



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

11th Meeting, 2016 (Session 5)

Tuesday 29 November 2016

The Committee will meet at 11.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decision on taking business in private:** The Committee will decide whether to take item 7 in private.
2. **Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service - witness expenses:** The Committee will be invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in the inquiry.
3. **Subordinate legislation:** The Committee will take evidence on the Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016 [draft] from—

Annabelle Ewing, Minister for Community Safety and Legal Affairs, Denise Swanson, Civil Law and Legal System Division, and Alastair Smith, Directorate for Legal Services, Scottish Government.
4. **Subordinate legislation:** Annabelle Ewing (Minister for Community Safety and Legal Affairs) to move—

S5M-02509—That the Justice Committee recommends that the Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016 [draft] be approved.
5. **Subordinate legislation:** The Committee will consider the following negative instrument—

Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2016 (SSI 2016/371).

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

Ian Thomson, Head of Investigations Scotland, Royal Society for the Protection of Birds Scotland, representing Scottish Environment Link.

7. **Limitation (Childhood Abuse) (Scotland) Bill:** The Committee will consider its approach to the scrutiny of the Bill at Stage 1.

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The papers for this meeting are as follows—

Agenda items 3 and 4

Paper by the clerk - Arbitration SSI J/S5/16/11/1

Agenda item 5

Paper by the clerk - SSI 2016/371 J/S5/16/11/2

Agenda item 6

Paper by the clerk - Inquiry into COPFS J/S5/16/11/3

Private paper - Inquiry into COPFS J/S5/16/11/4 (P)

[Written submission from RSPB Scotland](#)

[Written submission from Scottish Environment Link](#)

Agenda item 7

Private paper - Limitation (Childhood Abuse) (Scotland) Bill J/S5/16/11/5 (P)

[Limitation \(Childhood Abuse\) \(Scotland\) Bill and accompanying documents](#)

Justice Committee

11th Meeting, 2016 (Session 5), Tuesday 29 November 2016

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:
 - Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016 [draft].
[the instrument will be available to view in due course at:
<http://www.legislation.gov.uk/sdsi>*]*

**ARBITRATION (SCOTLAND) ACT 2010 (TRANSITIONAL PROVISIONS) ORDER
2016 [DRAFT]**

Introduction

2. This instrument is made under sections 33(1) and 36(4) of the Arbitration (Scotland) Act 2010. The Order removes the ability of parties under an arbitration agreement made prior to the commencement of section 36 of the Arbitration (Scotland) Act 2010 to contract out of using the new arbitration law provided for by the 2010 Act. The instrument will not affect arbitrations under such agreements where the arbitration has commenced before the coming into force of the Order.
3. Further details on the purpose of the instrument can be found in the policy note (see below).
4. The instrument comes into force on 1 January 2016.

Policy Note: Arbitration (Scotland) Act 2010 (Transitional Provisions) Order 2016 [draft]

Policy Objectives

The purpose of this instrument is to remove the ability of parties under an arbitration agreement made prior to the commencement of section 36 of the Arbitration (Scotland) Act 2010 to contract out of using the new arbitration law provided for by the 2010 Act. The instrument will not affect arbitrations under such agreements where the arbitration has commenced before the coming into force of the Order.

The instrument seeks to implement the intentions of the 2010 Act which is to provide a statutory default framework for arbitrations to operate in the absence of agreement to the contrary, ensuring a fair and impartial process, with the intention that anyone in Scotland, or seeking to do business in Scotland, should be able to access the principles and rules governing the law of arbitration in Scotland.

Section 36(3) of the Act made transitional provision providing that the legislation does not apply to an arbitration arising under an arbitration agreement made before the commencement of that section if the arbitrating parties agree not to use it.

Essentially this provision gave arbitrating parties the ability to opt to use the pre-existing arbitration law over the new law provided for in the 2010 Act. The pre-existing law was therefore saved for those pre-commencement agreements where the parties chose to contract out of the Act.

The Act provides that Scottish Ministers may be order remove this opt-out ability after a suitable period, falling as least 5 years after commencement of section 36.

As the Act is now over 5 years old, the Scottish Government is proposing to remove the ability of parties to contract out of using the new arbitration law.

Consultation

The Scottish Ministers have published the draft instrument and considered representations made to them about it. Those with an interest in the law of arbitration have been consulted, as provided for in the 2010 Act.

Impact Assessment

The instrument has no equality issues and no discriminatory or significant impact, directly or indirectly, on the protected characteristics.

Financial Effects

The instrument has no financial effects on the Scottish Government, local government or any other public body and places no additional burden on business.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

5. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 15 November 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

6. The Justice Committee is required to report to the Parliament on the instrument by 12 December 2016. The Minister for Community Safety and Legal Affairs has lodged motion S5M-02509 proposing that the Committee recommends approval of the instrument. The Minister is due to attend the meeting on 29 November 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 12 December 2016. 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.

Justice Committee

11th Meeting, 2016 (Session 5), Tuesday 29 November 2016

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - [Title Conditions \(Scotland\) Act 2003 \(Conservation Bodies\) Amendment Order 2016 \(SSI 2016/371\)](#) [see page 3].
2. If the Committee agrees to report to the Parliament on the instrument it is required to do so by 19 December 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 instrument.**

**TITLE CONDITIONS (SCOTLAND) ACT 2003 (CONSERVATION BODIES)
AMENDMENT ORDER 2016 (SSI 2016/371)**

Introduction

10. The instrument is made under section 38(4) of the Title Conditions (Scotland) Act 2003. The Order makes an amendment to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 by adding two bodies, Chapelton Community Interest Company and Tornagrain Conservation Trust to the list of prescribed conservation bodies.

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 13 December 2016.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

13. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 22 November 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 19 December 2016.

Policy Note: Title Conditions (Scotland) Act 2003 (Conservation Bodies) Amendment Order 2016 (SSI 2016/371)

Policy Objective

Section 38(4) of the Title Conditions (Scotland) Act 2003 grants Scottish Ministers the power to prescribe certain bodies to be conservation bodies. Bodies which are so prescribed may have conservation burdens created in their favour. Conservation burdens are conditions in the title deeds of property that ensure the preservation or protection of architectural, historical or other special characteristics of land for the benefit of the public. A conservation body is entitled to enforce conservation burdens created in its favour.

This Order makes an amendment to the Title Conditions (Scotland) Act 2003 (Conservation Bodies) Order 2003 by adding two bodies, Chapelton Community Interest Company and Tornagrain Conservation Trust to the list of prescribed conservation bodies. The power to make this Order may only be exercised where the object or function, or one of the principal objects or functions, of the body concerned preserve or protect, for the benefit of the public, the architectural, historical or other special characteristics of any land (in accordance with section 38(5)). The bodies dealt with by this Order comply with this requirement.

Chapelton Community Interest Company and Tornagrain Conservation Trust are both seeking prescription as a conservation body in order for them to create conservation burdens in order to preserve and protect the unique characteristics and qualities envisaged for the development of the proposed new towns.

Previous amending Orders prescribing conservation bodies were laid in 2003, 2004, 2006, 2007, 2008, 2012 and 2013.

Consultation

A consultation is not required as applicants either meet the terms of the legislation or they do not.

Impact Assessment

An equality impact assessment has not been undertaken on the basis that this policy does not have any impact on equality issues.

Financial effects

This Order is not expected to have any significant financial effects on Scottish Government, local government or on business. As there is no impact on business or the third sector, no Business and Regulatory Impact Assessment is required.

Justice Committee

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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 2016](#), the Committee heard from two panels of witnesses. The first was made up from unions representing COPFS workers and police representative bodies. The second panel consisted of two representatives of the Faculty of Advocates (both former Advocates Depute at the COPFS).

8. On [22 November 2016](#) the Committee heard from two panels of witnesses. The first panel was made up from is made up of Justices of the Peace and the second from representatives from Police Scotland and the Scottish Courts and Tribunal Service.

9. At its meeting on 29 November the Committee will hear from—

Ian Thomson, RSPB Head of Investigations representing Scottish Environment Link