and 1224 affect Scots criminal law. It does not matter whether we can change what happens: if we have a valid comment, we should comment. I would like to hear an independent view, especially on the

“standing of victims in criminal procedure”

and the

“principle of mutual recognition of decisions in criminal matters”.

I want to know whether the documents contain any difficulties for the integrity of Scots criminal law. We perhaps do not need to take oral evidence, but we should get written evidence from an academic. That might be a belt-and-braces approach, but it would allow us to be sure that the appropriate line was being taken. Some points stand out, but there may be other important points that we are not aware of.

I would also like to have a briefing on the ethos of the documents. Will they be directives? If they are to have the impact of directives, they will be fairly forceful. It would be useful if an academic in European legislation could give us a briefing to explain how such documents evolve and what it means when, for example, various nations have opt-outs. I would like us to know what we are reading.

**Maureen Macmillan:** Rather than going to an outside source, we could ask the legal advisers to the European Committee. They know about European law and may be able to explain the issues to us.

**The Convener:** Members are suggesting two things: to write to somebody—and Christine Grahame knows the usual suspects better than I

do—to ask whether documents 1600 and 1224 will cause any specific problems, and to ask for a briefing on the general processes involved with the documents. As Maureen Macmillan suggests, that information is probably already available. Whom should we write to on the specific implications of documents 1600 and 1224?

**Christine Grahame:** Professor Robert Black.

**The Convener:** Gordon Jackson is pulling a face.

**Gordon Jackson (Glasgow Govan) (Lab):** Professor Black is incredibly busy on the whole Lockerbie thing. On the radio this morning, he called himself a “Lockerbie buff”.

**Christine Grahame:** I did not hear that, so that is not why he sprang to mind.

**Gordon Jackson:** We could ask Joe Thomson of Glasgow. I do not have a strong view on this, but he is into all these things.

**Pauline McNeill:** I have no desire to go down the road of changing Scots law. It will lead to an interesting constitutional question if our UK and EU representatives say that we should go down that road. The bottom line is that we have the final say on criminal law, and I do not want to change it. I do not want competition law to be changed from civil to criminal, and I do not see the need to change criminal law.

The objectives of the documents are given. I am not concerned about the issues of bribery and corruption, because they are dealt with by the competition laws that we already have. I am not sure what the part about secret agreements is driving at. Is it driving at the recent discussions about shipbuilding contracts? We may also need to take advice on the business side of things. We should be thinking ahead. However, my gut feeling is that there is no need for change, but perhaps someone could convince the committee that there is.

**The Convener:** We seem to be getting into policy areas, in which case it is the minister or his representatives to whom we should address our questions.

**Christine Grahame:** The time scale may not allow us to take oral evidence but, before we see the minister, I would like us to arm ourselves with the written comments of Joe Thomson, or someone like him. If we do not, it will be hard for us to ask the right questions. Does not one of the documents come into force in a couple of days anyway? That would make our discussions a bit academic. At this stage, we perhaps need to learn a little about the process.

**The Convener:** The negotiations on some documents are at an advanced stage, so it may be

too late for us to influence them.

At the previous meeting, we agreed that I would write to Jim Wallace; I have not done so yet, because I wanted to hear what came out of this meeting. In that letter, I could express our general concern that we may be on the way to committing ourselves to making changes to Scots law almost as a by-product, without anyone knowing about it. In the meantime, we can write to someone to ask specifically about the two documents that we have talked about. I am conscious of the fact that, when one asks a lawyer for advice, a bill usually arrives. I am not sure whether the committee can take that on. I will think about that before deciding whom we will write to and what we will ask.

Are members happy that I should write to the minister to express our general concern about the implications for Scots law of the European agreements, if they are reached?

**Maureen Macmillan:** Would advice from the Law Society of Scotland be free?

**The Convener:** We certainly do not charge the society when it sends us e-mails and documents that we have to read. I am sure that writing to it would be mutually beneficial. We should hear what it has to say.

**Christine Grahame:** We do not have to ask it for advice. Could we not word our letter so that it asks for evidence, rather than advice?

**The Convener:** Yes. I will ask for its opinion, or evidence.

**Maureen Macmillan:** Opinions come very dear, do they not, Gordon?

**Gordon Jackson:** Not mine.

**The Convener:** Are members happy with my suggestions?

**Members indicated agreement.**

**Christine Grahame:** What would be the time scale for this?

**The Convener:** The letter to the minister will go within the next week, as will the letter to the Law Society. When they respond is more in their hands than mine.

**Christine Grahame:** Will we have a briefing from the European Committee's legal team? Before we face any more European documents, it would be useful to have an explanation on how things operate and how enforceable the documents are. That would give us an environment in which to work; at the moment I do not understand things fully.

**The Convener:** I will arrange for a briefing from the legal team, which we will circulate to members. If members feel that it raises more questions than

it answers, we could arrange for the team to come to the committee.

**Members indicated agreement.**

## Glasgow Courts (Visit)

**The Convener:** We move on to item 3 on our agenda. Michael Matheson has not yet arrived; he was one of the two members who visited the Glasgow Bar Association. The only other item on the agenda is fairly brief, so I would like to take item 3 now. Pauline, would you like to report to the committee on your visit to the courts in Glasgow?

**Pauline McNeill:** It was useful and interesting to see what is, I think, the country's biggest sheriff court. It was all new to me; I had not seen such a court in operation before. I arrived a bit late, so I missed one of the courts—the intermediate diet court, I think—but I caught up with it later in the afternoon.

The court is busy and it is possible to see how justice begins to break down if the administration does not function properly. For example, we visited the remand court; in one instance, the papers from the Crown Office were not available and the case had to be abandoned until the afternoon. The Bar Association told us later about the problems that such things can cause, especially for the defence. It also got in its bit about fixed fees. Problems can be caused for solicitors if they have planned to be in court on a particular day and then, through no fault of theirs, papers are lost and they have to reschedule everything.

We also visited the custody court. I arrived late; but although it was due to start at 2 o'clock, it did not start until 2.35 pm, so I did not really miss anything. It was interesting to see the speed at which everything works given that so many cases have to be dealt with. At this time of year, it is notable how many witnesses and people simply do not turn up. Warrants then have to be issued for their apprehension.

I eventually got to the intermediate diet court, but Michael Matheson may be able to tell you more about it, because he sat in for longer. In Glasgow there is a particular problem with that court: it is the one that deals with pleas and so on. We were told that there is less scope for that, because not all the information that should be available is available. For example, police reports are not made available at the intermediate diet, so the defence, in particular, does not get the opportunity to see the information. If a fiscal is not available and someone wants to make a plea, the whole thing begins to fall down.

Later, in a conference room, we discussed some of the concerns of the Bar Association. It has strong views on legal aid, for example, and hopes to be called to the Parliament to give evidence. I know that we will talk about that later.

The visit was useful, but I felt that it lacked focus. I would have liked to come away with three or four big changes that the Bar Association wanted, but I would be happy to go back. Three quarters of a day was probably not enough to take everything in. The three clerks were also there; they may want to add something.

10:00

**Christine Grahame:** I have been in sheriff courts often, so what Pauline says is not strange to me. I was not a criminal practitioner, but I saw the criminal courts in practice when I was there doing simple pleas.

Is it your view that, as emerged from the evidence that we took from the Executive, the procurator fiscal service is under-resourced and that there are simply not enough fiscals to handle court work? Did you find that there were vast piles of papers on various cases at the intermediate diet? Did you go to the pleading?

**Pauline McNeill:** It was difficult to see that in action in that snapshot, but it was clear that, in Glasgow, the lack of procurators fiscal is a problem. I did not know that retired fiscals were coming in part time, but I am told that the courts are making more use of such people.

**Christine Grahame:** Why were the custody disposals late? Had the sheriff been doing something else? You said that the session did not start until 2.35 pm. Was there a shortage of sheriffs?

**Pauline McNeill:** We were not given a reason for the delay, although we have heard that there have been problems when courts have been merged or nobody has been available. There were certainly lots of people running about trying to find courts to have cases heard in—there was undoubtedly a bit of chaos.

We were not given a specific reason why the court started late. However, as Alison Taylor will tell you, most of the courts that we went to started on time because we were there. It was a bit like the Queen's visit in that sense, so we may not have seen things at their peak. The Glasgow Bar Association was certainly clear that there were some problems connected with trials not starting on time and we were told that the working day of sheriffs needed to be looked at.

**The Convener:** Do you have any comments, Gordon?

**Gordon Jackson:** I was not there.

**The Convener:** I know that you were not there, but I thought that you might have some comments to offer from your own experience.

**Christine Grahame:** I have another question, which relates to the letter from the sheriff principal.

**The Convener:** I was going to mention that. We have had an invitation from the sheriff principal to visit the courts again to see things from the other side, as it were. If members feel that that would be useful, we could arrange such a visit. Would members like to do that?

**Members** *indicated agreement.*

**The Convener:** Those members who would like to visit the courts should give their names to the clerks after the meeting. As Michael Matheson has not arrived, we will have to go on to item 4 on the agenda.

## Europe Familiarisation Scheme

**The Convener:** We have been asked to nominate a committee member for the European Parliament familiarisation programme, which, given the earlier item on today's agenda, may be helpful. There is a short familiarisation programme for a group of committee conveners and/or members, which is likely to take place next spring. We do not yet have a date for it, so we do not know how it will mesh in with other commitments. I do not think that we even know how many days it will last. Is anyone interested in going?

**Christine Grahame:** Would not it be appropriate for you, as convener, to attend?

**The Convener:** Okay. I am happy with that. Could we also nominate a reserve? I am conscious that I may be committing myself to something without knowing its date or duration.

**Mrs Lyndsay McIntosh (Central Scotland) (Con):** In the event of your unavailability, would not it be best to make our reserve our deputy convener?

**The Convener:** Are you happy with that, Gordon—if not ecstatic?

**Gordon Jackson:** That is fine. I may push you under a bus, Alasdair.

**Christine Grahame:** It is the only goodie that has come our way.

**The Convener:** Indeed. I am sure that there are attractions.

**Mrs McIntosh:** Every other committee has been on exciting visits, and where did we go? Barlinnie.

**The Convener:** I am sure that Brussels is not all that different.

**Christine Grahame:** It has got to be better than Barlinnie.

**The Convener:** Order, order.

That is the end of the agenda. I remind members that our next formal committee meeting will be next Wednesday in committee room 3. Among our agenda items will be the Divorce etc (Pensions) (Scotland) Amendment Regulations 2000, which I am sure you will all look forward to excitedly, and evidence on police self-regulation from the Association of Scottish Police Superintendents. After next week's meeting is finished, we shall have a briefing from members of the Law Society of Scotland legal aid committee.

*Meeting closed at 10:06.*



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