



**JUSTICE AND HOME AFFAIRS COMMITTEE**

**AGENDA**

**23rd Meeting, 2000 (Session 1)**

**Wednesday 21 June 2000**

The Committee will meet at 9.30 am in Committee Room 1, Committee Chambers, George IV Bridge, Edinburgh.

- 1. Regulation of Investigatory Powers (Scotland) Bill – Order of consideration:**  
The Convener to move (S1M-1014), That the Justice and Home Affairs Committee consider the Regulation of Investigatory Powers (Scotland) Bill at Stage 2 in the following order: sections 1 to 28, long title.
- 2. Bail, Judicial Appointments etc. (Scotland) Bill – Order of consideration:**  
The Convener to move (S1M-1015), That, if the general principles of the Bail, Judicial Appointments etc. (Scotland) Bill are agreed to at Stage 1 and the Bill is referred to the Justice and Home Affairs Committee for Stage 2, the Committee consider the Bill at Stage 2 in the following order: sections 1 to 11, the schedule, section 12, long title.
- 3. Petition:** The Committee will consider the following petition—  
  
PE212 by the District Courts Association.
- 4. Regulation of Investigatory Powers (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).

Andrew Mylne  
Clerk to the Committee, Tel 85206

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**The following papers are attached for this meeting:**

Agenda item 3

Note by the Acting Senior Assistant Clerk (copy of petition attached)

JH/00/23/2

**Papers not circulated:**

Members are reminded to bring with them copies of the Bill and Accompanying Documents, together with any papers from the Stage 1 process that are considered relevant (such as the Committee's Stage 1 report). Copies of the Marshalled List will be available from Document Supply first thing in the morning and will also be available in Committee Room 1. A list of groupings will be available in Committee Room 1 at the beginning of the meeting.

## JUSTICE AND HOME AFFAIRS COMMITTEE

### Papers for information circulated for the 23rd meeting

Association of Scottish Police Superintendents response to Stalking and Harassment Consultation JH/00/23/1

[Note: copies of the above document were handed round to members at the 22nd meeting; copies are enclosed with this circulation only to other Agenda recipients.]

Crown Office and Procurator Fiscal Service Strategic Plan 2000-2003 (further to the draft Plan provided by Crown Office witnesses on the budget process 2001-02 at the Committee's meeting on 26 April – circulated to members only)

Letter to the Convener from the Society of Messengers-at-Arms and Sheriff Officers, together with reply from the Convener JH/00/23/4

Extracts from *The Scotsman* and *The Herald* on human rights commission

Note by the Clerk on visit by Sir Stephen Wall JH/00/23/3

Minutes of the 22nd meeting JH/00/22/M

**Note:** The Clerk has received one copy of each of the following papers by the Scottish Executive Central Research Unit:

- Public Charitable Collections;
  - Public Trusts and Educational Endowments;
  - Scottish Charity Legislation: An Evaluation;
  - Scottish Charity Legislation: An Evaluation (Executive Summary);
  - Scottish Charity Legislation: An Evaluation;
  - Scottish Charity Legislation: Annexes;
  - Meeting in the Middle: A Study of Solicitors' and Mediators' Divorce Practice.
- Any of these may be consulted in Room 3.5 CC, or copies can be ordered through the Document Supply Centre.

JH/00/23/1

## ASSOCIATION OF SCOTTISH POLICE SUPERINTENDENTS

### STALKING AND HARRASSMENT

#### INTRODUCTION

Stalking and harassment is a specific type of criminal conduct that would appear to be increasing in contemporary society. There are invariably many reasons for this increase, for example, the growth of new technology in communication provides stalkers with easy access to victims and divorce is now a common occurrence and can be an acrimonious process.

When stalking cases reach court they are usually well covered by the media and generate a great deal of public concern.

The consultation document leans towards the type of stalking and harassment that is committed within the context of domestic abuse and in particular by males against females. Notwithstanding the 'domestic' perspective of stalking and harassment it should be borne in mind that this crime is just as likely to be perpetrated by complete strangers to the victim and at times committed by females against males. Stalking and harassment can also be committed by members of the same sex, against each other. Therefore when considering the issue of stalking and harassment it is necessary to look beyond the 'domestic violence' context into the broader public arena.

The following are observations in relation to each of the respective points raised.

#### RELY ON THE EXISTING LAW

*'Are there inadequacies in the current law?'*

*'If so what are they?'*

#### Criminal Law

The common law is a strength of the Scottish system and in general police officers prefer to use it rather than statute law. There is no general consensus for the notion of a new statutory offence. However, it is felt by many that the common law crimes of breach of the peace and threats has limitations for dealing with the problem of stalking and harassment.

#### Breach of the Peace

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Notwithstanding the comments made in Section 46 of the consultation paper the charge of breach of the peace is the subject of challenges by defence lawyers on the grounds that it breaks Article 7 of the European Convention on Human Rights. It is therefore possible that in the future a successful challenge will be made to the crime or a specific charge in the Scottish Courts. A successful challenge may lead to a decline in the use of the crime as a charge and eventually into disuse. This situation, hopefully, may never arise. However, the possibility exists and should be considered carefully as a significant threat.

Breach of the peace covers a wide range of criminal conduct and is very effective, however, the crime may not be specific enough to deal with the extensive use of the new technology used by many stalkers. For example, a stalker may send his or her victim hundreds of e-mail messages from a laptop computer anywhere in the world! In complex circumstances such as this, using electronic devices from multiple loci and where the victim does not see the perpetrator it would be difficult to prove a breach of the peace. Furthermore new technology in the future will make communication easier and the next generation of telephones will have small screens allowing the perpetrator to see his or her victim.

Evidence to support the position that breach of the peace is not specific enough to deal with all circumstances can be found in the fact that many statutory laws already exist to legislate for similar conduct, for example, telecommunications, postal services, licensing, noise pollution and fireworks. In addition to this it was deemed necessary to strengthen the existing criminal and civil law (see section 17) with the introduction of the *Protection from Harassment Act 1997*. If breach of the peace is truly the panacea to all problems created by stalkers then it would not have been necessary to create new legislation. The existence of the large number of statutory laws with specific offences provides sound evidence that breach of the peace alone cannot resolve all unusual policing problems and that this fact has already been recognised by the legislature.

The crime of breach of the peace is also considered to be a minor one, albeit the courts can treat it very seriously. Notably the public perception of this crime is that the courts do not treat it as a serious offence which question suitability for stalking and harassment.

### Threats

Police Officers do not prefer charges of this type against people on a regular basis and tend to use breach of the peace instead. Even in circumstances where police officers report offenders for threats, the Procurators Fiscal tend to change the charge before issuing the copy complaint or indictment.

The crime is fairly specific in that there must be some type of threat made to the victim. In many instances stalkers do not overtly threaten their victims but choose to intimidate them by using more subtle and sophisticated methods. Ironically many stalkers are attracted to or are besotted by their victims and are trying to persuade them to engage in a relationship and therefore would not consider using threats.

It is contended that although this crime could be used in certain circumstances it is inadequate to deal with stalking and harassment.

## Civil Law

### General Problems

There are several identifiable problems for the police and the public in relation to all civil law remedies that can be summarised as follows:

1. Members of the public have to pay for the services of a solicitor or claim from the Legal Aid system (incurring a cost to taxpayers).
2. Victims have to go through the process of finding a solicitor, making an appointment, taking time-off from their work and perhaps attending at numerous court hearings. If the interdict is granted the victim will have to repeat this process every time that the order is broken. This leads to more cost and distress for the victim.
3. On most occasions the police do not have any power to act because the matter is a civil one and this may lead to confusion between the victim and the police when they are called to an incident.
4. Where the police do have power to act the system relies on an administrative process which can break down and cause unnecessary delays in taking action. The interdict or order may be unclear or contain an error which may need clarification. This is particularly difficult to resolve during the early hours of the morning or at the weekend when the courts and solicitors offices are closed.

### Specific Problems

#### Interdicts

As stated above interdicts are subject to time limitations, costly, time consuming and the penalty of two years imprisonment may be insufficient for more serious cases. Protection for the public against stalkers should be available to all people and at all times, without the necessity of incurring personal cost.

The police have no power to act in this type of interdict.

#### Exclusion Orders and Matrimonial Interdicts

At present the Matrimonial Homes (Family Protection) Act 1981 applies to married couples or cohabitants that have obtained occupancy rights through the Sheriff Court. In the future it is the intention of the Scottish Executive to extend the scope of the 1981 Act to include former spouses and all cohabitants. This legislation offers good protection to couples, however, it does not apply to cases where the perpetrator and victim are not in a relationship (this must account for a notable number of stalking cases).

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There have been a number of problems with this legislation since its introduction. For example, some women have allowed their spouses to re-enter the matrimonial home (even when an Exclusion Order exists) and called the police to arrest the husband only when they have had a disagreement. The police have often felt this to be unreasonable, particularly when the couple has lived happily for extended periods of time up to and sometimes beyond one year. Furthermore the police do not have any discretion in this matter and are obliged to arrest the offender.

There have been some occasions where the power to arrest has been omitted in error from the paperwork, or the victim's solicitor has failed to ask the sheriff to attach it to the matrimonial interdict.

The concerns identified in the 'general problems' section also apply to this legislation.

#### Protection of Harassment Act 1997

This legislation was introduced in light of numerous cases that highlighted gaps in the law for dealing with harassment. The existence of the act adds weight to the earlier contention in this paper that breach of the peace is insufficient to deal with this type of conduct.

Perhaps the most useful part of this legislation is the power of the court to grant a *Non-Harassment Order*. The act creates a criminal offence for the breach of an order and has realistic penalties that can be applied.

The main problem is that the victim must win his or her civil case in a court, or, the perpetrator must be convicted of an offence involving harassment, before an order can be granted. This process is a difficult one because a "course of conduct" must be demonstrated before an NHO can be granted. Establishing a "course of conduct" is a complex legal matter and courts have already referred to previous stated cases for guidance in relation to the use of previous convictions. Although the law appears to be evolving in relation to this act it is still unclear, unrealistic and impractical for the purposes of stalking and harassment. This act would probably only serve to frustrate any victim of harassment who wanted the problem resolved with the minimum of fuss.

A further difficulty with this legislation is that the police do not have any power of arrest for the breach of an NHO and have to rely on the perpetrator committing another offence for which he can be apprehended. This situation is highly unsatisfactory.

#### ***'To what extent do any such legal inadequacies account for perceived problems in dealing with stalking/harassment?'***

The legal inadequacies make a significant contribution to the perceived problems in dealing with stalking/harassment. The law can best be described as a 'mixed bag' of legislation that nearly covers the types of behaviour associated with stalking. The police have limited criminal charges that can be used to quickly resolve the matter, otherwise the public are advised to take civil action as an alternative course of action.

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This situation is unsatisfactory for the public and the police who feel that a specific offence should be available to deal with the problem of stalking.

### CHANGES TO CURRENT PRACTICE

#### *'Is adequate advice and guidance available on the remedies for someone who fears they are being stalked?'*

Strathclyde Police, for example, produces booklets on personal safety which are available to members of the public. The force Community Involvement Branch also give formal presentations on personal safety where requested.

Victim Support advice is available for victims of crime, however, this would normally only be available when a crime was reported to the police.

When members of the public report stalking activities to the police they will be given advice on the available alternatives. The quality of the advice given will depend on the experience and knowledge of the officer dealing with the report.

Advice and guidance is available to the public, however there are no specific booklets or written guidance for victims of stalking and harassment. The quality of information available to the public would be increased considerably with the introduction of a leaflet or booklet on the existing remedies.

#### *'Are there non-legislative changes in the ways in which such cases are dealt with by the criminal justice system which could address victim's concerns and minimise the risk to them?'*

There are several ways to improve the response of the criminal justice system without the requirement to produce legislation:

1. Referral to Victim Support when the matter is reported to the police, even when a crime has not been established (e.g. the report is genuine but there is insufficient evidence for a charge under the existing law).
2. The production of an information booklet by the Scottish Executive for the public.
3. Establishing a 'best practice' document for Scottish Forces in order that the police response to stalking and harassment is consistent throughout the country.
4. Within the Procurator Fiscal Service several members of staff could be identified to deal with stalking and harassment cases when they are reported. This would allow several deputies to prosecute offences more efficiently and effectively because of their experience. This system already exists for wildlife offences and is working very well.



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5. Fast-track processing of civil remedies is another option. To allow this option to take place the court would have to create time for specifically dealing with applications for interdicts and orders on the day that the application is made. Solicitors should be encouraged to deal with these cases as a matter of priority to help any fast-track system to work.
6. Fast-track criminal cases is a further option to consider. For this to work the police, procurator fiscal and courts would all have to operate quickly within a given timescale.

*'Is there scope for more training, awareness-raising, and improved procedures in identifying behaviour that constitutes harassment?'*

There is plenty of scope for improvement in relation to training and awareness for this type of behaviour.

- An awareness-raising seminar should be the starting point for improving our knowledge base of stalking and harassment. This could be achieved through the Scottish Police College Continuous Professional Development Programme which is a series of seminars and workshops designed to raise awareness in respect of current issues in the Police Service. Acknowledged experts are invited to speak on the subject and suggest how the service can improve its response.
- A multi-agency awareness seminar could also be arranged under the auspices of ACPOS, which would allow all agencies involved in the criminal justice system to attend and discuss the issues involved.
- Police officers require to be trained at Divisional level to raise their level of knowledge. This could be achieved through the production of a video or distance learning package.
- Intelligence gathering in relation to the activities of any stalker must be of paramount importance, because a pattern of "repeated behaviour" must be established for the purposes of providing sufficient evidence for courts. This point needs to be emphasised at any training session. Intelligence Officers would also benefit from a similar input to raise their awareness.
- Training in relation to gathering evidence for harassment cases may be required due to the problem that on many occasions there will only be one eye witness (usually the complainer) to the conduct. Similar training was provided for 'domestic violence' incidents in relation to acceptable corroboration for the complainer's account of events (e.g. the complainer was distressed when the police arrived).
- Force Support Officers who deal directly with the public and in particular CCTV operators should receive similar training to police officers, so that they can respond accordingly when an incident is reported or observed.

Police Procedure

*'Are there adequate communication systems between and within police forces, so that victims of harassment can be easily identified?'*

There is sufficient computerisation within the Police Service to allow for the development of a system for victims of harassment to be easily identified. In order to achieve an effective and efficient system throughout Scotland agreement would have to be reached through ACPOS, to ensure that all forces are operating under the same arrangements. A consistent approach to procedures throughout Scotland would ensure an enhanced service to any victim of stalking who moves address from one police area to another.

Systems have already been established for monitoring the victims of 'domestic violence' and there may be scope to extend this service to people who are being stalked.

Any proposal to set up an 'offender's register' (see section 22) should be considered carefully because any new administrative processes will have an impact on the resources of the Scottish Police Service. There may be scope in some forces to monitor stalkers from the existing Sex Offenders Unit, however, this should only be carried out if it can be achieved using the existing staff.

*'Are there adequate communication systems between police and Procurators Fiscal within and across relevant geographical boundaries?'*

Electronic mailing already exists between the police and Procurators Fiscal and in most areas meetings are held at a local level to discuss issues and policy.

If stalking was committed against a victim by the same perpetrator and crimes established in several different areas, for example, Kilmarnock, Glasgow, Edinburgh and Dundee then it would be fairly normal practice for the police to telephone each of the Procurators Fiscal offices to discuss the links between the incidents.

*'Are there any other changes to police training or procedure that might be made to ensure timely intervention when necessary?'*

Training can be introduced to new recruits when they attend the Scottish Police College for their initial course. This would ensure that the issue of stalking is introduced at an early stage in the officer's career. There is an obvious link to

'domestic violence' and there may be scope to cover both topics within the same module.

The creation of a 'best practice' document with guidelines and procedures would greatly assist the police response to this problem. For example, stalking consists of a repeated pattern of behaviour and when such matters are reported to the police (even one occasion) then normal practice would dictate that a warning is duly given and recorded at the earliest possible opportunity.

#### CHANGES TO CURRENT LAW

The existing law is unsatisfactory, particularly in relation to NHOs. If the Scottish Executive decide that they are going to change the existing law as their main option then they should consider implementing significant changes.

#### ***'Should we require disclosure of any available information on previous convictions for offences involving the same victim?'***

All available information should be disclosed on previous convictions of offences involving the same victim. As the law stands at the moment crucial information is being lost due to outdated previous Appeal Court rulings on the use of previous convictions. A stalker may have committed a series of crimes against his or her victim, such as, breach of the peace or assault and it is common sense that they should be taken into consideration when granting an order to protect someone from further harm.

#### ***'Should we require obligatory non-harassment orders in certain circumstances?'***

This would seem to be a good option to remove legal obstacles from being placed in the way of victims, however, sheriffs should have some discretion in the matter. Discretion cannot remain unfettered and where a sheriff does not grant an order there should be a requirement for him or her to state their reasons for refusal.

#### ***'Should we increase police powers of arrest in relation to harassment?'***

If the law is to be in any way effective in respect of breach of an NHO then the police must be granted a power of arrest without warrant for any person who is suspected of having committed this offence. The maximum penalty for this offence is fairly serious yet there is no police power of arrest for breach of an NHO. Clearly there is an imbalance in this legislation.

***'Should we reduce the burden of proof cases of alleged harassment?'***

The burden of proof should remain the same. If the burden of proof was reduced then Procurators Fiscal would probably be reluctant to prosecute without corroboration and most cases would be lost at some stage in the appeal process. The problem of corroboration should be resolved in the same way that 'domestic violence' was tackled.

***'Does the judgement in Riley v HMA point to the need to change the present law?'***

This case supports the notion that all relevant previous convictions should be considered to allow a 'course of conduct' to be established. The law should be changed to formally allow judges to consider all of the available previous convictions, otherwise, further rulings may refer to the outdated 1908 case of Connell v Mitchell.

***'Should the court be required in any case where the prosecution seeks and NHO to take into account any available information on previous convictions for offences involving the same victim?'***

For reasons already stated – yes.

***'Should there be a new statutory duty on the court to make an NHO when convicting a person of an offence involving harassment?'***

Yes, there should be a duty on the court to make an NHO, with the safeguard that a sheriff can refuse to do so in certain circumstances. The Procurator Fiscal should not be obliged to make a formal request.

***'Should we introduce a power of arrest without warrant for suspicion of breaching an NHO?'***

For reasons already stated – yes.

## A NEW STATUTORY OFFENCE

### *'How would any new offence be defined?'*

Any new offence would have to be carefully considered to ensure that it was sufficiently broad enough to cover all methods of stalking and harassment, including the use of all new technology and where possible future development. The offence must be drafted in a way that avoids the use of words that will be used by solicitors to create loopholes and legal arguments about what they mean. For example, the South Dakota legislation (see section 23) uses the terms *'wilfully, maliciously, and repeatedly'* in the offence. If similar wording was used in Scottish legislation it would invariably lead to much legal debate about what each of these individual terms mean and criminal intent would become harder to prove.

The current English legislation would seem to be easier to prove and more appropriate, however, the prosecution would have to prove that there was 'fear of violence' involved to complete the offence. There are stalking and harassment cases that cause annoyance to the victim rather than fear of violence, therefore, the wording needs to be moderated.

The essential elements of any new offence should include:

- a course of conduct on more than one occasion
- cause the victim concern or annoyance
- can be committed anywhere (covers private and public places)
- can be committed by any means (should cover use of new technology)

### *'What difference would it make in practice?'*

A new offence with specific police powers would provide the service with an additional tool to be used against stalkers. A specific offence would allow the police to respond more confidently and positively to conduct that is clearly harassment. Indeed a warning at an early stage may be sufficient to prevent further conduct, particularly if there are significant penalties available to the courts.

The Procurators Fiscal would also benefit from a new offence because it would increase their options to take action, particularly in circumstances where the behaviour is on the borderline for consideration (e.g. it clearly is not a breach of the peace) to prosecute.

The courts would also benefit by the creation of a new offence, because a specific charge that reflects the seriousness of the behaviour may encourage judges to impose significant penalties. In breach of the peace cases the judges are less inclined to impose realistic penalties, because the charge is widely regarded as a minor one.

*'Would the benefit be substantive or presentational*

In short, the answer to this question is that both areas would benefit.

A new offence would provide clarity for the entire judicial process for dealing with stalking and harassment. Convictions are likely to increase and perhaps even the number of prosecutions in circumstances where Procurators Fiscal were reluctant to take action.

The existence of an offence with significant penalties would also act as a deterrent to any potential stalkers and allow for quick action to be taken to prevent further distress to the victim. The media would invariably report any convictions for stalking which should help to dissuade potential offenders and therefore prevent crime. Public perception and confidence would also benefit, particularly when reported in the media, that where this type of conduct exists the police have the powers and legislation to take positive action.

The public would no longer have to seek a civil remedy and therefore will not have to pay for a solicitor, spend time in courts and rely on an interdict which is limited by time. Having a specific offence is preferable in that it operates at all times and all members of the public have access to the police without incurring any additional financial cost. Civil remedies also rely on efficient administrative processes for them to operate, however, mistakes occur in the best systems and this could cost someone a significant amount if distress. Therefore by removing the reliance on civil remedies victims of stalking should receive a more accessible service.

*'Where does the balance of advantage lie between flexible common law and statute?'*

Police officers and Procurators Fiscal prefer to use the common law because it is open to a broader interpretation and easier to apply. The common law does not allow for every circumstance and as new types of offences emerge specific legislation is required to supplement the existing law. The advantage of using statute law to deal with stalking and harassment is that a specifically created offence to deal with this type of behaviour provides the police with an instant and clear reference. Although charges such as breach of the peace are flexible they are open to interpretation and officers will have different interpretations as to how and when it is applied. Lack of clarity in determining whether or not a breach of the peace is appropriate in a given set of circumstances can be confusing for the police and frustrating for the victim.

In this instance the advantage lies with statutory law. The vital part for any legislature is to ensure that the offence is as wide ranging as possible with minimum scope for legal interpretation about the meanings of the words used in the offence.

ASPS  
May 2000

JH/00/22/4.



## **SOCIETY OF MESSENGERS-AT-ARMS AND SHERIFF OFFICERS**

*Affiliated to Union Internationale des Huissiers de Justice et Officiers Judiciaires*

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*From R.A. Macpherson, Past President*

13<sup>th</sup> June, 2000.

Ms. Roseanna Cunningham, M.S.P.,  
Convener of the Justice and Home Affairs Committee,  
Committee Chambers,  
George IV Bridge,  
EDINBURGH, EH99 1SP.

Dear Convener,

### **Abolition of Poindings and Warrant Sales Bill**

The Clerk to the Committee will have told you of my anxiety that four weeks should have gone by since my letter to you, without a reply. Several people have told me that they read your letter of 4<sup>th</sup> May on the internet: they have drawn their own conclusions about your message to me. In reply, I sent you a letter which has hitherto been kept closed to you. So how are they to know that I vigorously defend myself against any "serious allegation"? Delay might be said to deny justice.

I also urge you quickly to perform the very necessary public service that might be served by a letter from the Convener of the Justice Committee in these circumstances: to give support to those whose duty it is to uphold the civil law in Scotland.

Yours sincerely,  
R. Macpherson

*Honorary President:*  
Sir Malcolm R. Innes of Edingight, K.C.V.O., W.S.  
Lord Lyon King of Arms

<i>President:</i>	Gordon C. Macpherson
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**JUSTICE AND HOME AFFAIRS COMMITTEE**

**Petition PE212 by District Courts Association**

Note by the Acting Senior Assistant Clerk

Background

This petition calls for the Parliament to delete all proposals contained within the Bail, Judicial Appointments etc (Scotland) Bill at Chapter 2, which deals with Justices of the Peace.

The petition was circulated for the 21st meeting as JH/00/21/3 and is not recirculated here.

The Committee had sight of the petition whilst considering its draft Stage 1 report on the Bill, and the report makes reference to it. The Committee also took oral evidence from the District Courts Association in relation to the Bill at its meeting on 22 May.

Procedure

The Standing Orders make clear that, where the Public Petitions Committee (PPC) refers a petition to another committee it is for that committee then to take “such action as they consider appropriate” (Rule 15.6.2(a)).

Options

The Committee has already referred to this petition in its Stage 1 report on the Bill. The request made in the petition could be taken forward by any MSP (whether or not a member of the Committee) lodging an amendment to give effect these changes to the Bill. That is a matter for individual MSPs, and it is therefore difficult to see what the Committee itself can do further other than simply to take note of the petition.

12 JUNE 2000

ALISON TAYLOR



**JUSTICE AND HOME AFFAIRS COMMITTEE****Petition PE212 by District Courts Association**

Note by the Acting Senior Assistant Clerk

**Background**

This petition calls for the Parliament to delete all proposals contained within the Bail, Judicial Appointments etc (Scotland) Bill at Chapter 2, which deals with Justices of the Peace.

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The Committee has already referred to this petition in its Stage 1 report on the Bill. The request made in the petition could be taken forward by any MSP (whether or not a member of the Committee) lodging an amendment to give effect these changes to the Bill. That is a matter for individual MSPs, and it is therefore difficult to see what the Committee itself can do further other than simply to take note of the petition.

12 JUNE 2000

ALISON TAYLOR

## **JUSTICE AND HOME AFFAIRS COMMITTEE**

### **Visit of Sir Stephen Wall, Permanent Representative to the EU, 8 June 2000**

#### **Note by the Clerk**

I attach the text of a note prepared by the Clerk/Chief Executive's office about the above visit, which was attended by the Convener and myself.

Sir Stephen had lunch with a small group of MSPs, including George Reid and members of the European and Justice and Home Affairs Committee. This was followed by a meeting with the Clerk/Chief Executive and member of his office and the Clerk to the European Committee.

The following summarises the main points which emerged from the lunch and meeting discussions:

- Scotland has a reasonably high profile within Europe, but there is no real awareness of the Parliament as a distinct organisation.
- Committees were concerned that they were not receiving early information about European issues. The Parliament needed to ensure that arrangements through the Executive were good. There could also be a need to develop information flows between the European Committee and relevant policy Committees. It would be well worthwhile developing direct links with Scottish MEPs. Westminster Committees were understood to have found real value in having a clerk posted in Brussels
- Scotland Europa had a wealth of information available. UKRep and Scotland House served primarily the needs of the UK Government and the Scottish Executive. Both were willing to help the Parliament on specific issues but could not be expected to offer a comprehensive service. UKRep could put clerks and MSPs in touch with Commission desk officers.
- The European Committee was moving towards an approach which focussed in depth on a smaller range of issues of particular concern to Scotland rather than trying, in vain, to influence EU issues across the board on the traditional scrutiny model.
- Building links on the corporate level was means of raising the profile of the Parliament in Europe and would in turn help Committees make contacts on particular issues. It was noted that the Presiding Officer was seeing the EP President shortly. Early contact with Julian Priestly, Secretary General of the EP was recommended.
- Romano Prodi had appeared keen to visit Scotland when the European Committee had seen him in Brussels. Sir Stephen undertook to explore whether any plans were being made in his Cabinet to follow this up.
- Sir Stephen advised building relations with other Members States with well developed devolved systems. He had no great experience of Brussels based regional organisations. They had little influence in EU decision-making but could offer valuable networking. There was a potential difficulty for a Parliament, which has no easy mechanism for establishing a "corporate line", in participating in fora where political positions were taken.

- Sir Stephen thought the Parliament could contribute on issues such as the sub-Members State role in the EU and bringing the EU closer to the citizen. These were issues which Prodi wanted to push. A Commission White Paper had been published on which UK Government was “casting round” for ideas. The Executive should have been consulted and the Parliament might want to comment.
- The Parliament might also see a role for itself in Eastern Europe in terms of helping to consolidate democratic structures and systems. The Executive was operating a programme in the Czech Republic. FCO or British Council funding could be available to finance the Parliament’s efforts. The Parliament should make contact direct with FCO to see what was possible.
- Sir Stephen’s new role heading European policy in the Cabinet Office was noted and he would welcome the opportunity to keep in touch with the Parliament.

Vanessa Glynn  
Office of the Clerk/Chief Executive  
9 June 2000

JH/00/23/3

## JUSTICE AND HOME AFFAIRS COMMITTEE

### Visit of Sir Stephen Wall, Permanent Representative to the EU, 8 June 2000

Note by the Clerk

I attach the text of a note prepared by the Clerk/Chief Executive's office about the above visit, which was attended by the Convener and myself.

Sir Stephen had lunch with a small group of MSPs, including George Reid and members of the European and Justice and Home Affairs Committee. This was followed by a meeting with the Clerk/Chief Executive and member of his office and the Clerk to the European Committee.

The following summarises the main points which emerged from the lunch and meeting discussions:

- Scotland has a reasonably high profile within Europe, but there is no real awareness of the Parliament as a distinct organisation.
- Committees were concerned that they were not receiving early information about European issues. The Parliament needed to ensure that arrangements through the Executive were good. There could also be a need to develop information flows between the European Committee and relevant policy Committees. It would be well worthwhile developing direct links with Scottish MEPs. Westminster Committees were understood to have found real value in having a clerk posted in Brussels.
- Scotland Europa had a wealth of information available. UKRep and Scotland House served primarily the needs of the UK Government and the Scottish Executive. Both were willing to help the Parliament on specific issues but could not be expected to offer a comprehensive service. UKRep could put clerks and MSPs in touch with Commission desk officers.
- The European Committee was moving towards an approach which focussed in depth on a smaller range of issues of particular concern to Scotland rather than trying, in vain, to influence EU issues across the board on the traditional scrutiny model.
- Building links on the corporate level was means of raising the profile of the Parliament in Europe and would in turn help Committees make contacts on particular issues. It was noted that the Presiding Officer was seeing the EP President shortly. Early contact with Julian Priestly, Secretary General of the EP was recommended.
- Romano Prodi had appeared keen to visit Scotland when the European Committee had seen him in Brussels. Sir Stephen undertook to explore whether any plans were being made in his Cabinet to follow this up.
- Sir Stephen advised building relations with other Members States with well developed devolved systems. He had no great experience of Brussels based regional organisations. They had little influence in EU decision-making but could offer valuable networking. There was a potential difficulty for a Parliament, which has no easy mechanism for establishing a "corporate line", in participating in fora where political positions were taken.

- Sir Stephen thought the Parliament could contribute on issues such as the sub-Members State role in the EU and bringing the EU closer to the citizen. These were issues which Prodi wanted to push. A Commission White Paper had been published on which UK Government was "casting round" for ideas. The Executive should have been consulted and the Parliament might want to comment.
- The Parliament might also see a role for itself in Eastern Europe in terms of helping to consolidate democratic structures and systems. The Executive was operating a programme in the Czech Republic. FCO or British Council funding could be available to finance the Parliament's efforts. The Parliament should make contact direct with FCO to see what was possible.
- Sir Stephen's new role heading European policy in the Cabinet Office was noted and he would welcome the opportunity to keep in touch with the Parliament.

Vanessa Glynn  
Office of the Clerk/Chief Executive  
9 June 2000

The  
**Scottish  
Parliament**  
From: the Convener

File  
JH/00/23/4.

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Roderick Macpherson  
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11 Alva Street  
Edinburgh EH2 4PH

16 June 2000

Dear Mr Macpherson

**Abolition of Poindings and Warrant Sales Bill**

Thank you for your letter of 13 June, with reference to your earlier letter to me of 16 May.

Let me deal first with your letter of 13 June. The reason why I have not replied earlier to your letter of 16 May was that I wanted to give other members of my Committee an opportunity first to read and comment on it. In that connection, I can assure you that your letter of 16 May has been given the same public exposure as my original letter to you of 4 May. Your letter was circulated to members of my Committee for the Committee's 20th Meeting, 2000, on 30 May as paper JH/00/20/1. As is now the practice with Committee papers, the letter is therefore available on the Scottish Parliament website, just as my letter to you of 4 May is so available.

Turning to your letter of 16 May, I do not propose to comment on what you say by way of response to the remarks made by Mr Sheridan during the Stage 1 debate on the Bill. As I am sure you will appreciate, Mr Sheridan made those remarks on his own account and I can only suggest that you address your objections to them to Mr Sheridan.

The purpose of my letter of 4 May was to invite you to comment on an apparent discrepancy between what you said in evidence to my Committee and the view attributed to Society in the material quoted by Mr Sheridan in the Stage 1 debate. My letter made clear that I was not pre-judging the issue of whether the apparent discrepancy was real, and I do not therefore think it is reasonable of you to suggest that publication of my letter in advance of your reply did you "an injustice".

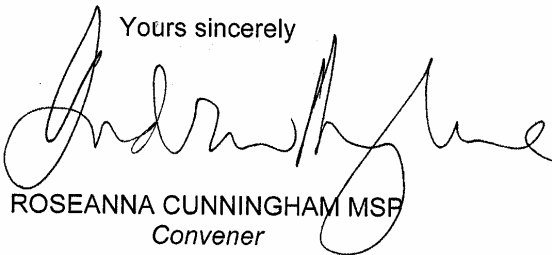
I also take strong exception to your suggestion that I was "menacing you with oaths". What I said in my letter of 4 May was intended to make clear the consequence that

might follow if the apparent discrepancy between your evidence and the true position of your Society turned out to be a real one. Once again, my letter was not prejudging the issue of whether your reply would satisfy me that the apparent discrepancy was not real; indeed, it was inviting you to do so.

Having said that, I am now prepared to accept, in view of what you say in the remainder of your letter, your assurance that you had no intention to mislead my Committee in evidence about the position of your Society in relation to the Bill.

A copy of this letter goes to Tommy Sheridan. I am also copying it to members of my Committee.

Yours sincerely

PP   
ROSEANNA CUNNINGHAM MSP  
Convener

Letter approved by the Convener and signed  
in her absence.