



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

**21st Meeting, 2019 (Session 5)**

**Tuesday 10 September 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 take items 4 and 6 in private.
2. **Secure care places for children and young people in Scotland:** The Committee will take evidence from—
  - Nick Hobbs, Head of Advice and Investigations, Children and Young People's Commissioner Scotland;
  - Nicola Dickie, Chief Officer – Children and Young People, COSLA;
  - Hugh Carr, Head of Strategic Procurement, and Janine Hunt, Strategic Programme Manager, Scotland Excel.
3. **European Union (Withdrawal) Act 2018:** The Committee will consider a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposal—
  - The Rights, Equality and Citizenship Programme (Revocation) (EU Exit) Regulations 2019.
4. **Secure care places for children and young people in Scotland:** The Committee will review the evidence taken at today's meeting.
5. **Scottish Biometric Commissioner Bill (in private):** The Committee will consider its approach to future witnesses and engagement activities.
6. **Work programme:** The Committee will discuss a proposal to take evidence on planning for Brexit.

**J/S5/19/21/A**

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The papers for this meeting are as follows—

**Agenda item 2**

Paper from the Clerk

J/S5/19/21/1

PRIVATE PAPER

J/S5/19/21/2(P)

**Agenda item 3**

Paper by the Clerk

J/S5/19/21/3

**Agenda item 5**

PRIVATE PAPER

J/S5/19/21/4(P)

## Justice Committee

### 21st Meeting, 2019 (Session 5) Tuesday 10 September 2019

#### Inquiry on Secure Care Places for Children and Young People in Scotland

##### Background

1. At its meeting on 11 April 2019, the Justice Committee agreed an approach to a short-term inquiry to look at key issues relating to the provision of mental health services and secure care places for children and young people in Scotland, the current and future capacity and structure of secure care.
2. The principle aim of this short-term inquiry is to inform committee and parliamentary debate on the issue, and to seek clarity from the Scottish Government on any issues the Committee believes may require further consideration.

##### Approach to the inquiry

3. The Committee agreed to seek evidence from the following stakeholders-
  - HM Inspector of Prisons in Scotland on the review of mental health provision at Her Majesty's Prison and Young Offender Institute Polmont;
  - Representatives of the Scottish Prison Service and the independent providers of secure care services in Scotland;
  - Other key stakeholders involved in supporting, monitoring or delivering mental health care provision for children and young people in Scotland.

##### Evidence taking

4. The Committee held its first oral evidence session on 28 May and took evidence from Wendy Sinclair-Gieben, HM Chief Inspector of Prisons for Scotland and Dr Helen Smith Consultant Forensic Child and Adolescent Psychiatrist, NHS West of Scotland Child and Adolescent Mental Health Service.
5. That session focussed on the [recently published report](#) by Wendy Sinclair-Gieben on mental health services for young people at YOI Polmont. The Cabinet Secretary for Justice, Humza Yousaf MSP, also [wrote to the Committee](#) on 21 May, setting out an initial response to the report from the HMIPS.
6. At its meeting on 28 May, the Committee also heard from Alison Gough of the Good Shepherd Centre; Audrey Baird of Kibble Education and Care Centre; David Mitchell of Rossie Young People's Trust, Carol Dearie of St Mary's Kenmure and Colin McConnell and Lesley McDowall of the Scottish Prison Service.
7. That evidence session highlighted concerns about the contract model used to provide secure care places in Scotland; the inconsistent provision child and adolescent mental health services

8. At its second evidence taking session on 11 June 2019, the Committee took oral evidence from Karen Dyball, Head of Children's Services (North West), Glasgow City Health and Social Care Partnership; Deborah Nolan, Practice Development Adviser, Centre for Youth and Criminal Justice, and Kirsten Hogg, Head of Policy, Barnardo's Scotland.

### Meeting on 10 September

#### *Oral evidence*

9. Following the evidence sessions on 28 May and 11 June, the Committee agreed it wishes to take oral evidence from COSLA and Scotland Excel on the national contract for providing secure care places, as well as from the Office of Children and Young People's Commissioner on the rights of children in secure care.

10. At this meeting the Committee will hear from-

- **Hugh Carr**, Head of Strategic Procurement, and **Janine Hunt**, Strategic Programme Manager, Scotland Excel;
- **Nicola Dickie**, Chief Officer for Children and Young People, COSLA;
- **Nick Hobbs**, Head of Advice and Investigations, Children and Young People's Commissioner Scotland.

#### *Written evidence*

11. The Committee sought written submissions from witnesses, and received written evidence from [Scotland Excel](#), [COSLA](#) and the [Children and Young People's Commissioner](#) in support of their oral evidence.

12. The Committee also received written submissions from the [Mental Welfare Commission Scotland](#) and [Royal College of Speech and Language Therapists](#). These submissions are included in public papers for the Committee meeting on 10 September.

13. All written [submissions](#) received by the Committee as part of this inquiry are available online.

14. The evidence panel on 10 September will allow the Committee to continue to consider various issues in relation to the provision of secure care for children and young people in Scotland, for example-

- The national contract system on which secure care places are provided for children and young people in Scotland;
- The development of mental health care for children and young people in secure care units;

- Whether Scotland is meeting its international human rights obligations to children and young people in secure care/custody;<sup>1</sup>
- Any capacity and demand issues within the sector;
- Any funding, resources and future development issues within the sector.

### **Further action**

15. Once the Committee has completed evidence-taking, it will consider how it wishes to form any conclusions from this work and report its findings to the Parliament and the cabinet Secretary for Justice.

**Justice Committee clerks**  
**5 September 2019**

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<sup>1</sup> Scottish Government Progressing Children's human rights (2018): 8.8 Young Offenders Institutions:  
<https://www.gov.scot/publications/progressing-human-rights-children-scotland-report-2015-2018/pages/11/>

## Justice Committee

21st Meeting, 2019 (Session 5), Tuesday 10 September 2019

### European Union (Withdrawal) Act 2018 – Consent to UK Statutory Instruments

#### Note by the clerk

#### Introduction

1. The European Union (Withdrawal) Act 2018 (the 2018 Act) sets out the process for the UK and Scottish parliaments to consider regulations to convert non-domestic EU law into UK law.
2. Members will recall that the process by which the UK leaves the EU requires consideration to be given as to whether the current body of law within the UK needs to be amended to reflect the fact that the UK will no longer be a member of the EU after exit day. At present, there are many references in regulations, for example, to EU bodies and the EU itself that will no longer be applicable after the UK has left the EU.
3. Some of the necessary changes to the statute book will be done through Scottish Statutory Instruments (SSIs) in the usual way. However, a number will be done through Statutory Instruments (SIs) passed in the UK Parliament with the consent of the Scottish Parliament based on the recommendation of the Scottish Government (SI notifications). Consent will be sought as these SIs will make changes to devolved powers and/or executive competences. Such changes should be broadly technical in nature. [Protocols](#) governing arrangements for both of these processes have been agreed to with the Scottish Government.

#### SI Notification

4. At today's meeting, Members will consider a SI notification (**see Annex A**) from the Scottish Government on the following SI:
  - The Rights, Equality and Citizenship Programme (Revocation) (EU Exit) Regulations 2019
5. The draft SI has not yet been laid in the UK Parliament. According to the SI notification, the SI will revoke an existing EU regulation and create the necessary powers for the UK Government to ensure the continuation of payments to an ongoing project in Scotland on Improving Justice in Child Contact: Children affected by domestic violence until its completion in 2020. Further information can be found in the SI notification attached at Annex A.

#### Views from officials and external bodies

9. The clerks approached other parliamentary officials to seek their views, if any, on the proposals. In addition, the notification has been placed on the Committee's website for public awareness. No issues have been raised.

**Action**

10. **Members are asked to consider the SI notification covered by this note and consider whether to agree with the view of the Scottish Government that it should consent to the relevant changes being made by the UK Government.**



## NOTIFICATION TO THE SCOTTISH PARLIAMENT

### The Rights, Equality and Citizenship Programme (Revocation) (EU Exit) Regulations 2019

#### A brief explanation of law that the proposals amend

The Rights, Equality, and Citizenship (REC) Programme aims to contribute to the further development of equality and the rights of people, the Charter on Fundamental Rights and Freedoms and international human rights conventions.

The relevant EU regulation is:

- Regulation (EU) No. 1381/2013 of the European Parliament and of the Council of 17 December 2013 establishing a Rights, Equality and Citizenship Programme for the period 2014 to 2020 (Text with EEA relevance).

The REC Programme has funded two projects based in Scotland, one of which is still active:

- **Improving Justice in Child Contact: Children affected by domestic violence.** This is a 24-month long project being run by the University of Edinburgh with its final report due in January 2021 after the project ends in October 2020.
- **Prepare for Leaving Care - A Child Protection System that Works for Professionals and Young People.** This was run by the University of Strathclyde, and completed its final report in January 2019.

The Programme is currently administered by the European Commission. In the event of a no deal scenario, HM Treasury (HMT) has guaranteed payments of funds for UK based recipients. The Statutory Instrument would agree to the UKG administering payments to Scotland in respect of the one live project in the case of a no-deal exit as part of the HMT Guarantee.

#### Summary of the proposals and how these correct deficiencies

The SI would revoke the EU regulation and create the necessary powers for the UKG to issue payments in Scotland for the sole purpose of the HMT Guarantee. This would ensure the continuation of payments to the ongoing project - Improving Justice in Child Contact: Children affected by domestic violence - until its completion in 2020.

#### An explanation of why the change is considered necessary

This change is necessary to ensure the continuation of payments to the ongoing project in Scotland - Improving Justice in Child Contact: Children affected by domestic violence - until its completion in 2020.

## **Scottish Government categorisation of significance of proposals**

Category A - The SI only agrees to the power to administer payments for one project within Scotland.

There is one technical transfer of payment administration power. There is no proposal to sub delegate new powers to legislate to public bodies in this instrument, no new fees being provided for, or new financial implications for businesses or the creation of new fines or penalties.

It is our position in Scottish Government that this change is consistent with both the devolution settlement and the Scottish Government (SG) position on the HMT Guarantee.

## **Impact on devolved areas**

The SI would allow for payments to an REC funded project within the University of Edinburgh under the HMT Guarantee. It does not create any policy in a devolved area and does not take away or place any constraint on devolved policy areas.

The HMT Guarantee is a UK Government policy. The guarantee of paying for funds, and the associated risks, rests with the UK Government.

## **Summary of stakeholder engagement/consultation**

Relevant policy teams within the SG have been consulted and agree that consent to this SI is within the interest of the project and stakeholders involved.

## **A note of other impact assessments, (if available)**

No other impact assessments.

## **Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation**

The Scottish Ministers believe that the proposed SI is necessary so far as falling within devolved competence to secure continuation of funding to the aforementioned Scottish project if the UK leaves the EU in a No-Deal situation.

## **Intended laying date (if known) of instruments likely to arise**

The current intention is that the affirmative SI will be laid in draft on 3 September 2019.

## **If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?**

The UK Ministry of Justice have confirmed that they will comply with the 28 day scrutiny period, and not debate the draft SI in committee until consent has been given by the Scottish Parliament.

**Information about any time dependency associated with the proposal**

The SI needs to be approved by the UK Parliament and made in advance of any EU Exit without a deal on 31 October 2019 in order to secure the continuation of payments to the REC funded Scottish project.

**Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

No.

**Any significant financial implications?**

No. As indicated above, this relates in practice to the funding of one project in Scotland.