



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

9th Meeting, 2016 (Session 5)

Tuesday 15 November 2016

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 6 in private.

2. **Subordinate legislation:** The Committee will take evidence on the Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft] from—

Annabelle Ewing, Minister for Community Safety and Legal Affairs, Quentin Fisher, Community Justice Division, Susan Bulloch, Community Justice Division, and Craig McGuffie, Directorate for Legal Services, Scottish Government.

3. **Subordinate legislation:** Annabelle Ewing (Minister for Community Safety and Legal Affairs) to move—

S5M-02127—That the Justice Committee recommends that the Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft] be approved.

4. **Subordinate legislation:** The Committee will consider the following negative instruments—

Community Justice Outcomes Improvement Plan and Performance Report (Scotland) Regulations 2016 (SSI 2016/309);

Act of Sederunt (Fees of Solicitors and Shorthand Writers in the Court of Session, Sheriff Appeal Court and Sheriff Court Amendment) 2016 (SSI 2016/316).

5. **Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service:** The Committee will take evidence from—

Chief Superintendent Gordon Crossan, President, Association of Scottish Police Superintendents;

Rachael Weir, Vice President, and Fiona Eadie, Secretary, Procurators Fiscal Society Section of the FDA;

Stephen Murray, Branch Executive Committee member, PCS Scotland;

Calum Steele, General Secretary, Scottish Police Federation;

and then from—

Michael Meehan, Law Reform Committee member, and Derek Ogg QC, Faculty of Advocates.

6. **Work programme:** The Committee will consider its work programme, including considering further its approach to the scrutiny of the Scottish Government's Draft Budget 2017-18.

Peter McGrath  
Clerk to the Justice Committee  
Room T2.60  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5195  
Email: peter.mcgrath@parliament.scot

The papers for this meeting are as follows—

**Agenda items 2 and 3**

Paper by the clerk - Affirmative SSI J/S5/16/9/1

**Agenda item 4**

Paper by the clerk - Negative SSIs J/S5/16/9/2

**Agenda item 5**

Paper by the clerk - Inquiry into COPFS J/S5/16/9/3

Private paper - Inquiry into COPFS J/S5/16/9/4 (P)

[Written submission from the Association of Scottish Police Superintendents](#)

[Written submission from the Procurators Fiscal Society Section of the FDA](#)

[Written submission from PCS Scotland](#)

[Written submission from the Scottish Police Federation](#)

[Written submission from the Faculty of Advocates](#)

**Agenda item 6**

Private paper - Work programme J/S5/16/9/5 (P)

**Justice Committee**

**9<sup>th</sup> Meeting, 2016 (Session 5), Tuesday 15 November 2016**

**Subordinate legislation**

**Note by the clerk**

**Purpose**

1. This paper invites the Committee to consider the following affirmative instrument:
  - [Home Detention Curfew Licence \(Amendment\) \(Scotland\) Order 2016 \[draft\]](#).

**HOME DETENTION CURFEW LICENCE (AMENDMENT) (SCOTLAND) ORDER  
2016 [DRAFT]**

**Introduction**

2. This instrument is made under section 3AA(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The Order amends section 3AA(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 by repealing paragraphs (f) and (g), which create statutory exclusions from Home Detention Curfew (HDC) for those prisoners who have been recalled or convicted while serving a sentence in the community. Currently, prisoners who are released on licence and recalled for non-compliance with their licence conditions (section 17) or for committing a new crime while serving a sentence of imprisonment in the community (section 16) are permanently excluded from applying for HDC again in the future. The Scottish Ministers will have discretion to release those prisoners from prison on HDC.
3. Further details on the purpose of the instrument can be found in the policy note (see below).

**Policy Note: Home Detention Curfew Licence (Amendment) (Scotland) Order  
2016 [draft]**

**Policy objectives**

1. The Scottish Ministers established an Electronic Monitoring in Scotland Expert Working Group in October 2014 to consider the effectiveness and possible uses of different forms of Electronic Monitoring. The final report contains eight recommendations. These recommendations have been informed by international evidence, partner and stakeholder engagement at a national and local level and the knowledge and expertise of the Group members.
2. The SSI has been drafted in response to one of these recommendations. The recommendation in question was to amend section 3AA(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) by removing paragraphs (f) and (g) which create statutory exclusions from Home Detention Curfew (HDC) for those prisoners who have been recalled or convicted while serving a sentence in the community. Currently, prisoners who are released on

licence and recalled for non-compliance with their licence conditions (section 17) or for committing a new crime while serving a sentence of imprisonment in the community (section 16) are permanently excluded from applying for HDC again in the future. The Working Group concluded that permanently excluding prisoners from applying in the future does not recognise an individual's progress over time in terms of rehabilitation and improvements in compliance and motivation to desist.

3. These regulations amend Section 3AA(5) by repealing paragraphs (f) and (g) so as to remove those prohibitions from obtaining HDC. The Scottish Ministers will have discretion to release those prisoners from prison on home detention curfew.

### **Consultation**

4. A consultation was held in 2013 and sought views on the operation of the current electronic monitoring service and examined whether anything could be done to improve the existing service. Following this consultation the Expert Working Group was established. In addition to the work of the Working Group, partner and stakeholder engagement has been, and will continue to be, an important strand of this work. While we have already benefited greatly from having key partners and stakeholders represented on the Working Group, a number of other engagement activities have also been undertaken as part of the Group's research.
5. A national conference was held in August 2015 and was attended by around 150 justice partners. The conference was the beginning of a deeper stakeholder engagement process, which continued with 12 local events and 2 GPS technology test events (attended by around 300 stakeholders). These events were held between January and June 2016 and provided an opportunity for practitioners, including the judiciary, criminal justice social work, third sector and others to engage in dialogue, share ideas and issues around the current service and identify opportunities for improving the end-to-end process for those involved in the management of those with convictions.

### **Impact Assessments and Financial Effects**

6. This is a technical instrument and as such has no significant financial, equality or privacy effects on the Scottish Government, local authorities or on business.

### **DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION**

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 25 October 2016 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**

5. The Justice Committee is required to report to the Parliament on the instrument by 1 December 2016. The Cabinet Secretary for Justice has lodged motion S5M-02127 proposing that the Committee recommends approval of the instrument. The Minister for Community Safety and Legal Affairs is due to attend the meeting on

15 November to answer any questions on the instrument and to move the motion for approval.

6. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 1 December 2016. Thereafter, the Parliament will be invited to approve the instrument.

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

**Justice Committee****9<sup>th</sup> Meeting, 2016 (Session 5), Tuesday 15 November 2016****Subordinate legislation****Note by the clerk****Purpose**

1. This paper invites the Committee to consider the following negative instruments:
  - [Community Justice Outcomes Improvement Plan and Performance Report \(Scotland\) Regulations 2016 \(SSI 2016/309\)](#) [see page 3];
  - [Act of Sederunt \(Fees of Solicitors and Shorthand Writers in the Court of Session, Sheriff Appeal Court and Sheriff Court Amendment\) 2016 \(SSI 2016/316\)](#) [see page 5].
2. If the Committee agrees to report to the Parliament on either of the instruments it is required to do so by 28 November 2016.

**Procedure for negative instruments**

3. 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).
4. 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.
5. 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.
6. 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.
7. 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**

8. 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**

9. **The Committee is invited to consider the instruments.**

## **COMMUNITY JUSTICE OUTCOMES IMPROVEMENT PLAN AND PERFORMANCE REPORT (SCOTLAND) REGULATIONS 2016 (SSI 2016/309)**

### **Introduction**

10. The instrument is made under sections 19(1) and 23(1)(a) of the Community Justice (Scotland) Act 2016. The Regulations make provision under section 19(1) of the Community Justice (Scotland) Act 2016 (the 2016 Act) to provide that the date by which community justice partners for each local authority area must publish their first community justice outcomes improvement plan is 31 March 2017; and make provision under section 23(1)(a) of the 2016 Act to specify that the period for the first performance report prepared under that section is the period from 1 April 2017 to 31 March 2018.

11. Further details on the purpose of the instrument can be found in the policy note (see below).

12. The instrument comes into force on 19 November 2016.

### **DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION**

13. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 25 October 2016 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**

14. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 28 November 2016.

### **Policy Note: Community Justice Outcomes Improvement Plan and Performance Report (Scotland) Regulations 2016 (SSI 2016/309)**

#### **Policy Objectives**

1. Regulation 2 makes provision under section 19(1) of the 2016 Act to provide that the date by which community justice partners for each local authority area must publish their first community justice outcomes improvement plan is 31<sup>st</sup> March 2017. The plan is to include an assessment of whether the nationally determined outcomes (set out in the national performance framework published under section 17) are being achieved using the nationally-determined indicators, and if not what action, if any, is to be taken to achieve them. The plan may also set out locally determined outcomes to be achieved in the area and the indicators to be used to measure performance in achieving those outcomes.
2. Regulation 3 makes provision under section 23(1)(a) of the 2016 Act to specify that the period for the first performance report prepared under that section is the period from 1st April 2017 to 31st March 2018. Section 23(1) provides that the report is to be published by the community justice partners for the local area as soon as reasonably practicable after that period. The report will set out the action they have taken to achieve the community justice outcomes set out in the plan prepared under section 19, as well as the progress they believe they have

made towards achieving those outcomes, using the specific indicators set out in the plan.

### **Consultation**

3. The date for the publication of the first community justice outcomes improvement plan has been discussed with all of the statutory community justice partners involved in ensuring a smooth transition to the new model of community justice. Other partners who have an interest have also been consulted, such as Social Work Scotland, the Community Planning Partnership Managers Network and the Criminal Justice Voluntary Sector Forum. The date was also considered during the development of the statutory guidance for the new model led by a guidance sub group of the transition workstream. The 31<sup>st</sup> March 2017 date was proposed by the Scottish Government and shared in the draft guidance which was published in April 2016 on the Knowledge Hub for Community Justice Redesign. No concerns have been raised in relation to the proposed date. Indeed, partners have stated that they would welcome early notice as to the required date to allow them to progress the development of their plans in a timely manner and ensure that they proceed through the required engagement, consultation and governance routes.
4. The period to be covered by the first performance reports in relation to community justice outcomes was discussed with the Community Justice Co-ordinators (who lead on the development of the plans at a local level) and partners, including representation from statutory community justice partners, at an event in April 2016. There was consistent support for the performance report to cover the period 1st April 2017 to 31st March 2018. The period for the reports will be reflected in the community justice guidance when it is formally launched in November 2016.

### **Impact Assessments**

5. A range of Impact Assessments were undertaken for the Bill for the 2016 Act in April 2015. No additional impacts are expected to arise from specifying the due date for the community justice outcomes improvement plans and the period to be covered by the associated performance reports. Therefore, no dedicated impact assessments were undertaken in establishing these dates.

### **Financial Effects**

6. There are no financial effects arising from stipulating the due dates. The financial cost for all legislative provisions in the Bill for the 2016 Act was assessed as part of the Financial Memorandum for the Bill.
7. A Business and Regulatory Impact Assessment (BRIA) was carried out in respect of the legislative provisions in the Bill for the 2016 Act. Accordingly, no dedicated BRIA was undertaken in establishing the relevant dates specified in this SSI.
8. The Minister for Community Safety and Legal Affairs confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

**ACT OF SEDERUNT (FEES OF SOLICITORS AND SHORTHAND WRITERS IN THE COURT OF SESSION, SHERIFF APPEAL COURT AND SHERIFF COURT AMENDMENT) 2016 (SSI 2016/316)**

**Introduction**

15. The instrument is made under sections 105(1) and 106(1) of the Courts Reform (Scotland) Act 2014. The Act of Sederunt makes various changes to the provisions governing the taxation of accounts of expenses in the sheriff court and Sheriff Appeal Court, and to the rules regulating the fees of shorthand writers.

16. The instrument comes into force on 28 November 2016.

**DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION**

17. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 25 October 2016 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**

18. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 28 November 2016.

## Justice Committee

9<sup>th</sup> Meeting, 2016 (Session 5), Tuesday 15 November 2016

### Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service

#### Note by the clerk

#### Introduction

1. The Committee agreed to hold an inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (COPFS) at its Business Planning Event in August. At its 6 September meeting, it agreed to this remit—

“The COPFS is Scotland’s independent prosecution service, acting in the public interest to help bring offenders to justice. The core role of the COPFS is to consider reports about crime from the police and other agencies, to decide whether it is in the public interest to prosecute them, and, if so, to deploy the resources that are necessary to help ensure that justice is done.

“The Committee’s inquiry will focus on this core role, examining in particular—

- The effectiveness and efficiency of the COPFS, and how well it works with other stakeholders in the criminal justice system;
- Whether the COPFS has the resources and skillsets it needs to carry out its core role;
- The COPFS’s responsiveness to new challenges and opportunities including the evolving nature of crime in 21st century Scotland, advances in technology, and changes in the delivery of court services that may affect access to justice;
- How the COPFS protects and supports witnesses and victims of crime.

“The Committee will also take evidence on the role and function of the Inspectorate of Prosecution in Scotland. (The IPS is the independent inspectorate for the COPFS.)

“The inquiry will not consider the COPFS’s two other roles of establishing the cause of sudden, unexplained or suspicious deaths or investigating allegations of criminal conduct against police officers, except in relation to the general issue of whether the COPFS has the resources it needs to carry out its purpose.”

2. The Committee issued a [call for evidence](#), with a closing date of 19 October 2016. All [written responses](#) accepted as evidence can be found on the Committee’s [inquiry page](#).

#### Committee consideration

3. As part of its inquiry the Committee visited the Lord Advocate in Chambers Street on 20 September 2016 and met with the Lord Advocate, the Solicitor General, the Crown Agent and various staff from the COPFS.

4. On 4 October 2016 the Committee met with individuals who had experience of the criminal justice system as victims and witnesses and heard of the difficulties they faced during the process. Notes of the meetings are available [here](#).

5. The Committee's first formal evidence session was on [25 October 2016](#), when it heard first from SACRO, Scottish Women's Aid, Rape Crisis Scotland and Victim Support Scotland. It then heard from a panel of legal representatives, comprising the Law Society of Scotland, and members of the Glasgow, Edinburgh and Aberdeen Bar Associations.

6. At its meeting on [1 November 2016](#) the Committee heard from a single panel consisting of representatives from the Community union, representing G4S staff, Circle Families Outside and Social Work Scotland.

7. At its meeting on 15 November the Committee will be taking evidence from two panels of witnesses. The first panel is made up of unions representatives COPFS workers and police representative bodies—

- Gordon Crossan, President, Association of Scottish Police Superintendents;
- Fiona Eadie, Secretary, and Rachael Weir, Vice President, Procurators Fiscal Society Section of the FDA;
- Stephen Murray, Branch Executive Committee member, PCS Scotland; and
- Calum Steele, General Secretary, Scottish Police Federation.

8. The Committee will then hear from—

- Michael Meehan, Law Reform Committee Member, Faculty of Advocates.