



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

30th Meeting, 2014 (Session 4)

Tuesday 25 November 2014

The Committee will meet at 10.30 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Draft Budget Scrutiny 2015-16:** The Committee will take evidence on the Scottish Government's Draft Budget 2015-16 from—

Chief Constable Sir Stephen House, Deputy Chief Constable Neil Richardson, and Janet Murray, Director of Financial Services, Police Scotland;

and then from—

Michael Matheson, Cabinet Secretary for Justice designate, Neil Rennick, Acting Director of Justice, Gillian Russell, Deputy Director, Police Division, Hilary Pearce, Police Division, and Richard Dennis, Deputy Director, Fire and Rescue Division, Scottish Government.

3. **Subordinate legislation:** The Committee will take evidence on the Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014 [draft] from—

Michael Matheson, Cabinet Secretary for Justice designate, Denise Swanson, Head of Access to Justice Unit, and Alastair Smith, Solicitor, Directorate for Legal Services, Scottish Government.

4. **Subordinate legislation:** Michael Matheson (Cabinet Secretary for Justice designate) to move—

S4M-11524—That the Justice Committee recommends that the Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014 [draft] be approved.

5. **Modern Slavery Bill (UK Parliament legislation):** The Committee will consider its approach to the legislative consent memorandum lodged by Kenny MacAskill (LCM(S4)35.1).

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Clerk to the Justice Committee
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The Scottish Parliament
Edinburgh
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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk J/S4/14/30/1
Private paper J/S4/14/30/2 (P)

[SPICe Briefing: Draft Budget 2015-16: Justice](#)

[Scottish Government's Draft Budget 2015-16](#)

[Written submissions received on the Draft Budget 2015-16](#)

Agenda items 3 and 4

Paper by the clerk J/S4/14/30/3

[Criminal Legal Aid \(Fixed Payments and Assistance by Way of Representation\) \(Scotland\) \(Miscellaneous Amendments\) Regulations 2014](#)

Agenda item 5

Private paper J/S4/14/30/4 (P)

Justice Committee

30th Meeting, 2014 (Session 4), Tuesday 25 November 2014

Draft Budget 2015-16

Note by the clerk

Background

1. The Scottish Government published its Draft Budget 2015-16¹ on 9 October 2014. The Justice Committee has agreed to focus this year's budget scrutiny on the police and courts budgets. SPICe has produced a briefing on the *Draft Budget 2015-16: Justice (14/75)*², which contains detailed information on the Justice and Crown Office and Procurator Fiscal Service budgets, with a particular focus on the two main areas of scrutiny identified by the Committee. The briefing was circulated to members with the meeting papers for the 4 November meeting.

2. The Committee received 11 written submissions to its call for evidence. It also requested the following additional budgetary information from the Scottish Police Authority (SPA), Police Scotland and the Scottish Court Service (SCS), which is not contained in the Scottish Government's level 4 figures for 2015-16:

- a breakdown of how their budgets for 2014-15 have been allocated and how specific savings for that year were made;
- how they plan to allocate their budgets and make specified savings for 2015-16;
- any significant factors which limit their flexibility in managing relevant budgets; and
- any potential ways of achieving savings which have been considered but rejected.

3. All written material provided is available on the Committee web pages at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/83201.aspx>

Oral evidence

Overview

4. The Committee took evidence on the police budget from HM Inspector of Constabulary in Scotland, Unison and the Association of Scottish Police Superintendents on 4 November and from the Scottish Police Federation and SPA on 11 November.³ It also heard evidence on the courts budget on 18 November from the Law Society of Scotland, Victim Support Scotland, SCS, Crown Office and Procurator Fiscal Service, and the PCS⁴ and FDA⁵ unions.

5. The Chief Constable will give evidence, followed by the Cabinet Secretary for Justice, at the Committee's final evidence session on the Draft Budget 2015-16 on 25 November.

¹ The Draft Budget 2015-16 is available at: <http://www.scotland.gov.uk/Resource/0046/00460440.pdf>

² The SPICe briefing is available at:

http://www.scottish.parliament.uk/ResearchBriefingsAndFactsheets/S4/SB_14-75.pdf

³ Official Reports of these meetings are available at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29847.aspx>

⁴ Public and Commercial Services Union.

⁵ The Procurators Fiscal Society Section of the First Division Association (FDA) Union.

Police budget: issues explored during evidence

6. Key issues raised during evidence on the policing budget 2015-16 include:

- identifying savings in the third year of police reform (2015-16 budget) would be more challenging than in previous years and could impact on service levels;
- whether a review to establish the most appropriate workforce balance is needed;
- pressure on police staff and superintendents arising from reduced numbers, resulting in morale issues and an inability to take annual leave and rest days;
- de-skilling of police staff posts;
- the level of back-filling of police staff (and officer) posts and whether this represents best value in the long term;
- the level to which budgets are devolved, including in relation to roads policing;
- local authority funding for police officers and staff;
- challenges arising from the inability to recover VAT from 2015;
- the significance of Police Scotland's i6 ICT project as an enabler of reform and in making specified savings;
- the transfer of funding from the SPA to NHSScotland for custody healthcare; and
- recovering costs for police support at public events.

Courts budget: issues explored during evidence

7. Key issues raised during evidence on the courts budget 2015-16 include:

- a significant increase in the volume of complex cases to be processed within reduced budgets and a difference of view between staff and management on whether this situation is sustainable;
- delays in the length of time cases take to reach court;
- the proposal to create three justice centres;
- the need to develop ICT and video-conferencing to minimise the effects of court closures and to realise savings;
- separation of victims and witnesses from the accused in court buildings;
- whether additional resources are needed to implement recent legislation, such as the Victims and Witnesses (Scotland) Act 2012; and
- benefits arising from the forthcoming merger of the Scottish Tribunal Service with the Scottish Court Service.

8. During evidence last week, the Scottish Court Service offered to provide a copy of the results of the most recent Staff Survey 2014. This information, which was published on 20 November, is annexed to this paper.

Next steps

9. The Committee is invited to consider this information alongside the SPICe briefing on the *Draft Budget 2015-16: Justice (14/75)* and paper 3 from SPICe, in advance of taking evidence from the Chief Constable and the Cabinet Secretary for Justice at this meeting.

ANNEXE**Correspondence from the Scottish Court Service to the Committee in relation to budget scrutiny**

Thank you for providing the Scottish Court Service with the opportunity to give evidence to the Committee on the draft budget for 2015-16. At the session yesterday I promised to send a summary of the 2014 Staff Survey results for the Scottish Court Service, having referred to several of the high level results during my evidence.

The survey was carried out over the month of October. High level results have just become available and will be published on the gov.uk website on 20 November. In total 890 people (59% of our staff) participated in the annual survey, which is conducted by independent researchers on behalf of the Cabinet Office. Our engagement index (which provides an overview of the combined results) increased by 2% this year, from 62% to 64% - some 6% above the civil service average and in line with high performing organisations across the civil service.

As the report illustrates a range of other responses have also shown improvement this year, a number of which I mentioned during the session. Our survey results in relation to staff satisfaction on "Resources and Workload" have increased from 80% last year to 82% this year. Commitment to and understanding of our organisational objectives and purpose increased to 92%. Results in the areas of "leadership & managing change" and "learning & development" also showed positive improvement.

I hope this information is useful to the Committee as they carry out their scrutiny of the draft budget. Should the Committee require any further information to aid its consideration please feel free to get in touch.

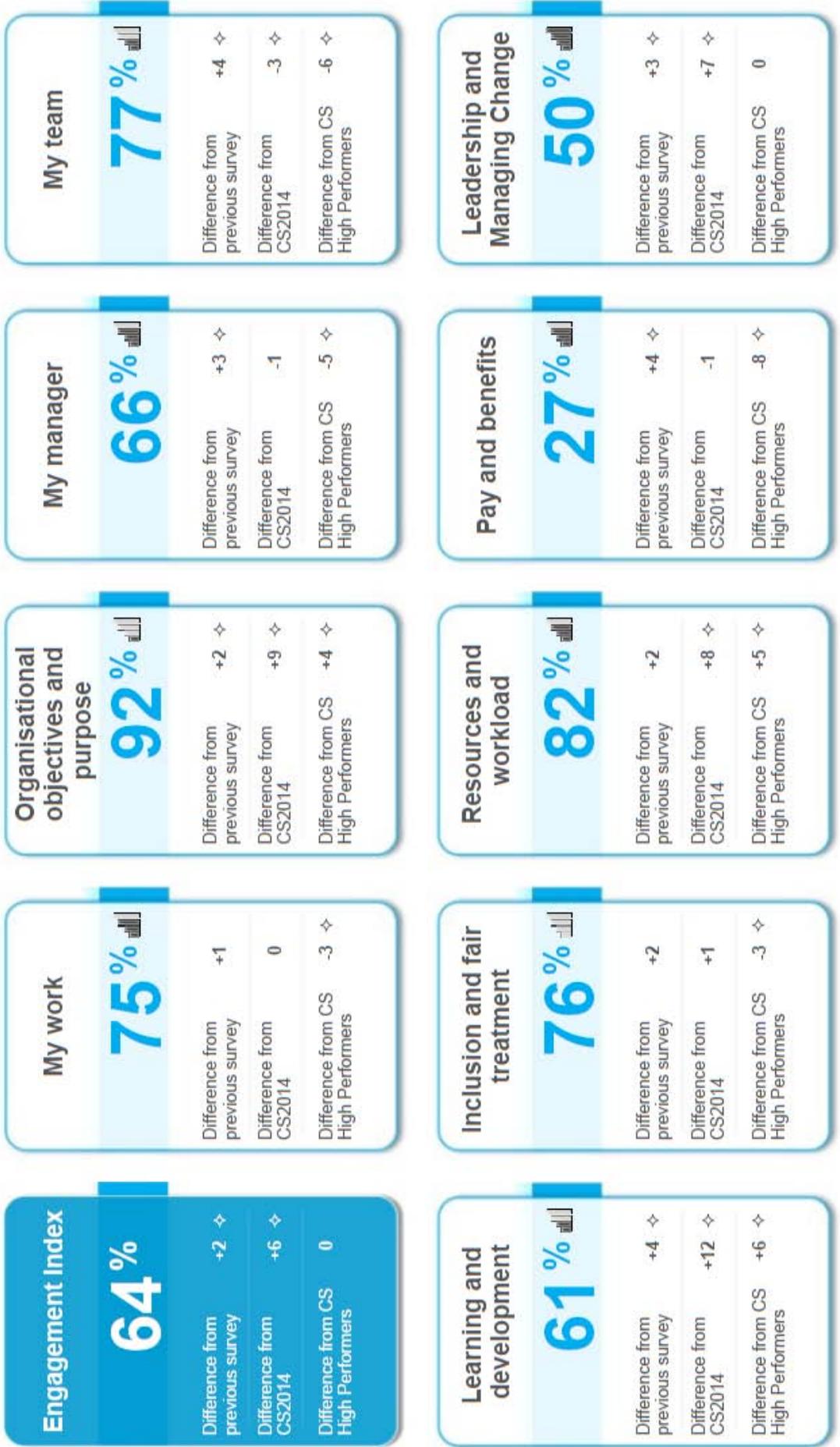
Eric McQueen
Chief Executive, Scottish Court Service
19 November 2014



Strength of association with engagement

◇ Statistically significant difference from comparison

Employee engagement is shaped by experience at work, as measured by nine themes in the survey shown below.



Justice Committee

30th Meeting, 2014 (Session 4), Tuesday 25 November 2014

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:
 - Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014 [draft].

Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014 [draft]

Introduction

2. The instrument amends the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 and the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003, with the aim of making savings to the legal aid fund. The amendments include:

- simplifying the narrative relating to fees for deferred sentence hearings;
- simplifying the fees relating to multiple pleas in assistance by way of representation (ABWOR) cases;
- widening the range of circumstances which can be treated as a single matter in failure to appear proceedings so an additional fee is not payable;
- simplifying the narrative relating to duty solicitor half fees; and
- returning the reduced fee for breach of bail conditions to half of the principal fee.

3. The instrument also aims to make application of the regulations clearer and simpler in relation to: (a) paying solicitors for preparatory work in cases continued without plea, regardless of whether the case is called; (b) ensuring there is an exceptional case status provision for all fixed payments, and (c) updating or removing redundant wording.

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/2014/9780111024812/contents>

Consultation

5. The policy note states that the Scottish Legal Aid Board, which administers the legal aid fund, and the Law Society of Scotland, the regulator and representative body for the legal profession in Scotland, have been consulted and that both organisations are content with the proposal.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 11 November 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 the instrument by 12 December 2014.

8. The instrument is subject to affirmative procedure (Rule 10.6 of Standing Orders). The Cabinet Secretary for Justice has lodged motion S4M-11524 proposing that the Committee recommends approval of the instrument. The Cabinet Secretary is due to attend the meeting on 25 November to answer any questions on the instrument, and then, under a separate agenda item, to speak to and move the motion for approval. It is for the Committee to decide whether or not to agree to this motion, and then to report to the Parliament by 12 December 2014.

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

10. The Committee will be asked to delegate to the Convener authority to approve the report on the instrument for publication.

ANNEXE A**Policy Note: Criminal Legal Aid (Fixed Payments and Assistance by Way of Representation) (Scotland) (Miscellaneous Amendments) Regulations 2014 [draft]**

The above instrument was made in exercise of the powers conferred by sections 9, 33(3A), (3C), (3D), (3F) to (3H) and 36(1) and (2)(a), (c) and (e) of the Legal Aid (Scotland) Act 1986(a). In accordance with section 37 of the 1986 Act, this instrument is subject to affirmative procedure.

Policy Objective**Overview**

The Scottish Government remains committed to maintaining a fair, high quality and equitable system which upholds public confidence at an affordable and sustainable level of expenditure. Reflecting the drop in Scotland's overall budget as a result of the UK Government's spending reviews, budgets will be increasingly challenging for the foreseeable future. It is imperative, therefore, that savings are made wherever possible.

In 2011 the Scottish Government set out its proposals in *A Sustainable Future for Legal Aid* to take forward a series of legal aid reforms.

This instrument is aimed mainly at amending the Criminal Legal Aid (Fixed Payments) (Scotland) Regulations 1999 ("the 1999 Regulations") and the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003 ("the 2003 Regulations") to make savings to the Fund by:

- simplifying the narrative relating to fees for deferred sentence hearings;
- simplifying the fees in relation to multiple pleas in assistance by way of representation (ABWOR) cases;
- widening the range of circumstances which can be treated as a single matter in failure to appear proceedings so an additional fee is not payable;
- simplifying the narrative relating to duty solicitor half fees; and
- returning the reduced fee for breach of bail conditions to half of the principal fee.

It also aims to make application of the regulations clearer and simpler in a number of subject areas by:

- paying solicitors for preparatory work for cases continued without plea, irrespective of whether the case is called;
- ensuring there is an exceptional case status provision for all fixed payments; and
- updating or removing redundant wording from the regulations.

Fees for diets of deferred sentence

The diet of "deferred sentence" occurs after conviction when the court has postponed its final decision about punishment. The diet at which that final decision is taken is the

diet of deferred sentence of which there may be more than one. For legal aid purposes, the current definition only includes diets where the case has been adjourned for inquiries or reports under section 201 (power of the court to adjourn case before sentence) and 203 (Reports), respectively, of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”).

Regulation 4 amends regulation 2(1) of the 1999 Regulations to include adjournments under section 202 (*deferred sentences*) within its definition of deferred sentence. This ensures that such an adjournment is to be treated in the same way as adjournments under sections 201 and 203, for the purposes of fixed payments (detailed at Schedules 1, 1A and 1B to the 1999 Regulations) and that the fee may only be charged once in these circumstances.

Regulation 9(4) amends paragraph 10ZA of Part 1 of Schedule 1 to clarify that this fee cannot be paid for any deferred sentence diets already included in the case disposal fee at paragraph 1(iiiia).

Reduced ABWOR fees in multiple cases

Regulation 6 substitutes an amended regulation 4(5A)(b) of the 1999 Regulations to provide that the sliding scale of payments can be applied where a mixture of pleas has allowed a case to be disposed of prior to trial, rather than only where a guilty plea to all charges on a complaint has been entered. The sliding scale provides that the fee may be reduced where the solicitor represents a person in the same court on the same day, on more than one complaint, and the person tendered a plea of guilty to the charge at the first pleading diet. The solicitor is entitled to 100% of the prescribed fee for the first complaint, 40% of that amount for the second complaint and 20% for any further complaints (sliding scale).

Half fees

Regulations 5, 9(3)(a), 10 (3)(a) and 11(5)(a) update various references to primary legislation found within the 1999 regulations to remove a reference to a section of the 1995 Act which has been repealed and take account of amendments relating to police liberation which were brought in by the Criminal Justice and Licencing (Scotland) Act 2010 (“the 2010 Act”). This will ensure that all of the sections of the 1995 Act dealing with police liberation are captured in the same way for the half fee for failure to appear proceedings, and incorporated into the grant of legal aid for the original proceedings.

Regulation 7 substitutes an amended regulation 4(5B) of the 1999 Regulations to allow this half-fee to be applied where there are multiple charges on any complaint for which a duty solicitor initially tenders a plea of not guilty on behalf of a client; and later that solicitor or a nominated solicitor changes the plea to guilty (to that charge or any other charge in the complaint) and any remaining charges are otherwise disposed of before a trial takes place.

Regulations 9(3)(b)-(d), 10(3)(b)-(c) and 11(5)(b) reduce the fees in the 1999 Regulations for a complaint under section 27(1)(b) (breach of bail conditions) of the 1995 Act. This restores the original intention of Regulation 2(7) of the Criminal Legal Assistance (Fees and Information, Etc., (Scotland) Regulations 2008, for work in connection with section 27(1)(b) to be half the principal fee: i.e. the equivalent of half

the fee paid for all work mentioned in paragraphs 1 of part 1 of Schedule 1, Schedule 1A and Schedule 1B to the 1999 Regulations.

Cases continued without plea

Regulation 11(4) (for the 1999 Regulations) and Regulation 12 (for the 2003 Regulations) revises the provision for fees where cases are continued without plea. This allows these fees to be paid where the diet itself is not called; removing any financial disincentive there may have been for solicitors to work with the Procurator Fiscal to reach agreement prior to the diet.

Exceptional case status

Regulation 8 permits the Scottish Legal Aid Board (“the Board”) to apply exceptional case status to all Schedules of the 1999 Regulations, so that solicitors can now be paid detailed fees rather than a fixed payment in certain circumstances, allowing proper remuneration where the amount of work involved is well beyond the norm.

Updates and removals of redundant text

Regulation 9(2)(a) replaces all references to ‘District Court’ with ‘Justice of the Peace (JP) Court’ to reflect the introduction of Justice of the Peace Courts, by regulation, in 2008.

Regulation 9(2)(b) makes clear that fees to be paid are based on the level of Court a Procurator Fiscal intends that a case should be heard, depending upon the seriousness of the case.

Regulation 11(6) updates the 1999 Regulations by removing text relating to fees which no longer applies to Schedule 1B. In addition, regulation 11(3) adds a necessary reference, which was the result of a consequential amendment to an earlier revision of legal aid regulations.

Consultation

The Board, which administers the Fund, and the Law Society of Scotland (“the Society”) which is the regulator and representative body for the legal profession in Scotland, have been consulted. Both the Board and the Society are content with the proposals.

Impact Assessments

An equality impact assessment has been completed on the instrument and is attached. No negative impacts were identified. The Board will continue to monitor the effect of the 1999 Regulations and the 2003 Regulations as part of its continuing programme of research and analysis on the supply of and access to legal aid and to the factors which might affect such access and supply.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy on business is that the fees that solicitors may

charge for some areas of work will be reduced while, where certain criteria are met, solicitors will have the option of seeking exceptional case status to be paid in detailed fees rather than fixed payments. Any financial disincentive that might prevent solicitors from seeking to dispose of a case before it calls in court will be removed, encouraging more efficient use of court time.

The estimated impact on the Scottish Legal Aid Fund is an overall saving of £586,000 per annum.

Scottish Government
Justice Directorate
22 October 2014