



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

17th Meeting, 2014 (Session 4)

Tuesday 3 June 2014

The Committee will meet at 10.00 am in the David Livingstone Room (CR6).

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Review of expenses and funding of civil litigation in Scotland:** The Committee will take evidence on the Scottish Government's response to Sheriff Principal Taylor's review from—

Roseanna Cunningham, Minister for Community Safety and Legal Affairs, Stella Smith, Civil Law and Legal System Division, Kay McCorquodale, Civil Law and Legal System Division, and Alastair Smith, Legal Services, Scottish Government.

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

Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Amendment Regulations 2014 (SSI 2014/123);

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2014 (SSI 2014/130).

4. **Public petitions:** The Committee will consider the following petitions—

PE1370 by Dr Jim Swire, Professor Robert Black QC, Robert Forrester, Father Patrick Keegans and Iain McKie on Justice for Megrabi;

PE1449 by Dr John Wallace Hinton on behalf of Accountability Scotland on the Scottish Committee of the Administrative Justice and Tribunals Council;

PE1479 by Andrew Muir on complaints about solicitors;

PE1504 by Kathie Mclean-Toremor on party litigants - civil appeals to the Supreme Court.

5. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

Agenda item 2

Private paper	J/S4/14/17/1 (P)
Private paper	J/S4/14/17/2 (P)
Private paper	J/S4/14/17/3 (P)

[Scottish Government's response to Sheriff Principal James A Taylor's Review of Expenses and Funding of Civil Litigation in Scotland](#)

Agenda item 3

Paper by the clerk	J/S4/14/17/4
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[Adults with Incapacity \(Supervision of Welfare Guardians etc. by Local Authorities\) \(Scotland\) Amendment Regulations 2014 \(SSI 2014/123\)](#)

[Title Conditions \(Scotland\) Act 2003 \(Rural Housing Bodies\) Amendment Order 2014 \(SSI 2014/130\)](#)

Agenda item 4

Private paper	J/S4/14/17/5 (P)
Letter from Police Scotland on Petition PE1370	J/S4/14/17/6

Agenda item 5

Private paper	J/S4/14/17/7 (P)
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Additional paper for agenda item 4

Written submission from the Committee of Justice for Megrahi on Petition PE1370 J/S4/14/17/8

Justice Committee

17th Meeting, 2013 (Session 4), Tuesday 3 June 2014

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Amendment Regulations 2014 (SSI 2014/123);
 - Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2014 (SSI 2014/130).
2. Further details on the procedure for negative instruments are set out in Annexe A attached to this paper.

Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Amendment Regulations 2014 (SSI 2014/123)

Introduction

3. The purpose of the instrument is to allow more flexibility in the frequency of visits, in response to the circumstances of individual adults, so that local authority resources may be targeted to safeguard the most vulnerable.
4. The instrument comes into force on 9 June 2014.
5. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2014/123/contents/made>

Consultation

6. The policy note on the instrument confirms that the proposals were considered at a focus group meeting arranged by the Mental Welfare Commission and the Scottish Government at the end of May 2012 and attended by representatives from local authorities and a number of voluntary sector organisations supporting adults with incapacity. A formal consultation took place between May and August 2013 with 19 respondents. The proposals were generally supported although some concerns were expressed about the power to dispense with annual visits.

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 27 May 2014 and agreed to draw the instrument to the Parliament's attention as the meaning of the text inserted by regulation 5 could be

clearer. The Scottish Government has undertaken to bring forward an amending instrument to correct the error.

8. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 4 of this paper.

Justice Committee consideration

9. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 16 June 2014.

Policy Note:

Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Amendment Regulations 2014 (SSI 2014/123)

The above instrument was made in exercise of the powers conferred by sections 10(3)(a) and (b) and 86(2) of the Adults with Incapacity (Scotland) Act 2000 ("the 2000 Act"). The instrument is subject to negative resolution procedure.

Policy Objectives

Under section 10(3) of the 2000 Act, Scottish Ministers can make regulations about the supervisory functions carried out by local authorities in relation to welfare guardians and persons appointed under intervention orders. Regulations were made under section 10(3) in 2002 – the Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities) (Scotland) Regulations 2002 (SSI 2002/95; "the principal Regulations").

The principal Regulations were amended in 2005 to reduce the supervision requirements on local authorities where a guardian has been appointed for more than 1 year. Originally, local authorities had to arrange visits of the adult and guardian every 3 months. This requirement was changed to every 6 months. This change came about as a consequence of work carried out jointly by Alzheimer Scotland – Action on Dementia and the Scottish Development Centre for Mental Health to monitor the implementation of the 2000 Act and make recommendations on issues which might need to be addressed. The changes in 2005 were intended to address the concerns expressed by the Association of Directors of Social Work and guardians that the 3-monthly requirement was intrusive and unnecessary.

The Scottish Government and the Mental Welfare Commission consider that the principal Regulations still place too great a burden on local authorities; are not risk-based; and do not necessarily best meet the needs of the adult. Amendments to the principal Regulations are, therefore, being made in this instrument to allow more flexibility in the frequency of visits, in response to the circumstances of individual adults, so that local authority resources may be targeted to safeguard the most vulnerable.

The amendments will:-

- Extend the interval for on-going supervisory visits to adults and welfare guardians, where a guardian has been appointed for more than 1 year from 6 months to 12 months;

- Provide local authorities with a power to vary or cease the 12 monthly visits to adults and/or welfare guardians, where a guardian has been appointed for more than 1 year, following the first 12 month review and subject to certain safeguards including the agreement of both the adult and the guardian;
- Prescribe the form of notification a local authority must send to the Mental Welfare Commission when it has decided to vary or cease visits;
- Alter the intervals and nature of visits to adults and welfare guardians, where the guardian has been appointed for less than 1 year. Currently the requirement is to visit within 14 days before or after the midpoint of the appointment and within 14 days of the end of the appointment. This will change to a visit to the adult and guardian within 3 months of the guardianship order being granted, and contact with the guardian no less than 3 months before the end of the appointment;
- Alter the circumstances in which information must be provided by a welfare guardian or person authorised under an intervention order to a local authority, and enable a guardian or person authorised under an intervention order from volunteering relevant information to the local authority.

Specifically, the changes will support the overall policy aim of providing some flexibility to local authorities in relation to visiting adults with incapacity and their guardians. This will enable local authorities to adopt a risk based approach and to target their resources to where they are most needed. These proposed changes will build on the amendments made in 2005.

The proposals in the instrument are supported on the basis that the current minimum of 6 months is often both onerous for the local authority and intrusive for the guardian. The facility to extend the interval between visits will also provide helpful flexibility and enable proportionate risk management, enabling resources to be better targeted.

Appropriate levels of safeguarding are put in place by the instrument, with the involvement of the welfare guardian and the adult in the local authority's decision making process about extension of the intervals for visits or cessation of visits. If the adult or the welfare guardian does not agree to the change proposed by the local authority the issue cannot be taken any further. In addition the instrument provides that the Mental Welfare Commission will be provided by the local authority with a record of the decision and the reasons for it, which will allow them to raise any issues of concern with the local authority should they consider it necessary. The Mental Welfare Commission will be issuing guidance to assist local authorities complete the form of notification.

None of these proposed changes should prevent a local authority from arranging visits to the adult or welfare guardian more frequently than the interval set down in the principal Regulations – the principal Regulations set down the minimum supervisory requirements.

In terms of the requirement for the guardian or person authorised under an intervention order to provide information when requested by the local authority, the proposed changes in the instrument will promote a partnership approach between the guardian and local authority; provide greater clarity for guardians as to their responsibilities and strengthen the local authority's ability to require information to be provided; and importantly, complement the risk based approach to intervals between visits, as if the frequency of visits decrease, the sharing of information becomes more important.

Consultation

These proposals were considered at a Focus Group meeting arranged by the Mental Welfare Commission and the Scottish Government at the end of May 2012 and attended by representatives from local authorities and a number of voluntary sector organisations supporting adults with incapacity.

A formal consultation took place between May and August 2013 with 19 respondents. The proposals were generally supported although some concerns were expressed about the power to dispense with annual visits.

Financial Effects

No additional costs will fall on the Scottish Government or local government. The amendments to the principal Regulations provide for a more flexible and risk based approach to supervisory visits on behalf of local authorities to adults and their welfare guardians. They should therefore enable local authorities to better target their available resources and operate more effectively within the limits of their workforce capacity.

Equality Impact Assessment

An equality impact assessment has been produced in connection with these proposals and was published as part of the consultation paper. The assessment concludes that it is not foreseen that the proposals would impact on any particular group more than any other.

Scottish Government Civil Law and Legal System Division
April 2014

Extract from the Delegated Powers and Law Reform Committee 37th Report 2014

Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Amendment Regulations 2014 (SSI 2014/123) (Justice Committee)

1. The instrument amends the Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities) (Scotland) Regulations 2002 (SSI 2002/95; the 2002 regulations). The 2002 regulations prescribe the duties of the local authority in relation to supervision of welfare guardians and persons authorised under intervention orders, in terms of the Adults with Incapacity (Scotland) Act 2000. They also prescribe the information to be provided by such persons to the local authority.
2. The amendments to the 2002 regulations include extending the minimum interval for on-going supervisory visits by the local authority to adults and welfare guardians, and providing local authorities with a power to vary the frequency of visits, or to cease them, where a guardian has been appointed for more than one year.
3. The regulations come into force on 9 June 2014.
4. In considering the instrument, the Committee asked the Scottish Government for an explanation of certain matters. The correspondence is reproduced in the Appendix.

5. Regulation 5 of the instrument inserts regulation 2A(5) in the 2002 regulations. It enables a local authority which has made a decision to cease or reduce the frequency of supervisory visits to a welfare guardian or adult to restart those visits or to vary them back to the original 12-month intervals “in accordance with regulation 2(1)(b)”. Regulation 2(1)(b) refers to visits (with an interval of 12 months or less) to the welfare guardian, while regulation 2(1)(a) refers to such visits to the adult. The Committee considers that it is unclear whether the effect of the cross-reference to regulation 2(1)(b) is to enable a variation of visits to both the welfare guardian and to the adult, or only to one of them.
6. The Scottish Government acknowledges the error in the cross-reference. It considers that there is a risk that the provision would have the effect of allowing a variation of visits (to intervals of not more than 12 months) only in respect of the adult, when the policy intention is to allow this for visits to both the adult and the welfare guardian.
- 7. The Committee accordingly draws the instrument to the Parliament’s attention under ground (h) as the meaning of the text inserted by regulation 5 could be clearer.**
- 8. Regulation 5 inserts new regulation 2A(5) in the Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Regulations 2002 (“the 2002 Regulations”). The cross-reference in regulation 2A(5)(a) to regulation 2(1)(b) of the 2002 Regulations is erroneous as it is too specific. It creates uncertainty regarding whether the effect is to permit a variation of visits (to intervals of not more than twelve months) in respect of both the adult subject to a guardianship order and the welfare guardian, or only in respect of the adult. The policy intention is to allow for such a variation in respect of visits to both the welfare guardian and the adult.**
9. The Committee notes that the Scottish Government has undertaken to bring forward an amending instrument to correct the error.

Appendix

Adults with Incapacity (Supervision of Welfare Guardians etc. by Local Authorities) (Scotland) Amendment Regulations 2014 (SSI 2014/123)

On 14 May 2014, the Scottish Government was asked:

(1) Regulations 3-5 provide for an increase in the minimum interval between visits to the adult and guardian, and enable the variation and cessation of local authority visits. In so far as those provisions reduce the level of supervision of welfare guardians by the local authority, does the Scottish Government consider that they engage the Article 8.1 rights of the adult subject to a guardianship order? We refer here to the positive obligations Article 8 imposes on the state to secure respect for private and family life (e.g. as in *X and Y v the Netherlands* (1985) 8 EHRR 235). Please explain why the interference is justifiable in pursuit of a legitimate aim, and also meets the tests of fair balance and proportionality, as the Policy Note does not explain these matters.

(2) In new regulation 2A(5)(a) of the principal regulations, as inserted by regulation 5, does the Scottish Government agree that the reference to an interval between visits being not more than twelve months “in accordance with regulation 2(1)(b)” should be “in accordance with regulation 2(1)”, as the provision in regulation 2A(5)(a) concerns

visits to both the adult and the guardian? What does the Scottish Government consider is the effect of the reference to regulation 2(1)(b)?

(3) In the Form of Notice in the Schedule to the principal regulations, inserted by regulation 8, there is a statement that “The local authority has provided information to the adult and guardian on how they can contact the local authority if either person wishes visits to the adult and/or the guardian to *restart*”. Standing the terms of new regulation 2A(5)(a) of the principal regulations, is this statement intended also to include information on how the adult or guardian can contact the local authority if they wish the interval between visits to be *varied*?

The Scottish Government responded as follows:

(1) The Scottish Government does not consider that Article 8 is engaged in relation to any alteration in the arrangements for supervision of an adult’s welfare guardian.

Article 8 is undoubtedly engaged at the point in time when the adult is placed under guardianship. The 2000 Act has express provision to ensure protection as regards foreseeability of the legal effect on the adult of appointment, and specification of the powers conferred on the guardian (*Touko Ollila v Finland* A18969/91 30 June 1993 and *Herczegfalvy v Austria* 1992 15 EHRR 437).

The power being exercised in relation to these Regulations does not arise in relation to appointment of a welfare guardian. The power in this case arises in relation to the frequency of supervision of such guardians by local authorities. The arrangements whereby a local authority visits an adult do not affect the nature of the guardianship that the adult is under, but are part of the process of the local authority ensuring that the guardian is fulfilling his or her functions and duties under the 2000 Act.

Even if Article 8 is engaged in relation to alteration of arrangements for supervision of an adult’s welfare guardian, the alterations proposed in these Regulations can be justified in pursuit of a legitimate aim and meeting the tests of fair balance and proportionality.

The circumstances in which a welfare guardian may be appointed to an adult can be extremely varied. The legitimate aim in this situation is to ensure that the guardian is performing his/her functions appropriately in relation to the welfare of the adult. Frequent supervision may be appropriate in some cases, and the principal Regulations are clear (as is noted in the Policy Note to these Regulations) that they prescribe the *minimum* supervisory requirements. A local authority must satisfy itself that the arrangements it puts in place in practice meet any Article 8 obligations which arise. However, less frequent supervision may also be appropriate in some cases. Indeed, excessively frequent supervision might, in theory, breach an adult’s Article 8 rights, if such rights are engaged.

Fair balance and proportionality are ensured by the safeguarding measures which are put in place by these Regulations, referred to in the Policy Note. The adult and/or welfare guardian may object to the proposed variation or cessation and where an objection is made, the proposal cannot be implemented. The Mental Welfare Commission also performs a role, on receipt of the relevant information from the local authority, in being able to raise any concerns about the variation or cessation. The Scottish Government’s position is that the MWC is well-placed to consider these

decisions by local authorities, already having certain statutory functions under the 2000 Act, and will be issuing guidance to local authorities on these decisions.

The cumulative effect of these safeguarding provisions is that a balance is struck between any Article 8 rights of an adult in relation to the alteration of supervision of the adult's welfare guardian, and the need for appropriate supervision of the guardian by the local authority.

(2) The Scottish Government acknowledges that the cross-reference in regulation 2A(5)(a) of the principal Regulations (as amended) to regulation 2(1)(b) is erroneous by being too specific. As the legal advisers to the DPLRC have noted, paragraph (1)(b) of regulation 2 refers only to visits to the guardian, whereas paragraph (1)(a) refers to visits to the adult. The Scottish Government considers that there is a risk that regulation 2A(5)(a) would have the effect of only allowing a variation of visits back to intervals of not more than twelve months for visits to the adult when the intention was to allow this for visits to the adult and the guardian. The Scottish Government will therefore bring forward an amending instrument to remove the reference to subparagraph (b).

(3) The reference in the form to a local authority having provided information as regards restarting of visits is intended – see the text in square brackets above the box preceding the reference which explains that this part of the form should be completed where the decision is to cease visits.

The Scottish Government's position is that the form does not need to cover the provision of information on variation of visits, as, by their nature, visits would be continuing so the adult or guardian will have ongoing relationship with the local authority through which any desire to alter the frequency of visits can be raised. Where visits have stopped, however, there is no ongoing relationship which makes it necessary for the local authority to ensure that the adult and guardian know how to ask for restarting of the visits, as is provided for in the form.

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2014 (SSI 2014/130)

Introduction

10. The purpose of the instrument is to amend the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004 by adding one body, Yuill Community Trust C.I.C., as a prescribed rural housing body.

11. The instrument comes into force on 17 June 2014.

12. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2014/130/contents/made>

Consultation

13. The policy note on the instrument confirms that a consultation was not required because applicants either meet the terms of the legislation or they do not.

Delegated Powers and Law Reform Committee consideration

14. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its meeting on 27 May 2014 and agreed that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

Justice Committee consideration

15. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by 23 June 2014.

Policy Note:

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2014 (SSI 2014/130)

The powers to make this Order are conferred by section 43(5) of the Title Conditions (Scotland) Act 2003 ("the 2003 Act"). The instrument is subject to the negative procedure.

Policy Objective

Section 43(5) of the 2003 Act provides that Scottish Ministers may prescribe such body as they think fit to be a rural housing body. A rural housing body will be able, when selling rural housing or land, to reserve a right to repurchase the property or land in the event of it coming up for sale. As a consequence, rural housing bodies will have the ability to control future sales. Ministers also have the power, under the 2003 Act, to determine that a body shall cease to be a rural housing body.

The right to repurchase may only be used over rural land. Rural land means land other than excluded land. Excluded land has the same meaning as in the Land Reform (Scotland) Act 2003, namely settlements of over 10,000 people.

This Order amends the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004 by adding one body, Yuill Community Trust C.I.C., as a prescribed rural housing body

The power to make this Order may only be exercised where the object or function, or one of the principal objects or functions, of the body concerned is to provide housing or land for housing (section 43(6) of the 2003 Act). Yuill Community Trust C.I.C. complies with this requirement.

Previous amending Orders designating rural housing bodies were made in 2004, 2006, 2007, 2008 and 2013.

Consultation

A consultation is not required as applicants either meet the terms of the legislation or they do not.

Impact Assessments

An equality impact assessment has not been undertaken on the basis that this policy does not have any impact on equality issues.

Financial effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. With the limited information received from the BRIA process, we conclude that the impact of this Order on existing businesses in the area is generally positive. The Order enables a further rural housing body to provide affordable housing for current and future communities. This is likely to contribute to sustaining existing businesses and may attract new businesses.

Civil Law and Legal System Division
April 2014

ANNEXE A**Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee’s web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64215.aspx>

Justice Committee

17th Meeting, 2014 (Session 4) Tuesday 3 June 2014

Petition PE1370

Letter from Police Scotland

Lockerbie Air Disaster – PE1370 – Justice for Megrahi (JFM)

I refer to the previous correspondence on Police Scotland's response to the criminal allegations presented by Justice for Megrahi, and the assurance provided by the Chief Constable Sir Stephen House, in his letter dated 20 February 2014, to provide the Justice Committee with an update on progress.

On 2 April 2014 I hosted a meeting at Tulliallan, between Police Scotland and a JFM Liaison Group. A summary of the meeting is enclosed for your information.

I trust that you find this update to be useful and informative. Please do not hesitate to contact me should you require any further information or clarification.

Iain Livingstone
Deputy Chief Constable
28 May 2014

MEETING SUMMARY

Police Scotland and Justice for Megrahi (JFM)

Tulliallan Castle: Wednesday 2nd April 2014.

Present:

Police Scotland: Deputy Chief Constable Iain Livingstone; Detective Superintendent Stuart Johnstone.

Justice for Megrahi (JFM): Iain McKie; Len Murray; James Robertson.

The meeting was held to facilitate liaison between Police Scotland and JFM in respect of the ongoing police investigation into JFM's 9 criminal allegations, with both parties keen to resolve the recent difficulties and use the meeting as a positive basis to move forward.

In a full and frank discussion, JFM expressed their concern at the progress of the investigation to date, the lack of feedback in this regard and sought to restore and maintain mutual confidence through regular liaison. In acknowledgement of the JFM position, DCC Livingstone reiterated that Sir Stephen House had stated his priority was an efficient and effective investigation into the allegations and that DCC Livingstone had been appointed to ensure that this was delivered. Regular liaison

between Police Scotland and JFM was welcomed and would serve to underline this commitment.

Police Scotland provided a brief synopsis of the extent of the investigations into the allegations, to date, with some reassurance through emphasis of the high standard of work and level of detail applied by Mr Shearer prior to his retirement. This work, in turn, has been subject to independent scrutiny and review, the opinion of which will help inform the enquiry as it moves forward. This update and explanation was welcomed by JFM, and served to dispel some misconceptions that the allegations were not being effectively investigated.

A robust governance structure is now in place, with the appointment of Detective Superintendent Johnstone as senior investigating officer, to progress work on the allegations, as directed by Deputy Chief Constable, Crime and on behalf of the Chief Constable. The enquiry is now being managed through established major incident procedures, with immediate effect. This methodology was welcomed by the JFM Liaison Group, and provided an assurance that the enquiry was being robustly managed, and following established major enquiry processes. A dedicated enquiry team of selected officers is being appointed under Detective Superintendent Johnstone, whose full-time remit and responsibility is now the investigation into the allegations.

JFM stated that they could find no justification in the August 2013 decision to delay enquiry into allegations 5, 6 and 7, and also challenged the implication, in the Chief Constable's letter to JFM dated 20th February 2014, that effectively investigation into all 9 allegations had been temporarily halted because of this 'conflict'. The delay had arisen because of a perceived 'conflict' with investigations being carried out by the Crown Office/Police team seeking evidence against Abdelbaset al Megrahi and possible others in relation to the downing of Pan Am 103 and the murder of 270 persons. JFM could see no good reason why the allegations could not be investigated in parallel with the other Libyan enquiries. It was highlighted that on two occasions the Justice Committee had been informed that the 'conflict' would shortly be resolved and investigation would be restarted. This had not happened. JFM maintained that far from being in conflict a number of their allegations actually had relevance to the separate Crown enquiry.

Police Scotland noted JFM's position and stated that following liaison between Mr Shearer and the Crown Office conflict between the two enquiries had been identified and thus delays occurred in progressing certain of the allegations. It was not possible to share the exact detail of that conflict due to operational security. The current position was that, of now, a full investigation of JFM's allegations was resuming and that it was accepted that in some aspects the two separate enquiries had common threads running through them that would require to be examined. However, should such conflicts present themselves the live investigation will at all times take precedent. This will not, however, preclude the full, proper, and timeous investigation to the JFM allegations.

The need for regular liaison was recognised as being an important factor if mutual confidence was to be restored and maintained during the investigative process. JFM undertook to be available as required to assist the ongoing investigation, and proposed the formation of a 'Liaison Group' charged with responsibility for

maintaining close police links. While inviting the JFM representatives to contact the enquiry team at any time Police Scotland indicated that they welcomed the concept of a 'Liaison Group' whereby trust and mutual confidence could develop. They would institute a series of regular meetings shortly where there would be an opportunity to meet and review. JFM agreed to this proposal but made it clear that as an organisation with a specific aim (i.e. 'Justice for Megrahi') it reserved the right to challenge the police during the ongoing liaison. Given the length of time that had already passed, JFM stated that further unexplained or unreasonable delays in the investigation would not be acceptable.

In conclusion, JFM representatives stated that while they had reservations about the way their allegations had been handled in the past they were confident that today's discussions would prove to be an excellent basis for moving the investigation forward. Police Scotland underlined their total commitment to the investigation and their determination that these high priority allegations would be effectively investigated.

Both parties agreed that the discussions had been open, frank and extremely useful, and gave a commitment to build on this accord. Police Scotland and JFM agreed that further liaison meetings will be held in future.

Justice Committee

17th Meeting, 2014 (Session 4), Tuesday 3 June 2014

Petition PE1370 Justice for Megrahi

Written submission from the Committee of Justice for Megrahi

Since the Justice Committee's last consideration of PE 1370 on 18th February 2014 and the resultant correspondence between the Justice Committee and Police Scotland, JFM is pleased to inform the Committee that constructive progress is now being made regarding the investigation into all nine allegations of criminality against Crown, police and forensic officials.

Justice for Megrahi (JFM) is grateful to the Justice Committee for its intervention with Police Scotland subsequent to the stalling of the investigation into JFM's allegations of criminality against aforementioned officials.

On 21st February 2014 JFM received a letter of reassurance from Chief Constable Sir Stephen House that action would be taken to re-establish JFM's confidence in the investigation. Through his good offices, a meeting between DCC Livingston (responsible for oversight), Detective Superintendent Johnstone (responsible for running the investigation) and representatives of JFM took place at the Police Scotland College, Tulliallan, on 2nd April 2014.

Following a full and frank discussion, a major crime investigation team has been set up under Detective Superintendent Johnstone. In addition, the issue of 'conflict' between the JFM allegations and the COPFS investigation appears to have been overcome and interviews with JFM representatives speaking to the allegations in question have now taken place and further interviews may result. Clear lines of communication have been established and regular updates are in progress.

While there has been a positive sea-change in the police approach to the criminal allegations, ultimately, the report of their investigation will be handed over to the Crown Office for any action it might deem necessary. Given that institution's public and highly prejudicial pronouncements, in 2013, before any investigation was even launched (see: Scotsman article of 24 September 2012 – <http://www.scotsman.com/the-scotsman/scotland/lockerbie-cover-up-like-hillsborough-claim-campaigners-1-2543953> and Times Scotland Edition article of 21 December 2012 – <http://www.thetimes.co.uk/tto/news/uk/scotland/article3637840.ece>), JFM continues to have little faith in any decision the Crown Office might make in respect of its allegations.

Currently there are three separate initiatives being pursued in relation to the Lockerbie atrocity. The JFM call for an independent public inquiry (PE 1370), the JFM criminal allegations and the Lockerbie relatives anticipated submission to the SCCRC re a third appeal against Mr al- Megrahi's conviction. All three pillars are integrally linked, although JFM, while totally supportive, has no direct role in the SCCRC submission.

There is no question that the Justice Committee, in its role as political overseer, has been hugely influential in progressing all three initiatives. For this reason, JFM considers it of major importance that the Justice Committee maintains PE 1370 open on the parliamentary books and continues to maintain a watching brief on behalf of the people of Scotland.

Should a decision to close be taken and it later transpires that criminal wrongdoing was committed during the Lockerbie investigation and Zeist trial, and/or should Mr Megrahi's conviction be quashed upon appeal, the call for an inquiry would be irresistible. Closing the petition at this stage therefore makes little sense.

It is JFM's position that the Justice Committee still has a massively important role to play in maintaining political oversight over these ongoing initiatives aimed at casting light on the most appalling atrocity ever committed on Scottish soil in recent history. We believe their continuing involvement is essential if wounds are ever to be healed and faith restored in the Scottish criminal justice system. It is sincerely hoped that the Justice Committee will identify with this view.

Finally, JFM regrets the delayed lodging of this submission but we were only informed of the 3rd June consideration of PE 1370 after the deadline had lapsed.

The Committee of Justice for Megrahi
30 May 2014