



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 17th March 2016

SP Paper 964

7th Report, 2016 (Session 4)

Web

**Justice Committee**

# **Annual Report 2015-16**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

---

All documents are available on the Scottish Parliament website at:

[www.scottish.parliament.uk/documents](http://www.scottish.parliament.uk/documents)

For information on the Scottish Parliament contact Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

© Parliamentary copyright. Scottish Parliamentary Corporate Body

The Scottish Parliament' copyright policy can be found on the website –  
[www.scottish.parliament.uk](http://www.scottish.parliament.uk)

# Contents

<b>Introduction</b>	<b>1</b>
<b>Overview of 2015-16 parliamentary year</b>	<b>1</b>
Bills	1
Post-legislative scrutiny	2
Other legislative scrutiny	2
Draft Budget scrutiny 2016-17	3
Other scrutiny topics	3
Petitions	4
EU engagement	4
Engagement and innovation	4
Equalities	5
Human rights	5
Justice Sub-Committee on Policing	5

# Justice Committee

To consider and report on a) the administration of criminal and civil justice, community safety and other matters falling within the responsibility of the Cabinet Secretary for Justice and b) the functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



[scottish.parliament.uk/justice](http://scottish.parliament.uk/justice)



[justice.committee@scottish.parliament.uk](mailto:justice.committee@scottish.parliament.uk)



0131 348 5047



Follow the Justice Committee @SP\_Justice

## Committee Membership



**Convener**  
**Christine Grahame**  
Scottish National Party



**Deputy Convener**  
**Elaine Murray**  
Scottish Labour



**Christian Allard**  
Scottish National Party



**Roderick Campbell**  
Scottish National Party



**John Finnie**  
Independent



**Margaret McDougall**  
Scottish Labour



**Alison McInnes**  
Scottish Liberal  
Democrats



**Margaret Mitchell**  
Scottish Conservative  
and Unionist Party



**Gil Paterson**  
Scottish National Party

**Note: The membership of the Committee changed during the period covered by this report, as follows:**

Margaret McDougall (Scottish Labour West Scotland) joined the Committee on 2 September 2015 replacing Jayne Baxter (Scottish Labour Mid Scotland and Fife).



# Introduction

1. This report covers the Justice Committee's work during the Parliamentary year from 11 May 2015 to 23 March 2016. The Committee held 32 meetings over this period. Twenty-four of these meetings included some items taken in private, mainly for consideration of draft reports or of the Committee's work programme, in line with usual practice.

## Overview of 2015-16 parliamentary year

### Bills

2. The Committee considered the following Scottish Government and Members' Bills over the course of the parliamentary year<sup>1</sup>:
  - Abusive Behaviour and Sexual Harm (Scotland) Bill (Scottish Government)
  - Apologies (Scotland) Bill (Margaret Mitchell MSP)
  - Community Justice (Scotland) Bill (Scottish Government)
  - Criminal Justice (Scotland) Bill (Scottish Government)
  - Criminal Verdicts (Scotland) Bill (Michael McMahon MSP)
  - Human Trafficking and Exploitation (Scotland) Bill (Scottish Government)
  - Inquiries into Deaths (Scotland) Bill (Patricia Ferguson MSP)
  - Inquiries into Fatal Accidents and Sudden Deaths (Scotland) Bill (Scottish Government)
  - Prisoners (Control of Release) (Scotland) Bill (Scottish Government)
3. Each of these Bills had merit and, while we were unable to agree to the general principles of the Members' Bills on inquiries into deaths and criminal verdicts, we were sympathetic to their aims and keen to see particular provisions taken forward. Here we focus on four of the Bills that completed passage through the Parliament where this Committee was able to effect real change.
4. Our consideration of the **Human Trafficking and Exploitation (Scotland) Bill** straddled two parliamentary years. We welcomed the Government's amendments to the definition of the human trafficking offence in the Bill, an issue on which this Committee and the majority of our witnesses had signalled concerns at Stage 1.
5. Our scrutiny of the **Prisoners (Control of Release) (Scotland) Bill** led to the Government significantly amending the Bill at Stage 2 to address concerns regarding the Bill's focus on long-term prisoners, in particular on sex offenders, and on the possibility of some prisoners being released without a period of community supervision. Given the extent of the changes proposed by amendment, we took further evidence at Stage 2.

6. While we broadly supported the general principles of the **Community Justice (Scotland) Bill**, we made a number of recommendations, including widening of the definition of “community justice” so as to include preventative measures. In response, the Government brought forward amendments along the lines we proposed.
7. We give particular mention to the **Criminal Justice (Scotland) Bill**, which has featured in our last two annual reports. The Bill was finally passed in December 2015 after being introduced in June 2013. In response to a majority of the Committee’s concerns on the Bill’s provisions regarding removal of the corroboration requirement, the Government asked Lord Bonomy to look into additional safeguards needed to balance abolishing the corroboration requirement. Stage 2 of the Bill was postponed until Lord Bonomy reported. After the Bonomy review, the Government agreed that the contentious provisions on corroboration should be removed and amendments to that effect were agreed to at Stage 2.

## **Post-legislative scrutiny**

8. Committees have a key role in considering how laws passed by this Parliament are working in practice. This year, we continued our post-legislative scrutiny of the fire reform provisions in the **Police and Fire Reform (Scotland) Act 2012**,<sup>2</sup> by holding regular evidence sessions and gathering written views. The Justice Sub-Committee on Policing continues to undertake this role in relation to policing.
9. This parliamentary year, we also found time, as we moved towards dissolution, to conduct a short piece of post-legislative scrutiny on the **Family Law (Scotland) Act 2006**,<sup>3</sup> one of the most important pieces of legislation on family law in recent years. Given the short time available, it was not the Committee’s intention to consider the entire 2006 Act. Instead we invited views from stakeholders on which aspects merited consideration and, on the basis of responses received, we examined: the provisions on cohabitation set out in sections 25 to 29 of the Act, and the main reforms made by the Act relating to parental responsibilities and rights. Our report sets out the key findings and conclusions of this initial scrutiny and we hope this might provide a foundation for a future justice committee to build on in the next session.

## **Other legislative scrutiny**

### **Legislative Consent Memorandums**

10. During the reporting period, the Committee considered one legislative consent memorandum<sup>4</sup> on the Armed Forces Bill<sup>5</sup>, which made provision regarding the powers of Ministry of Defence firefighters. Keen to satisfy ourselves that all parties affected were content with the proposals, we sought views from the Fire Brigades Union Scotland (FBU Scotland), which had not been consulted. The FBU Scotland later confirmed it was content with the Government’s response to its concerns and, on that basis, we recommended approval of the LCM<sup>6</sup>.



#### Subordinate legislation

11. During the reporting period, the Committee considered 15 affirmative and 30 negative Scottish statutory instruments, and five instruments not subject to parliamentary procedure<sup>7</sup>. One affirmative instrument, the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2015, was, after debate, rejected by the Committee by majority, on the grounds that it did not set out an equitable approach to the availability of legal aid in the new Sheriff Appeal Court that would safeguard access to justice.<sup>8</sup>

### **Draft Budget scrutiny 2016-17**

12. The Scottish Government's Draft Budget 2016-17<sup>9</sup> was published, much later than usual, on 16 December 2015. We focused our scrutiny on three areas of spend: policing, the fire and rescue service, and the Crown Office and Procurator Fiscal Service (COPFS). While there was only time for the Committee to hold one evidence session, with the Cabinet Secretary for Justice, on the budget post-publication, we gathered evidence in advance; on the financial planning for 2016-17 conducted by Police Scotland, the Scottish Police Authority (SPA), the Scottish Fire and Rescue Service and COPFS. We raised concerns in our report<sup>10</sup> about the level of projected policing overspend for this financial year, a lack of strategic financial planning by the SPA, and the inability of the single police and fire services to recover VAT.

### **Other scrutiny topics**

#### Women offenders

13. In February 2016, the Committee held its annual evidence session with the Cabinet Secretary for Justice on progress in implementing the Commission on Women Offenders' recommendations.<sup>11</sup> We were encouraged by evidence of the enhanced support and mentoring services being provided to women offenders. However, we have concerns, in the light of HM Chief Inspector of Prison's latest findings<sup>12</sup> that aspects of conditions at Cornton Vale are still unacceptable, and that its replacement will not be fully in place until 2021.

#### Agricultural crime

14. Following the Committee's round-table session on agricultural crime in February 2015<sup>13</sup>, the Solicitor General announced<sup>14</sup> that she would carry out a review of the way that COPFS prosecutes agricultural crime. She gave evidence to the Committee on the outcomes of the review, including publication of an updated agricultural prosecution policy,<sup>15</sup> on 2 February 2016.

#### Interception of communications by Police Scotland

15. The Committee took evidence from Police Scotland, the SPA and the Cabinet Secretary<sup>16</sup> in relation the Interception of Communications Commissioner's statement of 25 November 2015<sup>17</sup> that Police Scotland had breached the

Acquisition and Disclosure of Communications Data, Code of Practice 2015, in respect of five applications for communications data. Moving the debate on from the specifics of the breaches, we took evidence from the Chief Constable and SPA Chair on two wider issues: internal communications at Police Scotland and its policies and practices in relation to the protection of staff who report wrongdoing or malpractice within the organisation. The Committee hopes that our successor committee will revisit the issue, following publication of HM Inspector of Constabulary in Scotland's report on Police Scotland's Counter Corruption Unit and the conclusion of any relevant Investigatory Powers Tribunal proceedings.

## **Petitions**

16. The Committee considered nine petitions<sup>18</sup> over the course of the year on various topics ranging from fatal accident inquiries into deaths abroad, to retention of police and fire control rooms in northern Scotland. In relation to petition PE1370, a long-standing petition calling for an independent inquiry into the Megrahi conviction, we received progress updates this year on Police Scotland's investigation into the petitioners' allegations and sought more information on the COPFS's appointment of independent counsel to examine the findings of that investigation. This petition remains open along with four others.

## **EU engagement**

17. This Parliamentary year, the Committee prioritised five EU issues<sup>19</sup> on which to receive regular updates from the Minister for Community Safety and Legal Affairs, including on the impact of particular Directives on Scots Law and Europe's response to the migration crisis. The European and External Relations Committee also considered EU migration issues over the course of this parliamentary year. Also of particular note is the Committee's ongoing work on the proposal to create a European Public Prosecutor's Office which we agreed in 2014 had breached the subsidiarity principle.<sup>20</sup> We are encouraged that member states participating in the EPPO project appear to recognise the need to provide some means to enable it to work with the UK which, it argues, should help to ensure there is no adverse impact on the Scottish prosecutorial system.

## **Engagement and innovation**

18. The Committee continued to engage innovatively with a wide selection of stakeholders. Given the sensitive issues considered in the Abusive Behaviour and Sexual Harm (Scotland) Bill, we arranged a private informal discussion with a number of individuals who had experienced domestic abuse. The session was intended to provide a safe environment for guests to speak candidly, with members of Victim Support Scotland in attendance to provide assistance, should they need it. Video-conferencing was also used at the session. We continue to use social media to engage with those who may not traditionally come into contact with the Committee and our Twitter followers are continuing grow to almost 1000.

## **Equalities**

19. Equalities issues continue to be mainstreamed throughout the Committee's work. For example, during consideration of subordinate legislation relating to the Scottish Sentencing Council<sup>21</sup>, we raised concerns about the gender balance of appointments. We agreed to write to the Lord Justice General to ask him to give cognisance to the Government's policy commitment to move towards a 50:50 gender balance by 2020 in future appointments. Equalities issues have also arisen in relation to our work on women offenders, and legislation on abusive behaviour, and human trafficking.

## **Human rights**

20. In January 2016, the Committee heard from the outgoing Chair of the Scottish Human Rights Commission on Scotland's National Action Plan on Human Rights<sup>22</sup> (SNAP). Over the course of the year, John Finnie, the Committee's SNAP rapporteur, regularly met with the SHRC Chair and provided updates to the Committee. We also held a Chamber debate on the latest SNAP progress report.

## **Justice Sub-Committee on Policing**

21. The Justice Sub-Committee on Policing<sup>23</sup>, which reviews the operation of the Police and Fire Reform (Scotland) Act 2012 as it relates to policing, held nine meetings. The Sub-Committee also returned to Dumfries, Elgin and Glenrothes to meet with community officers, divisional command teams, partners, and local and community councillors, to inform its local policing work. The Sub-Committee also took formal evidence on a range of other topics such as call handling, stop and search, the Police Scotland's national ICT project (i6), and complaints handling.

## Justice Committee

Annual Report 2015-16, 7th Report, 2016 (Session 4)

---

<sup>1</sup> [Details of the Committee's scrutiny of all Bills](#)

<sup>2</sup> [Police and Fire Reform \(Scotland\) Act 2012](#)

<sup>3</sup> [Family Law \(Scotland\) Act 2006](#)

<sup>4</sup> The Sewel Convention applies when the UK Parliament legislates on a matter which is normally dealt with by the Scottish Parliament as part of its work. Under the terms of the Convention, this will happen only if the Scottish Parliament has given its consent.

<sup>5</sup> [Legislative Consent Memorandum on the Armed Forces Bill](#)

<sup>6</sup> [Justice Committee. 5th Report, 2016 \(Session 4\). Report on the Armed Forces LCM](#)

<sup>7</sup> [Details of the Committee's scrutiny of all subordinate legislation](#)

<sup>8</sup> [Justice Committee. 16<sup>th</sup> Report, 2015 \(Session 4\) Report on Subordinate Legislation](#)

<sup>9</sup> [Scottish Government Draft Budget 2016-17](#)

<sup>10</sup> [Justice Committee. Report on the Scottish Government's Draft Budget 2016-17](#)

<sup>11</sup> [Justice Committee. Official Report, 9 February 2016, Cols 2-24.](#)

<sup>12</sup> [HMICS, Report On HMP & YOI Cornton Vale Full Inspection 28 September - 7 October 2015](#)

<sup>13</sup> [Justice Committee. Official Report, 2 February 2016, Cols 2-24](#)

<sup>14</sup> [Solicitor General's announcement of a review of agricultural crime policy](#) (3 March 2015)

<sup>15</sup> [COPFS agricultural crime policy](#) (16 December 2015)

<sup>16</sup> [Justice Committee. Official Report, 15 December 2015, Cols 2-57](#)

<sup>17</sup> [Interception of Communications Commissioner's statement of 25 November 2015](#)

<sup>18</sup> [Details of the Committee's consideration of petitions](#)

<sup>19</sup> [Details of the Committee's EU priorities](#)

<sup>20</sup> The principle of subsidiarity is defined in Article 5 of the Treaty on European Union. It aims to ensure that decisions are taken as closely as possible to the citizen and that constant checks are made to verify that action at EU level is justified in light of the possibilities available at national, regional or local level.

<sup>21</sup> [Justice Committee. Official Report, 1 September 2015, Cols 29-31](#)

<sup>22</sup> [Scotland's National Action Plan for Human Rights \(SNAP\)](#)

<sup>23</sup> [Details on the work of the Justice Sub-Committee on Policing](#)



