



**JUSTICE 2 COMMITTEE**

**AGENDA**

**25th Meeting, 2004 (Session 2)**

**Tuesday 14 September 2004**

The Committee will meet at 2.00 pm in Committee Room 1

- 1. Fire (Scotland) Bill:** The Committee will take evidence on the general principles of the Bill at Stage 1 from—

Brian A Murray, Firemaster, Highlands and Islands Fire Brigade, John Williams, Firemaster, Grampian Fire and Rescue, David Wynne, Firemaster, Dumfries and Galloway Fire Brigade, and Brian Allaway, Firemaster, and David Millar, Head of Corporate Services, Lothian and Borders Fire Brigade;

John McDonald, Executive Council Member for Scotland, Ken Ross, Scottish Regional Secretary, and Frank Maguire, Solicitor, Fire Brigades Union;

Walter Stewart, President, Derek Chadbon, National General Secretary, and Jim Smith, Station Manager, Cumnock, Retained Firefighters Union.

- 2. Justice and Home Affairs in Europe:** The Committee will consider an update paper by the Clerk.

Gillian Baxendine / Lynn Tullis  
Clerks to the Committee  
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Agenda item 1 – Fire (Scotland) Bill

Proposed areas for questioning  
(PRIVATE PAPER – MEMBERS ONLY) – to follow

J2/S2/04/25/1

Agenda item 2 – Justice and Home Affairs in Europe

Note by the Clerk

J2/S2/04/25/2

Fire (Scotland) Bill - additional submission of evidence

J2/S2/04/25/2b

- Grampian Fire Board

***Members are reminded to bring with them copies of the Fire (Scotland) Bill and accompanying documents and copies of the written evidence submitted on the bill.***

**Forthcoming meetings:**

- Tuesday 21 September 2pm – Justice 2
- Tuesday 28 September 2pm – Joint meeting with Justice 1 followed by Justice 2
- Tuesday 5 October 2pm – Justice 2

**JUSTICE 2 COMMITTEE**

**25th Meeting 2004 (Session 2)**

**Tuesday 14 September 2004**

Justice and Home Affairs in Europe  
Update Note by the Clerk

**Background**

1. At its meeting on 2 March 2004, the Committee received a briefing from Executive officials and considered a paper by the Clerks on scrutiny and monitoring of the Justice Department's work on EU issues. The Committee agreed that it was interested in forthcoming Green Papers on sentencing and bail and also the proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the EU.

2. At its meeting on 25 May 2004, the Committee considered a further paper from the Clerk and agreed:

- a. to maintain a watching brief, by way of updates from the Executive, on the Framework Decision on certain procedural rights in criminal proceedings;
- b. following publication on 30 April of the Green Paper on sentencing (formal title: Approximation, mutual recognition and enforcement of criminal sanctions in the European Union), to invite the Executive to give evidence, in due course, on its response to the consultation; and
- c. to await the publication of the Green Paper on bail (formal title: Mutual recognition of non-custodial pre-trial supervision measures) before deciding what action to take.

**Updates**

***Framework Decision on certain procedural rights in criminal proceedings***

3. The Executive wrote to key stakeholders inviting comments by 27 September to assist in contributing to the UK negotiating line. At this stage, the Executive appears to be broadly supportive of the aims of the proposal but has some concerns with particular aspects of the text.

4. The House of Commons Select Committee on European Scrutiny considered this Framework Decision and deemed it legally and politically important but did not clear it. The Committee's 22nd report of 2003/04<sup>1</sup> raised a number of issues that it wished to clarify with the Minister. It decided to hold the document "under scrutiny" pending the Minister's reply. After further correspondence with the Minister, the

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<sup>1</sup> <http://www.publications.parliament.uk/pa/cm200304/cmselect/cmeuleg/42-xxii/4217.htm>

Committee's 26th report remained "concerned about the wide scope of the proposal, since it will affect criminal procedure generally and not just those cases where some cross-border element arises". Further questions were raised with the Minister and the scrutiny reserve continued pending her reply.

**5. We suggest that the Committee invites Executive officials to a meeting in October to provide an update on the issues raised by stakeholders and how it intends to proceed.**

### ***Green Paper on sentencing***

6. The consultation period on this Green Paper was originally due to finish at the end of July but has been extended to the middle of October. The Scottish Executive has undertaken a mini-consultation on this Green Paper and will be sending its response to the Commission by the deadline. The response will be made available to the Committee at the same time.

7. The House of Commons Select Committee on European Scrutiny<sup>2</sup> has identified this as a legally and politically important document raising "profound issues which should be debated", in particular "the extent to which harmonisation of the criminal law, especially that relating to penalties, is really necessary as a condition for mutual recognition." The document will be debated by one of the European Standing Committees in the autumn.

**8. We suggest that the Committee should invite an update from Executive officials at the same time as the update mentioned in paragraph 5. The best time for this would appear to be after the October recess, when the Executive's response will be available. If the issues appear to warrant it, the Committee might then wish to hear from the Minister at a later meeting.**

### ***Green Paper on bail***

9. The Commission Green Paper on bail (formal title: Green Paper on the Mutual Recognition of Non-Custodial Pre-Trial Supervision Measures) was published on 17 August<sup>3</sup> together with a detailed Commission Staff Working Paper which provides an analysis of the legal framework and some thinking on what an instrument might entail. The paper is intended to address the issue of nationals of one member state being detained in another country prior to trial. The purpose of the proposals is described as "to substitute pre-trial detention with a non-custodial supervision measure and to transfer this measure to the Member State where the suspected person normally has his or her residence. This would allow the suspected person to be subject to a supervision measure in his or her normal environment until the trial takes place in the foreign Member State."

10. The Green Paper invites responses to some key questions by 30 November.

11. The Sentencing Commission for Scotland is currently undertaking work on the use of bail and remand and has published a consultation document with a deadline

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<sup>2</sup> 24th report 2004

<sup>3</sup> [http://europa.eu.int/comm/justice\\_home/news/consulting\\_public/news\\_consulting\\_public\\_en.htm](http://europa.eu.int/comm/justice_home/news/consulting_public/news_consulting_public_en.htm)

for responses of 30 September, The Executive has advised that the findings from the Sentencing Commission's work will be used to inform the Executive response.

12. The Committee will wish to consider what activity to undertake in relation to this Green Paper. Options would include:

- invite the Executive to update on progress when it attends to speak on other issues. However, if the Committee was not satisfied with the Executive's approach, this would probably be too late for the Committee to undertake any more proactive work on the Green Paper before the consultation deadline;
- alternatively, the Committee could invite officials and/or the Sentencing Commission to an earlier meeting to discuss this specific proposal and consider on that basis whether to undertake further Committee scrutiny at this stage. The Committee's timetable would allow this to be done before the October recess.

### **Conclusion**

13. The Committee is invited to agree—

- whether to invite officials to a Committee meeting to give an update on the framework decision on procedural rights;
- whether to invite officials to give an update on the Green Paper on sentencing; and
- whether to invite officials and/or the Sentencing Commission to give evidence on the Green Paper on bail and, if so, whether this should be at an early meeting or after the October recess.

Clerk to the Committee

9 September 2004

## SUBMISSION FROM GRAMPIAN FIRE BOARD

I enclose for your attention the comments of Grampian Fire Board on the Fire (Scotland) Bill.

In respect of amalgamation schemes the Board does not support the proposal that Ministers lead on the setting up, amendment or revocation of amalgamation schemes. The Board would prefer to maintain the current arrangements of fire authorities being able to develop amalgamation schemes as is currently the position under the Fire Services Act 1947.

The Board supports the inclusion in the Bill's provisions of clauses which provide fire authorities with the appropriate powers related to borrowing. Such powers are provided in the 1947 Act under section 36 sub sections (10) (11) and (13) and the Board supports the inclusion of similar powers in the Bill. It is considered that without these powers being provided that authorities would not be able to borrow.

With regard to Additional Function Orders the Board considers there should be:

- provisions for consultation with the Authority concerned, and,
- provisions on the time the Order should remain in force and,
- provisions for financial assistance for authorities who are required to carry out any additional functions.

In respect of the proposed powers being taken by Ministers in Section 11 of the Bill the Board seeks clarification of whether the emergency direction being taken by the Ministers would take precedence over the statutory duty of an authority.

In respect of the Charging Order provisions, the Board supports the proposal for powers to be taken by Ministers to enable fire authorities to make charges (other than for extinguishing fire, protecting life or property in the event of fire). The Board supports the development of these powers to charge for:

- attending incidents which are found to be caused by inappropriate activation of fire alarm systems,
- charging for services connected to property protection and preventing the spread of fire, provided to individuals or agencies who are themselves professional advisers or where it is considered they should engage professional advice. An appropriate exclusion to this being advice to private homeowners.

In developing a Charging Order, the Board considers it appropriate that a requirement for consultation takes place with fire authorities as to what can be charged for in an Order should be included in the Bill.

In respect of water supplies provision the Board considers it appropriate that there should be included in the Bill provisions that define reasonable minimum standards of water supply in order for a brigade to fight fires. Costs associated with the development of water supply infrastructures should be defrayed to the water undertaking or developer through planning gain initiatives and not charged to the fire authority.

With regard to the Minister's involvement in the development of mutual aid schemes the Board wishes to comment on:

- the possible conflict might arise from the powers available to a Minister to develop an Additional Function Order and its relationship to a mutual aid scheme, and
- whether an Authority (which has statutory authority) can itself delegate the carrying out of functions to another body when it is responsible for ensuring the function is carried out.

With regard to a National Framework document, the Board rejects proposals that provide for a Minister to take powers to make an Order requiring an Authority to take or refrain from taking action in a certain manner when it is considered that an Authority is failing or likely to fail to act in accordance with the Framework Documents.

The Board also rejects proposals that provide for Ministers to have a greater say in the way a fire authority runs its day-to-day affairs through the utilisation of a combination of powers being considered under Section 2, Section 34 and Section 36 of the Bill. The utilisation of such powers are seen to be contrary to local accountability and to date as far as this Board is aware there has been no precedent which gives rise for such powers to be used. The Board reinforces its commitment to a

decentralised, locally accountable, locally representative Fire Board and rejects the Scottish Executive's premise that centralisation and direction from Edinburgh is best for Grampian Fire and Rescue Service. The Grampian Joint Board is a well defined, extended community and the existing boundaries are best for the people of Aberdeen, Aberdeenshire and Moray.

The Board expresses its concern and reservations on the development of Property and Facility Orders, as it may leave Grampian Fire and Rescue Service exposed with a shortage of resources in the event of such an Order being raised. The Board would wish to see incorporated in the Bill provision for consultation with fire authorities as a matter of course.

The Board supports the Bill's proposal to abolish the Scottish Central Fire Brigades Advisory Council and to develop a replacement forum that advises Ministers on the development of fire service policy.

The Bill omits completely the provisions contained in Section 18 of the 1947 Act. This section related to the appointment and promotion of fire service personnel. There requires to be incorporated in the Bill's provisions a clause which facilitates a Minister to draw up an appointment and promotion regulations.

The provisions for an Authority to develop an establishment scheme for its area are not incorporated in the Bill's arrangements. These are included in Section 19 of the 1947 Act. The Board supports the inclusion of a clause in the new Bill that facilitates an Authority to develop and establishment scheme for its area.

The absence of an establishment scheme raises dubiety over the position of a Firemaster and that post holders responsibility to the fire authority. The Board supports the current statutory arrangement incorporated in s(19)(2) of the 1947 Act "*the chief officer of the fire brigade to which a scheme relates shall be directly responsible to the fire authority maintaining the Brigade or to a committee thereof*".

Thank you for the opportunity to comment.

6 September 2004