



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

30th Meeting, 2017 (Session 5)

Tuesday 24 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 6 in private.

2. **Subordinate legislation:** The Committee will take evidence on the Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 [draft] from—

Annabelle Ewing, Minister for Community Safety and Legal Affairs, Aileen Grimmer, Civil Law and Legal System Division, Gaynor Davenport, Directorate for Housing and Social Justice, and Sadif Ashraf, Directorate for Legal Services, Scottish Government.

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

S5M-08085—That the Justice Committee recommends that the Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 [draft] be approved.

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

Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2017 (SSI 2017/310).

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

Danny Boyle, Parliamentary and Policy Officer, Black and Ethnic Minority Infrastructure in Scotland;

Tom Halpin, Chief Executive, Safeguarding Communities - Reducing Offending (Sacro);

Sandy Riach, Vice Chairman, Scottish Disabled Supporters' Association;

Evelyn Fraser, Development Manager, Scottish Women's Convention;

Colin Macfarlane, Director, Stonewall Scotland.

6. **Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill:** The Committee will consider potential witnesses for the scrutiny of the Bill at Stage 1.

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 - Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 J/S5/17/30/1

Agenda item 4

Paper by the clerk - Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2017 (SSI 2017-310) J/S5/17/30/2

Agenda item 5

Paper by the clerk - Offensive Behaviour at Football and Threatening Communications (Repeal) (S) Bill J/S5/17/30/3

Paper by the clerk - secondary schools online survey responses J/S5/17/30/4

Private paper 1 - Offensive Behaviour at Football and Threatening Communications (Repeal) (S) Bill J/S5/17/30/5 (P)

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

[Written submission from BEMIS](#)

[Written submission from SACRO](#)

[Written submission from the Scottish Women's Convention](#)

[Written submission from Stonewall Scotland](#)

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

Agenda item 6

Private paper 2 - Offensive Behaviour at Football and Threatening Communications (Repeal) (S) Bill J/S5/17/30/6 (P)

Justice Committee

30th Meeting, 2017 (Session 5), Tuesday 24 October 2017

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:
 - [Legal Aid \(Scotland\) Act 1986 Amendment Regulations 2017 \[draft\]](#)

Introduction

2. This instrument is made under section 13(4) of the Legal Aid (Scotland) Act 1986.
3. The Regulations will ensure that civil legal aid continues to be available for civil cases relating to the private rented sector before the First-tier Tribunal for Scotland Housing and Property Chamber, as it was available for those cases before the sheriff. This is with the exception of landlord registration, because landlords are to be treated in the same way as property factors and letting agents in relation to registration matters.
4. Further details on the purpose of the Order can be found in the policy note attached at **Annexe A**.

Justice Committee consideration

5. The Justice Committee is required to report to the Parliament on the instrument by 16 November 2017. The Minister for Community Safety and Legal Affairs has lodged motion S5M-08085 proposing that the Committee recommends approval of the instrument. The Minister is due to attend the meeting on 24 October 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 16 November 2017. 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.**

Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 3 October 2017 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Policy Note

Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 [draft]

1. The Scottish Ministers propose to make the regulations above in exercise of the powers conferred by section 13(4) of the Legal Aid (Scotland) Act 1986 and all other powers enabling them to do so.

Policy Objectives

2. The policy objective of this instrument is to ensure civil legal aid continues to be available for civil cases relating to the private rented sector before the First-tier Tribunal for Scotland Housing and Property Chamber, as it was available for those cases before the sheriff. This is with the exception of landlord registration, this is because landlords should be treated in the same way as property factors and letting agents in relation to registration matters. There is currently no publicly funded legal assistance available in the Housing & Property Chamber for Property Factor registration matters and we propose that letting agents should be treated the same. We can assume most landlords will have at least one property that is not their main dwelling, and regard will be given to any associated income for financial assessment. This will put them out of scope for Advice & Assistance and often for civil legal aid too. Many landlords will have insurance, and therefore will have other rights and facilities, to which regard must be had before looking to the Fund to cover the cost of legal proceedings. Legal aid is also to be made available for the new private tenancy created by the Private Housing (Tenancies) (Scotland) Act 2016.
3. This amendment is necessary as section 16 of the Housing (Scotland) Act 2014 transfers jurisdiction in civil matters relating to the private rented sector from the sheriff to the First-tier Tribunal of Scotland Housing and Property Chamber. These actions include repossession cases and various non-repossession cases.
4. The Private Housing (Tenancies) (Scotland) Act 2016 creates a new type of Scottish Private Residential Tenancy which is expected to come into force on 1 December 2017. Civil disputes relating to the new tenancy including repossessions will be heard in the Housing and Property Chamber.

Consultation

5. A consultation in relation to the transfer of jurisdiction which included a section on legal aid took place between January and March 2017 with interested parties. There were 21 responses to this consultation. The [responses](#) and an [independent analysis report](#) are available on the Scottish Government website. The Law Society of Scotland were consulted as part of the public consultation however did not comment.

Impact Assessments

6. An [Equality Impact Assessment](#) has been completed on the draft SSI. There are no equality impact issues.

Financial Effects

7. A [Business and Regulatory Impact Assessment](#) (BRIA) has been completed. The impact of this policy on business is that civil legal aid will be available in the First-tier Tribunal for Scotland Housing and Property Chamber.
8. When the Government introduced the Bill for the Housing Act 2014, it estimated that the cost of legal assistance for the 700 private rented housing cases each year that would transfer from the Courts to the Tribunals would be about £25,000 – comprising £14,000 for Advice and Assistance, and £11,000 for Civil Legal Aid, based on continuing the same form of legal assistance in the First-Tier Tribunal as is currently available for these cases in the Courts, as is the aim. This takes into account that legal aid will not be available for landlord registration.

Justice Committee

30th Meeting, 2017 (Session 5), Tuesday 24 October 2017

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - [Civil Legal Aid \(Scotland\) \(Miscellaneous Amendments\) Regulations 2017 \(SSI 2017/310\)](#) [see page 3].
2. If the Committee agrees to report to the Parliament on the instrument it is required to do so by 13 November 2017.

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.**

**CIVIL LEGAL AID (SCOTLAND) (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2017 (SSI 2017/310)**

Introduction

10. The instrument is made under sections 33(2)(a) and (3) and 36(1) and (2)(a) and (c) of the Legal Aid (Scotland) Act 1986. The Regulations provide for the calculation of the fees of solicitors and counsel in relation to proceedings in the First-tier Tribunal for Scotland. They amend regulation 2 of the 1989 Regulations to specify the Auditor of the Court of Session as the relevant auditor in relation to legal aid accounts in the First-tier Tribunal for Scotland.

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 1 December 2017.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

13. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 3 October 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 13 November 2017.

Policy Note: Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2017 (SSI 2017/310)

1. The Scottish Ministers propose to make the regulations above in exercise of the powers conferred by sections 33(2)(a) and (3) and 36(1) and (2)(a) and (c) of the Legal Aid (Scotland) Act 1986 and all other powers enabling them to do so.

Policy Objectives

2. The policy objective of this instrument is to ensure calculation of the fees of solicitors and counsel in relation to proceedings in the First-tier Tribunal for Scotland. The simple procedure fee schedule will apply to solicitors. The second phase of the roll out of simple procedure would have applied to private rented housing cases before the sheriff, so it is appropriate to apply these fees. The fees for counsel will be the same as it was before the sheriff court. It amends regulation 2A of the 1989 Regulations to specify the Auditor of the Court of Session as the relevant auditor in relation to legal aid accounts in the First-tier Tribunal for Scotland.

3. It provides for proceedings in the First-tier Tribunal for Scotland to be treated as distinct proceedings for the purposes of legal aid. This is required to distinguish these distinct proceedings from others and means it must be the subject of separate legal aid applications. It also ensures the requirement of prior approval from the Scottish Legal Aid Board for the employment of counsel with regard to these types of cases.

Consultation

4. A consultation in relation to the transfer of jurisdiction which included a section on legal aid took place between January and March 2017 with interested parties. There were 21 responses to this consultation. The responses and an independent analysis report are available on the Scottish Government website. The Law Society of Scotland were consulted as part of the public consultation however did not comment.

Impact Assessments

5. An [Equality Impact Assessment](#) has been completed on the draft SSI. There are no equality impact issues.

Financial Effects

6. A [Business and Regulatory Impact Assessment](#) (BRIA) has been completed. The impact of this policy on business is that civil legal aid will be available in the First-tier Tribunal for Scotland Housing and Property Chamber.
7. When the Government introduced the Bill for the Housing Act 2014, it estimated that the cost of legal assistance for the 700 private rented housing cases each year that would transfer from the Courts to the Tribunals would be about £25,000 – comprising £14,000 for Advice and Assistance, and £11,000 for Civil Legal Aid, based on continuing the same form of legal assistance in the First-Tier Tribunal as is currently available for these cases in the Courts, as is the aim. This takes into account that legal aid will not be available for landlord registration.

Justice Committee

30th Meeting, 2017 (Session 5), Tuesday 24 October 2017

**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 heard from two panels of witnesses. The first panel was Police Scotland and the Crown Office and Procurator Fiscal Service (COPFS). The second panel comprised 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 its meeting of 24 October, the Committee will hear from a further panel of witnesses. The panel will comprise representatives of BEMIS Scotland, Scottish Disabled Supporters' Association, Scottish Women's Convention, Stonewall Scotland and SACRO. Written submissions from the witnesses can also be found via the link above.
5. The Committee will consider future witnesses for Stage 1 scrutiny at its meeting of 24 October. The Stage 1 deadline for the Bill is Friday 26 January 2017.
6. Official Reports of all meetings will be published on the Committee's [webpage](#).

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

Justice Committee

30th Meeting, 2017 (Session 5), Tuesday 24 October 2017Offensive Behaviour at Football and Threatening Communications (Repeal)
(Scotland) Bill

Secondary schools on-line survey responses

Background

The Justice Committee agreed to gather the views of young on issues related to the proposal to repeal the Offensive Behaviour at Football and Threatening Communications Act 2012.







An on-line survey was sent to all 364 secondary schools in Scotland and issued to the 19 secondary schools who visited the Parliament in September. The pupils were given a short activity which provided them with an overview and context of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 before being asked to complete the on-line survey.

Summary of responses

There were a total of 1441 responses to the on-line survey (not every respondent answered every question) and a summary of the responses to the 11 questions is outlined below.

1. What school do you go to?





Around 50 secondary schools from around Scotland responded to the survey.

2. What year are you in?			Response Percent	Response Total
1	S1		5.64%	81
2	S2		6.13%	88
3	S3		24.39%	350
4	S4		40.91%	587
5	S5		14.36%	206
6	S6		8.57%	123
			Answered	1435
			Skipped	6

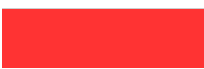



3. How often do you go to Scottish football matches?			Response Percent	Response Total
1	Never		57.45%	825
2	Sometimes		30.36%	436
3	Lots		12.19%	175
			Answered	1436
			Skipped	5

4. Which Scottish football club do you support? Please answer 'none' if you don't support a club.		Answered	Skipped
1	Open-Ended Question	1428	13

Over 400 people responded that they did not support any football club. The majority of respondents, who did support a football club, supported either Celtic, Rangers, Aberdeen, Hearts or Hibernian.

5. Have you experienced or witnessed offensive behaviour – e.g. behaviour which expresses hatred of people based on their religious, racial, or national background, disability or sexuality (choose all that apply)?			Response Percent	Response Total
1	At a football match		28.09%	377
2	On the way to, or leaving, a football match		20.94%	281
3	Online		65.87%	884
4	At school		47.47%	637
5	Other, including other sporting events (please tell us)		10.43%	140
			Answered	1342
			Skipped	99






About 20 respondents said that they had not experienced or witnessed offensive behaviour. Others said they had experienced or witnessed it at hockey, cricket and rugby matches, whilst out with their friends, watching TV or movies.




6. In which of the following scenarios do you think there should be a specific law banning the singing of offensive songs? (choose all that apply)			Response Percent	Response Total
1	At a football match?		44.59%	627
2	On the way to, or leaving, a football match?		34.99%	492
3	I do not believe there should be a specific law banning offensive songs		41.32%	581
4	Other, including other sporting events (please tell us)		9.67%	136
			Answered	1406
			Skipped	35

Many respondents said that the law should not apply to any other venues, whilst some thought it should apply to sporting events, and others that offensive songs should be banned everywhere.

7. What do you think is the best way to deal with offensive behaviour?		Answered	Skipped
1	Open-Ended Question	1304	37

Respondents to this question thought that there should be some sort of punishment, either right away or after a warning about behaviour being offensive. This included being issued a fine, being arrested and charged, being banned from football stadiums and/or sporting events. Others thought that there should be more police and stewards at football matches to prevent offensive behaviour and that the football clubs should take action to address the behaviour. Some respondents thought that singing at football matches added to the atmosphere and should therefore be allowed, whilst others said it was either too difficult or unfair to pick out certain individuals when a large number of people were singing. Educating children and adults about the effects of their behaviour was also highlighted.



8. How much of a problem do you think serious threatening behaviour, such as threatening communications on social media, is in Scotland (with 1 being not a problem at all and 5 being a serious problem)?			Response Percent	Response Total
1	1		5.73%	82
2	2		16.07%	230
3	3		43.47%	622
4	4		26.48%	379
5	5		8.25%	118
			Answered	1431
			Skipped	10

9. Have you ever experienced, or do you know of others who have been subject to, threatening communications online? For clarity, this means a serious threat to carry out a seriously violent act which would cause somebody to suffer fear or alarm, or a threat intended to stir up hatred on religious grounds.			Response Percent	Response Total
1	Yes		30.23%	432
2	No		60.88%	870
3	Not applicable		8.89%	127
			Answered	1429
			Skipped	12

10. What do you think is the best way to deal with threatening communications?		Answered	Skipped
1	Open-Ended Question	1230	211

Responses to this question included action that the person should take, for example, informing an adult, telling the police, and blocking the person from contacting them. The police could then help to identify the person and either speak to them, fine them, or charge them with an offence under existing or separate legislation. Some thought that the internet providers / those hosting social media platforms should take action to address the issue. For example, having a method by

which people could report the behaviour and then taking action to tackle it, such as imposing a ban on using social media.

11. Are you aware of the law that was passed in 2012 called the Offensive Behaviour at Football and Threatening Communications (Scotland) Act?			Response Percent	Response Total
1	Yes		70.59%	1013
2	No		29.41%	422
			Answered	1435
			Skipped	6