JUSTICE 2 COMMITTEE

AGENDA

5th Meeting, 2006 (Session 2)

Tuesday 28 February 2006

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

1. **Declaration of interests:** David Davidson will be invited to declare any relevant interests.

2. **Choice of Convener:** The Committee will choose a new Convener.

3. **Police, Public Order and Criminal Justice (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).

4. **Subordinate Legislation:** The Committee will consider the following negative instrument—

   The Police Grant (Variation) (Scotland) Order 2006 (SSI 2006/39).

5. **Justice and Home Affairs in Europe:** The Committee will receive a report back from the Deputy Convener on the recent Committee visit to the European Parliament and will discuss its approach to future scrutiny of European issues.

Tracey Hawe/Gillian Baxendine
Clerks to the Committee
Papers for the meeting—

Agenda Item 3

1st Marshalled List of Amendments for Stage 1 (Day 1) – to follow

Groupings – to follow

Members are reminded to bring with them copies of the Bill, Explanatory Notes and Policy Memorandum, available from Document Supply or from the Parliament’s website (http://www.scottish.parliament.uk/business/bills/46-policePublic/index.htm) together with any papers from the Stage 1 process that are considered relevant (such as the Committee's Stage 1 Report)

Agenda Item 4

Note by Clerk (including SSI and Explanatory Notes) J2/S2/06/5/1

Agenda Item 5

Note by Clerk J2/S2/06/5/2

Forthcoming meetings—

• Tuesday 7 March 2006, 2pm, Committee Room 4
• Tuesday 14 March 2006, 2pm, Committee Room 5
1. The Police Grant (Variation) (Scotland) Order 2006 varies Police Grant Orders for the financial years between 1997/98 and 2005/06 to state the actual aggregate police grant and the amounts of police grant paid to each police authority and joint police boards in respect of those financial years, rather than the estimated budget figures stated in the original Orders.

2. At its meeting on 7 February, the Subordinate Legislation Committee agreed to ask the Scottish Executive for clarification as to why the Orders for the year prior to 2005-06 could not have been made earlier. The Committee also sought clarification as to why there was a delay in laying the instrument (the Order was made on 26 January but was not laid until 1 February).

3. After considering the response from the Scottish Executive (attached as Annex A) the Subordinate Legislation Committee agreed to bring the Order to the attention of the Justice 2 Committee on the grounds that, given the timing involved, the use of the power was unusual and unexpected. In doing so, the Subordinate Legislation Committee noted that there had been no adverse consequences in practice.

4. If members have any queries or points of clarification on the instrument which they wish to have raised with the Scottish Executive in advance of the meeting, please could these be passed to the Clerk to the Committee as soon as possible, to allow sufficient time for a response to be received in advance of the Committee meeting.
Annex A

Scottish Executive response to the Subordinate Legislation Committee

First question

1. The Orders for the years prior to 2005-06 were not made earlier due to an administrative oversight. The Executive did not previously appreciate the need for the re-determination of the orders to reflect changes to the grant payments already determined. Once the need for this was appreciated, the Executive considered it important to resolve the position as quickly as possible through the composite order to ensure that the relevant grant orders reflected the payments that were actually made. Steps have been taken to ensure that this does not happen for future years, and the Executive will endeavour to ensure that re-determinations are undertaken in the relevant grant year. However, throughout this period correct financial procedures were followed, and it is considered that this is a technical matter which will have no impact on past or present police funding.

Second question

2. The Order was made by the Minister on Thursday 26 January and passed back to Police Division 1 on Friday 27 January. It is Executive practice for a Report which accompanies such an Order to be signed at the same time as the Order is made by the Minister. The Head of Police Division 1 of the Justice Department was absent sick on Friday 27 and Monday 30 January, but signed the Report to the Order at the first available opportunity thereafter, on Tuesday 31 January. All relevant documentation was passed to the SSI clerks that same day. The SSI clerks prepared the Order and the Report for laying before the Parliament the following day.

3. The Executive appreciates that such an Order should be laid as soon as possible after it has been made. On this occasion, the soonest possible opportunity for laying was Wednesday 1 February.
Background

1. Members of the Justice 2 Committee recently undertook a familiarisation visit to Brussels and held a number of useful meetings with Commission officials, UKREP, the Scottish Executive’s EU Office and the Director General of the Justice Freedom and Security directorate of the Commission.

2. Members will also recall that the two Justice Committees met jointly in April 2005 to take evidence from the Minister and officials.

3. This paper updates the Committee on the three particular policy areas being followed by the Committee, provides a summary of the Commission’s work programme for the current year and seeks the Committee’s view on what action it now wishes to take.

Update on policy issues being pursued by the Committee

Framework Decision on Certain Procedural Rights in Criminal Proceedings

4. Following consultation on a Green Paper in 2003, the Commission adopted a proposal on the rights of defendants and suspects in criminal proceedings throughout the EU covering access to legal advice before and after a trial, access to interpretation and translation etc. The proposal has been under consideration in working group since then but progress has been slow. A decision is expected shortly on how this is to be taken forward but some delegations have questioned the legal basis for this within existing treaties.

Green Paper on Sentencing

5. The Green Paper on sentencing was published on 30 April 2004 under the formal title “Green Paper on Approximation, Recognition and Enforcement of Criminal Penalties.” The Paper sought views on whether national differences in criminal penalties are an obstacle to protection in areas of freedom, security and justice and whether existing differences in sentencing between Member States lead to problems for judicial co-operation. The Executive responded formally to this Green Paper following a mini-consultation with stakeholders.

6. Since publication of the Green Paper, nothing has been brought forward by the Commission and nothing is expected. There is interest at Commission level in early release schemes and issues around whether those found guilty
of crimes should be repatriated to serve their sentence in the home state but nothing specific to these areas is included in the Commission’s current work plan.

**Green Paper on Bail**

7. The Green Paper on Bail (formal title - Green Paper on the Mutual Recognition of Non-Custodial Pre-Trial Supervision Measures) was published in August 2004. The Commission’s intention is to make it possible for a criminal suspect arrested in an EU Member State in which he/she is not resident to be subject to non-custodial supervision measures there. The Executive responded to this Green Paper as part of the UK response. The Commission has been studying responses and is expected to publish a draft Framework Decision shortly.

**Commission Work Programme**

8. Towards the end of each year, the Commission produces its Work Programme for the forthcoming calendar year. The table at Annexe A shows the Commission’s work programme for 2006 in the areas of criminal and civil justice.

9. The Committee will be aware that, to date, the Justice 1 Committee has looked at issues relating to civil law whereas this Committee has maintained a watching brief on criminal law matters. It should be noted however for any future work that there is no intention to have a civil / criminal split between the two committees.

**For Decision**

10. The Justice 1 Committee is considering European Justice and Home Affairs at its meeting on Wednesday 1 March 2006 and is likely to invite the Minister for Justice to give oral evidence on the outcomes of the Scottish Executive activity during last year’s UK presidency and also to advise on priorities for the Austrian and Finnish presidencies.

11. This Committee is therefore invited to consider what action it wishes to take. The Committee may wish to

   (i) invite the Minister for Justice to give oral evidence on the matters referred to in paragraph 10 to both Committees jointly at a date to be agreed

   (ii) seek a written update from the Executive on the Commission’s work programme prior to any oral evidence session with the Minister

   (iii) consider whether it wishes to commission any research from SPICe prior to any evidence session with the Minister in any area of specific interest to the Committee.
### Conflicts of Laws in Matters of Matrimonial Property Regimes

**Green Paper**

Will launch a consultation on the legal and practical issues arising in international situations in the area of property rights of married and unmarried couples (inc. question of jurisdiction & mutual recognition).

### A European System for the Attachment of Bank Accounts

**Green Paper**

Will launch a consultation on how to improve the enforcement of the monetary claims in the EU, including a proposal to create a European System for the attachment of bank accounts.

### Drugs and Civil Society in the EU

**Green Paper**

Will provide a framework for working with civil society in the drugs field at EU level and ensure effective implementation of the EU Drugs Action Plan 2005-2008.

### Applicable Law and Jurisdiction in Divorce Matters

**Regulation**

Will aim to enhance legal certainty and flexibility and meet the legitimate expectations of the citizens according to the Hague Programme.

### Proposal for a Computerised System of Exchange of Information on Criminal Convictions

**Decision (CFSP/JHA)**

Will aim to create the foundation necessary for a pan-European computerized system that would allow the exchange the information contained in national registers.

### Conflicts of Jurisdiction and the Principle of ne bis in idem in Criminal Proceedings

**Framework decision (JHA)**

Will create a mechanism that would facilitate the choice of jurisdiction in criminal proceedings in situations where two or more Member States could be interested in the same case. It would also aim to clarify the scope, applicability and the interpretation of certain elements/definitions of the current rules on the transnational EU principle of *ne bis in idem*.

### Implementation of the Rights of the Child

**Communication**

Will propose a framework to facilitate the implementation of the rights of the child within the EU.

### European Cyber-Security and Cyber-Crime Policy

**Communication**

An update of the Commission’s cyber-crime policy, including issues related to protection of the critical information infrastructure, terrorist use of the internet, identity theft, pan-European admissibility of electronic evidence, combating on-line child pornography, etc.

### Hague Action Plan – Scoreboard +

**Implementation report**

The first of a proposed annual report focusing on the transposition of legislative acts adopted.

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1 There are currently no Community rules in the field of applicable law to divorces.

2 cf Articles 54-58 of the Convention Implementing the Schengen Agreement (CISA).