



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

20th Meeting, 2020 (Session 5)

Tuesday 8 September 2020

The Committee will meet at 10.00 am in a virtual meeting and be broadcast on www.scottishparliament.tv.

1. **Declaration of interests:** Annabelle Ewing will be invited to declare any relevant interests.
2. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
3. **Defamation and Malicious Publications (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Dr Andrew Scott, Associate Professor of Law, London School of Economics;

Gavin Sutter, Senior Lecturer in Media Law, Queen Mary University, London;

and then from—

Mark Scodie, Senior Corporate Counsel, TripAdvisor Limited;

Ally Tibbitt, Journalist, Director and co-founder, The Ferret.

4. **Defamation and Malicious Publications (Scotland) Bill (in private):** The Committee will review the evidence heard earlier in the meeting.
5. **Re-opening the courts:** The Committee will consider a draft report.

J/S5/20/20/A

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The papers for this meeting are as follows—

Agenda item 3

Note by the Clerk

J/S5/20/20/1

PRIVATE PAPER

J/S5/20/20/2 (P)

Agenda item 5

PRIVATE PAPER - TO FOLLOW

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

Justice Committee

20th Meeting, 2020 (Session 5), Tuesday, 8 September 2020

Defamation and Malicious Publications (Scotland) Bill

Paper from the Clerk

Introduction

1. The Defamation and Malicious Publications (Scotland) Bill (“the Bill”) was introduced by the Cabinet Secretary for Justice on 2 December 2019. The Bill and accompanying documents can be accessed [here](#).

2. The purpose of the Bill is to clarify and strengthen the statutory underpinning of defamation in Scots law. The Bill seeks to do this by placing certain key elements of Scots common law on defamation on a statutory basis. The Bill will also replace and restate, in one place, elements of the existing statutory provisions in Scots law.

3. According to the policy memorandum which accompanies the Bill, the overarching policy objective of the Bill is “to modernise and simplify the law of defamation (and the related action of malicious publication) in Scotland in order to:

- strike a more appropriate balance between freedom of expression and the protection of individual reputation; and
- clarify the law and improve its accessibility.

Approach to Stage 1 consideration

4. The Committee began taking oral evidence on the Bill on 17 March 2020. However, this process was temporarily suspended as a result of the hiatus in parliamentary business caused by the COVID-19 pandemic. The Justice Committee recommenced taking oral evidence on the Bill from witnesses on Tuesday 25 August.

5. It is expected Stage 1 scrutiny of the Bill will to continue throughout September and October, and the Committee would report to the Parliament on the general principles before the end of October 2020.

Oral evidence

6. At its meeting on 8 September, the Committee will continue taking oral evidence on the Bill by hearing from two panels of witnesses. They are—

- Dr Andrew Scott, Associate Professor of Law, London School of Economics, and Mr Gavin Sutter, Senior Lecturer in Media Law, Queen Mary University London;
- Mark Scodie, Senior Corporate Counsel, TripAdvisor and Ally Tibbitt, Journalist Director and co-founder, The Ferret.

7. This evidence session will take place remotely, with Members and witnesses appearing via live video conferencing. Members of the public can watch the evidence session live on the Scottish Parliament TV website from 10:00 am on Tuesday 8 September: <https://www.scottishparliament.tv/>

8. Following this evidence session, the Committee will consider the evidence received as part of the Stage 1 scrutiny of the Bill.

9. To date, the Committee has taken oral evidence on the Bill on [17 March](#) (Scottish Government Bill Team), [25 August](#) (BBC Scotland, NUJ, Scottish Newspaper Society and Scottish PEN) and [1 September](#) (Faculty of Advocates, Law Society of Scotland, Dr Stephen Bogle and Dr Bobby Lindsay, University of Glasgow).

Written evidence

10. Written submission on the Bill have been received from the following witnesses giving oral evidence on 8 September-

- [Dr Andrew Scott submission](#);
- [Mr Gavin Sutter submission](#).

11. Other written submissions received by the Committee in response to its call for views on the Bill are [available on the Committee's webpage](#).

12. A [SPICe briefing](#) setting out the key issues in the Bill is also available online.

13. Following the oral evidence they provided on 17 March, the Scottish Government Bill Team has provided [supplementary written evidence on take down procedure in England and Wales](#).

Justice Clerks
3 September 2020