JUSTICE 2 COMMITTEE

AGENDA

8th Meeting, 2004 (Session 2)

Tuesday 2 March 2004

The Committee will meet at 2.00 pm in Committee Room 1.

1. **Justice and home affairs in Europe:** The Committee will take evidence from—

   Mr Colin Imrie, Head of the Access to Justice Division and Susan Herbert, Head of the EU Justice and Home Affairs Strategy Unit, Scottish Executive,

   and will then consider its approach to European scrutiny.

2. **Fingerprint evidence:** The Committee will consider correspondence received.

3. **Petition:** The Committee will consider the following petition—

   PE347 Petition by Mr Kenneth Mitchell calling for the Scottish Parliament to investigate the practice of shoeing Clydesdale Horses to introduce legislation to make such a style of shoeing illegal unless sanctioned, for medical reasons, by a Veterinary Surgeon.

4. **Constitutional Reform Bill:** The Committee will consider the Constitutional Reform Bill currently before the UK Parliament.

5. **Subordinate legislation:** The Committee will consider the following negative instruments—

   The Advice and Assistance (Scotland) Amendment Regulations 2004 (SSI 2004/49);
   The Civil Legal Aid (Scotland) Amendment Regulations 2004 (SSI 2004/50);
   The Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2004 (SSI 2004/51).

6. **Subordinate legislation:** Hugh Henry MSP (Deputy Minister for Justice) to move the following motions—
S2M-966 Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): The Advice and Assistance (Financial Conditions) (Scotland) Regulations 2004—that the Justice 2 Committee recommends that the draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2004 be approved;

S2M-967 Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): The Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2004—that the Justice 2 Committee recommends that the draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2004 be approved;

Gillian Baxendale / Lynn Tullis
Clerks to the Committee
Tel 0131 348 5054
The following papers are enclosed for this meeting:

**Agenda item 1 – Justice and home affairs in Europe**

Note by the Clerk J2/S2/04/8/1
Note by the Clerk (Private Paper) J2/S2/04/8/10

**Agenda item 2 – Fingerprint Evidence**

Note by the Clerk (correspondence attached) J2/S2/04/8/2

**Agenda item 3 - Petition**

Note by the Clerk (letter from the Minister attached) J2/S2/04/8/3

**Agenda item 4 – Constitutional Reform Bill**

Note by the Clerk J2/S2/04/8/4

**Agenda item 5 – Subordinate legislation**

Note by the Clerk (SSI 2004/49 attached) J2/S2/04/8/5
Note by the Clerk (SSI 2004/50 attached) J2/S2/04/8/6
Note by the Clerk (SSI 2004/51 attached) J2/S2/04/8/7

**Agenda item 6 – Subordinate legislation**

Note by the Clerk (draft instrument attached) J2/S2/04/8/8
Note by the Clerk (draft instrument attached) J2/S2/04/8/9

**Forthcoming Meetings:**

Tuesday 9 March – Justice 2 Committee meeting (PM)
Tuesday 16 March Joint Justice 1 / Justice 2 Committee Meeting (PM)
Tuesday 23 March – Youth Justice Seminar, Glasgow
Tuesday 30 March – Justice 2 Committee meeting (PM)
Introduction

1. At the joint awayday with Justice 1 Committee on 8 September 2003, the Committees received a briefing from the Executive on its involvement in monitoring and implementing European proposals and legislation which impacts on Scots law. Following the awayday, the Justice 2 Committee decided not to follow-up any specific European issues at that time but to come back to this issue at a future date.

2. Colin Imrie, Head of the Executive’s Access to Justice and EU JHA and International Action Division, is attending the meeting to update the Committee on the work of the Executive, following publication of the Executive’s European Strategy and the Minister for Justice’s statement on the key priorities for the next six months for the Justice Department. This note sets out the background.

Background

3. The Scottish Executive and the Parliament are required to implement laws and decisions taken by the EU. For example, many of the statutory instruments that come before Committees have their origins in decisions of the EU. It is therefore important that Scotland’s interests are reflected in the decision making of the EU, that the Committees of the Parliament have a good level of awareness of the issues under consideration and their implications, and that the actions of the Executive are influenced and scrutinised.

4. The Executive published its European Strategy on 20 January 2004, available by following this link: -

http://www.scotland.gov.uk/library5/government/sees-00.asp

It sets out the Executive’s key priorities and states that the Executive will “focus its effort on prioritising and engaging on the key short and medium-term EU issues likely to have a significant impact on people’s lives in Scotland,” that the Executive “will ensure that EU work is mainstreamed into the Executive’s priorities so that the impacts for Scotland are fully addressed” that it will “work closely with the Scottish Parliament on EU issues” and it “will support and encourage mainstreaming in the Parliament to ensure that EU
business is appropriately scrutinised by members of the subject committees which have an European element to their work”.

5. The Strategy mentions Justice matters specifically as follows:-

“A fast growing area of EU action is in the field of Justice and Home Affairs, promoting cross-border co-operation on matters directly affecting devolved policy areas such as co-operation against serious crime, civil judicial co-operation, drugs policy and police co-operation. The Minister for Justice will work to ensure that EU JHS legislation is compatible with the principles of Scots criminal and civil law and that Scotland does not become a haven for criminals. She will also work to increase the exchange of best practice with EU partners on areas such as tackling youth crime and cross-border access to justice.”

6. On 18 February 2004, Scottish Ministers each published a statement on their ministerial priorities for the Irish Presidency. Cathy Jamieson’s statement is attached at annexe A.

7. Some elements of that statement to highlight are:-

**Civil Judicial Co-operation** – the creation of a European Enforcement Order for uncontested claims. This is likely to involve rule changes for the Scottish Courts and negotiations on the creation of a European Small Claim and a European Order for Payment.

**Criminal Law** – the publication of Green Papers on Bail and Sentencing in relation to which, for the first time on criminal issues, the Executive will be responding directly to the Commission, instead of through a UK response. The Executive has already met with the Commission in advance of publication to discuss the likely scope of the Green Papers. Also the discussions with the Home Office on establishing the UK negotiating line on the Framework Decisions on the European Evidence Warrant and on Minimum Standards in Criminal Proceedings.

**Asylum and Immigration** - although reserved, some issues in relation to the Asylum and Qualifications and Procedures Directive may have implications for Scotland.

**Police Co-operation** – the ongoing development of the European Police College, whose secretariat will be located at Bramshill (England) and the event held in Dublin in February on the Joint Investigation teams and the Scottish Police Force’s involvement.

For Discussion (after the evidence session)

8. The Committee will wish to consider what approach it wishes to take to the scrutiny and monitoring of the Justice Department’s work on EU issues. Up until now the Committee has taken a “passive monitoring” approach by way of receiving 6-monthly statements on EU activities and the circulation of the pre and post council agendas for information.

9. It is clear that Justice and Home Affairs is a fast-paced area of the EU. In light of that, it may be that the Committee would wish to adopt an approach
similar to that of the Justice 1 Committee, whereby one or two subject areas could be selected as meriting closer attention and scrutiny by the Committee. Justice 1 undertook to look at divorce, alternative dispute resolution and the draft regulations on parental responsibility.

10. If the Committee wishes to give further consideration to taking forward a particular area of interest, Clerks can come back to a future meeting with an options paper for discussion, at which time the Committee may wish to invite other Executive officials or witnesses to feed their views in. The Committees may also wish to consider inviting the Justice Minister to a joint meeting to discuss the Commission work programme and Presidency priorities.

11. In addition, the Committee may wish to consider whether a visit to Brussels would be of benefit in the course of this year.
MINISTERIAL PRIORITIES

IRISH PRESIDENCY OF THE EUROPEAN UNION

Prospects for Justice and Home Affairs - the top priorities as outlined by the Presidency

The Irish Presidency has presented a programme of work in which it makes clear that one of its four priority objectives will be to develop the EU as an Area of Freedom, Security and Justice with the aim of a Safer Union for all citizens. A key focus of the Presidency will be to build on what has already been achieved and to take forward work on those measures specified by the Treaty of Amsterdam and the European Council in Tampere. The Tampere Programme will be coming to an end during 2004 and the Presidency will initiate the process leading to the development of the post Tampere agenda in the Justice and Home Affairs sector.

The Irish programme confirms that the Presidency will seek to:

- Improve security for Europe's citizens by implementing action plans and work programmes including those directed to combating organised crime, drugs and terrorism as well as other forms of crime which pose a threat to the security to the citizens of the EU. Also making full use of Europol, the European Police College (CEPOL) and the Police Chief’s Task Force.

- In the field of judicial co-operation, the Presidency will focus on measures which take forward the principle of mutual recognition as the cornerstone of judicial co-operation in both civil and criminal matters.

- On the criminal side the Presidency will aim to finalise work on the Framework Decision on the application of the principle of mutual recognition to the execution in the EU of confiscation orders and also the Framework Decisions on the application of the double jeopardy principle and on a European Evidence Warrant.

- Work in the civil area will be directed toward the principle of mutual recognition and to facilitating better access to justice. The Presidency will prioritise work on the Council Regulation creating a European Enforcement Order for uncontested claims in conjunction with the European Parliament and will take forward work on the Directive dealing with Compensation to Crime Victims.
Important Issues for the Executive During this Presidency

The Minister for Justice will work to ensure that EU JHA legislation is compatible with the principles of Scots criminal and civil law and that Scotland does not become a safe haven for criminals. Work will also be undertaken to increase the exchange of best practice with EU partners on areas such as tackling youth crime and cross border access to justice.

Scottish Justice Ministers will attend Council meetings during the Irish Presidency, where this is appropriate.

Civil Judicial Co-operation

- Top priority for the Presidency will be the Council Regulation creating a European Enforcement Order for uncontested claims. In practical terms agreement of and adoption of the proposal would speed up and simplify the recognition and enforcement of decisions in uncontested civil and commercial cases. Some court rule changes will be necessary. The Executive has been closely involved in negotiations on this dossier and officials have attended working groups in Brussels.

- The Regulation on the law applicable to non-contractual obligations (Rome II) will be taken forward during the Presidency. The regulation will decide which country’s law would apply to resolve an international dispute concerning a non-contractual obligation – anything from a negligence action arising from a road traffic accident to defamation to a claim based on environmental pollution. The most difficult area is likely to be defamation because of the need to balance freedom of expression against protection of reputation in a way which is acceptable across Europe.

- Following last years Green Paper further consideration will be given to the creation of European Small Claim and a European Order for Payment procedures. The Executive will be involved in negotiations on both these dossiers. Such procedures are considered beneficial in that they seek to simplify proceedings and, through the engagement of minimum standards and mutual recognition, will promote access to justice throughout the EU.

Criminal Law

- We expect the Commission to publish Green Papers on Bail and on Sentencing during the Irish Presidency. For the first time on criminal issues the Executive will be responding directly to the Commission on Green Papers as opposed to contributing to the UK response. The Executive has met with the Commission in advance of the publication to discuss the likely scope of the Green Papers. It is anticipated that the Papers will consult on the principles and practicalities of extending the principle of mutual recognition to certain aspects of bail and sentencing. With regard to sentencing it is also anticipated that there
will be consultation on the degree to which an element of harmonisation should form part of any future programme of measures.

- The Executive will also be involved in discussions with the Home Office on establishing the UK negotiating line on the Framework Decisions on the European Evidence Warrant and on Minimum Standards in Criminal Proceedings. The European Evidence Warrant is an order which would be issued by a judicial authority in one Member State to obtain evidence in another Member State. The Framework Decision on Minimum Standards in Criminal Proceedings will also be important as there could be implications for Scots Law in a range of areas arising from these particular proposals. To consider these implications the Executive is planning to invite academics in the Scottish law schools to assist it in its work.

**Police Co-operation**

- Key issues for the Executive during the Irish Presidency will include the ongoing development of the European Police College, whose secretariat, following a decision at the end of last year, will now be located at Bramshill. The Presidency will be focussing on what customers need from the College and the Executive will be feeding in the views of the Scottish Police.

- The aim of the Presidency to make the Police Chief’s Task Force more effective is of interest to the Executive and we will again, in consultation with the Scottish police, want to feed in our views and take part in this debate to reflect Scottish interests.

- We will also be involved in a Presidency-led initiative designed to remove obstacles to the use of joint investigation teams, which can be set up to tackle serious and organised crime affecting two or more Member States.

- We will ensure that the Scottish Police Service is represented at a key Joint Investigation Team event being held in Dublin in February.

- And finally, we will be involved in exchanging best practice in the fields of youth crime and crime prevention through the organisation of a conference on the policing of youth crime.

**Asylum and Immigration**

A key area in the JHA field with the Presidency aiming to resolve outstanding issues on the Asylum Qualifications and Procedures Directive. Although asylum and immigration is reserved there may be implications for Scotland from some of the proposals and Justice and Social Justice colleagues are keeping in close touch with the Home Office on this dossier.
Implementation

Recent measures that have been agreed and are or are in the process of being implemented in Scotland include:

- The Regulation on Parental Responsibility which will apply from March 2005, and we are in the early stages of considering its implementation. This is likely to require an SSI, new Rules of Court and, more importantly, awareness raising with relevant interest groups, especially the legal professions. The Regulation itself is concerned with setting common rules of jurisdiction and ensuring rapid recognition and enforcement of court orders relating to matrimonial issues or residence of/contact with children.

- The Regulation on Taking of Evidence came into force on 1 January and the Executive has completed the legal work to bed this particular Regulation in.

- The Framework Decision on the European Arrest Warrant, which was agreed on 13 June 2002, has been implemented into Scots law in Scotland by means of the Extradition Act 2003. The new Act came into force in 1 January 2004 and aims to simplify procedures for seeking extradition across the EU. As the Crime (International Co-operation) Act 2003 is brought into force during 2004, the Crown Office will become the Central Authority for mutual legal assistance in criminal matters in Scotland. The Crown Office is now working with Scottish enforcement bodies to ensure the benefits of the new simplified process can be properly realised.

Best Practice

We are undertaking a number of measures in the order to exchange best practice with other Member States:

- Partners with Northern Ireland in a twinning project to improve the training and development of the Latvian State Police

- Working with partners to host a Policing of Youth Crime Conference in Scotland in July 2004

- Closer links with the Commission through visits, presentations to DG JHA on Scots Law and facilitating a visit to Scotland.

CATHY JAMIESON
1. At its 15th meeting on 25 November 2003, the Committee considered correspondence from Alex Neil MSP regarding the fingerprint service provided by the Scottish Criminal Records Office (SCRO). In his letter Mr Neil called for the Justice 2 Committee to investigate the issues surrounding the future of the service, in particular—

- the implementation of recommendations arising from the McKie case;
- the implications for the justice system of the introduction of "non numeric" fingerprint evidence by the SCRO in conjunction with the Crown Office; and
- any other implications of the introduction of the new fingerprint evidence system.

2. The Committee agreed to write to the Minister for Justice in order to establish the extent to which the recommendations arising from the McKie case have now been successfully implemented. The Committee also agreed to write to the Scottish Criminal Records Office (SCRO) to ask for the technical background to the introduction of the new "standard" of fingerprint evidence and to the Lord Advocate to establish the implications for the prosecution of cases.

3. Responses, which have now been received from the SCRO, the Minister for Justice and the Crown Office, are attached.

4. The briefing note provided by the SCRO outlines the procedures, quality management systems, training and marketing strategy surrounding the implementation of the non numeric standard. It concludes that the "application of an arbitrary numeric standard to characteristics in fingerprint individualisation has no valid scientific basis" and the "overwhelming body of opinion with the Fingerprint communities across the world supports a Non-Numeric Standard".

5. Members will note from the Minister’s response that, according to the most recent inspection by Her Majesty’s Chief Inspector of Constabulary, “most of the recommendations have been discharged” and that “HMIC is satisfied that all the outstanding recommendations are being addressed and that considerable progress has been made”. The HMIC report is available at the following weblink:

http://www.scotland.gov.uk/about/JD/HMIC/00015403/page672432057.aspx
The Committee may wish to note in particular recommendation 15: *HMIC recommends that managing the change to a non-numeric standard should be addressed at a very early point by the APRT (ACPOS Presidential Review Team)*. The latest report states that HMIC “will revisit this important area during the next primary inspection” in 2004.

6. The Minister also comments that if a non-numeric standard is adopted in Scotland, the Lord Advocate would have to be satisfied that “he would be entitled to rely on fingerprint evidence presented using that standard before such evidence is led in criminal proceedings”. This is reiterated in the Crown Office response.

7. The Lord Advocate is of the view that “a move towards examination that is focussed on the quality of prints will provide an improvement in fingerprint evidence used before our courts”. However, the Crown Office also indicated that “Any change to the existing practice must ensure that the confidence that fingerprint evidence has traditionally enjoyed is not compromised.”

8. Members are invited to consider what, if any, further action to take in relation to fingerprint evidence. In doing so, Members are reminded that any work the Committee undertakes in this area should be generic in nature and not specific to the McKie case.

Clerk to the Committee

February 2004
Dear Ms Baxendine

Thank you for your letter of 4 December in relation to the proposed introduction of non-numeric fingerprint analysis.

Crown Office has previously been in discussion with fingerprint experts about the move to a non-numeric standard of fingerprint identification. Although the decision to adopt such a standard would be a matter for SCRO, clearly, any such move would require to be made in close consultation with the Lord Advocate, who would require to be satisfied that he would be entitled to rely on fingerprint evidence prepared using that standard.

Historically, fingerprint impressions have been identified as identical to a known fingerprint only where they have found a minimum of 16 points of similarity in fingerprint ridge characteristics. However, while in practice fingerprint officers may have been satisfied of identification, on the basis of their experience and expertise, in relation to examinations yielding less than 16 points, the practice in such cases has been not to express a view.

It is important to remember that fingerprint evidence is, and has always been, opinion evidence. The evidence of a fingerprint officer is not evidence of fact, he is merely providing an opinion on the basis of his experience, training and professional expertise. Opinion evidence will always be capable of challenge by the defence, and properly so. Where the Crown relies on the evidence of an expert to make conclusions from a set of facts, it is wholly appropriate that the accused has the opportunity to test this evidence, and, if appropriate, to lead evidence challenging the conclusions reached.

It is understood that in certain circumstances, fingerprint experts are able to express conclusions on marks with less than 16 points. The Lord Advocate is of the view that it is entirely appropriate that fingerprint experts with sufficient training and experience should be in a position to focus on the quality of marks, not just simply a quantity of characteristics. There should be a consideration of a number of matters, such as the detail of the mark, any displayed rarity of pattern or characteristic, as well as incomplete detail, contamination with other material and smudging. An opinion based on an analysis of a fingerprint as a whole will be of higher evidential value than one based on a simple counting process.
It is a testament to the quality of fingerprint evidence over the years that there have so few successful challenges. Any change to the existing practice must ensure that the confidence that fingerprint evidence has traditionally enjoyed is not compromised.

The Lord Advocate is of the view that a move towards examination that is focussed on the quality of prints will provide an improvement in fingerprint evidence used before our courts. The Crown will only lead expert evidence where it is confident of the nature of the examination and the robustness of the conclusions.

I hope this is helpful.

Yours sincerely

MORAG McLAUGHLIN
Head of Policy Group
Background

Petition

1. Petition 347 calls for the Scottish Parliament to investigate the practice of shoeing Clydesdale Horses and to introduce legislation to make such style of shoeing illegal unless sanctioned, for medical reasons, by a veterinary surgeon.

2. Show shoeing (or coupling) is a method of shoeing horses that supports only the front of the hoof and causes the back of the hoof to drop. It is used primarily at horse shows and exhibitions to create an exaggerated version of the Clydesdale’s natural stance which is regarded as a desirable feature in the show ring. The late petitioner alleged that coupling can cause both short- and long-term medical problems and may shorten the life of the horse. Two motions calling for a ban of coupling were lodged during the first session of the Parliament on 17 November 2000: S1M-1366 by Dr Sylvia Jackson and S1M-1365 by Nick Johnston.

3. Committee members are reminded to note that the petitioner, Mr Kenneth Mitchell, a registered farrier, has died since submitting this petition. Mr James W Sharp is now the primary contact for the petition.

4. The petition was referred to the former Justice 1 Committee because its subject matter is dealt with by the Scottish Executive’s Justice Department under its responsibilities for criminal sanctions in relation to the protection of domestic and captive wild animals, which is covered mainly by the Protection of Animals (Scotland) Act 1912. It has been referred by the Public Petitions Committee\(^1\) to the new Justice 2 Committee for further consideration.

Consideration by the Committee

5. At its meeting on 20 January 2004, the Committee agreed to write to the Minister for the Environment and Rural Development for further clarification on the proposed Animal Health and Welfare Bill and request that the consultation on the Bill include the issue of coupling. The Minister’s response is attached.

6. The Committee also agreed to consider in detail the volume of material relevant to this petition which had been considered by the Public Petitions Committee of the previous Parliament. The Committee agreed to revisit the petition once this additional information had been obtained. This volume of material is attached.

\(^1\) Public Petitions Committee, 2nd Meeting 2003 (Session 2), 25 June 2003.
Procedure

7. According to the Standing Orders, where the Public Petitions Committee has referred a petition to another committee, that committee may take such action as it considers appropriate.\(^2\)

Proposed action

8. In view of the Deputy Minister’s commitment in relation to the forthcoming Animal Health and Welfare Bill, the Committee is invited to close consideration of this petition.

9. In closing the petition, the Committee is invited to agree to write to the late petitioner’s representative advising him of the Deputy Minister’s commitment.

10. The Committee is also invited to forward the volume of material relevant to this petition to SEERAD’s Animal Health and Welfare Division.

Former Justice 1 Committee papers for reference

- J2/S2/03/12/3
- J1/03/3/14
- J1/02/28/9
- J1/02/36/5

\(^2\) The Scottish Parliament, *Standing Orders*, Rule 15.6.2
Introduction
1. The Constitutional Reform Bill was introduced in the House of Lords on 24 February 2004 and can be read in full at:

http://www.publications.parliament.uk/pa/ld200304/ldbills/030/2004030.htm

2. Part 2 of the Bill (attached at Annex A) creates a Supreme Court of the United Kingdom. (The Bill also abolishes the office of Lord Chancellor and makes provision in relation to judicial appointments for England and Wales.)

3. This note provides some background on the Bill and invites the Committee to consider its approach to scrutinising the Scottish elements of the Bill.

Timetable
4. Given the timetable at Westminster, the Committee is likely to be asked to complete consideration of any Sewel motion before the end of March.

Background
5. The proposals in the Bill arise from the Department for Constitutional Affairs consultation paper, Constitutional Reform: a Supreme Court for the United Kingdom, which can be read at:


A summary of written responses to that consultation are at:

http://www.dca.gov.uk/consult/supremecourt/scresp.htm;

and Lord Falconer’s statement to the House of Lords following the consultation is at:

http://www.publications.parliament.uk/pa/ld199900/ldhansrd/pdvn/lds04/text/40126-04.htm#40126-04_head1

6. On its establishment, the Supreme Court will become the final court of appeal from the Court of Session, in place of the House of Lords. The Supreme Court will also determine devolution issues under the Scotland Act in place of the Judicial Committee of the Privy Council.
7. Under the Scotland Act, Schedule 5, Part 1, paragraph 1, certain constitutional matters are reserved: the continued existence of the High Court of Justiciary as a criminal court of first instance and of appeal and the continued existence of the Court of Session as a civil court of first instance and of appeal. The determination of devolution issues under the Scotland Act is also a reserved matter. The Scottish legal and court systems are not otherwise mentioned in Schedule 5 as reserved matters and are therefore generally devolved. The Constitutional Reform Bill therefore covers both devolved and reserved matters relating to Scotland and the Executive is expected to bring forward a Sewel motion shortly.

8. Background papers from the consultation are enclosed at Annex B (Written evidence to the Department for Constitutional Affairs¹ and The Lord Advocate's speech to the Law Society on 21 January 2004²).

Constitutional Affairs Committee report

9. The Constitutional Affairs Committee of the House of Commons reported on these proposals on 10 February 2004.³ Relevant extracts of the report are at Annex C.⁴

10. The Committee drew the following conclusion:

“The jurisdiction of the Supreme Court over Scottish appeals and any changes will require legislation or a resolution of the Scottish Parliament. These issues are significant to the maintenance of Scottish law as a distinct entity. They were not addressed when the Government first announced its proposals and the timetable for decisions on the Supreme Court needs to allow for proper resolution and discussion of them in the Scottish Parliament.”

11. Also enclosed at Annex C are extracts from the oral evidence received by the Committee from Lord Hope, Lord Cullen and Lord Falconer.⁵

Summary of issues raised in consultation and Select Committee report

12. A wide range of issues relevant to Scotland have been identified by witnesses and respondents. These include:

- constitutional implications of a Supreme Court for the United Kingdom, including in relation to the Act of Union
- the implications for Scots law
- the implications of the transfer to the Supreme Court of devolution issues
- the distinction between criminal cases (which are not appealable to the House of Lords) and civil cases (which are), and whether there should be any change to that principle as part of these reforms

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¹ Also available at http://www.dca.gov.uk/consult/supremecourt/scresp.htm
³ Judicial appointments and a Supreme Court (court of final appeal)
⁴ Also available at http://www.publications.parliament.uk/pa/cm200304/cmselect/cmconst/48/4802.htm
⁵ Also available at: http://www.parliament.uk/parliamentary_committees/conaffcom.cfm
- whether to continue the current distinction whereby Scottish cases do not require leave to appeal and English cases do
- the appointment process for judges, the number of judges and how to ensure adequate Scottish representation/expertise
- the administration, organisation and funding of the court

As consultees have pointed out, some of these issues were not subject to consultation by DCA and the Committee will wish to consider which issues are appropriate for it to take evidence on in relation to the Constitutional Reform Bill.

**Procedure and approach**

13. In general, Sewel motions invite the Parliament to agree that certain devolved matters should be legislated for at Westminster. As a general rule, committees have not tended to undertake detailed scrutiny of the provisions of the Westminster legislation but have focused their scrutiny on the question of whether it is appropriate for the given matter to be legislated on by Westminster. Scrutiny has usually been by means of a short evidence session with the Minister. However there is no prescribed procedure for Sewel motions and it is for the committee to decide its approach to matters within its remit.

14. In this case, in the light of the comments from the Constitutional Affairs Committee, the Committee may wish to consider taking more extensive evidence. If this approach is followed possible witnesses include:

- Lord Cullen (either formally if he is willing to attend or informally/in correspondence);
- Lord Hope (who gave evidence to the Constitutional Affairs Committee);
- The Law Society;
- The Faculty of Advocates;
- One or more legal academics (SPICe have identified a number of possible names).

The Committee might also consider whether it would be helpful to discuss the report of the Constitutional Affairs Committee with some of the MPs from that committee – for example, by video conference.

15. The meetings on 9th and 16th March would be available for taking evidence.

**Conclusion**

16. The Committee is invited to agree its approach to scrutiny of the Constitutional Reform Bill.

Clerk to the Committee 26 February 2004
The Advice and Assistance (Scotland) Amendment Regulations 2004 (SSI 2004/49)

Note by the Clerk

The Instrument

1. This instrument amends the Advice and Assistance (Scotland) Regulations 1996 to increase the capital disregard limit from winnings in matrimonial cases. The capital disregard limit has been increased broadly in line with inflation from £4,275 to £4,395. The Executive indicates that, as this increase is simply to reflect inflation, expenditure on the Legal Aid Fund will remain unchanged.

Procedure

2. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 22 March 2004.

3. The Subordinate Legislation Committee considered this instrument on 24 February 2004 and had no comment to make. The instrument was laid on 10 February and comes into force on 12 April 2004.

4. 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.

26 February 2004

Clerk to the Committee
The Civil Legal Aid (Scotland) Amendment Regulations 2004 (SSI 2004/50)

Note by the Clerk

The Instrument

1. This instrument amends the Civil Legal Aid (Scotland) Amendment Regulations 2004 to increase the capital disregard limit from winnings in matrimonial cases. The capital disregard limit has been increased broadly in line with inflation from £4,275 to £4,395. The Executive indicates that, as this increase is in line with inflation, expenditure on the Legal Aid Fund will remain unchanged.

Procedure

2. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 22 March 2004.

3. The Subordinate Legislation Committee considered this instrument on 24 February 2004 and raised some technical points on which it is awaiting a response. The instrument was laid on 10 February and comes into force on 12 April 2004.

4. 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.

26 February 2004

Clerk to the Committee
JUSTICE 2 COMMITTEE

8th Meeting 2004 (Session 2)

Tuesday 2 March 2004

The Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2004
(SSI 2004/51)
Note by the Clerk

The Instrument

1. This instrument amends the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2004. It sets out fixed payments in respect of work done in connection with consideration, by prescribed sheriff courts, of victim statements. The prescribed courts which can consider victim statements are at Ayr, Edinburgh and Kilmarnock.

Procedure

2. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 22 March 2004.

3. The Subordinate Legislation Committee considered this instrument on 24 February 2004 and, aside from several typos and minor points of form, had no comment to make. The instrument was laid on 10 February and comes into force on 11 March 2004.

4. 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.

26 February 2004

Clerk to the Committee
Background

1. This instrument amends the Legal Aid (Scotland) Act 1986 to increase the disposable income limits for eligibility for advice and assistance. Disposable income limits for advice and assistance are increased annually in line with contributory benefits.

Procedure

2. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 22 March 2004.

3. The Subordinate Legislation Committee considered the instrument at its meeting on 24 February 2004 and had no comment to make.

4. The instrument was laid on 10 September 2003. Under Rule 10.6, the draft Order being subject to affirmative resolution, it is for the Justice 2 committee to recommend to the Parliament whether the instrument should come into force. The Minister for Justice has, by motion S2M-967 (set out in the Agenda), proposed that the Committee recommends the approval of the Order. The Minister will attend to speak to and move the motion. The debate may last for up to 90 minutes.

5. At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendation.
JUSTICE 2 COMMITTEE
8th Meeting 2004 (Session 2)
Tuesday 2 March 2004

The Civil Legal Aid (Financial Conditions)(Scotland) Regulations 2004 (draft)
Note by the Clerk

Background

1. This instrument increases the income limits to make eligible for civil legal aid persons with a yearly disposable income of not more than £9,475 (previously £9,307). It also makes eligible, without payment of a contribution, persons with a yearly disposable income of not more than £2,902 (previously £2,851).

2. Members should note that an error has been spotted in the original Executive Note and an amended version has therefore been provided.

Procedure

3. The Justice 2 Committee has been designated lead Committee and is required to report to Parliament by 22 March 2004.

4. The Subordinate Legislation Committee considered the instrument at its meeting on 24 February 2004 and had no comment to make.

5. The instrument was laid on 10 September 2003. Under Rule 10.6, the draft Order being subject to affirmative resolution, it is for the Justice 2 committee to recommend to the Parliament whether the instrument should come into force. The Minister for Justice has, by motion S2M-966 (set out in the Agenda), proposed that the Committee recommends the approval of the Order. The Minister will attend to speak to and move the motion. The debate may last for up to 90 minutes.

6. At the end of the debate, the Committee must decide whether or not to agree to the motion, and then report to the Parliament accordingly. Such a report need only be a short statement of the Committee’s recommendation.

25 February 2004

Clerk to the Committee