

## Justice Committee

### EU priorities and other EU issues

#### Response from the Cabinet Secretary for Justice

Thank you for your letter of 24 October, in which you ask for Scottish Government views in respect of certain EU priority dossiers and also with respect to the UK Government's opt out from the pre-Lisbon Treaty "3<sup>rd</sup> Pillar" justice and home affairs dossiers. I am happy to provide the following information.

#### *Compensation of crime victims*

**The Committee would welcome a further update on whether the Scottish Government's forthcoming Victims and Witnesses Bill will contain any provisions arising from the EU initiative on compensation of crime victims.**

In my last letter I referred to work that the Government was taking forward to analyse EU proposals establishing minimum standards on the rights, support and protection of victims of crime. The substantive negotiations on that Directive have now been completed and the following measures have been included in the Victims and Witnesses Bill to ensure compliance with its provisions on compensation.

The Bill will strengthen the use of direct compensation by amending existing legislation to place a duty on the courts to consider a compensation order. This means that consideration will have to be given to making a compensation order in every situation where there is a victim who is eligible to receive a compensation payment under a compensation order, for example a person who has been caused personal injury, loss, damage, alarm or distress as a result of an offender's criminal acts.

With regard to other EU initiatives on compensation to victims of crime, Directive 2004/80/EC put in place a mechanism between Member States to facilitate access to national compensation schemes in the Member State where the crime was committed, where the victim lives in another Member State (i.e. cross border situations) This scheme does not seek to harmonise substantive provision across the EU, only requiring that national schemes provide for compensation in respect of 'violent intentional crime'. Whilst I believe that the Commission has been reviewing the application of this Directive, the Scottish Government is currently unaware of any fresh proposals to update it. However, my officials have been in contact with the Ministry of Justice to seek clarification as to whether any further consideration has been given to taking this work forward. I will write to the Committee again if any further information becomes available.

#### *Alternative dispute resolution for business to business disputes*

**The Committee seeks clarification from the Scottish Government as to whether it is content that this latest ADR proposal (on business to business disputes) will be compliant with the principle of subsidiarity**

The Commission intimated in November 2011 that it was considering an alternative dispute resolution instrument for business to business disputes, but also that the

proposal was subject to change. There have been no further subsequent announcements that the Scottish Government is aware of with regard to this initiative since then. It is not clear at this time, therefore, whether the Commission has removed it as a priority, perhaps in light of information gathered during their internal impact assessment, or whether it is simply delayed. You mention that the Committee is concerned that there may be subsidiarity concerns in such a measure. We cannot of course comment without sight of an actual proposal, or detailed drafts, but we will be alert to such a possibility in the event that the Commission ultimately decides to resume activity in this area. Commission documentation at the time indicated that the aim of the instrument would be to link with existing national schemes to enhance cross-border ADR coverage.

*Jurisdiction, recognition and enforcement of judgements in matrimonial matters and matters of parental responsibility*

**The Committee would welcome an update on the outcome of the review of Regulation (EC) No. 2201/2003 and an indication of whether there is likely to be any effect on domestic law.**

The results of the review of this measure have not yet been published by the Commission. I understand that the review is behind schedule. It is not yet possible, therefore, to determine whether the review will lead to any new proposals, or whether there will be any impact on domestic law. However, this measure deals primarily with jurisdiction and recognition of judgements in cross-border cases and it does not seem likely that domestic substantive law should be affected significantly. You will understand that I cannot comment definitively until we have further details.

*Pre-Lisbon Treaty police and criminal justice measures*

**The Committee seeks the Scottish Government's views on this announcement and clarification as to the level of consultation that took place between the UK and Scottish Governments in advance of the announcement.**

As the Committee will be aware, during Lisbon Treaty negotiations, the UK Government secured provisions allowing it to decide to opt-out of pre-Lisbon Treaty police and criminal justice measures. The opt-out or opt-in decision would determine whether European Court of Justice (ECJ) jurisdiction and Commission enforcement powers will apply in the UK to all police and criminal justice measures adopted before that Treaty came into force in 2009 (known as 'the 3<sup>rd</sup> Pillar'). If it decides to opt out of the 3rd Pillar, the UK Government must intimate its decision before 31 May 2014, which will be deemed as notice that it is opting out of that body of legislation when ECJ jurisdiction over it commences on 1 December 2014. As you will know, the protocol also provides that the UK can then seek to opt back in. However, this must be negotiated with the Commission and Council. Therefore, there are three options available to the UK Government in this matter. Firstly, to stay fully in; secondly to opt out and stay out; thirdly, to opt out and then seek to opt back in to certain measures, although re-entry would not be guaranteed.

As the Committee will be aware, the best known of the pre-Lisbon Treaty measures is, probably, the European Arrest Warrant. Other significant measures include co-operation through Eurojust and Europol; EU wide police alerts; cross-border criminal record checks; fingerprint and DNA checks; joint investigative teams, etc.

The Committee will recognise that these existing arrangements play a major role in assisting police and prosecution authorities in Scotland in tackling cross-border crime, such as human trafficking, and assist co-operation with relevant agencies in other parts of Europe.

I wrote to UK Government Ministers in April, and again in August 2012, indicating our strong interest in this decision with reference to the potential implications for justice matters that fall within the devolved competence of the Scottish Parliament and the need for prior consultation. Although some limited initial dialogue took place between Scottish and UK Government officials about specific measures, no formal reply was received to my letters ahead of 15 October.

On 15 October, the Home Secretary announced in the Westminster Parliament that the UK Government's 'current thinking' is to opt out of all the pre-Lisbon police and criminal justice measures and then negotiate with the Commission and other Member States to opt back into those individual measures which it considers to be in its national interest to rejoin. The UK Government also committed to hold votes in both the Houses of Parliament before making a final decision. I can confirm to the Committee that there was no prior formal notification to Scottish Ministers before this important announcement was made. I have written to UK Government Ministers expressing my strong disappointment and concern about the unsatisfactory handling of this announcement, which related to a decision that has profound potential implications for the operation of justice matters which are within the devolved competence of the Scottish Parliament. I have asked for a clear statement about the arrangements for Scottish Ministers to be consulted before a final decision is taken. I understand that Northern Ireland Ministers have written in similar terms.

I hope that the above information is of assistance to the Committee.

Kenny MacAskill  
Cabinet Secretary for Justice  
28 November 2012