



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

21st Meeting, 2014 (Session 4)

Tuesday 5 August 2014

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

1. **Commission on women offenders:** The Committee will take evidence from—

Kenny MacAskill, Cabinet Secretary for Justice, and Andrew Bruce, Deputy Director, Community Justice Division, Scottish Government;

Colin McConnell, Chief Executive, Scottish Prison Service.
2. **Subordinate legislation:** The Committee will take evidence on the Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 [draft] from—

Kenny MacAskill, Cabinet Secretary for Justice, Denise Swanson, Head of Access to Justice Unit, and Alastair Smith, Legal Directorate, Scottish Government.
3. **Subordinate legislation:** Kenny MacAskill, Cabinet Secretary for Justice to move—

S4M-10634—That the Justice Committee recommends that the Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 [draft] be approved.
4. **Subordinate legislation:** The Committee will consider the following negative instrument—

Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014 (SSI 2014/159).
5. **Scotland's National Action Plan for Human Rights:** The Committee will receive an update from John Finnie, rapporteur to Scotland's National Action Plan (SNAP) for Human Rights, on progress on the SNAP process.

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The papers for this meeting are as follows—

Agenda item 1

Paper by the clerk J/S4/14/21/1

Private paper J/S4/14/21/2 (P)

Agenda items 2 and 3

Paper by the clerk J/S4/14/21/3

[Scottish Legal Complaints Commission \(Modification of Duties and Powers\) Regulations 2014 \[draft\]](#)

Agenda item 4

Paper by the clerk J/S4/14/21/4

[Right to Information \(Suspects and Accused Persons\) \(Scotland\) Regulations 2014 \(SSI 2014/159\)](#)

Agenda item 5

Paper by the clerk J/S4/14/21/5

Justice Committee

21st Meeting, 2014 (Session 4), Tuesday, 5 August 2014

Commission on Women Offenders

Note by the clerk

Purpose

1. This paper provides background information on implementation of the Commission on Women Offenders' recommendations in advance of the evidence session on 5 August.

Background

2. In response to two consecutive inspection reports critical of conditions at Cornton Vale by Her Majesty's Chief Inspector of Prisons, the Scottish Government established a Commission on Women Offenders in June 2011 to look at ways to improve the outcomes for women in the criminal justice system. The Commission published its report on 17 April 2012 which included the following recommendations:

- Cornton Vale should be replaced with a smaller specialist prison for women serving a statutory defined long-term sentence and who present a significant risk
- most women prisoners on remand or serving short-term sentences should be held in local prisons to improve liaison with local communities and reintegration
- women at risk of reoffending or custody should have a named key worker as a single point of contact and intensive mentoring
- community justice centres (one stop shops based on the 218 Service, Willow Project and Women's Centres in England) should be established for women offenders to enable them to access a consistent range of services
- a national Community Justice Service should be established to commission, provide and manage adult offender services in the community.

3. The Cabinet Secretary for Justice accepted a further recommendation that he should report to the Scottish Parliament annually on progress with implementing the recommendations and has provided written reports and evidence to the Committee annually since 2012. These reports and official reports of the evidence sessions are available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/70346.aspx>

4. On 3 June 2014, the Committee agreed to write to the SPS, Howard League Scotland, and Dame Elish Angiolini for views on a perceived shift away from the Commission's recommendations, particularly relating to the size of the new prison and the creation of community justice centres based on the 218 Service in Glasgow. Responses received are provided at Annexe A¹. On 26 June, the Committee considered these responses and agreed to invite the Cabinet Secretary and SPS to give evidence at its meeting on 5 August.

Evidence session

5. The Committee is invited to consider the responses received and to take evidence from the Cabinet Secretary for Justice, Kenny MacAskill, and SPS Chief Executive, Colin McConnell.

¹ Due to her workload, Dame Elish Angiolini indicated that she was unable to provide a written response within the timescale.

ANNEXE A**Response from the Scottish Prison Service to the Convener on implementation of the Commission on Women Offenders' recommendations**

Thank you for your letter of 4 June to Colin McConnell requesting an update on progress in implementing certain recommendations of the Commission on Women Offenders. I am replying in Colin's absence on annual leave.

My response is set out below. I should point out that those aspects of your letter concerning Community Justice Centres and supported accommodation are matters more appropriate for the Scottish Government to respond to.

I should reiterate the Scottish Prison Service's commitment to delivering on the ambitions laid out in the Commission's report. We have and continue to work closely with a wide range of relevant partners on this agenda and Colin has, as you know, taken personal responsibility for leading this work and established a Women Offenders Project Team to support him doing so. We are confident that our approach – both to the design for Inverclyde and to the further development of our strategy for the management of women in custody – is founded upon and will appropriately deliver the Commission's recommendations.

The Project Team has adopted an holistic approach to the care and management of women in custody and sought to develop the design of the prison, its ethos and its proposed regime in a complimentary and integrated way. In doing so, each of the Commission's recommendations has been individually addressed.

In particular I would highlight:

- Inverclyde's design has ensured that living, learning and working accommodation provides the flexibility and facilities to enable a diversity of activities and interventions to take place;
- the overall design of the prison is being developed with specific needs of women at the forefront and special attention has been given to the mother and baby unit, to the visits facility and to the family help hub. It is our intention that all three areas will have outside garden and play space; and
- the needs of women with mental health and addictions problems, those who are vulnerable and those who display challenging behaviours, have been catered for in the design, as indeed have young women.

Turning to your questions around population management, Inverclyde will be both a national prison catering for women prisoners with particular needs or characteristics and will also act in large part as a local facility for women from the west of Scotland. Through the establishment of a new regional unit for women, which opened at HMP Grampian in March of this year, and a new regional unit for women at HMP Edinburgh, which is due to open in December 2016, the Scottish Prison Service is taking broader steps to manage women prisoners in such a way as to improve liaison with local communities and reintegration.

This 'hub and spoke' arrangement will enable women to be located as close to their communities as is practicable – though they may spend a period of time in Inverclyde should they require a programme or other intervention that cannot be provided in their local Establishment. We are confident that this approach is in line with the Commission's

conclusions and remain committed to working with partners to build on these developments and facilitate further innovation where it is practicable and affordable.

You asked about Inverclyde's overall design capacity (300 and capable of expanding to 350 as an operational maximum) and whether there are plans for the use of that capacity to take pressure away from other parts of the estate if and when required.

You will recall Colin's comments to the Committee in 2012 on this matter when he said that whilst we can look again at how custodial facilities are used across the country as wider justice policies are brought to bear, it is necessary for us to plan to build a replacement for Cornton Vale that can manage a women's population of around 300. This approach reflects standard practice given that it is notoriously difficult to predict with any great certainty how the prison population may fluctuate. The normal operating capacity for Inverclyde of 300 includes 4 spaces in the mother and baby unit and 8 spaces in the community integration unit, making the prison's mainstream capacity 288 in a combination of single and twin rooms.

Inverclyde is a prison designed specifically for women. There would be no intention to utilise the facility to ease overcrowding in the male Estate.

I hope this information reassures the Committee that the Scottish Prison Service is making good progress on the delivery of the Commission's recommendations.

Ian Davidson
 Director of Strategy and Innovation
 19 June 2014

Response from Howard League Scotland to the Convener on implementation of the Commission on Women Offenders' recommendations

Howard League Scotland is grateful for the opportunity to comment upon the implementation of the recommendations of the Commission on Women Offenders.

Summary

It is not possible to contemplate a sustained reduction in Scotland's female prison population without considering the balance between the provision of custodial sentences and the provision of community disposals. These are two halves of the same coin. Two years on from the publication of the report of the Commission on Women Offenders, we are concerned that the balance is still significantly tilted in favour of custody rather than community-based approaches to addressing women's offending behaviour. Nor is it possible to envisage reductions in the female prison population without focussing on the root causes of women's offending – poverty, substance and alcohol misuse, mental health problems, histories of domestic and sexual abuse. These issues must be tackled if we are to prevent women from entering the criminal justice system in the first place.

The Cabinet Secretary for Justice recently reflected that the plight of women caught up in our criminal justice system was one of "*the most pressing social issues of recent times*"². The Committee will be familiar with the characteristics and needs of women offenders, and the rise of Scotland's female prison population, which was the spur for the establishment of the Commission.

² Article of Howard League Scotland website, 24 April 2014
<http://www.howardleaguescotland.org.uk/news/2014/cabinet-secretary-justice-kenny-macaskill-women's-penal-policy>

The female prison population has risen by 120% since 2000, despite conviction rates remaining stable over the same period. Whilst there has been a small decrease in the number of women in custody over the last year, it remains to be seen whether this reduction will persist. According to Scottish Prison Service figures, on 6 June 2014, there were 332 convicted female prisoners and 75 untried female offenders in custody.

Whilst the Scottish Government nominally accepted the majority of the Commission's 37 recommendations, we are concerned that some of the recommendations are not being implemented as the report's authors intended.

A replacement for Cornton Vale

We were pleased to note the Commission's recommendation to close HMP Cornton Vale and welcomed the proposal that it should be replaced with "*a smaller specialist prison for those women offenders serving a statutory defined long-term sentence and those who present a significant risk to the public*".³

We are therefore disappointed that the Scottish Government intends to construct a new women's prison with a maximum capacity of 350 that will handle convicted and remand adult and young offenders of varying legal and security categories and of varying sentence length, from short term sentences to life prisoners. This is a clear departure from the recommendations made by the Commission. In addition to HMP Inverclyde, women will continue to be held in HMP Grampian and HMP Edinburgh currently holds around 100 women. Therefore the projected capacity of the female prison estate once HMP Inverclyde is operational in 2017 will be around 500. HMP Inverclyde is expected to have a lifespan of at least 60 years and the contract for its construction will go out to tender in October 2014.

Building to projections

The failure to reduce capacity in the female prison estate is often justified on the grounds that it is necessary to adhere to prison population projections. However, there is evidence to suggest that creating capacity in the form of new prison places may itself actually increase the likelihood of a rise in the prison population. Cautioning against over-reliance on historical patterns in the prison population, criminologist Dr Sarah Armstrong wrote recently that "*prison forecasts are at risk of triggering a self-fulfilling prophecy encouraging capital expansion*".⁴ Writing about the prison boom in the USA, Spellman (2009)⁵ concludes that a "*dramatic improvement in the infrastructure for delivery of alternative sanctions*" is what is likely to be required to reduce prison populations.

The balance between custody and community disposals

There, if we are to reduce the female prison population in Scotland, as well as a reduction in prison places, there must also be sufficient investment in community disposals for women. This 'twin-track' approach is essential if we are to bring a halt to the upward spiral of female imprisonment in Scotland. However, we are not yet convinced that the commitment exists for a sufficient shift in resources to enable this to happen.

The Scottish Government has allocated £3m over the two-year period 2013-15 to support women offenders in the community. This is welcome; however, it pales in comparison with the annual cost of imprisoning women. The Scottish Prison Service estimated in 2011/12 that the average annual cost of imprisonment per prisoner was £32,371. Based on an

³ Report of the Commission on Women Offenders, April 2012, p.10.

⁴ Article on Howard League Scotland website, 12 June 2014, 'The Problem with prison population projects' by Dr Sarah Armstrong <http://www.howardleaguescotland.org.uk/news/2014/june/problem-prison-population-predictions>

⁵ Spellman, W (2009) *Crime, cash and limited options: Explaining the prison boom* Criminology and Public Policy Volume 8 Issue 1

average daily female prisoner population of 400, the annual cost of imprisonment for women is in the region of £13m (although it is likely to be higher than this, given the additional needs of female prisoners). We also note that the capital expenditure for HMP Inverclyde is expected to be around £60m.⁶

Privately, a number of organisations working with women offenders have conceded that the resources allocated to community-based interventions are a ‘drop in the ocean’. We also note their concerns about the short-term nature of funding arrangements, which threaten the sustainability of those services, and the ability to demonstrate their effectiveness.

We know that the needs of women offenders are better addressed in the community and the Commission’s report highlighted a number of existing services supporting women in the community. The Cabinet Secretary for Justice indicated in his October 2013 report to Parliament that funds would be made available for the expansion of the Willow project in Edinburgh. However, whilst the Scottish Government intends to maintain its £1.7m annual funding of the 218 Service in Glasgow, we understand that no *additional* funds have been made available to the Service since the publication of the Commission’s report.

Leadership

The Commission’s report highlighted the importance of leadership in driving forward this agenda. We are disappointed that the recommendation to establish a national Community Justice and Prison Delivery Board has not been implemented, presumably due to the fact that the Scottish Government is currently considering reform of community justice in Scotland more generally. The existence of such a body would provide a critical function, increasing accountability and oversight, and enabling a rebalancing of responses to women’s offending away from custodial sentences to community-based solutions.

We are also concerned that the Scottish Government appears to be stepping back from responsibility for oversight of the response to the Commission’s report. When Howard League Scotland asked the Cabinet Secretary for Justice whether the proposals for HMP Inverclyde were in keeping with the Commission’s overall aspirations, he replied saying that decisions relating to the size and design of HMP Inverclyde were operational matters for the Scottish Prison Service.

It is unfair to expect the Scottish Prison Service – whose business it is to build and operate prisons – to take an overview of the whole package required to reduce female imprisonment in Scotland, when so much of the task of meeting that challenge is beyond their control.

Sentencing

The Commission’s report acknowledged the role that sentencing has played in the growth of the female prison population in Scotland, making five recommendations in this area and a further three recommendations on ‘Alternatives to remand’. It noted research carried out by the Scottish Centre for Crime and Justice Research which found “*general longer-term increases in the use of custody compared to other disposals and some degree of upward drift in sentence length*” (p.19). It would seem that sentencing practice remains unchanged and that progress in this area has been limited. Clearly this is cause of concern given the role that sentencing has played in contributing to the growth of Scotland’s female prison population.

Tackling the root causes of women’s offending behaviour

Our aspiration should be to prevent women coming into contact with the criminal justice in the first instance. Therefore we must address the social disadvantage that shapes some

⁶ Article in the Evening Times, 11 February 2013, ‘£60m prison plan delayed’
<http://www.eveningtimes.co.uk/news/60-prison-plan-delayed-115184n.20137910>

women's lives. Real success in preventing offending behaviour, as well as reducing offending, lies beyond the realms of penal policy.

Conclusion

Very few women need to be in prison for reasons of public protection and the pains of imprisonment are more acute for women than men, as evidenced by the high rates of self-harm and mental illness seen in the female prison population. The damaging, often long lasting, effects on children of maternal imprisonment are also well documented. The £60m allocated to the construction of HMP Inverclyde would be put to better use resourcing community justice centres, as well as the "smaller specialist prison" envisaged by the Commission on Women Offenders. The radicalism at the heart of the Commission's report is in danger of being lost, as we once again fall back on imprisonment as the primary response to women's offending.

Howard League Scotland
18 June 2014

Addendum to Howard League Scotland's response to the Convener on implementation of the Commission on Women Offenders' recommendations

Further to our submission on the implementation of the recommendations of Commission on Women Offenders, we wanted to bring the Committee's attention to work done by Professor Alec Spencer into the cost of prison per prisoner place.

You will recall that in our submission to the Committee, we contrasted the investment in community justice for women offenders with the cost of imprisoning women. The Scottish Prison Service estimated in 2011/12 that the average annual cost of imprisonment per prisoner was £32,371. Based on this figure and an average daily female prison population of 400, the annual cost of imprisonment for women could be calculated as being in the region of £13m.

However, in his submission to the Scottish Prisons Commission in 2007 (available here: <http://www.scotland.gov.uk/Resource/Doc/1102/0056826.pdf>), Professor Alec Spencer, made the following observation:

The real cost of imprisonment is difficult to estimate. SPS's Annual Report gives the target annual average cost per prisoner place for 2006/07 as £35,000 and the outturn as £30,989. This excludes the Prisoner Escort Service (run on behalf of prisons, police and courts), capital costs of new buildings and prisoner compensation claims. SPS states that the actual annual average cost per prisoner place, calculated on a resource accounting basis (including capital charges), in 2006-07 was £40,449; also the actual annual average cost per prisoner place including exceptional payments in 2006-07 was £33,925. However, the total cost to the taxpayer for all SPS operations and expenditure was in the region of £396.3 million for 2006/07 and for 2007/08 is £427.8 million. Excluding the escort service, the cost of SPS (£374m) divided by the average number of prisoners (7,183) gave a cost of £52,075 per prisoner.

Whilst these calculations are a few years out of date, it is not difficult to see that the annual cost of imprisoning women in Scotland to the taxpayer is likely to be considerably higher than £13m per annum.

Howard League Scotland
27 June 2014

Justice Committee

21st Meeting, 2014 (Session 4), Tuesday 5 August 2014

Subordinate legislation

Note by the clerk

Introduction

1. This paper invites the Committee to consider the following affirmative instrument:
 - Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 [draft].

Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 [draft]

Purpose of instrument

2. The draft Regulations were laid under section 41 of the Legal Profession and Legal Aid (Scotland) Act 2007 (the 2007 Act).
3. The purpose of this instrument is to make amendments to the Legal Profession and Legal Aid (Scotland) Act 2007 to adjust the duties and powers of the Scottish Legal Complaints Commission and to impose new duties and new powers on it. This includes--
 - giving the SLCC the ability to revisit the eligibility of the complaint during the investigation phase;
 - providing for a more flexible order of consideration of aspects of complaints;
 - giving the SLCC the ability to discontinue the investigation of a complaint and, should it wish, reinstate a complaint where it has discontinued an investigation;
 - providing that practitioners about whom a conduct complaint has been made with the power to complain to the SLCC if they feel that the conduct complaint has been poorly handled by the relevant professional organisation;
 - providing new powers for dealing with recommendations in reports on handling complaints
 - providing for handling complaints to be reinstated;
 - placing an obligation on the SLCC to set up and consult an independent panel in certain circumstances.

4. Further details on the purpose of the instrument can be found in the policy note in Annexe A to this paper and an electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/sdsi/2014/9780111023846/contents>

Consultation

5. The policy note confirms that a short consultation with targeted groups representing business and consumer interests was appropriate rather than a full public consultation as this was a stakeholder initiative. Consultation packs were sent to the

Scottish Legal Complaints Commission, the Law Society of Scotland, the Faculty of Advocates, the Association of Commercial Attorneys, the Legal Defence Union, the Scottish Solicitors' Discipline Tribunal, Citizens Advice Scotland, Which? and the Office of Fair Trading.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 17 June 2014 and agreed that it did not need to draw the attention of the Parliament to it on any grounds within its remit.

Justice Committee consideration

7. The Justice Committee is required to report to the Parliament on this instrument by 21 August 2014.

8. The instrument is subject to affirmative procedure (Rule 10.6. of Standing Orders). The Cabinet Secretary for Justice has lodged motion S4M-10634 proposing that the Committee recommends the approval of the instrument. The Cabinet Secretary for Justice will attend the Committee meeting on 5 August to answer any questions on the instrument, and then, under a separate agenda item, will be invited to speak to and move the motion for approval. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 30 May 2014.

9. The Parliament will then be invited to approve the instrument.

10. The Committee is asked to delegate to the Convener authority to approve the report on the instruments for publication.

ANNEXE A**Policy Note: Scottish Legal Complaints Commission (Modification of Duties and Powers) Regulations 2014 [draft].**

The above instrument is made in exercise of the powers conferred by section 41 of the Legal Profession and Legal Aid (Scotland) Act 2007 (the 2007 Act).

The instrument, which will make amendments to primary legislation, is subject to the affirmative procedure.

Background

The Law Society of Scotland and the Scottish Legal Complaints Commission (“the SLCC”) raised concerns about certain practical aspects of the Legal Profession and Legal Aid (Scotland) Act 2007. They agreed to form a working group together with other stakeholders, the aim of which was to suggest improvements to the complaints process which would benefit both the public and the profession.

Following the conclusion of the working group, the Law Society of Scotland and SLCC wrote jointly to Ms Roseanna Cunningham, Minister for Community Safety and Legal Affairs, on 28 November outlining a number of proposals upon which all member of the working group were agreed.

Policy objectives

This instrument makes of the following changes to the 2007 Act.

1. Ability to re-visit eligibility questions

The Act currently obliges the SLCC to consider the eligibility of a complaint (on the grounds of timeousness, prematurity, frivolity, vexatiousness or lack of merit) prior to investigation of the complaint. Section 9 of the Act currently requires the SLCC, once it has begun an investigation, to continue to investigate that complaint even if it becomes clear, during the investigation, that the complaint would have been ineligible. The SLCC has reported that during the section 9 investigation phase, information can come to light which subsequently reveals that the complaint ought to have been rejected at a much earlier stage because of timeousness, prematurity, frivolity, vexatiousness, or lack of merit. These Regulations give the SLCC the ability to revisit the eligibility of the complaint during the investigation phase.

2. Rearranging the order of consideration

The Act provides for the order in which the SLCC has to consider various preliminary matters before it can begin its investigation. Currently, the SLCC has to firstly consider whether the complaint is premature or timeous, secondly whether the complaint is frivolous, vexatious or totally without merit and only then determine whether the complaint is a conduct or a service complaint. The “Rules of the Scottish Legal Complaints Commission 2013” envisage that different considerations should apply when considering the timeousness and prematurity of conduct complaints and service complaints. They therefore have to determine, administratively, which category the complaint falls into *before* considering timeousness or prematurity. This runs contrary

to the order required by the legislation. The instrument provides therefore for a more flexible order of consideration, where prematurity can be considered in advance of the categorisation of each complaint as either conduct or services, with categorisation and the eligibility criteria considered afterwards.

3. Power to discontinue and reinstate service complaints

At present section 9 of the 2007 Act requires the SLCC to produce a determination in respect of each and every complaint which reaches the investigation stage. This applies even in cases where the complainer stops co-operating, or unreasonably fails to give the SLCC the information that it needs to properly investigate a complaint. This instrument gives the SLCC the ability to discontinue the investigation of a complaint and, should it wish, reinstate a complaint where it has discontinued an investigation.

4. Practitioners to be able to raise handling complaints

Conduct complaints are remitted by the SLCC to the relevant professional organisation (“RPO”) to handle under section 6 of the 2007 Act. Section 23 allows the Commission to investigate complaints by members of the public that the RPO failed to investigate properly their conduct complaint. The instrument provides that practitioners about whom a conduct complaint has been made should similarly be able to complain to the SLCC if they feel that the conduct complaint was poorly handled by the RPO.

5. Dealing with recommendations in reports on handling complaints

Section 24(2) to (6) currently give the RPO 3 months to decide whether or not it will comply with a recommendation in a report by the SLCC on a handling complaint. The SLCC has the same period of 3 months within which to decide whether the RPO has complied with a recommendation in a report on a handling complaint. This means that the SLCC potentially has to wait 3 months before the RPO intimates whether it intends to comply with a recommendation. Additionally, in some cases, depending on the nature of the recommendation, implementation may take longer than 3 months.

The instrument instead provides that:

- i. The RPO must notify the relevant people in writing within 14 days if it is not intending to comply with a recommendation. If that is the case then as at present Commission can take enforcement action.
- ii. Normally the RPO should still have 3 months in which to comply
- iii. There should be an exception where it is not practicable to comply within 3 months eg. if re-investigation of a complaint is ordered it might take longer than 3 months. In that case the onus is to be on RPO inform the relevant parties in such cases and to propose a reasonable timescale. The SLCC can take enforcement action if it doesn't consider what RPO proposing is reasonable or the RPO fails to comply.

6. SLCC to be able to reinstate a handling complaint

Section 23(2) allows the SLCC to discontinue a handling complaint, once they have begun to investigate it but there is no provision for reinstatement of handling complaints. This instrument provides for handling complaints to be reinstated and brings parity with the proposed changes in respect of service complaints.

7. SLCC to be required to establish an independent advisory panel

Provision is made to oblige the SLCC to set up and consult an independent panel. The panel is to include representatives from consumer and equalities organisations. The functions of the panel are to make recommendations to the Commission for improvements to the Commission's practice and procedures; to suggest topics for research; and express views on matters relating to the Commissions' functions, as the Commission directs. This will facilitate the existing statutory consultation function. Enshrining the existence of the group in statute will enhance its status and give it protection against arbitrary dissolution – a protection which a consumer group established administratively would not have.

Consultation

A stakeholder consultation was held between March and April 2014 on these proposed changes to the 2007 Act. It was decided that a short consultation with targeted groups representing business and consumer interests was appropriate rather than a full public consultation as this was a stakeholder initiative in the first place.

Consultation packs were sent to the SLCC, Law Society of Scotland, the Faculty of Advocates, the Association of Commercial Attorneys, the Legal Defence Union, the Scottish Solicitors' Discipline Tribunal, Citizens Advice Scotland, Which? and the Office of Fair Trading.

Regulatory impact assessment

A partial Regulatory Impact Assessment was carried out. It provided evidence to support our recommendation that no final BRIA needs to be produced for these proposals.

Financial effects

These amendments do not require law firms, consumers or the public sector to do anything, there is no additional cost to implementing the amendments. There will be a minimal cost to the SLCC in terms of staff time spent on creating new rules of procedure and adapting systems.

Justice Committee

21st Meeting, 2013 (Session 4), Tuesday 5 August 2014

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014 (SSI 2014/159).
2. Further details on the procedure for negative instruments are set out in Annexe A attached to this paper.

Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014 (SSI 2014/159)

Introduction

3. The purpose of the instrument is to ensure that a person is provided as soon as reasonably practicable with such information (verbally or in writing) as is necessary to satisfy the requirements of Articles 3 and 4 of the Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings. This information is included within a Letter of Rights to be passed to every suspect who is in police custody, conveying information about the right of access to a lawyer and assisting in ensuring that suspects are informed of essential information. In particular, the Regulations require—

(a) that persons in police custody are provided with information about their rights, verbally or in writing, as required to satisfy the requirements of Articles 3 and 4 of the Directive;

(b) that a person held in police custody can access any documents held by constables of the Police Service of Scotland or members of police staff which are essential to challenging effectively the lawfulness of their arrest and detention, as required to satisfy Article 7(1) of the Directive;

(c) the chief constable to publish guidance describing the documents that are accessible, how requests must be handled, and how a person can obtain a review of any failure or refusal to make such documents available.

4. The introduction of this “Letter of Rights” was also separately recommended by the Carloway Review into Criminal Law and Practice. A non-statutory letter was introduced in July 2013 and these regulations place the requirement on a statutory footing in compliance with the Directive.

5. The provisions are contained in the Criminal Justice (Scotland) Bill. However, following the decision to postpone Stage 2 of the Bill until next year, this instrument makes provision for the existing regime.
6. The instrument comes into force on 6 June 2014.
7. 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/2014/159/contents/made>

Consultation

8. The policy note on the instrument confirms that formal public consultation on Lord Carloway's recommendations and the plans for the Bill, including provision of the Letter of Rights, took place between July and October 2012. Further consultation with key stakeholders, specifically on plans for the Letter of Rights, took place between January and May 2013 ahead of the introduction of the Bill in June 2013 and the roll out of the Letter of Rights in July 2013. Further discussions have also been held with Police Scotland, the Crown Office and Procurator Fiscal Service, Scottish Legal Aid Board and the Law Society.

Delegated Powers and Law Reform Committee consideration

9. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 24 June 2014 and agreed to draw the instrument to the attention of the Parliament because the "28 day rule" had not been complied with. The letter to the Presiding Officer setting out the reasons for non-compliance is reproduced on page 11 of this paper.

10. In the letter, the Scottish Government explains that the Regulations have been prepared and are proposed to be brought into force as quickly as possible, to transpose urgently into Scots law certain provisions of the Directive 2012/13/EU on the right to information in criminal proceedings. This follows the re-scheduling of Stage 2 of the Criminal Justice (Scotland) Bill into 2015, as originally certain provisions of that Directive were to be transposed by the Bill.

11. The DPLR Committee accepted the Scottish Government's reasons for breaching the rule.

12. The DPLR Committee also agreed to draw to the attention of the Justice Committee the terms of regulation 3(2) and the Scottish Government's response, which explains the effect of that paragraph.

13. Regulation 3(2) provides that a person in police custody must be provided "as soon as reasonably practicable" with such information as is necessary to satisfy the requirements of Articles 3 and 4 of the Directive. Articles 3.1 and 4.1 of the Directive provide that the information should be provided "promptly". The Scottish Government has explained in its response that the Regulations do not specify a time limit for the provision of the information because, as a matter of practice, a suspect will not be interviewed before a Letter of Rights under Article 4 of the Directive is provided to the person. The DPLR Committee draws to the attention of the Justice Committee that regulation 3 does not make provision for that latest timing, which is referred to within the preamble to the Directive.

14. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 6 of this paper.

Justice Committee consideration

15. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 18 August 2014.

Policy Note:

Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014 (SSI 2014/159)

The Right to Information (Suspects and Accused Persons) (Scotland) (Regulations) 2014 ("the Regulations") were made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to negative procedure.

Policy Objectives

The Regulations ensure that a person is provided as soon as reasonably practicable with such information (verbally or in writing) as is necessary to satisfy the requirements of Articles 3 and 4 of the Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings ("the Directive"). This formally enhances human rights in Scotland.

This information is included within a "Letter of Rights" to be passed to every suspect who is in police custody, conveying information about the right of access to a lawyer and assisting in ensuring that suspects are informed of essential information.

The Carloway Review into Criminal Law and Practice separately recommended the introduction of a Letter of Rights in Scotland. Accordingly a non-statutory Letter of Rights was introduced in July 2013, available in 34 languages. The Regulations bring this provision onto a statutory footing in order to comply with Articles 3 and 4 of the Directive.

To transpose Article 8.1 of the Directive into Scots law in relation to the Letter of Rights, the Regulations also provide that a constable will record the time at which and the identity of the person by whom the suspect is provided with the Letter of Rights.

Furthermore the Regulations ensure that, upon request, suspects or their solicitors will be provided free of charge with access to any documents held by Police Scotland, related to their specific case, which are essential to challenging effectively the lawfulness of their arrest and detention. This will satisfy Article 7.1 of the Directive. The police will also be required to issue guidance under the regulations which will explain how a person may challenge a refusal or failure to provide access to information under the Regulations.

Many of the requirements of the Directive are already covered by Scots law under the Criminal Procedure (Scotland) Act 1995 and the disclosure regime under Part 6 of the Criminal Justice and Licensing (Scotland) Act 2010. The Regulations will provide a statutory basis for the Letter of Rights and transpose the remaining provisions of the Directive into Scots Law.

Originally Articles 3 and 4 of the Directive were to have been transposed by section 5 of the Criminal Justice (Scotland) Bill (“the Bill”). On 24 April the Scottish Government agreed to a proposal from opposition parties to reschedule Stage 2 of the Bill to take place after Lord Bonomy’s Review of post-corroboration safeguards has reported in 2015. The provisions will remain in the Bill for discussion at Stage 2 in relation to the new arrest and detention regime set out in the Bill. In the meantime, this instrument will make provision for the existing regime.

Consultation

Formal public consultation on Lord Carloway’s recommendations and the plans for the Bill, including provision of the Letter of Rights, took place between July and October 2012. An analysis of responses to this consultation is available online¹. This report includes a full list of those who responded and agreed to the release of this information.

Further consultation with key stakeholders, specifically on plans for the Letter of Rights, took place between January and May 2013 ahead of the introduction of the Bill in June 2013 and the roll out of the Letter of Rights in July 2013. Provision of the Letter of Rights was also subject to Parliamentary scrutiny at Stage 1 of the Bill. The general principles of the Bill were agreed by Parliament following the Stage 1 debate on 27 February 2014.

During Parliamentary scrutiny of the provisions in the Bill, an amendment was suggested to the effect that information about suspects’ rights should be provided both verbally and in writing. However Police Scotland have indicated that they already endeavour to ensure all suspects understand their rights, and that providing it both verbally and in writing would result in disproportionate time and resource implications. Uninterrupted the Letter of Rights takes around 5 minutes to read, and with c.200,000 suspects a year being processed, this could equate to an additional 16,666 hours of police time per annum associated with this specific task alone. Having considered this amendment, officials recommended that the Regulations should reflect the Bill, i.e. not requiring the information to be given both verbally and in writing. This also allows the police to deliver the Letter of Rights verbally if a suspect cannot read, or if a person cannot be given a paper copy of the Letter of Rights due to safety concerns. The Letter of Rights provisions will remain in the Bill for discussion at Stage 2, in the context of the new regime.

Further discussions have also been held with Police Scotland, the Crown Office and Procurator Fiscal Service, Scottish Legal Aid Board and the Law Society.

Impact Assessments

An equality impact assessment has been completed on the draft.

For the majority of protected characteristics,² the policy creates no negative impacts. There are positive impacts for all groups stemming from an increased awareness of their rights in custody and the fact that simple and accurate information will be provided to all.

¹ <http://www.scotland.gov.uk/Resource/0041/00410913.pdf>

² As per the Equality Act 2010, section 4, the protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation.

Further work is required for full benefits to be received by: 1) some children and young people; 2) those with learning difficulties and some disabilities; 3) those whose first or only language is not English.

With regards to the first two categories above, work is underway to improve accessibility, informed through on-going consultation with stakeholder groups. For the third category, the current non-statutory Letter has been made available in 34 languages, and the Scottish Government will continue to assess the need for additional translations.

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

This instrument will have a small financial impact on the Scottish Police Authority (SPA), as the police will have to provide a Letter of Rights to all suspected or accused persons in police custody, unless there are particular reasons not to do so. Anticipated costs for the production of English language version of the Letter of Rights agreed with Police Scotland is £6,000 per annum for 200,000 copies of double sided A4 with two columns of print per page. Additional costs for desktop, ad hoc printing for non-English language versions are unlikely to exceed £1,000 per annum.

Police Scotland have confirmed that they do not expect the Regulations to create any further substantial costs. Total estimated SPA costs for the Letter of Rights are therefore £7,000 per annum and £2,000 initial costs. These costs were included in the Bill's financial memorandum³, which the Finance Committee considered and reported on in November 2013⁴.

Scottish Government
Justice Directorate
2 June 2014

³ [http://www.scottish.parliament.uk/S4_Bills/Criminal%20Justice%20\(Scotland\)%20Bill/b35s4-introden.pdf](http://www.scottish.parliament.uk/S4_Bills/Criminal%20Justice%20(Scotland)%20Bill/b35s4-introden.pdf)

⁴ <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/71208.aspx>

***Extract from the Delegated Powers and Law Reform Committee 44th Report
2014***

**Right to Information (Suspects and Accused Persons) (Scotland) Regulations
2014 (SSI 2014/159) (Justice Committee)**

1. The Regulations implement (in part) Directive 2012/13/EU on the right to information in criminal proceedings (“*the Directive*”).
2. In particular, the Regulations require—
 - (a) that persons in police custody are provided with information about their rights, verbally or in writing, as required to satisfy the requirements of Articles 3 and 4 of the Directive;
 - (b) that a person held in police custody can access any documents held by constables of the Police Service of Scotland or members of police staff which are essential to challenging effectively the lawfulness of their arrest and detention, as required to satisfy Article 7(1) of the Directive;
 - (c) the chief constable to publish guidance describing the documents that are accessible, how requests must be handled, and how a person can obtain a review of any failure or refusal to make such documents available.
3. The Regulations were brought into force on 6 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. The Scottish Government provided a letter to the Presiding Officer explaining the failure to comply with Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010, in respect of the breach of the “28 day rule” between the date of laying the instrument and the date when it is brought into force. The correspondence is reproduced at Annex B. The instrument was made on 4 June, laid on 5 June, and was brought into force on 6 June.
6. The Committee reports the breach of the “28 day rule” between the date of laying of the instrument before Parliament and its coming into force date, as a matter of course. This breach does not affect the validity of the Regulations. The Committee accepts the reasons which have been provided by the Scottish Government for the breach of the rule in this instance, as explained below.

Regulation 3(2)

7. The Committee also determined to draw the effect of regulation 3(2), and the Scottish Government’s response to the Committee on that paragraph, to the attention of the Justice Committee, as the lead committee for the instrument. Regulation 3(2) transposes into Scots law certain provisions of the Directive:
8. Article 3.1 of the Directive provides that Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the procedural rights set out in the Article, as they apply under national law, in order to allow for those rights to be exercised effectively.

9. Article 4.1 provides that the States shall ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights.

10. The Scottish Government has acknowledged in its response that the Directive envisages an element of discretion in the timing of providing the information, through the use of a “back-stop provision”. Recital (19) of the preamble to the Directive provides – “The competent authorities should inform suspects or accused persons promptly of those rights, as they apply under national law, which are essential to safeguarding the fairness of the proceedings, either orally or in writing, as provided for by this Directive. In order to allow the practical and effective exercise of those rights, the information should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person by the police or by another competent authority”. (The preamble is not part of the operative provisions of the Directive.)

11. Paragraph (1) of regulation 3 of these Regulations provides that paragraph (2) applies to a person who is in police custody. Regulation 3(2) provides that a person in police custody must be provided “as soon as reasonably practicable” with such information (verbally or in writing) as is necessary to satisfy the requirements of Articles 3 and 4. This therefore elaborates upon the wording used in the Directive.

12. The Committee accepts that this particular elaboration of the wording is permissible, to give effect to the transposition of the relevant provisions of the Directive. However the response from the Scottish Government indicates that the wording in regulation 3(2), as to the timing requirement, is based on practical considerations. The Scottish Government’s response explains that in practice, there are difficulties with providing every arrested person with a Letter of Rights (as Article 4 of the Directive requires) in situ on arrest, depending on the situation. “In most cases the arrested or detained person will receive a copy of the Letter of Rights when they are taken to a police station.”

13. The Scottish Government therefore decided to use “as soon as reasonably practicable” within regulation 3(2). The Scottish Government’s response states that: “(t)his requires the police to provide the information as soon as they are able to do so and, in practice, the letter will be issued in advance of any interview taking place... once the person arrives at the police station following arrest or detention. Under current law, a person arrested or detained is taken as quickly as practicable thereafter to a police station.”

14. Accordingly the Scottish Government has considered that there is no need to specify a “back-stop” deadline date for the provision of the Letter of Rights. The Scottish Government’s response states that: “(t)he Regulations do not specify a time limit for the provision of the information because, as a matter of practice, a suspect will not be interviewed before the Letter of Rights is provided.... Ultimately this means that every person who is arrested or detained will be taken to the police station before being interviewed.”

15. The Committee accordingly draws the instrument to the attention of the Parliament on the reporting ground (j), as the requirements of section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 have not been complied with.

16. However, the Committee accepts the reasons provided by the Scottish Government for the breach of the “28 day rule” in this instance. The Scottish Government has explained that the Regulations have been prepared and are proposed to be brought into force as quickly as possible, to transpose urgently into Scots law certain provisions of the Directive 2012/13/EU on the right to information in criminal proceedings (“the Directive”). This follows the re-scheduling of Stage 2 of the Criminal Justice (Scotland) Bill into 2015, as originally certain provisions of that Directive were to be transposed by the Bill.

17. The Committee also draws the terms of regulation 3(2), and the Scottish Government’s response to the Committee which explains the effect of that paragraph, to the attention of the Justice Committee.

18. Regulation 3(2) provides that a person in police custody must be provided “as soon as reasonably practicable” with such information as is necessary to satisfy the requirements of Articles 3 and 4 of the Directive.

19. The Government has acknowledged in its response that the terms of the Directive envisage an element of discretion in the timing of providing the information, through the use of a “back-stop provision”. Recital (19) of the preamble to the Directive refers to “at the latest before the first official interview of the suspect or accused person by the police or by another competent authority”. Articles 3.1 and 4.1 of the Directive provide that the information should be provided “promptly”.

20. The Committee accordingly draws to the attention of the Justice Committee that regulation 3 does not make provision for that latest timing, which is referred to within the preamble to the Directive. The Scottish Government has explained in its response that the Regulations do not specify a time limit for the provision of the information because, as a matter of practice, a suspect will not be interviewed before a Letter of Rights under Article 4 of the Directive is provided to the person.

Appendix**Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014 (SSI 2014/159)****On 13 June 2014, the Scottish Government was asked:**

Article 3.1 of Directive 2012/13/EU on the right to information in criminal proceedings provides that Member States shall ensure that suspects or accused persons are provided promptly with information concerning at least the procedural rights set out in the Article, as they apply under national law, in order to allow for those rights to be exercised effectively. Article 4.1 provides that the States shall ensure that suspects or accused persons who are arrested or detained are provided promptly with a written Letter of Rights. It appears that “promptly” for these purposes is not further defined in the Directive. We note that an explanatory note to the Directive states- “In order to allow the practical and effective exercise of those rights, the information should be provided promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person by the police or by another competent authority” (Para (19) of document reference PE-CONS 78/3/11 REV 3). (“Promptly” is defined in the Oxford English Dictionary online edition as meaning “in a prompt manner; readily, quickly; at once, without delay; directly, forthwith, there and then.”).

(a) Regulation 3 of this instrument (which transposes Articles 3 and 4 into domestic law) provides that a person in police custody must be provided as soon as reasonably practicable with such information (verbally or in writing) as is necessary to satisfy the requirements of Articles 3 and 4.

As it does not appear to be explained in the explanatory note or other documents submitted with the instrument, please explain why the instrument does not adopt the word “promptly” as used in the Directive, and why it has been considered that the requirement to provide the information “as soon as reasonably practicable” properly transposes and implements the requirements in Articles 3.1 and 4.1?

(b) Please clarify why the Regulations do not provide for any time limit for the provision of information before the first interview of the suspect or accused, as mentioned above?

The Scottish Government responded as follows:

(a) The terms of the Directive require a person to be given the relevant information “promptly in the course of the proceedings and at the latest before the first official interview of the suspect or accused person by the police or by another competent authority”. Although this suggests that the information should be given without delay, the terms of the Directive clearly envisage some element of discretion in timings through the use of a back-stop provision (“at the latest before... interview” – recital 19).

In practice, there are difficulties with providing every arrested person with a letter of rights in situ on arrest. In high-pressure situations, such as riots for example, it would not be appropriate for the police to devote significant amounts of time to ensuring each person arrested is immediately provided with a letter of rights, and explaining its contents. Similarly the police may not be able to cater for the needs of every individual arrested – where, for example, a detained person speaks a language for which a

translation of the letter is not readily available. In most cases the arrested or detained person will receive a copy of the letter of rights when they are taken to a police station.

In recognition of the fact that it may not be possible to provide a letter of rights immediately on arrest, and to avoid the suggestion that the law requires this, the decision was taken to use “as soon as reasonably practicable” as the formulation for the regulations. This requires the police to provide the information as soon as they are able to do so and, in practice, the letter will be issued in advance of any interview taking place (see further below) once the person arrives at the police station following arrest or detention. Under current law, a person arrested or detained is taken as quickly as practicable thereafter to a police station.

(b) As set out above, the requirement for the information to be provided “as soon as reasonably practicable” will ensure that all suspects and accused persons will be provided with a letter of rights on arrival at the police station, and certainly before any interview takes place. Accordingly, the Scottish Government considers that there is no need to specify a back-stop for the provision of the letter.

The Regulations do not specify a time limit for the provision of the information because, as a matter of practice, a suspect will not be interviewed before the letter of rights is provided. Where a suspect is arrested or detained, they are thereafter taken to a police station. Interviews are not conducted at the locus. Ultimately this means that every person who is arrested or detained will be taken to the police station before being interviewed.

On arrival at the police station, and before any interview can commence, an arrested or detained person is presented at the charge bar and a custody officer evaluates the basis for the person’s continued detention or arrest. At this stage, the person is given information about their rights in custody and a copy of the letter of rights is given. The relevant process incorporates a prompt to the custody officer to ensure that the letter is provided in every case. The letter of rights has been provided on a non-statutory basis since July 2013 – this practice is now well-embedded in the Police Service of Scotland.

Reasons for breach of laying requirements under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 - Letter to Presiding Officer

The Right to Information (Suspects and Accused Persons) (Scotland) Regulations 2014, SSI 2014/159 was made by the Scottish Ministers under section 2(2) of the European Communities Act 1972 on 4 June 2014. It is being laid before the Scottish Parliament today, 5 June 2014 and comes into force on 6 June 2014.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (asp 10) has not been complied with. I am writing to explain why it has not been possible in this case to meet the 28 day requirement, in accordance with section 31(3) of that Act.

This SSI transposes Articles 3, 4, 7(1) and 7(5) of EU Directive 2012/13/EU on the right to information in criminal proceedings. This Directive lays down rules that will ensure that suspects are provided with timely information about procedural rights. In particular, the relevant Articles require that a "Letter of Rights" be given to every suspect in a police station who is arrested or detained, conveying information about the right of access to a lawyer, entitlement to legal aid, right of access to materials of the case in order to challenge their arrest or detention, etc. Member states are required to implement this Directive by 2 June 2014.

Background

Originally Articles 3 and 4 of the Directive were to have been transposed by section 5 of the Criminal Justice (Scotland) Bill ('the Bill'). This would have achieved transposition by early August, but in the context of creating a new arrest system, this was considered an acceptable delay.

On 24 April the Scottish Government agreed to a proposal from opposition parties to reschedule Stage 2 of the Bill to take place after Lord Bonomy's Review of post-corroboration safeguards has reported in 2015. The provisions will remain in the Bill, and when Stage 2 commences, Parliament will have the opportunity to debate and amend these provisions in relation to the new regime. In the meantime, it is necessary to make provision for the existing regime.

As regards Articles 7(1) and 7(5), following discussions with COPFS and Police Scotland we are confident that current police practice largely complies with the requirements, however in order to ensure clear transposition of the Directive we also need to make provisions for these Articles in the Regulations. Other Articles of the Directive are satisfied by existing statutory and common law provisions.

We have therefore prepared regulations under the European Communities Act 1972 to transpose these obligations as quickly as possible. The regulations will be laid on 4 June 2014 and will come into force on 5 June, which will still fall short of the strict transposition deadline by three days. We regret that it is necessary to break the 28 day requirement in order to ensure full compliance with minimal further delay.

**Elsbeth MacDonald,
Deputy Director, Criminal Justice Division
5 June 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

21st Meeting, 2014 (Session 4), Tuesday 5 August 2014

Scotland's National Action Plan on Human Rights Process

Note by the clerk

Purpose

1. The purpose of this item is to allow John Finnie, the Committee's Rapporteur to Scotland's National Action Plan (SNAP) process, to report back to the Committee following a recent meeting with Professor Alan Miller, Chair of the SNAP Leadership panel.

Background

2. The Committee held an evidence session with the Scottish Human Rights Commission (SHRC) on SNAP on 18 February. During the evidence session, Professor Miller (as Chair of the SHRC) suggested a number of areas in which the Committee could develop its work in relation to SNAP.

3. The Committee subsequently agreed to appoint John Finnie as rapporteur to the SNAP process. The role of the rapporteur is to engage with the SNAP leadership panel which oversees the delivery of SNAP and meets every six months. In practical terms, this involves the rapporteur meeting a member of the SNAP Leadership Panel twice a year. The recent meeting between the rapporteur and Professor Miller was the first of these meetings.

4. The Committee also agreed to bid for a debate on human rights, to take place following the publication of the SNAP annual report. That bid was successful and a date will be confirmed in due course. The annual report is scheduled to be published by the end of October.

Recommendation

5. The Committee is invited to note this paper and the report back by John Finnie.

Justice Committee
July 2014