

# **JUSTICE COMMITTEE**

Tuesday 29 January 2008

Session 3

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## **JUSTICE COMMITTEE**

### **3<sup>rd</sup> Meeting 2008, Session 3**

#### **CONVENER**

\*Bill Aitken (Glasgow) (Con)

#### **DEPUTY CONVENER**

\*Bill Butler (Glasgow Anniesland) (Lab)

#### **COMMITTEE MEMBERS**

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

\*Nigel Don (North East Scotland) (SNP)

\*Paul Martin (Glasgow Springburn) (Lab)

\*Stuart McMillan (West of Scotland) (SNP)

\*Margaret Smith (Edinburgh West) (LD)

\*John Wilson (Central Scotland) (SNP)

#### **COMMITTEE SUBSTITUTES**

Aileen Campbell (South of Scotland) (SNP)

Marlyn Glen (North East Scotland) (Lab)

John Lamont (Roxburgh and Berwickshire) (Con)

Mike Pringle (Edinburgh South) (LD)

\*attended

#### **CLERK TO THE COMMITTEE**

Douglas Wands

#### **SENIOR ASSISTANT CLERK**

Anne Peat

#### **ASSISTANT CLERK**

Euan Donald

#### **LOCATION**

Committee Room 2



## Scottish Parliament

### Justice Committee

*Tuesday 29 January 2008*

[THE CONVENER *opened the meeting at 10:24*]

### Subordinate Legislation

#### Bankruptcy Fees (Scotland) Amendment Regulations 2008 (SSI 2008/5)

**The Convener (Bill Aitken):** Good morning, ladies and gentlemen. I remind everyone to switch off mobile phones. We have received apologies from Cathie Craigie and from Bill Butler, who is unfortunately having transport difficulties this morning. We hope that he will be with us shortly.

Agenda item 1 is subordinate legislation. There is one negative instrument for the committee's consideration. As no member wants to comment, do we agree to note the regulations?

**Members** *indicated agreement.*

## Justice and Home Affairs in Europe

10:25

**The Convener:** Item 2 is a discussion on justice and home affairs in Europe. I welcome for this item Iain McIver, who is the European researcher from the Scottish Parliament information centre. Members have the clerk's paper and the annexes to which it refers. I have two points to mention. First, the European and External Relations Committee has not yet decided whether to conduct an inquiry into, or merely to focus on, the reform treaty. Secondly, paragraph 22 of the clerk's paper suggests that a Justice Committee member could attend the EERC's meeting on 5 February but, as members know, a visit to the Crown Office has now been arranged for the morning of that day, immediately after our committee's meeting.

I invite members to consider the paper and take decisions on the points that are listed at the end of it. I know that members will have read the paper, which raises several issues that are of interest and concern. European legislation impinges more and more on Scots law and we do not wish to be caught short by anything that is going on. The clerk's paper says that several European Union dossiers might interest the committee. I suggest that we examine the dossiers. The divorce regulation might well be of interest, because the danger is that, as a result of what is or is not going on, the process here could be subject to undue delays. Do members have views on what we should consider?

**Margaret Smith (Edinburgh West) (LD):** I agree about the divorce regulation.

Paragraph 18 says:

"The Reform Treaty covers a number of devolved matters ... but neither the UK Government's white paper on the Reform Treaty nor the Explanatory Memorandum made reference to consultation with the devolved administrations, ministerial responsibility for ... devolved matters ... or Scotland's separate legal system."

I have told colleagues that the Law Society of Scotland has raised with me concern about consultation with devolved Administrations, so perhaps that should be pursued by us or by the European and External Relations Committee and flagged up to the United Kingdom Government. It is important not to have oversights just because someone in Westminster has not realised that, as Scots law is different from English law in some regards, something might be more applicable to Scotland than to the rest of the United Kingdom. In some situations, people could genuinely make a mistake.

Further, the UK Government's consultation period is short. Eight weeks is a tight timeframe within which to consult Scottish ministers and the Scottish Parliament, as well as the UK Government and the UK Parliament, before passing comments back to the Commission. We must ensure that the issue is on the agenda both at Westminster and here from the outset.

**The Convener:** I concur. The proper approach may be for us to wait and see what the European and External Relations Committee does. We can intervene if we think that that is necessary. The European and External Relations Committee will deal with the full picture, whereas our interest in the matter is restricted. However, you are correct when you say that we need to keep an eye on the situation.

10:30

**Nigel Don (North East Scotland) (SNP):** I concur. I would like to mention some specific dossiers, but I, too, am very concerned that a number of people down south simply do not recognise—or recognise far too late—that there is another legal system up here. I am not quite sure what the correct mechanisms are, but perhaps we should ask the Government whether it is looking at the mechanisms for consultation. If it is not, perhaps it should, to ensure that they are robust.

All the dossiers are interesting at one level, but those relating to families, the law of succession and wills and matrimonial matters are particularly interesting. Recognition and enforcement of decisions relating to maintenance obligations and matrimonial property will be difficult to harmonise across Europe. In our national context, that is an increasingly important area of law and a priority.

**The Convener:** All the dossiers to which Nigel Don refers are important, but we must recognise the time constraints to which we are subject. I will try to narrow down the issues. There are five dossiers in which we have a greater or lesser interest. If possible, I would like to restrict our consideration to three of them, given the time constraints to which I referred. Do members agree that the matrimonial issues are a priority?

*Members indicated agreement.*

**The Convener:** Succession and property entitlements are also a major issue. Mr Don, what do you suggest as the third priority?

**Nigel Don:** You have picked up the first two dossiers that are listed in annex C. The second dossier on page 2 is the proposed Council regulation on recognition and enforcement of decisions relating to maintenance obligations, which is another aspect of matrimonial matters. I suggest that we include in our considerations both

that dossier and the second dossier on page 3, which is the green paper on matrimonial property regimes. We should consider together the four dossiers that have been mentioned.

**The Convener:** That seems eminently sensible. Do members agree to the suggestion?

*Members indicated agreement.*

**The Convener:** I turn to paragraph 26 of paper J/S3/08/3/2. We have dealt with subparagraph (a) and have agreed on what we propose to do. The other recommendations in the paragraph seem eminently sensible. Do members agree to the recommendations?

*Members indicated agreement.*

*Meeting closed at 10:33.*

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