



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

24th Meeting, 2019 (Session 5)

Tuesday 1 October 2019

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to review the evidence heard under item 3, and whether to take item 6 in private.
2. **Scottish Biometrics Commissioner Bill:** The Committee will take evidence on the Bill at Stage 1 from—
 - Maureen Falconer, Regional Manager, Information Commissioner's Office;
 - Al Duff, Professor of Information Policy, Edinburgh Napier University and Member of NO2ID Edinburgh;
 - Matthew Rice, Scotland Director, Open Rights Group;
 - Judith Robertson, Chair, Scottish Human Rights Commission.
3. **Brexit Contingency Planning:** The Committee will take evidence from—
 - Deputy Chief Constable Will Kerr, Police Scotland;
 - Detective Chief Superintendent Patrick Campbell, Specialist Crime Division, Police Scotland.
4. **Delegated Powers and Law Reform Committee consultation on Scottish Law Commission Bills and referral criteria:** The Committee will consider a draft response.
5. **Scottish Biometrics Commissioner Bill and Brexit Contingency Planning (in private):** The Committee will review the evidence heard at today's meeting.
6. **Work programme:** The Committee will consider its work programme.

Stephen Imrie
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: justiceCommittee@parliament.scot

The papers for this meeting are as follows—

Agenda item 2

Paper by the Clerk J/S5/19/24/1

PRIVATE PAPER J/S5/19/24/2 (P)

Agenda item 3

Paper by the Clerk J/S5/19/24/3

PRIVATE PAPER J/S5/19/24/4 (P)

Agenda item 4

Paper from the Clerk J/S5/19/24/5

Agenda item 6

PRIVATE PAPER J/S5/19/24/6 (P)

Justice Committee

24th Meeting, 2019 (Session 5) Tuesday 1 October 2019

Scottish Biometrics Commissioner Bill

Background

1. The [Scottish Biometrics Commissioner Bill](#) (“the Bill”) was introduced in the Scottish Parliament, by the Cabinet Secretary for Justice, Humza Yousaf MSP, on 30 May 2019. The Bill, and its [accompanying documents are available online](#). The Bill has been referred to the Justice Committee for stage 1 scrutiny and the Parliament has set an end date of 20 December 2019 for the Stage 1 process.

Purpose of the Bill

2. The purpose of the Bill is to address a range of ethical and human rights considerations in Scotland in terms of the approach to the collection, use, retention and disposal of biometric data in the context of policing and criminal justice. The Bill aims to ensure this is done in a lawful, effective and ethical manner.

3. The Bill seeks to achieve this by establishing the post of the Scottish Biometrics Commissioner (‘the Commissioner’). The primary role of the Commissioner will be to draw up and promote the use of a Code of Practice for the collection, use, retention and disposal of biometric data by Police Scotland and the Scottish Police Authority¹, who provide the forensic service to police in Scotland. The Bill also provides for other functions in relation to the Commissioner.

Evidence taking

4. The Committee undertook a call for written evidence on the Bill from 2 July to 30 August 2019. The [responses received by the Committee](#) are now available online. Based on these responses the Committee has invited various witnesses to provide oral evidence on the Bill.

5. At the meeting on 1 October, the Committee will hear from its fourth panel of witnesses on the Bill. This panel will consist of-

- **Maureen Falconer**, Regional Manager for Scotland, Information Commissioners Office;
- **Matthew Rice**, Scottish Director of Open Rights Group;
- **Al Duff**, Professor of Information Policy, Edinburgh Napier University and Member of NO2ID Edinburgh, and
- **Judith Robertson**, Chair of the Scottish Human Rights Commission.

¹ Under Section 2(1) of the Bill, the Code of Practice will apply to Police Scotland and the SPA.

6. The Committee has also received [a written submission from Matthew Rice](#), [a written submission from Al Duff](#) and a [written submission from Judith Robertson](#) in advance of their oral evidence to the Committee on the Bill.

7. The Scottish Parliament Information Centre (SPICe) has also produced a [parliamentary Bill Briefing](#) on the provisions of the Bill.

Evidence to date

8. The Committee began taking oral evidence on the Bill on [25 June](#), when it heard from the Scottish Government Bill Team officials.

9. On [24 September](#) the Committee heard from Professor Paul Wiles and Lucy Bradshaw-Murrow, of the Office of Commissioner for the Retention and Use of Biometric Material, and Dr Christopher Lawless of Durham University, Dr Hannah Graham of the Scottish Centre for Crime and Justice Research and Dr Karen M Richmond of the University of Strathclyde.

Justice Committee clerks
26 September 2019

Justice Committee on Policing

24th Meeting, 2019 (Session 5), Thursday 1 October 2019

Note by the Clerk

Brexit Contingency Planning: Police Scotland

Introduction

1. The Justice Committee will hear evidence from Detective Chief Constable Will Kerr and Detective Chief Superintendent Patrick Campbell, Specialist Crime Division, Police Scotland on Brexit contingency planning.
2. Police Scotland provided an [update](#) on its EU Withdrawal Contingency Planning at the Scottish Police Authority Board meeting on 24 September 2019.
3. The Committee also received submissions from the [Scottish Government](#), the [Crown Office and Procurator Fiscal Service](#) and the [Scottish Prison Service](#), ahead of the evidence session.
4. The paper indicates that Police Scotland continues to prepare for Brexit through Brexit Contingency Planning and its Brexit Delivery Team.
5. On [31 January 2019](#) Chief Constable Iain Livingstone told the Justice Sub-Committee on Policing that he would not be reducing police officer numbers by 300 due to the uncertainty surrounding Brexit and its potential consequences. Instead the Chief Constable was to keep that capacity to meet any demands that might arise from Brexit.
6. The paper to the SPA Board states that the Force Reserve (FR) have been deployed since 5th August 2019 and are located in 5 hubs throughout Scotland. The resources are now actively deployed across Police Scotland's divisions supporting front line policing.
7. Police Scotland estimate that the total spending in relation to Brexit for Police Scotland is £8,053,218, as of 9 September 2019.
8. The Justice Committee will consider the contingency plans that Police Scotland have in place, the number of police officers involved in that work, the type of work those officers have been engaged in, the cost of Brexit contingency planning, and the impact of this work on the wider police service.

Justice Committee clerks
26 September 2019

Justice Committee

24th Meeting, 2019 (Session 5), Tuesday 1 October 2019

Scottish Law Commission bills and the role of the Delegated Powers and Law Reform Committee

Introduction

1. In May 2013, the Parliament agreed a change in Standing Orders to allow certain Scottish Law Commission (SLC) bills to be considered by the Delegated Powers and Law Reform (DPLR) Committee. The criteria for referral of a bill to the DPLR Committee and not a subject committee were agreed at the time, namely that such a referral can occur:
 - (a) where there is a wide degree of consensus amongst key stakeholders about the need for reform and the approach recommended;
 - (b) which does not relate directly to criminal law reform;
 - (c) which does not have significant financial implications;
 - (d) which does not have significant European Convention on Human Rights (ECHR) implications; and
 - (e) where the Scottish Government is not planning wider work in that particular subject area.
2. The purpose of the criteria is to identify bills that might be broadly regarded as more 'technical' reforms to the law. These can now be considered by the DPLR Committee as lead committee, as opposed to the subject committee whose remit is otherwise engaged by the subject matter of the bill. The relevant subject committee is regarded as the appropriate committee to consider bills that may be more 'contentious'.
3. At its meeting on 21 May 2019, the DPLR Committee agreed to establish a working group to review the criteria for designating bills as SLC bills which may be referred to it for scrutiny. The working group, which is made up of Scottish Parliament, Scottish Government and Scottish Law Commission officials, may make recommendations on potential changes to the Committee for its consideration.
4. The working group is considering:
 - how effective the referral criteria and wider SLC Bill process have been in meeting the aim improving the implementation rate of SLC reports; and
 - whether there are any ways in which the process for the referral and consideration of SLC Bills could be improved.

5. Since the Presiding Officer's criteria were agreed in 2013, four Bills have been designated as SLC Bills and have been referred to the DPLR Committee. The resulting Acts of the Scottish Parliament are:

- [Legal Writings \(Counterparts and Delivery\) \(Scotland\) Act 2015](#)
- [Succession \(Scotland\) Act 2016](#)
- [Contract \(Third Party Rights\) \(Scotland\) Act 2017](#)
- [Prescription \(Scotland\) Act 2018](#)

6. During the summer recess, the Clerk of the DPLR Committee wrote to the Convener on the issue of SLC bills and the role of the DPLR Committee (see Annex), seeking views from the Justice Committee.

Action

7. Members are asked if they perceive there to be any issues with the current system for referral, whether there is a need to change the referral criteria or whether they have any views on the status quo.

Clerking Team
September 2019

Dear Convener

I'm writing on behalf of the working group to review the criteria for the referral of Scottish Law Commission Bills to the Delegated Powers and Law Reform Committee. The working group was established by the Delegated Powers and Law Reform Committee and comprises officials from the Scottish Law Commission, Scottish Government and Scottish Parliament.

To help the working group in its review of the criteria, it is keen to hear the views of interested parties on the effectiveness of the SLC Bill referral process. Given the Justice Committee has a considerable interest in legislation stemming from Scottish Law Committee reports, its input would be of tremendous value.

The attached consultation document asks a number of questions about the effectiveness of the process for the referral and consideration of SLC Bills. However, please feel free to provide any views you may have on the wider parliamentary process.

The working group would welcome a response from the Justice Committee by **Friday 4 October 2019**. Following the consultation process, the working group will study the findings and report back to the Delegated Powers and Law Reform Committee for its consideration.

Yours sincerely,

Andrew Proudfoot
Clerk to the Delegated Powers and Law Reform Committee

Working group to review the criteria for the referral of Scottish Law Commission Bills to the Delegated Powers and Law Reform Committee

Call for written evidence

Background and purpose

1. In May 2013 the Parliament agreed a change in Standing Orders to allow certain Scottish Law Commission Bills (“SLC Bills”) to be considered by the Delegated Powers and Law Reform Committee. This was intended to improve the implementation rate of SLC reports. Six years on, the Committee agreed that it was now time to review the effectiveness of that change in improving the implementation rate.
2. At its meeting on 21 May 2019 the Committee agreed to establish a working group to review the [Presiding Officer’s criteria](#) for designating bills as SLC Bills which may be referred to it for scrutiny. The working group, which is made up of Scottish Parliament, Scottish Government and Scottish Law Commission officials, may make recommendations on potential changes to the Committee for its consideration.
3. Any potential changes to the criteria would still require wider parliamentary scrutiny and would not be expected to take effect until the start of Session 6 in 2021.

How the Parliament currently considers SLC Bills

4. SLC Bills are covered by [Rule 9.17A of Standing Orders](#), which outlines an SLC Bill as one which:
 - (a) implements all or part of a report of the Scottish Law Commission (including a joint report with the Law Commission);
 - (b) complies with such criteria as shall be determined by the Presiding Officer; and
 - (c) is not a Consolidation Bill, Codification Bill, Statute Law Repeals Bill or Statute Law Revision Bill.
5. Bills seeking to implement SLC reports are generally introduced by the Scottish Government. As such, it is for the Scottish Government to consider with the Commission which reports will be implemented.
6. Once a Bill is introduced, the designation of lead committee is dependent on the subject matter of the Bill. Should the above criteria be met, the Bill can be classed as an SLC Bill and the Delegated Powers and Law Reform Committee can be designated as lead committee. The criteria that has been determined by the Presiding Officer under point (b) above covers 5 factors. A Bill can be designated as an SLC Bill:

- i. where there is a wide degree of consensus amongst key stakeholders about the need for reform and the approach recommended;
- ii. which does not relate directly to criminal law reform;
- iii. which does not have significant financial implications;
- iv. which does not have significant European Convention on Human Rights (ECHR) implications; and
- v. where the Scottish Government is not planning wider work in that particular subject area.

7. The purpose of the criteria is to identify Bills that might be broadly regarded as more ‘technical’ reforms to the law. These can properly be considered by the DPLR Committee as lead committee, as opposed to the subject committee whose remit is otherwise engaged by the subject matter of the Bill. The relevant subject committee is regarded as the appropriate committee to consider Bills implementing SLC report that may be more contentious.

8. Since the Presiding Officer’s criteria were agreed in 2013, four Bills have been designated as SLC Bills and have been referred to the DPLR Committee. The resulting Acts of the Scottish Parliament are:

- [Legal Writings \(Counterparts and Delivery\) \(Scotland\) Act 2015](#)
- [Succession \(Scotland\) Act 2016](#)
- [Contract \(Third Party Rights\) \(Scotland\) Act 2017](#)
- [Prescription \(Scotland\) Act 2018](#)

Matters under consideration

9. As noted earlier, the SLC Bill process was designed to improve the implementation rate of SLC reports. The working group will therefore consider:

- how effective the referral criteria and wider SLC Bill process have been in meeting that aim; and
- whether there are any ways in which the process for the referral and consideration of SLC Bills could be improved.

10. The working group is keen to hear the views of interested parties on the effectiveness of the SLC Bill process.

11. You may also have wider views on the implementation of SLC reports, beyond the parliamentary process, which you may wish the working group to take into account during its considerations.

Next steps

12. Please respond by **Friday 4 October 2019**. The working group will consider the responses before reporting its findings to the Delegated Powers and Law Reform Committee later in the autumn.

How to submit your evidence

13. Please note that in most cases your written submission will be published on the Scottish Parliament's website and may be quoted in any eventual Committee report or in Committee meetings (which are public and broadcast).

14. If you wish to request that your submission be published without your name, please contact the Clerks at dplr.committee@parliament.scot.

15. Before making a submission, please read the [Scottish Parliament's Privacy Notice](#) about submitting your views to a Committee. This tells you about how we process your personal data.

16. We welcome written views in English, Gaelic, Scots or any other language.

17. Written responses, which should ideally be no more than four sides of A4, should be sent electronically to dplr.committee@parliament.scot.

18. If you cannot submit electronically, you may send in a hard copy written submission. If you are sending in a hard copy submission please print off and include a copy of the Data Protection form. Please send them to: The Delegated Powers and Law Reform Committee, Room T1.01, Scottish Parliament, Edinburgh EH99 1SP.

Contact

19. Should you require alternative formats of this information or further assistance in making a written submission to the Committee, please do not hesitate to contact the Andrew Proudfoot via email (dplr.committee@parliament.scot) or by telephone on 0131 348 5212.