

# **JUSTICE COMMITTEE**

Tuesday 15 September 2009

Session 3

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### **JUSTICE COMMITTEE** **24<sup>th</sup> Meeting 2009, Session 3**

#### **CONVENER**

\*Bill Aitken (Glasgow) (Con)

#### **DEPUTY CONVENER**

\*Bill Butler (Glasgow Anniesland) (Lab)

#### **COMMITTEE MEMBERS**

\*Robert Brown (Glasgow) (LD)  
\*Angela Constance (Livingston) (SNP)  
\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)  
\*Nigel Don (North East Scotland) (SNP)  
\*Paul Martin (Glasgow Springburn) (Lab)  
\*Stewart Maxwell (West of Scotland) (SNP)

#### **COMMITTEE SUBSTITUTES**

Aileen Campbell (South of Scotland) (SNP)  
John Lamont (Roxburgh and Berwickshire) (Con)  
Mike Pringle (Edinburgh South) (LD)  
Dr Richard Simpson (Mid Scotland and Fife) (Lab)

\*attended

#### **THE FOLLOWING GAVE EVIDENCE:**

Gerry Bonnar (Scottish Government Criminal Justice Directorate)  
Kenny MacAskill (Cabinet Secretary for Justice)

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

Andrew Mylne

#### **SENIOR ASSISTANT CLERK**

Anne Peat

#### **ASSISTANT CLERK**

Andrew Proudfoot

#### **LOCATION**

Committee Room 1



# Scottish Parliament

## Justice Committee

*Tuesday 15 September 2009*

[THE CONVENER *opened the meeting at 10:18*]

## Subordinate Legislation

### Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 (Draft)

**The Convener (Bill Aitken):** Good morning, ladies and gentlemen. I remind everyone to switch off mobile phones. We have no apologies—there is the maximum turnout.

Item 1 concerns subordinate legislation and is consideration of the draft Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009, which is subject to affirmative procedure. I draw committee members' attention to the draft order and the cover note, which is paper 1. The Subordinate Legislation Committee had no points to make on the order.

I welcome Kenny MacAskill, the Cabinet Secretary for Justice; Gerry Bonnar, from the criminal procedure division in the Scottish Government; and Ian Vickerstaff, from the Scottish Government legal directorate.

Do you wish to make an opening statement, Mr MacAskill?

**The Cabinet Secretary for Justice (Kenny MacAskill):** Yes—I will make a brief statement.

The purpose of the draft order is to implement for Scotland the 2005 framework decision by the Council of the European Union on mutual recognition of financial penalties. It will provide a widely applicable scheme that will enable Scottish fines and fixed penalties to be enforced elsewhere in the European Union, and it will enable other member states to seek enforcement in Scotland. It will do so by amending the Criminal Procedure (Scotland) Act 1995.

The scheme encompasses a wide range of offences for which financial penalties can be imposed. Scottish implementation is intended to occur on 12 October, and the Westminster Government intends to implement the framework decision on 1 October.

The draft order sets out the process for outgoing and incoming fines and penalties. The sheriff and justice of the peace courts will be the competent authorities for enforcing incoming penalties and for issuing outgoing request certificates to be

transmitted to other member states. As in England, Wales and Northern Ireland, the courts will be supported by a central authority. In Scotland, the central authority will be the sheriff clerk in Edinburgh. Requests from other countries for enforcement of fines in Scotland will be screened by the central authority, which will also assist with outgoing requests.

The enforcement of financial penalties in Scotland will be the responsibility of the Scottish Court Service and will remain subject to Scots law. Financial penalties that are collected under the framework decision will ordinarily be retained by the state that carries out enforcement, unless the penalty is compensation or a special agreement is made regarding remittance of the penalty. The requesting state will, in the certificate that accompanies the fine, specify the methods of enforcement that are permissible under its system. The executing state will be required to respect any restriction that may be involved, such as restrictions on imprisonment.

Although it is difficult to estimate the costs of, or income from, implementation until the volume of cases is known, the Scottish Court Service is satisfied that initial costs can be met from within existing resources. The Home Office has made initial estimates—based on limited data—that indicate that about 1,000 cases a year may be incoming and outgoing once the scheme is fully established throughout the European Union.

The draft order will provide useful assistance to authorities throughout the European Union in pursuing financial penalties across borders. It should allow for cross-border enforcement to be much more coherent than it is at present. I invite the committee to recommend that the draft order be approved by Parliament.

**The Convener:** That seems to be fairly straightforward. Are there any questions?

**Stewart Maxwell (West of Scotland) (SNP):** The cabinet secretary said that the Home Office had estimated that there would be 1,000 cases. Was that the figure for Scotland or the United Kingdom?

**Kenny MacAskill:** It is 1,000 incoming and outgoing cases for Scotland.

**Gerry Bonnar (Scottish Government Criminal Justice Directorate):** That figure is an extrapolation from a Home Office estimate.

**Nigel Don (North East Scotland) (SNP):** The policy objectives say that a penalty of less than €70 will not be recoverable. I can see why you might want to set that limit—it is too small a sum to worry about or it defines something that is trivial—but the costs of chasing any sum of money will be significant and a great deal larger than €70, so

what is the real policy objective? Getting somebody to pay a parking fine somewhere else might sometimes be a way of bringing them to justice and making them think, but it is not obvious to me why we have that lower limit, because the costs of chasing anything will be a great deal bigger than the sum that will be recovered.

**Kenny MacAskill:** We have to have a limit and many such limits are quite arbitrary. Why is it €70, and not €65 or €75? We just have to pick a level. We live in a transient world in which people have free movement within the EU and choose to live in other jurisdictions. It is not only individuals who can be pursued; corporations can also move between jurisdictions. It is simply a matter of being able to proceed and pursue matters.

It would be for the state that sought to enforce a penalty to make a judgment call. Unless someone was a repeat violator of parking regulations and was cocking a snook at the system, it might not seek to enforce. In other instances, where a point of principle or a significant amount was involved, enforcement might be felt to be appropriate. It is not so much a matter of the sum, which is relevant because it would be an inconvenience to the state that got the request. To some extent, it will be for the enforcing state to make a judgment on which penalties to pursue and why.

**Nigel Don:** I agree entirely. If that is the case, there is no need to have a lower limit at all. I wonder why it exists.

**Kenny MacAskill:** I presume that it is because there has to be some *de minimis* figure.

**The Convener:** I will attempt to be helpful. The amount probably relates to the sort of figures that would be imposed in respect of fixed penalties rather than court disposals in European countries.

How do you get round the fact that some countries may have a rather more robust approach to collection of fines than seems to exist in this jurisdiction at present?

**Kenny MacAskill:** In some jurisdictions, fines are taken by the police on the spot. That is not an approach that we take, although we are waiting on Westminster providing orders that will allow our police officers to ensure that some people—drivers, in particular—from foreign jurisdictions do not routinely flout the laws of our land when they come here. Those orders will give us some surety that we will be able to hold on to such people. I point out that such matters are subject to rules on traffic that are, for whatever reason, reserved to Westminster, even though they have consequences for our country.

**The Convener:** I think that that might cause more problems than solutions, but that is a matter for another day.

As there are no further questions, we move to item 2, which is consideration of motion S3M-4819, which asks that the Justice Committee recommend approval of the draft order.

*Motion moved,*

That the Justice Committee recommends that the draft Mutual Recognition of Criminal Financial Penalties in the European Union (Scotland) Order 2009 be approved.—[Kenny MacAskill.]

*Motion agreed to.*

**The Convener:** Are members content to consider a draft report on the instrument in private at our next meeting?

**Members indicated agreement.**

**The Convener:** I suspend the meeting briefly to allow the minister and his team to leave, and I thank them for their attendance.

10:26

*Meeting suspended.*

10:26

*On resuming—*

### **Act of Sederunt (Commissary Business) (Amendment) 2009 (SSI 2009/292)**

**The Convener:** We come, under agenda item 3, to the first of two instruments that are subject to negative procedure. The Subordinate Legislation Committee has drawn no matters to the attention of Parliament in relation to SSI 2009/292. However, the report notes that both this instrument and a closely related instrument that did not require to be laid—SSI 2009/293—breached the 21-day rule, and states that it would have been useful if the letter from the Cabinet Secretary for Justice to the convener of the Justice Committee explaining the timing of the instrument had been copied to the Subordinate Legislation Committee.

As members have no comments, are they content simply to note the instrument?

**Members indicated agreement.**

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** I dare say that you might already be thinking of raising this point in the Conveners Group or elsewhere, but the timing of instruments can be a bit out sometimes: the Government really needs to get its act together.

**The Convener:** Yes. I will raise that point at the next appropriate meeting of the Conveners Group, and will report back to the committee.

**Robert Brown (Glasgow) (LD):** In fairness, the instrument is entirely procedural. It is difficult to think of any issues that might arise from it.

**The Convener:** Yes, but there has been a history of difficulty.

10:28

*Meeting continued in private until 12:37.*

**Stewart Maxwell:** Yes—about 10 years.

**The Convener:** The fact that a situation has been unsatisfactory for 10 years does not mean that we should not pursue it.

**Stewart Maxwell:** Not at all; I would not suggest that.

**Scottish Court Service  
(Procedure for Appointment of Members)  
Regulations 2009 (SSI 2009/303)**

**The Convener:** The Subordinate Legislation Committee had no points to make on SSI 2009/303. Do members agree to note the regulations?

**Members** *indicated agreement.*





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