



JUSTICE 2 COMMITTEE

AGENDA

26th Meeting, 2004 (Session 2)

Tuesday 21 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—

Jeff Ord, Chief Inspector of Fire Services, and Brian McKenzie, Assistant Inspector of Fire Services, HM Fire Services Inspectorate;

Jim Robson, Principal, Scottish Fire Services College;

Julie Sturrock, Councillor Dundee City Council, and Chair COSLA Task Group, Stephen Hunter, Firemaster, Tayside Fire Brigade, David Millar, Head of Corporate Services, Lothian and Borders Fire Brigade, and Claire Downs, Policy Officer, and Barbara Lindsay, Corporate Manager, COSLA.

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

- 3. Subordinate Legislation:** The Committee will consider the following negative instruments—

The European Communities (Lawyer's Practice) (Scotland) Amendment Regulations 2004 (SSI 2004/302);

The Advice and Assistance (Scotland) Amendment (No. 2) Regulations 2004 Amendment Regulations 2004 (SSI 2004/305);

The Criminal Legal Aid (Scotland) Fees Amendment (No. 2) Regulations 2004 (SSI 2004/316).

Gillian Baxendine / Lynn Tullis
Clerks to the Committee
Tel 0131 348 5054

Agenda item 1 – Fire (Scotland) Bill

Proposed areas for questioning
(PRIVATE PAPER – MEMBERS ONLY)

J2/S2/04/26/1

Agenda item 2 – Justice and Home Affairs in Europe

Note by the Clerk

J2/S2/04/26/2

Agenda item 3 – Subordinate Legislation

Note by Clerk - [SSI 2004/302](#)

J2/S2/04/26/3

Note by Clerk - [SSI 2004/305](#)

J2/S2/04/26/4

Note by Clerk - [SSI 2004/316](#)

J2/S2/04/26/5

Letter from Ian Allen, Scottish Executive Justice Department

J2/S2/04/26/6

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 28 September 2pm – Justice 2 meeting (joint meeting cancelled)
- Tuesday 5 October 2pm – joint meeting of J1 and J2 followed by Justice 2 meeting
- Tuesday 26 October – Justice 2

JUSTICE 2 COMMITTEE

26th Meeting 2004 (Session 2)

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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 2003/04¹ raised a number of issues that it wished to clarify with the Minister. It decided to hold the document "under scrutiny"

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

pending the Minister's reply. After further correspondence with the Minister, the 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 (after the recess) 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 Scrutiny² 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 August³ 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.

² 24th report 2004

³ http://europa.eu.int/comm/justice_home/news/consulting_public/news_consulting_public_en.htm

11. The Executive intends to write to key stakeholders inviting views in order to inform its response to the Green Paper and will make its conclusions known to the Committee.

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 only allow a few weeks for the Committee to undertake any more proactive work on the Green Paper before the consultation deadline;
- alternatively, or additionally, the Committee could seek expert evidence itself either orally or in writing with a view to discussing this with officials once the Executive response is available.

Conclusion

13. The Committee is invited to agree—

- whether to invite officials to a Committee meeting after the October recess 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 it wishes to seek its own evidence in relation to the Green Paper on bail or to await the Executive response.

Clerk to the Committee

16 September 2004

JUSTICE 2 COMMITTEE

26th Meeting 2004 (Session 2)

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The European Communities (Lawyer's Practice) (Scotland)
Amendment Regulations 2004 (SSI 2004/302)
Note by the Clerk

The Instrument

1. These Regulations amend the European Communities (Lawyer's Practice) (Scotland) Regulations 2000 which implemented the Council Directive No. 98/5/EC. Directive 98/5/EC permits lawyers qualified in one EU Member State to practise on a permanent basis in another Member State under their home professional title. Lawyers wishing to make use of their rights under this Directive are required to register with the competent body (usually the local bar) in the Member State in which they wish to practise and are bound by the relevant local rules of professional conduct and insurance and guarantee fund regimes. Once registered, a European lawyer is able to advise on the law of their home state, international and European law, and also the law of the host state (subject to certain restrictions).
2. The Regulations allow lawyers in all those states that have either entered the European Community since 1992, or made similar agreements on the free movement of persons, the freedom to practise in Member States.
3. The Executive note explains that the 2000 Regulations should have taken account of the Agreements made in 1992 and 1999. However, the Scottish Executive is not aware that any European lawyer has been prevented from pursuing professional activities in Scotland as a result of this administrative oversight.

Procedure

4. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 27 September 2004.
5. The Subordinate Legislation Committee considered this instrument on 14 September 2004 and raised no points. The instrument was laid on 25 June and comes into force on 16 September 2004.
6. Under Rule 10.4, the instrument is subject to negative resolution procedure - which means that the Order remains in force unless the Parliament passes a resolution, not later than 40 days after the instrument is laid, calling for its annulment. Any MSP may lodge a motion seeking to annul such an instrument and, if such a motion is lodged, there must be a debate on the instrument at a meeting of the Committee.

15 September 2004

Clerk to the Committee

JUSTICE 2 COMMITTEE

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The Advice and Assistance (Scotland) Amendment (No. 2) Regulations 2004

Amendment Regulations 2004 (SSI 2004/305)
Note by the Clerk

The Instrument

1. These Regulations amend earlier amending regulations to provide for all work carried out on or after 28 June to be remunerated at the higher rate and not just new grants of advice and assistance.
2. The Executive note explains that representations had been made that the interim fee increase prescribed in the Regulations should apply to all work undertaken on or after 28 June, irrespective of whether in respect of an existing or new grant.

Procedure

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15 September 2004

Clerk to the Committee

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1 July 2004

Dear Convener

CRIMINAL LEGAL AID (SCOTLAND) (FEES) AMENDMENT (No 2) REGULATIONS 2004

The Criminal Legal Aid (Scotland) (Fees) Amendment (No 2) Regulations 2004 was made under Section 33 of the Legal Aid (Scotland) Act 1986 on 30 June. It is being laid before the Scottish Parliament today and will come into force on 2 July 2004.

The reason for not complying with normal procedures is that the Subordinate Legislation Committee pointed out a typographical error in the Criminal Legal Aid (Scotland) (Fees) Amendment Regulations 2004 which inadvertently changed a reference in Regulation 6(4) of the Criminal Legal Aid (Scotland) (Fees) Regulations 1989. This error imposed a cap (where none existed before) on fees for the duty solicitor for certain work in the youth and domestic abuse courts but removed one which existed for other work in the same courts.

The Justice Minister is concerned about the impact that such an error may have for the youth court and the domestic abuse court. However, to correct this within normal Parliamentary rules, amending regulations could not take effect until late September at the earliest. This would have been a significant delay with unforeseen consequences for solicitors and their clients. The Minister has decided that amending regulations should be laid today that will correct this error.

The Minister hopes that the Parliament, and your Committee, would be prepared agree to correct this error as quickly as possible.

I am copying this letter to Dr Jackson, Convener of the Subordinate Legislation Committee and to the Clerks of the respective Committees for their information

Yours faithfully

IAN ALLEN