



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

29th Meeting, 2017 (Session 5)

Tuesday 3 October 2017

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 5 in private.
2. **Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Anthony McGeehan, Policy and Engagement, Crown Office and Procurator Fiscal Service;

Assistant Chief Constable Bernard Higgins, Operational Support, Police Scotland;

and then from—

Jeanette Findlay, and Paul Quigley, Fans Against Criminalisation;

Simon Barrow, Chair, and Paul Goodwin, Chief Executive, Scottish Football Supporters Association;

Andrew Jenkin, Head of Supporters Direct Scotland.

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

Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2017 (SSI 2017/274);

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2017 (SSI 2017/285);

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment
(No. 2) Order 2017 (SSI 2017/301).

4. **Justice Sub-Committee on Policing:** The Committee will consider a report back from the Sub-Committee meeting on 28 September 2017.
5. **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 - Offensive Behaviour at Football and Threatening Communications (Repeal) (S) Bill J/S5/17/29/1

Private paper - Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill J/S5/17/29/2 (P)

[Offensive Behaviour at Football and Threatening Communications \(Repeal\) \(Scotland\) Bill and accompanying documents](#)

[SPICe Briefing: Offensive Behaviour at Football and Threatening Communications \(Repeal\) \(Scotland\) Bill](#)

[Written submission from the Crown Office and Procurator Fiscal Service](#)

[Written submission from Fans Against Criminalisation](#)

[Written submission from Police Scotland](#)

[Written submission from the Scottish Football Supporters Association](#)

[Written submission from Supporters Direct Scotland](#)

[All written submissions received on the Bill](#)

Agenda item 3

Paper by the clerk - subordinate legislation J/S5/17/29/3

Agenda item 4

Paper by the clerk - Justice Sub-Committee on Policing J/S5/17/29/4

Agenda item 5

Private paper - work programme J/S5/17/29/5 (P)

Private paper - SPICe Briefing J/S5/17/29/6 (P)

Justice Committee

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**Offensive Behaviour at Football and Threatening Communications (Repeal)
(Scotland) Bill**

Note by the clerk

Introduction

1. James Kelly MSP introduced the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill¹ in the Scottish Parliament on 21 June 2017. The Parliamentary Bureau designated the Justice Committee as lead committee for Stage 1 scrutiny of the Bill on 27 June 2017.
2. The Committee considered its overall approach to scrutiny of the Bill at Stage 1 at its meeting on 27 June 2017 and issued a call for evidence. The call for evidence closed on 18 August 2017. Responses are published on the Committee's [webpage](#).

Justice Committee consideration

3. At its meeting on 3 October 2017, the Committee will hear from two panels of witnesses. This is the Committee's first evidence session on the Bill. The first panel will comprise representatives of Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS)². The second panel will comprise representatives of Fans Against Criminalisation, the Scottish Football Supporters Association and Supporters Direct Scotland. Written submissions from the witnesses can be found via the link above. Police Scotland also made a submission to the Finance Committee's call for evidence on the financial implications of the Bill, which can be read [here](#).
4. At future meetings, the Committee will take evidence from further panels of witnesses for Stage 1 scrutiny. The Stage 1 deadline for the Bill is Friday 26 January 2017.
5. Official Reports of all meetings will be published on the Committee's [webpage](#).

¹ <http://www.parliament.scot/parliamentarybusiness/Bills/105269.aspx>

² The Committee also invited the Scottish Police Federation to give oral evidence alongside Police Scotland and COPFS, but it was unable to attend.

Justice Committee

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Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - [Scottish Tribunals \(Eligibility for Appointment\) Amendment Regulations 2017 \(SSI 2017/274\)](#) [see page 3];
 - [Sexual Offences Act 2003 \(Prescribed Police Stations\) \(Scotland\) Regulations 2017 \(SSI 2017/285\)](#) [see page 5];
 - [Title Conditions \(Scotland\) Act 2003 \(Rural Housing Bodies\) Amendment \(No. 2\) Order 2017 \(SSI 2017/301\)](#) [see page 7].
2. If the Committee agrees to report to the Parliament on any of the instruments it is required to do so by 23 October on the first one, 30 October on the second one and by 6 November on the last one.

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 *a/ways* 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.**

SCOTTISH TRIBUNALS (ELIGIBILITY FOR APPOINTMENT) AMENDMENT REGULATIONS 2017 (SSI 2017/274)

Introduction

10. The instrument is made under paragraphs 1(2) of schedule 3 of the Tribunals (Scotland) Act 2014. The Regulations amend the Scottish Tribunals (Eligibility for Appointment) Regulations 2015 to provide eligibility criteria for appointment of ordinary members of the First-tier Tribunal in respect of health and education experience and charity regulatory experience.

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 2 October 2017.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

13. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 12 September 2017 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 23 October 2017.

Policy Note: Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2017 (SSI 2017/274)

1. The instrument amends the Scottish Tribunals (Eligibility for Appointment) Regulations 2015. Those regulations set the criteria for legal members of the First-tier Tribunal, legal members of the Upper Tribunal, and ordinary members of the First-tier Tribunal with either tax experience, or housing, property or surveying experience. <http://www.legislation.gov.uk/ssi/2015/381/made>

Policy Objectives

2. The 2014 Act specifies that the First-tier Tribunal may comprise ordinary, legal and judicial members. Ordinary members are appointed to the First-tier Tribunal and then assigned to a Chamber by the President of Tribunals based on their jurisdictional expertise.

3. These regulations create the eligibility criteria for ordinary members of the First-tier Tribunal for Scotland with health and education experience, or with charity regulatory experience. Members with these areas of expertise will be assigned to the Health and Education Chamber or the General Regulatory Chamber respectively.

4. The criteria for eligibility for appointment as an ordinary member with health and education experience is that the person has knowledge and experience of:

- (a) children or young persons with additional support needs within the meaning of section 1(1) of the Education (Additional Support for Learning)(Scotland) Act (2004), or
- (b) a disability within the meaning of section 6 of the Equality Act 2010.

5. The criteria for eligibility for appointment as an ordinary member with charity regulatory experience is that the person has knowledge and experience in accounting or governance of public or private bodies or charities.
6. Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

Consultation

7. A consultation with interested parties took place between May and August 2017. There were 15 responses to this consultation. The responses are available on the Scottish Government website:
<https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/additional-support-needs-tribunals/>

<https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/transferring-scap-to-scottish-tribunals/>

Impact Assessments

8. An Equality Impact Assessment has already been completed on the Tribunals (Scotland) Bill – see link below.
<http://www.scotland.gov.uk/Resource/0042/00421637.pdf>
9. An Equality Impact Assessment is not required for these Regulations.
10. A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.

SEXUAL OFFENCES ACT 2003 (PRESCRIBED POLICE STATIONS) (SCOTLAND) REGULATIONS 2017 (SSI 2017/285)

Introduction

15. The instrument is made under section 87(1)(a) of the Sexual Offences Act 2003. The Regulations provide a new list of prescribed police stations, incorporating all of the various changes and corrections that have occurred since 2014, to allow those offenders who are subject to the notification requirements of the Sexual Offences Act 2003 to comply with the said requirements. The Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2014 and the amending instrument are revoked.

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

17. The instrument comes into force on 9 October 2017.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

18. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 19 September 2017 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

19. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 30 October 2017.

Policy Note: Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2017 (SSI 2017/285)

Policy Objectives

1. In Scotland a sex offender becomes subject to the notification requirements of Part 2 of the 2003 Act if that person is convicted of an offence listed in Schedule 3 of the 2003 Act, or where another finding contained in section 80(1) of the 2003 Act is made against them, or if a civil preventative order (e.g. sexual offences prevention orders as provided by sections 104 to 109 of the 2003 Act) has been made against that offender which includes a requirement to comply with the notification requirements. Such offenders have to notify the police of their name, address, and certain other personal details within 3 days of their conviction, sentence, or when a sexual offences prevention order is made.
2. Section 87(1) of the 2003 Act provides that a sex offender gives notification under sections 83(1), 84(1), or 85(1) of the 2003 Act by attending any police station which is prescribed for those purposes by regulations. Section 87 of the 2003 Act empowers the police to take photographs, fingerprints and samples to verify the offender's identity upon notification. Notification should therefore take place at a station where the necessary facilities are available.
3. The Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2014 (SSI No. 147, "the 2014 Regulations") prescribed a list of

police stations across Scotland at which a sex offender can attend to notify the police of their details. The 2014 Regulations came into force on 28 June 2014. The 2014 Regulations were subsequently amended by the Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2016 (SSI 2016/187), which came into force on 1 July 2016 and corrected typographical errors, changed addresses within the same town, or added new prescribed police stations.

4. However when the Scottish Parliament's Delegated Powers and Law Reform and Justice Committees considered the 2016 Amendment Regulations they both noted the fact that these amendment Regulations contained a number of errors (when compared with the details held by the Royal Mail), relative to some of the police stations post codes. An undertaking was given by the Cabinet Secretary for Justice to correct these errors following consultation with Police Scotland.
5. Police Scotland has now checked the Police Gazetteer (this is the mapping and address system on the force's command and control systems) alongside the details held by the Royal Mail.
6. The Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2017 therefore revoke the 2014 Regulations and its subsequent amendments, and provide a new list of prescribed police stations incorporating all of the various changes and corrections that have occurred since 2014.
7. The 2017 Regulations provide the same number of prescribed police stations as previously listed (i.e. 89). Police Scotland are content that the revised list is accurate and delivers the required geographical coverage across Scotland to allow those offenders who are subject to the notification requirements of the Sexual Offences Act 2003 to comply with the said requirements.

Consultation

8. The Scottish Government has liaised with Police Scotland's National Offender Management Unit, which provides governance, audit and compliance in respect of all areas of offender management, so that an accurate and up-to-date list of prescribed police stations could be established.

Impact Assessments

9. The impact of the Regulations will be purely administrative for the police and individuals subject to the notification requirements of the Sexual Offences Act 2003. There will be no impact on businesses, equalities or strategic environment.

Financial effects

10. The Regulations have no financial effects on the Scottish Government's program expenditure.

**TITLE CONDITIONS (SCOTLAND) ACT 2003 (RURAL HOUSING BODIES)
AMENDMENT (NO. 2) ORDER 2017 (SSI 2017/301)**

Introduction

20. The instrument is made under section 43(5) of the Title Conditions (Scotland) Act 2003. The Order amends the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004 by adding one body, Dormont Passive Homes (Scotland) Ltd, as a prescribed rural housing body.

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

22. The instrument comes into force on 14 November 2017.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

23. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 26 September 2017 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

24. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 6 November 2017.

Policy Note: Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment (No. 2) Order 2017 (SSI 2017/301)

Policy Objective

1. Section 43(5) of the 2003 Act provides that Scottish Ministers may prescribe such body as they think fit to be a rural housing body. Section 43(1) of the 2003 Act allows for the creation of a real burden over rural land which comprises a right of pre-emption in favour of a rural housing body. This is known as a rural housing burden. The imposition of such a burden means that when such land is being sold, the rural housing body has the right to purchase it, or re-purchase it, as the case may be. In essence, it enables the rural housing body to control future sales. Ministers also have the power, under section 43(8) of the 2003 Act, to determine that a body shall cease to be a rural housing body.
2. The right to repurchase may only be used over rural land. Rural land means land other than excluded land. Excluded land has the same meaning as in Part 2 of the Land Reform (Scotland) Act 2003, which, following amendments made by the Community Empowerment (Scotland) Act 2015, now means “land consisting of a separate tenement (i.e. interest in land) which is owned separately from the land in respect of which it is exigible”. This definition is subject to exceptions for land consisting of salmon fishings and certain mineral rights.

3. This Order amends the Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Order 2004 by adding one body, Dormont Passive Homes (Scotland) Ltd., as a prescribed rural housing body.
4. 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 is to provide housing or land for housing (section 43(6) of the 2003 Act). Dormont Passive Homes (Scotland) Ltd. complies with this requirement.
5. Previous amending Orders designating rural housing bodies were made in 2004, 2006, 2007, 2008, 2013, 2014 and 2017. Annex A provides a list of all currently prescribed rural housing bodies to date.
6. The Scottish Government is continuing with an exercise aimed at consolidating the list of rural housing bodies. It has attempted to contact all rural housing bodies and conservation bodies (prescribed under section 38 of the 2003 Act) and has asked them, among other things, if they wish to remain prescribed as a rural housing or conservation body. A number of responses have been received although reminders have needed to be sent to some bodies. The Scottish Government is now considering the responses received.

Consultation

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

Impact Assessments

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

Financial effects

9. A partial Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. With the limited information received from the BRIA process, we conclude that the impact of this Order on existing businesses in the area is generally positive. The Order enables a further rural housing body to provide affordable housing for current and future communities. This is likely to contribute to sustaining existing businesses and may attract new businesses.

ANNEX A

LIST OF PRESCRIBED RURAL HOUSING BODIES

Albyn Housing Society Limited	Kilfinan Community Forest Company
Argyll Community Housing Association	Lochaber Housing Association Limited
Barra and Vatersay Housing Association Limited	Muirneag Housing Association Limited
Berneray Housing Association Limited	Mull and Iona Community Trust
Buidheann Taigheadais na Meadhanan Limited	North West Mull Community Woodland Company Limited
Buidheann Tigheadas Loch Aillse Agus An Eilein Sgitheanaich Limited	Orkney Islands Council
Cairn Housing Association Limited	Pentland Housing Association Limited
Colonsay Community Development Company	Rural Stirling Housing Association Limited
Comhairle nan Eilean Siar	Taighean Ceann a Tuath na'Hearadh Limited
Community Self-Build Scotland Limited	The Highland Housing Alliance
Craignish Community Company Limited	The Highlands Small Communities' Housing Trust
Down to Earth Solutions Community Interest Company	The Isle of Eigg Heritage Trust
Dumfries and Galloway Small Communities Housing Trust	The Isle of Gigha Heritage Trust
Dunbritton Housing Association Limited	The North Harris Trust
Ekopia Resource Exchange Limited	Tighean Innse Gall Limited
Fyne Homes Limited	West Harris Trust
Fyne Initiatives Limited	West Highland Housing Association Limited
HIFAR Limited	West Highland Rural Solutions Limited
Isle of Jura Development Trust	Yuill Community Trust C.I.C.

Justice Committee

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Feedback from the Justice Sub-Committee on Policing

Note by the clerk

1. The Justice Sub-Committee on Policing met on 28 September 2017 when it held an evidence session on governance of the Scottish Police Authority.
2. The Sub-Committee took evidence from Michael Matheson, Cabinet Secretary for Justice, Scottish Government.
3. The Sub-Committee will next meet on 26 October, when it will hold a roundtable evidence session on Police Scotland's engagement with black and minority ethnic (BME) communities, to consider the operational approach and challenges.