



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

3rd Meeting, 2020 (Session 5)

Tuesday 21 January 2020

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 take item 9 in private.

2. **Subordinate legislation:** The Committee will take evidence on the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2020 [draft] from—

Humza Yousaf, Cabinet Secretary for Justice, Nigel Graham, Senior Policy Officer, and Douglas Kerr, Legal Adviser, Scottish Government Legal Directorate, Scottish Government.

3. **Subordinate legislation:** Humza Yousaf (Cabinet Secretary for Justice) to move—

S5M-20332 That the Justice Committee recommends that the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2020 [draft] be approved.

4. **Subordinate legislation:** The Committee will take evidence on the Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019 (SSI 2019/423) from—

Humza Yousaf, Cabinet Secretary for Justice, Graham Robertson, Electronic Monitoring Policy Manager, and Craig McGuffie, Principal Legal Officer, Scottish Government.

5. **Subordinate legislation:** The Committee will consider the following negative instrument—

Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019 (SSI 2019/423)

6. **Children (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Dr Louise Hill, Evidence and Policy Lead, CELCIS;

Ben Farrugia, Director, Social Work Scotland;

Duncan Dunlop, Chief Executive, and Oisín King, Member, Who Cares? Scotland;

and then from—

Jackie McRae, Practice and Partnerships Lead, Children's Hearings Scotland;

Alistair Hogg, Head of Practice and Policy, Scottish Children's Reporter Administration.

7. **Justice Sub-Committee on Policing:** The Committee will consider a report back from the Sub-Committee meeting held on 16 January 2020.
8. **Children (Scotland) Bill (in private):** The Committee will review the evidence heard earlier in the meeting.
9. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the Clerk

J/S5/20/3/1

Agenda item 4

Paper by the Clerk

J/S5/20/3/2

Agenda item 6

Paper by the Clerk

J/S5/20/3/3

PRIVATE PAPER

J/S5/20/3/4 (P)

Agenda item 7

Paper by the Clerk

J/S5/20/3/5

Agenda item 9

PRIVATE PAPER

J/S5/20/3/6 (P)

Justice Committee

3rd Meeting, 2020 (Session 5), Tuesday 21 January 2020

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:

- [Rehabilitation of Offenders Act 1974 \(Exclusions and Exceptions\) \(Scotland\) Amendment Order 2020 \[draft\]](#)

Introduction

2. The instrument was made in exercise of the powers conferred by sections 4(4), 7(4), 10(1), 10A(1) and paragraph 6 of schedule 3 of the Rehabilitation of Offenders Act 1974 (c.53) (“the 1974 Act”).

3. The overall policy objective of the instrument is to improve how the backgrounds of constables, potential constables, police custody and security officers and armed forces police can be appropriately vetted in Scotland. The purpose of which is to improve the decisions made in relation to the appointments for such roles as well as decisions made in relation to disciplinary proceedings against serving constables.

4. Further details on the purpose of the Order can be found in the policy note attached at **Annexe A**.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

5. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 7 January 2020 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

6. The Justice Committee is required to report to the Parliament on the instrument by 11 February 2020. The Cabinet Secretary for Justice has lodged motion S5M-20332 proposing that the Committee recommends approval of the instrument. The Cabinet Secretary for Justice is due to attend the meeting on 21 January to answer any questions on the instrument and to move the motion for approval.

7. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 11 February. Thereafter, the Parliament will be invited to approve the instrument.

8. The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.

ANNEXE A

POLICY NOTE

**THE REHABILITATION OF OFFENDERS ACT 1974 (EXCLUSIONS AND EXCEPTIONS) (SCOTLAND) AMENDMENT ORDER 2020
SSI 2020/No. XX**

The above instrument was made in exercise of the powers conferred by sections 4(4), 7(4), 10(1), 10A(1) and paragraph 6 of schedule 3 of the Rehabilitation of Offenders Act 1974 (c.53) (“the 1974 Act”). The instrument is subject to the affirmative procedure. For the purposes of this policy note the instrument will be called “the 2020 amendment Order”.

Purpose of the instrument

The overall policy objective of this instrument is to improve how the backgrounds of constables, potential constables, police custody and security officers and armed forces police can be appropriately vetted in Scotland. The purpose of which is to improve the decisions made in relation to the appointments for such roles as well as decisions made in relation to disciplinary proceedings against serving constables.

As such, the ultimate policy intent is to improve the quality of such decisions so as to ensure those who serve as constables and police custody and security officers are fit to serve and ensure constables continue to be fit to serve. It will also ensure armed forces police are treated in the same way in Scotland as in England & Wales.

Although the instrument relates to police constables generally, it will have most effect in relation to Police Scotland.

In more detail, this instrument amends the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013, as amended (“the 2013 Order”). The purpose of which is to allow Police Scotland and all other forces recruiting and employing people in Scotland (e.g. British Transport Police, Civil Nuclear Constabulary) to be able to consider all spent convictions received at any age and all spent alternatives to prosecution (AtPs) given when the person was 18 or over in:

- disciplinary proceedings against a police constable appointed after date of commencement, and in
- disciplinary proceedings against an existing police constable for conduct committed on or after date of commencement, (this is to ensure no retrospective assessments are made of a constable appointed under the previous vetting regime).

This instrument will also allow Police Scotland, other forces recruiting and employing people in Scotland and the armed forces police to be able to consider all spent convictions received at any age and all spent AtPs given when the person was 18 or over when:

- vetting constables, police custody and security officers, persons appointed as police cadets to undergo training with a view to becoming constables, naval, military and air force police, (where a person has at date of commencement not applied for the roles mentioned).

Policy Objectives

Spent convictions

1. The policy objective is to adjust the rules relating to what spent conviction information can be used when vetting candidates seeking what this notes refers to as a 'relevant position',¹ as well as what spent conviction information can be used when it is necessary for disciplinary proceedings against a constable. More information will be capable of being considered which is intended to aid decision-making in appointing those seeking a relevant position and in disciplining constables.
2. The policy objective in respect of conviction information is achieved in two ways.
3. The instrument amends the 2013 Order so that all spent convictions can be considered in the vetting of a potential candidate seeking a relevant position. The instrument also allows all spent conviction information to be considered in disciplinary proceedings against an existing constable.
4. This amendment will mean after commencement, Police Scotland, other forces recruiting and employing people in Scotland and the armed forces police will be placed in a similar position to, for example, the Parole Board, the Mental Health Tribunal for Scotland, firearm dealers and occupations where a licence to keep explosives is necessary. That is, they will have the ability to consider all spent conviction information.

Spent Alternatives to Prosecution (AtPs)

5. Similar to the approach taken in respect of spent convictions, the policy objective is to adjust the rules relating to what spent AtP information can be used when vetting candidates seeking a relevant position as well as what spent AtP information can be used when it is necessary for disciplinary proceedings against a constable. More information will be capable of being considered which is intended to improve the decision-making in appointing individuals seeking a relevant position and in disciplining constables.

¹A 'relevant position' under this instrument are constables, police custody and security officers, persons appointed as police cadets to undergo training with a view to becoming constables, naval, military and air force police.

6. Section 7(4)² and paragraph 6 of schedule 3 of the 1974 Act confers powers to dis-apply the protections for the non-disclosure of spent AtPs under the 1974 Act. However, this power has not yet been used. As such, once an AtP is spent it cannot be used for the purposes of a higher level disclosure, (unlike relevant spent convictions), and cannot be used to prejudice an individual in an employment context.
7. The policy objective is to amend the 2013 Order to dis-apply the protections under paragraphs 3, 4(2) and (3) and 5(2) of schedule 3 of the 1974 Act. This will allow Police Scotland, other forces recruiting and employing people in Scotland and the armed forces police the ability to use relevant spent AtP information when vetting an individual seeking a relevant position. It will also allow Police Scotland and other relevant forces in Scotland to be able to consider relevant spent AtPs in disciplinary proceedings against a constable. A relevant spent AtP is one that is given when the individual concerned was 18 or over. Therefore, any spent AtPs given when the individual was under 18 will not be able to be considered and the protections under the 1974 Act will continue to apply.

General background

Convictions

8. A conviction may become spent after a certain length of time has elapsed since the date of conviction, with different periods of time applying to different disposals as laid down in the 1974 Act.
9. Once a conviction is spent the 1974 Act provides that an individual is not normally required to self-disclose the conviction and cannot be prejudiced by its existence. The protections are subject to certain exceptions specified in the 1974 Act and set out in secondary legislation. The purpose of this approach is to appropriately allow an individual to move away from their past criminal activity so that they can contribute effectively to society while also ensuring that people with a legitimate interest, such as employers, are able to understand an individual's background.
10. It is section 4 of the 1974 Act which embodies the main principle of the Act for convictions in terms of what it means to be protected not to self-disclose a spent conviction. Broadly speaking, those protections in the 1974 Act permit individuals not to self-disclose spent convictions when asked to do so (e.g. by a prospective employer) prevent others from asking about those spent convictions and prohibit reliance on spent convictions in certain legal proceedings or to prejudice an individual in an employment context. However, there are certain exceptions and exclusions to this general approach when the interests of public safety are paramount.
11. The 1974 Act provides the Scottish Ministers with powers to make, by order, exceptions and exclusions to the protections under section 4 of the 1974 Act which would otherwise permit an individual not to self-disclose spent conviction information and prevent any other person requiring the disclosure of such

² Paragraph 8(5) of schedule 3 modifies section 7(4) to the effect that the power in section 7(4) applies for the purpose of excluding the application of paragraph 3 of schedule 3 of the 1974 Act.

information or prejudicing the individual on account of any such disclosure or, indeed, failure to disclose. The Scottish Ministers made the 2013 Order in exercise of those powers.

Alternatives to Prosecution (AtPs)

12. An AtP may become spent after a certain length of time has elapsed from the date the AtP is given, with different periods of time applying to different categories of AtP, (i.e. category 1 or category 2) as laid down in the 1974 Act.
13. 'Category 1' AtPs are warnings given by a constable or a procurator fiscal and fixed penalty notices given under section 129 of the Antisocial Behaviour (Scotland) Act 2004 and are spent immediately. 'Category 2' AtPs are other types of non-court based disposals available to the police and prosecutors specified in section 8B of the 1974 Act. They are fiscal fines, fiscal compensation orders, fiscal work orders and fiscal activity/treatment orders and a notice to comply with a restoration order and are spent after 3 months.
14. Once an AtP is spent, the 1974 Act provides that an individual is not required to self-disclose the AtP and cannot be prejudiced by its existence. The protections are not currently subject to any exceptions as set out in secondary legislation. This is because the 2013 Order only applies in respect of spent convictions and, at present, no exclusions or exceptions to the protections of the 1974 Act apply in respect of spent AtPs. In other words, once an AtP is spent it cannot be used to inform any employment decision or decisions in proceedings set out in the 2013 Order.

The 2015 Order

15. Prior to its amendment by the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2015, ("the 2015 Order"), articles 3 and 4 of the 2013 Order specified types of proceedings and circumstances which were excluded from protection under section 4(1) and (2) of the 1974 Act and where details of all spent convictions therefore required to be self-disclosed. For example, in disciplinary proceedings against a constable or when a person applied for a licence under the Private Security Industry Act 2001, the person would be required to reveal all spent convictions, if asked, and these were able to be taken into account in such proceedings.
16. There are also some categories of professions, offices, employments and occupations which were wholly excepted from the protections set out in section 4(3)(b) of the 1974 Act. Therefore, all spent conviction information or failure to disclose such information could be used as a proper ground for dismissing or excluding a person from such employment.
17. The 2013 Order was amended by the 2015 Order to remove the legal requirement for all spent convictions to be self-disclosed by an individual when asked for any of the purposes specified in the 2013 Order. This was to ensure only relevant spent convictions were required to be self-disclosed by an individual for those purposes. In other words, the amendments made by the 2015 Order restricted the requirement for self-disclosure and for non-relevant spent convictions to be used.

18. Prior to 2015, Police Scotland, other forces recruiting and employing people in Scotland and armed forces police in Scotland were able to inform decisions about the suitability of candidates using a full set of information about a person's previous convictions. Police Scotland and other forces in Scotland could also take account of all unspent and spent convictions when undertaking disciplinary proceedings against a constable.
19. The reforms made by the 2015 Order restricted the amount of previous convictions Police Scotland and other forces in Scotland could use to vet candidates and in disciplinary proceedings because only unspent convictions and spent convictions which are not 'protected convictions' could be taken into account when making employment decisions or in disciplinary proceedings. 'Protected convictions' are convictions for any offence not listed in either of schedules A1 and B1 of the 2013 Order and any offence listed in schedule B1 which is filtered out because;
- the sentence imposed was admonition or absolute discharge³, or
 - the person was under 18 years of age at the time the offence was committed and at least 7 years 6 months have passed since the date of that conviction, or
 - the person was over 18 years of age at the time the offence was committed and at least 15 years have passed since the date of that conviction.
20. As armed forces police were also included in paragraph 6 of schedule 4 of the 2013 Order, this restriction in disclosure also applied to naval, military and air force police in Scotland.
21. Further to this, the order making power under paragraph 6 of Schedule 3 of the 1974 Act has not previously been used. Therefore, Police Scotland, other forces in Scotland and armed services police can currently only consider certain AtPs for 3 months, (i.e. Category 2 AtPs), and cannot use any spent AtP information for the purposes of vetting those seeking a relevant position or in disciplinary proceedings against a police constable in Scotland.

Role of the constable - Police Scotland

22. The Scottish Government has considered carefully the appropriate policy in this area. Police Scotland police by consent and a vital part of this is that the public have the utmost confidence in the integrity of police officers.
23. It is a Scottish Government strategic policing priority that Police Scotland must be accountable and must continuously improve public confidence in policing and inspire trust by being transparent, accountable and act with integrity, fairness and respect. Therefore, to meet that priority and maintain public confidence, Police Scotland are clear that all prospective police officers must undergo the most

³ The reference to an absolute discharge includes a reference to the discharge of the referral of a child's case to a children's hearing under;

a) section 69(1)(b) and (12) of the Children (Scotland) Act 1995; or
 b) section 91(3)(b), 93(2)(b), 108(3)(b) or 119(3)(b) of the Children's Hearings (Scotland) Act 2011.

rigorous checks into their background to ensure they are a fit and proper person to undertake the role of constable.

24. Being able to show that a prospective police officer has respect for the rule of law is a critical component in assessing whether that person is such a fit and proper person. In contrast, Police Scotland note that evidence of a disregard for the rule of law has the potential to cast doubt on that person's character and might suggest that such a person will not act with integrity, fairness and respect when a sworn officer.
25. From day one of being a constable, an individual can be dealing with vulnerable people on the job (e.g. call outs to sexual offence victims, the elderly, children etc.). The ability of a constable to give evidence in court could also be compromised if they have recent spent AtPs and/or certain spent convictions which are 'protected convictions'. Giving evidence in court is part and parcel of a constable's job and the compromising of an officer's evidence could have a substantial impact on the prosecution of justice and public confidence.
26. In particular, the role of constables in requiring to 'uphold the law' requires intense and robust vetting to take place. This is highlighted by the independent checks that take place on Police Scotland's own internal procedures (e.g. Her Majesty's Inspectorate of Constabulary in Scotland (HMICS) inspections and the Scottish Police Authority (SPA)) whereby the integrity and character of constables is commonly cited as being of critical importance.
27. It is important to note that the purpose of the 2020 amendment Order is to enable consideration of a person's full conviction and AtP, (given when 18 or over), history to enable informed decision making. This does not mean that the existence of a past conviction or AtP will mean that for example, a person's application to become a constable will automatically be rejected.
28. Police Scotland have indicated they are acutely aware of the 2014 UK Supreme Court ruling (R (T) v the Secretary of State for the Home Department [2014] UKSC 35⁴), which underpinned the changes to the higher level disclosure regime in 2015. As such, they recognise that safeguards must be in place and as a result, decisions are taken with full cognisance of an applicant's rights under article 8 of the ECHR. Therefore, the rationale of all their vetting decisions follows closely the considerations which were outlined by the UK Supreme Court in 2014 as being important in determining whether it was justifiable to require the disclosure of, or reliance on, a person's conviction. These include the nature of the offence, the age when the person committed it, its relevance to the issue at hand, and the time that has elapsed since the offence was committed. Further, all their decisions are recorded; applicants who are refused vetting are informed of the reason for this, (where police operations and the data protection rules allow), and an appeals process is in place.
29. All their decisions are based on policy and accompanying standard operating procedures and they adhere to the standards required for lawful decision making in

⁴ <https://www.supremecourt.uk/cases/uksc-2013-0048.html>

the public sector – for instance, reasonableness, rationality and procedural propriety.

30. Since the creation of a force vetting unit in May 2015, Police Scotland has undergone two formal audits by the SPA and were part of an inspection by HMICS. The Scottish Government were informed that there have been no specific cases identified where vetting was found to be incorrect or disproportionate. Police Scotland has also successfully defended a judicial review of its decision making.
31. With all this in mind, the Scottish Government believe the policy changes contained in the 2020 amendment Order reflect the reasonable expectation of the public that those charged with the substantial responsibility of upholding law and order should be held to a higher level of conduct and integrity standards and that a consideration of all past criminal conduct, where such consideration is undertaken in a fair, open and proportionate manner, affords the best protection to the public by having constables who have had their backgrounds fully vetted prior to appointment.
32. Police Scotland is bound by law to promote measures to prevent crime, harm and disorder. Their strategic police priorities include a responsibility to continuously improve public confidence in policing and inspire trust. It is the Scottish Government's view that the current legislative position does not allow them to fully meet these demands.
33. It is noted police vetting is unlike any other disclosure process in that it is Police Scotland itself which undertakes the entire process of assessment, disclosure and decision-making as to clearance. Therefore, Police Scotland are already aware of every aspect of a potential candidate's previous offending behaviour and, (unlike other relevant employers), they are in a unique position in not having to rely on disclosure checks from Disclosure Scotland.
34. Indeed, this access to a complete history of a person's previous offending behaviour allows Police Scotland to be in the trusted and important role in higher level disclosure where they are required to provide 'Other Relevant Information' to Disclosure Scotland for the purposes of enhanced disclosure checks and protection of vulnerable groups checks. The experience they have in the area of assessing offending behaviour information with a view to informing relevant decisions is extensive.

Police custody and security officer

35. The 2020 amendment Order also covers police custody and security officers. Police custody and security officers (PCSOs) are police staff who are responsible for the custody and care of prisoners in custody in police cells. This brings a great degree of responsibility as they directly interact with people who are arrested and with people who may be vulnerable. PCSOs are also responsible for searching people and taking their personal property.
36. Therefore, due to the nature of their duties the Scottish Government consider it appropriate that they should undergo the same vetting process as a police constable and a police cadet.

Other roles within Police Scotland

37. The 2020 amendment Order does not apply to all police staff, meaning that the existing rules will continue to apply to those roles. That is because the Scottish Government and Police Scotland agree the current level of disclosure for any employment or office which is not a constable, police cadet, or police custody and security officer remains appropriate under existing law (i.e. subject to general higher level disclosure, but not the further scrutiny that will be permitted under this Order). Those other roles fall into the category of ‘persons employed for the purposes of a police force established under any enactment and persons appointed to assist in the carrying out of police functions’.

Armed forces police

38. Since the Scottish Ministers were given the powers to make an exclusions and exceptions order that also made provisions in relation to otherwise reserved matters naval, military and air force police have always been ‘excepted’ offices and employments under schedule 4, part 2, paragraph 6 of the 2013 Order.⁵

39. Therefore, the purpose of this instrument is to put armed service police back in the position they were in prior to the changes made in 2015 in relation to spent convictions and also to allow them to be able to use relevant spent AtPs in the same way as Police Scotland and other relevant forces in Scotland. Thus maintaining the status quo for such offices and employments under the 2013 Order.

Changes being made to the 2013 Order by the 2020 amendment Order

Definitions

40. Article 1(3) defines “the 2013 Order” and “ATP” for the purposes of the Order.

Disciplinary proceedings against a constable

41. Article 2(2) of the 2020 amendment Order allows Police Scotland and other forces recruiting and employing people in Scotland to be able to consider all spent convictions in respect of disciplinary proceedings against a constable. It does this by amending article 3(2)(a) of the 2013 Order to remove the reference to paragraph 2 of schedule 1 of that Order. It is paragraph 2 of schedule 1 of the 2013 Order which makes reference to disciplinary proceedings against a constable.

42. In order to ensure the amendments to the 2013 Order do not affect existing constables, a saving provision has been included in the 2020 amendment Order. Article 3(1) of the 2020 amendment Order contains the saving provision for these proceedings.

⁵ <http://www.legislation.gov.uk/ssi/2003/231/schedule/4/made>

43. Effectively this applies the existing law to serving officers in respect of a conviction which occurred prior to the 2020 amendment Order coming into force.

Vetting of people seeking a relevant position

44. Section 4(2)(a) and (b) of the 1974 Act provides protection to individuals in the circumstances where a question seeking information in respect of a person's previous convictions, offences, conduct or circumstances is put to them or any other person otherwise than in proceedings before a judicial authority. The protections are that the question is to be treated as not relating to spent convictions and that no consequences or prejudice can arise out of a failure to acknowledge or disclose a spent conviction. This covers matters such as questions put to a person in the context of a job application or when they are seeking home insurance.

45. Article 2(3) of the 2020 amendment Order amends article 4(3) of the 2013 Order to insert new sub-paragraph (ba). This has the effect of removing police recruitment and recruitment for naval, military and air force police from the reach of article 4(2) of the 2013 Order, meaning that police recruitment and armed forces police recruitment remains completely excluded from the protections of section 4(2)(a) and (b) of the 1974 Act, (i.e. the individual, if asked, should tell the truth about all their previous convictions).

46. This means that Police Scotland and other relevant forces will be able to consider all spent conviction information for the purposes of vetting constables, police custody and security officers and persons appointed as police cadets to undergo training with a view to becoming constables, (where the person has at date of commencement not yet applied). It will also mean that the armed forces will be able to consider all spent conviction information for purposes of vetting naval, military and air force police, (where the person has at date of commencement not yet applied).

47. In order to ensure the amendments to the 2013 Order do not apply to a person who has already applied to Police Scotland, other relevant forces or the armed forces before the 2020 amendment Order comes into force, another saving provision has been included in the 2020 amendment Order. Article 3(2) of the 2020 amendment Order contains this saving provision.

48. This saving provision ensures that the changes do not apply where the suitability of a prospective candidate seeking a relevant position is being assessed immediately before the coming into force of the 2020 amendment Order. This means any recruitment application made prior to the coming into force of the 2020 amendment Order is unaffected by the changes made by the 2020 amendment Order.

Proper ground for dismissing or excluding a person from employment etc.

49. Section 4(3)(b) of the 1974 Act provides protection whereby a spent conviction or any failure to disclose a spent conviction is not a proper ground for dismissing or excluding a person from any office, profession, occupation or employment, or for prejudicing a person in any way in any occupation or employment.

50. As mentioned above, the 2013 Order disapplies this protection but not for 'protected convictions' as a result of the amendments made to the 2013 Order in 2015. The policy is for the changes made to the 2013 Order in 2015 not to apply to relevant positions. That is all convictions should be able to be considered for such positions.
51. Article 2(4) of the 2020 amendment Order removes the changes made in 2015 to the 2013 Order in respect of relevant offices or employments. This means that relevant police and armed forces police employment will be, (subject to the saving provision mentioned below), fully excepted from the protections of section 4(3)(b) of the 1974 Act.
52. Article 3(3) of the 2020 amendment Order contains the saving provision mentioned above, which means that the existing law, (i.e. amendments made in 2015), will continue to apply in circumstances where a person holds a relevant position immediately before the 2020 amendment Order comes into force, (but only in respect of a conviction dated before the coming into force of the 2020 amendment Order). This means any past convictions of someone currently employed in a relevant position continue to be treated as they are at present. However, for future applications all spent convictions will be able to be considered.

Alternatives to prosecution (AtP)

53. Article 2(5) of the 2020 amendment Order inserts a new article 5A into the 2013 Order. The purpose of which is to allow Police Scotland, other relevant forces and the armed forces police to consider spent AtPs in an equivalent way to the provisions for convictions as mentioned above. However, as previously mentioned, it will only apply to spent AtPs given when the person was 18 or over.
54. This new article 5A will allow Police Scotland and other relevant forces in Scotland to consider all spent AtP information given when a person was 18 or over when vetting constables, police custody and security officers and persons appointed as police cadets to undergo training with a view to becoming constables and in disciplinary proceedings against a constable. It will also allow the armed forces police the ability to consider all spent AtP information given when a person was 18 or over when vetting naval, military and air force police. However, the amendment does not apply to any service disciplinary proceedings.
55. As with convictions, to ensure the amendments made by the 2020 amendment Order do not effect existing relevant positions further saving provisions have been included in the 2020 amendment Order for AtPs.
56. As such, article 3(4) to (6) of the 2020 amendment Order contains saving provisions which mirror the saving provisions made in respect of convictions in article 3(1) to (3). This provision ensures the existing law in relation to spent AtPs, (i.e. no disclosure in higher level disclosures), will continue to apply in circumstances where a person holds a relevant position immediately before the 2020 amendment Order comes into force, (but only in respect of an AtP dated before the coming into force of the 2020 amendment Order). This means any past AtPs of someone currently employed in a relevant position continue to be treated

as they are at present. However, for future applications all spent AtPs if given when a person was 18 or over will be able to be considered.

Employment etc affected by the 2020 amendment Order

57. Article 2(6) of the 2020 amendment Order substitutes a new paragraph 6 of Part 2 of schedule 4 of the 2013 Order. This separates out various forms of police employment into paragraphs 6 and 6A.

58. This means that only the following will be affected by the 2020 amendment Order:

6. Constables, police custody and security officers, persons appointed as police cadets to undergo training with a view to becoming constables and naval, military and air force police.

59. The following will not be affected by the 2020 amendment Order and as such, the amendments made in 2015 will still apply:

6A. Persons employed for the purposes of a police force established under any enactment and persons appointed to assist in the carrying out of police functions.

Consultation

60. Following consideration by Police Scotland as to the effect on their own internal vetting procedures of the changes made in 2015, engagement has taken place between Police Scotland and the Scottish Government as regards policy in this area. The content of this Order reflects those discussions.

61. Scottish Government officials have also been in discussion and had meetings with the Crown Office and Procurator Fiscal Service and Disclosure Scotland regarding the proposals set out in this instrument. Scottish Government officials have also been in contact with the Ministry of Justice and Ministry of Defence regarding the proposals in this instrument.

Impact Assessments

62. We have assessed whether impact assessments are required and have decided they are not necessary. This is due to the limited scope and impact of this instrument. For armed forces police we are putting them back into the position they were prior to the changes to the 2013 Order in 2015 with the further addition of allowing them to consider AtPs given or accepted when the person was 18 or older. This will mean the Scottish system for vetting armed forces police is consistent with the policy in England and Wales and, as such, ensures parity north and south of the border.

63. Further to this, as stated above the policy objective is to allow Police Scotland to be able to consider information they already hold. Therefore, the policy is not about allowing Police Scotland access to more sensitive conviction or AtP information, as

they already have access this information and process it for the purposes of public protection.

64. As Police Scotland are a public authority they have a duty to comply with ECHR and must consider the impact of their vetting procedures on children, those with protected characteristics and on business etc. Further, as stated above, Police Scotland are aware of the 2014 UK Supreme Court ruling which underpinned the changes to the higher level disclosure regime in 2015. As such, they recognise that safeguards must be in place and as a result decisions are taken with full cognisance of an applicant's rights under article 8 of the ECHR.
65. As such, the rationale of all their vetting decisions follows closely the considerations which were outlined by the UK Supreme Court in 2014 as being important in determining whether it was justifiable to require the disclosure of, or reliance on, a person's conviction. These include the nature of the offence, the age when the person committed it, its relevance to the issue at hand, and the time that has elapsed since the offence was committed. Further, all their decisions are recorded; applicants who are refused vetting are informed of the reason for this (where police operations and the data protection rules allow) and an appeals process is in place. As such, we do not consider this instrument requires impact assessment to be undertaken.

Financial Effects

66. 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.

Scottish Government
Justice Directorate
26 November 2019

Justice Committee

3rd Meeting, 2020 (Session 5), Tuesday 21 January 2020

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - [The Restriction of Liberty Order etc. \(Scotland\) Amendment Regulations 2019](#) [see page 3];
2. The instrument was laid before the Parliament on 17 December 2019 and came into force on 20 December 2019 **thereby breaching the requirement that at least 28 days should elapse between the laying of an instrument that is subject to the negative procedure and the coming into force of that instrument.**
3. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by 3 February 2020. The Cabinet Secretary for Justice is due to attend the meeting on 21 January to answer any questions on the instrument.
4. Following the evidence session, the Committee may report its views on the instrument if it wishes (for example, indicating it is content with the instrument, or commenting on its views on the reasons for the breach of the 28-day rule, or recommending the instrument be revoked etc). Procedure for dealing negative instruments are set out in paragraphs 9 to 14 below.

Delegated Powers and Law Reform Committee Consideration

5. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 7 January and agreed to write to the Scottish Government to ask for more details on why the instrument was brought into force only three days after it was laid (see Annexe A).
6. The response from the Cabinet Secretary for Justice is attached in Annexe B.
7. The Delegated Powers and Law Reform Committee considered the instrument again at its meeting on 14 January and agreed to draw it to the attention of the Parliament under reporting ground (j) (failure to comply with laying requirements).
8. The relevant extract from the [Delegated Powers and Law Reform Committee's report](#) is attached in Annexe C.

Procedure for negative instruments

9. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. 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).
10. 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.
11. 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.
12. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
13. 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. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
14. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

15. 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/delegated-powers-committee.aspx>

Recommendation

16. **The Committee is invited to consider the instrument.**

POLICY NOTE**RESTRICTION OF LIBERTY ORDER ETC. (SCOTLAND) AMENDMENT
REGULATIONS 2019
SSI 2019/423**

The above instrument was made in exercise of the powers conferred by section 245C of the Criminal Procedure (Scotland) Act 1995 and all other powers enabling them to do so. The instrument is subject to negative procedure.

These Regulations have the effect of prescribing the equipment that can be used for the purposes of electronic monitoring in Scotland. In practice this is done by setting out in a list within the regulations, a very brief description of each piece of equipment that can be used for electronic monitoring and each model number e.g. Security Keyfob 433, model number 10-0054-4. We originally proposed to update these regulations in January/February 2020 to prepare for the move to a new electronic monitoring contract (from 1 April 2020).

We have moved to have these Regulations made and laid more swiftly however (and in breach of the 28-day rule) as there has been an unprecedented increase in the numbers of electronically monitored court orders over recent weeks with the numbers monitored now at a historically high level. There are also changes proposed to Home Detention Curfew (HDC) over the next few weeks which may mean that in future weeks a larger number of people are released on HDC, where numbers are currently at a historic low.

The current private sector service provider of the electronic monitoring service have stocks of new monitoring equipment that could be used if the number of those to be monitored increases. We are moving to prescribe that equipment now so that it is available to use should there be any further increases in demand on the service. We believe this is a pragmatic step to ensure continuity in the operation of this important aspect of the justice system.

In practice the regulations update a list which contains a brief description and model number for each piece of equipment, replacing it with a different and updated list of descriptions and model numbers, removing any equipment no longer used. This is necessary to ensure a sufficient supply of radio frequency equipment – when radio frequency technology advances then new models are introduced into the service and the new model numbers need to be prescribed.

We acknowledge that the enabling power in these Regulations will be repealed when Part 1 and Schedule 1 of the Management of Offenders (Scotland) Act 2019 come into force bringing in a new statutory regime of electronic monitoring. Until that new regime is in force, the Scottish Ministers will remain under an obligation, in terms of the existing regime, to specify devices for the purposes of monitoring an individual's compliance with various community sentences and licence conditions. Once the new regime is in force, new Regulations will require to be made specifying the types of devices that can be used for monitoring compliance with community sentences and licence conditions.

Policy Objectives

These regulations allow the prescribed equipment to be used for electronic monitoring. This will allow newer models of equipment to be introduced into the service to start to replace older equipment. This newer equipment can be used as part of the planned swap out of equipment in order to prepare for a new contractual period from 1 April 2020. By prescribing it now, it also provides for a contingency if there is any significant increase in demand on the service in advance of that planned swap out.

Consultation

The development of electronic monitoring more generally has been the subject of significant recent Parliamentary oversight through the recent passage of the Management of Offenders Act 2019. There has not been consultation on this specific step as it is a largely administrative arrangement that supports the wider operation of the service. It does not make any changes to the underlying legislative basis for monitoring, it only lists the equipment used.

Impact Assessments

An impact assessment has not been done, as the changes here are largely administrative in nature and do not impact on the underpinning legislative basis covering what it is possible to monitor.

Financial Effects

No BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate

16 December 2019

LETTER FROM THE CONVENER OF THE DPLR COMMITTEE TO THE CABINET SECRETARY FOR JUSTICE

Humza Yousaf MSP
Cabinet Secretary for Justice

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7 January 2020

Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019

Dear Cabinet Secretary,

At its meeting earlier today, the Committee considered the Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019 (SSI 2019/423).

As you are no doubt aware, standing orders provide that any breach of the 28 day laying requirement must be reported under reporting ground (j) (“failure to comply with laying requirements”). The Committee also considers whether it is content with the reasons provided by the Scottish Government for the failure to comply.

The reasons for the failure to comply are set out in a letter to the Presiding Officer, annexed below. The Committee would be grateful for further information on this matter.

The letter to the Presiding Officer states that the need for this Order was due to “the significant increase in the numbers of community sentences which are to be electronically monitored” in the weeks before the Order was laid. Have the reasons for this increase been identified? Furthermore, could the pressure on the supply of electronic tags have been predicted earlier, to allow regulations to have been laid in enough time to respect the 28 day requirement?

I would be grateful for a response to these questions by **5pm on Thursday 9 January**.

Yours sincerely,

Graham Simpson
Convener of the Delegated Powers and Law Reform Committee

Graham Simpson MSP
 Convener of the Delegated Powers and Law
 Reform Committee
 Scottish Parliament
 By email

**LETTER FROM THE CABINET SECRETARY FOR JUSTICE TO THE CONVENER
 OF THE DPLR COMMITTEE**

January 2020

Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019

Thank you for your letter of 7 January 2020 regarding the Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019. You asked for further information about the laying of these Regulations to inform your consideration of the breach of the 28 day laying requirement.

I would like to put on the record that I would wish wherever possible to fulfil all the obligations within Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. That these Regulations were laid in breach of that requirement was a consequence of our assessment of the need to put in place a prudent contingency arrangement, in light of unexpected changes we were seeing in a demand-led service.

The increase in the number of electronically monitored orders was driven in particular by increases in the number of Restriction of Liberty Orders (RLOs). RLOs are imposed by the courts, and individual sentencing decisions are, of course, a matter for the court in each case. However, I have asked my officials to explore whether there may be any underlying drivers for the increase and I would be happy to provide an update on this in due course if that would be helpful.

With regard to the possibility of having predicted the increased pressure earlier, we do regularly review management information in relation to the electronic monitoring service. However, as can be seen in the table below, the increases in the number of those electronically monitored in November 2019 and, in particular, December 2019 were significantly outwith the level of increases we had previously seen.

Month	Month to month change in total number of individuals electronically monitored
April 2019	1.6% increase
May 2019	1.9% increase

June 2019	1.2% increase
July 2019	3.2% decrease
August 2019	0.8% increase
September 2019	2.2% increase
October 2019	1.3% increase
November 2019	4.1% increase
December 2019	7.4% increase

The electronic monitoring service provider does have equipment stock levels that allow it to cope with variations in the level of demand, and despite the increases in late 2019 being greater than are routinely experienced, it was able to supply equipment as required. However, given the trend from October to December 2019, we did have concerns that – should this trend continue or increase – issues could arise around the availability of equipment, particularly over the festive period. This risk was increased by the fact that, as outlined in our previous letter, there was a possibility that administrative changes to Home Detention Curfew (HDC) in December would have an impact on the number of electronically monitored individuals.

Given that the provider already had additional new equipment on hand - beyond its supply of existing equipment and which would fulfil exactly the same function – in preparation for the start of the new contract in April 2020, we considered it prudent to take steps to enable this readily available equipment to be used if necessary. As there is a legislative requirement that all equipment is prescribed in Regulations before it can be used, this required the laying of the Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2019.

Predicting future demand with certainty is challenging, and it was only when a further significant increase became apparent a few weeks before Parliamentary recess that we considered it necessary to act swiftly to make sure all the existing stock of equipment could be used as and when needed, and to ensure there was no interruption in the continuity of delivery of this important service. Given when this information was received, the need to be responsive to the emerging demand on the service, and the time required to prepare the Regulations, we did not consider there to be any reasonable option but to lay these in breach of the 28 day requirement.

When the relevant sections of the Management of Offenders (Scotland) Act 2019 are commenced, prescription of individual pieces of equipment will no longer be required in this way so this specific issue is unlikely to reoccur. However, notwithstanding that change, nor the specific circumstance that required us to act swiftly in this case, I have asked my officials to consider how any similar risks may be mitigated in future, in order to ensure that the laying requirements can be met and appropriate Parliamentary scrutiny maintained.

I hope that this information is helpful and I am, of course, happy to provide any further details to the Committee if there are outstanding questions about this matter.

When the relevant sections of the Management of Offenders (Scotland) Act 2019 are commenced, prescription of individual pieces of equipment will no longer be required in this way so this specific issue is unlikely to reoccur. However, notwithstanding that change, nor the specific circumstance that required us to act swiftly in this case, I have asked my officials to consider how any similar risks may be mitigated in future, in order to ensure that the laying requirements can be met and appropriate Parliamentary scrutiny maintained.

I hope that this information is helpful and I am, of course, happy to provide any further details to the Committee if there are outstanding questions about this matter.

HUMZA YOUSAF

EXTRACT FROM THE DPLR COMMITTEE'S REPORT ON THIS INSTRUMENT

17. The Committee welcomes the commitment given by the Cabinet Secretary to consider how any similar risks may be mitigated in future so that laying requirements can be met and appropriate parliamentary scrutiny maintained.

18. However, the Committee still consider it to be unclear when exactly the Government were made aware of the potential shortage of monitoring equipment - the Cabinet Secretary's response states this was "a few weeks before Parliamentary recess". While it may still have been necessary to breach the 28 day rule, the Committee consider that it may have been possible to provide more than 3 days between the laying of the instrument and its coming into force.

19. The Committee therefore wishes to highlight the Cabinet Secretary's response to the lead committee, the Justice Committee, and make clear the importance this Committee places on parliamentary scrutiny and the Scottish Government's statutory obligations.

20. While breaching the 28 day rule may at times be unavoidable, it should only be done when no alternatives exist. The reasoning provided to the Parliament by the Government should clearly state the reason for the breach, provide details of when the Government was made aware of the issue as well as what other options were explored.

Justice Committee

3rd Meeting, 2020 (Session 5), Tuesday 21 January 2020

Children (Scotland) Bill

Note by the clerk

Introduction

1. The Children (Scotland) Bill was introduced in the Scottish Parliament on 2 September 2019. It is a Scottish Government Bill. The Bill mainly makes changes to how disputes in relation to children are settled when families break down.
2. According to the Scottish Government, the policy aims of the Bill are to:
 - ensure the views of the child are heard in contact and residence cases;
 - further protect victims of domestic abuse and their children;
 - ensure the best interests of the child are at the centre of contact and residence cases and Children’s Hearings; and
 - further compliance with the United Nations Convention on the Rights of the Child (UNCRC) in family court actions.
3. More information on the Bill can be found here:
<https://www.parliament.scot/parliamentarybusiness/Bills/112632.aspx>
4. A SPICe briefing on the Bill can be found here:
<https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/11/21/The-Children--Scotland--Bill-1>
5. SPICe have also prepared a briefing looking at how other legal systems deal with parenting disputes, which can be found here:
<https://digitalpublications.parliament.scot/ResearchBriefings/Report/2019/11/20/Resolving-parenting-disputes--Scotland-compared-to-other-countries-1>

Justice Committee scrutiny

6. The Bill was referred to the Justice Committee for Stage 1 scrutiny. The Committee launched a [call for evidence](#) on 20 September 2019, with a closing date of 15 November 2019. To date, 74 responses have been received and published here:
<https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/113648.aspx>
7. Any further late responses will be published on that webpage in due course.
8. As part of its scrutiny of the Bill, the Committee commissioned an external academic, Dr Lesley-Anne Barnes Macfarlane of Edinburgh Napier University, to review both the current law and the proposed reforms in the Bill from a human

rights perspective. Her report can be found here:

https://www.parliament.scot/S5_JusticeCommittee/Inquiries/Balancing_the_Rights_of_Parents_and_Children_Reportv2.pdf

And a summary report here:

https://www.parliament.scot/S5_JusticeCommittee/Inquiries/Balancing_the_Rights_of_Parents_and_Children_Report_Summary.pdf

9. At its meeting on [26 November 2019](#), the Committee took evidence from Scottish Government officials assisting Ministers in taking the Bill through Parliament (“the Bill team”).
10. At its meeting on [17 December 2019](#), the Committee held a roundtable evidence session with Dr Fiona Morrison, University of Stirling, Professor Kay Tisdall, University of Edinburgh, and representatives from the Children and Young People’s Commissioner Scotland and Scottish Women’s Aid. These individuals and organisations have been involved in recent research projects which have included hearing directly from children and young people on issues relating to the Bill. The purpose of the roundtable session was to explore the findings from these projects on children and young people’s experiences of contact disputes, their views on how the current system could be improved, and whether other work needs to be done to hear children’s views on these issues.
11. The Committee then took evidence on the Bill from Professor Elaine Sutherland, University of Stirling, and Dr Richard Whitecross, Edinburgh Napier University.
12. At its meeting on [7 January 2020](#), the Committee heard from representatives of the Children and Young People’s Commissioner Scotland, Children 1st, NSPCC Scotland, ASSIST and Scottish Women’s Aid.
13. At its meeting on [14 January 2020](#), the Committee heard from Dr Sue Whitcombe, Chartered Psychologist, and representatives from Grandparents Apart UK, Shared Parenting Scotland and Relationships Scotland.
14. At its meeting on 21 January 2020, the Committee will take evidence from two panels of witnesses. On the first panel will be: Dr Louise Hill, Evidence and Policy Lead, CELCIS; Ben Farrugia, Director, Social Work Scotland; Duncan Dunlop, Chief Executive, Who Cares? Scotland; and Oisín King, Member, Who Cares? Scotland. On the second panel will be: Jackie McRae, Practice and Partnerships Lead, Children’s Hearings Scotland; and Alistair Hogg, Head of Practice and Policy, Scottish Children’s Reporter Administration.
15. At future meetings in January, the Committee will hear from other witnesses with an interest in the Bill.

Justice Sub-Committee on Policing

3rd Meeting, 2020 (Session 5), Tuesday 21 January 2020

Note by the Clerk

Feedback paper

1. On 16 January 2020, the Justice Sub-Committee on Policing held its third and final evidence session on its inquiry into the use of facial recognition technology by the police service in Scotland. The Sub-Committee took evidence from Duncan Sloan, Temporary Assistant Chief Constable (T/ACC), Police Scotland, Lynn Brown, Interim Chief Executive, and Tom Nelson, Director of Forensic Services, Scottish Police Authority.
2. Members heard that when an individual has been arrested, they are photographed as part of the custody process at the point of being charged with an offence. That photograph is uploaded to the Police Scotland Custody System, from there it is uploaded to the Scottish Criminal History System (CHS). Once this is done the image is automatically uploaded to the UK Police National Database (PND). If the person is subsequently found not guilty in court the custody photo is deleted from the CHS, as well as being automatically deleted from the UK PND. This, the Sub-Committee were told, happens in as near to real time as possible.
3. T/ACC Sloan told the Sub-Committee that the CHS only contains custody images, and does not include other images, such as those from CCTV. However, the UK Police National Database (PND) does contain "intelligence images", from a number of sources, such as CCTV. Police officers using the Scottish CHS or the UKPND undergo national training in the proper access and use of these systems.
4. T/ACC Sloan confirmed that Police Scotland have no plans to trial or test the use of Live Facial Recognition Technology (FRT) and that the force is aware of the concerns regarding the reliability and proportionality of current systems, which have been trialled by police forces in England and Wales.
5. Both Police Scotland and the SPA confirmed that any consideration and procurement process which they may undertake in the future on the introduction of LFRT would need to be subject to several key elements. These include meeting the 'strict necessity' test under the GDPR requirements, proportionality, ethics and protection of human rights. and robust processes to assess the credibility and reliability of any new technology.
6. Any business case for the purchase and use of such new technologies would also need to meet stringent requirements in terms of value for money, and an assessment of the suitability of the technology not to incur bias or discriminate based on the algorithms used. To ensure public confidence in the police is maintained there would need to be a robust public debate on where, how and why technology such as LFRT might be used.
7. Police Scotland confirmed that they would welcome a legal framework for the use of retrospective and live facial recognition technology. They would support any action

which would place the collection, use, storage and disposal of images, fingerprints and other biometric material on a more certain legal basis in Scotland. This could include an amendment to the Criminal Procedure (Scotland) Act 1995 to include images and fingerprints.

8. The witnesses acknowledged the important role that the Scottish Biometrics Commissioner will play in helping to develop the guidance framework within which policing and the criminal justice in Scotland will utilise technology such as LFRT.

9. The witnesses also spoke of the key role the new Commissioner could play in leading the public debate on how, why and where such technologies should be used by the police. The SPA stated that a legal basis for use of LFRT will be "vital" going forward and highlighted the role that a Biometrics Code of Practice could play in helping to regulate how technology like LFRT is used.

10. SPA witnesses also told the Sub-Committee that the Board is putting together a more structured approach to the delivery of Police Scotland's 10-year strategy. They confirmed that they will work closely with bodies, such as HMICS, to ensure ethical and human right considerations are embedded across all of the processes which shape the scrutiny and implementation of various technologies included in Policing 2026.

11. The SPA confirmed that it will participate in any work looking at its dual role of maintaining the police service, and holding the Chief Constable to account.

12. The Sub-Committee agreed to consider a draft report on its inquiry, at its next meeting on 30 January 2020.

13. The Sub-Committee considered its forward work programme and agreed to invite the Cabinet Secretary for Justice to provide evidence on the Scottish Government's response to the sub-Committee's report on its facial recognition inquiry.

Justice Sub-Committee clerks
16 January 2020