



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

14th Meeting, 2019 (Session 5)

Tuesday 14 May 2019

The Committee will meet at 10.30 am in the Mary Fairfax Somerville Room (CR2).

1. **Decisions on taking business in private:** The Committee will decide whether to take items 5 and 6 in private.
2. **Subordinate legislation:** The Committee will consider the following negative instrument—

International Joint Investigation Teams (International Agreements) (EU Exit) (Scotland) Order 2019 (SSI 2019/149).
3. **HMP Kilmarnock:** The Committee will consider an oral report back from a fact-finding visit to HMP Kilmarnock.
4. **Justice Sub-Committee on Policing:** The Committee will consider a report back from the Sub-Committee meeting held on 9 May 2019.
5. **Finance and Constitution Committee:** The Committee will consider correspondence from the Convener of the Finance and Constitution Committee.
6. **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 - SSI 2019 149

J/S5/19/14/1

Agenda item 4

Paper by the clerk - Justice Sub-Committee on Policing

J/S5/19/14/2

Agenda item 5

Private paper - Finance and Constitution Committee

J/S5/19/14/3 (P)

Agenda item 6

Private paper 1 - work programme

J/S5/19/14/4 (P)

Private paper 2 - work programme

J/S5/19/14/5 (P)

Justice Committee

14th Meeting, 2018 (Session 5), Tuesday 14 May 2019

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - [International Joint Investigation Teams \(International Agreements\) \(EU Exit\) \(Scotland\) Order 2019 \(SSI 2019/149\) \[see page 3\];](#)
2. If the Committee agrees to report to the Parliament on the instrument it is required to do so by 3 June 2019.

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 instrument.**

INTERNATIONAL JOINT INVESTIGATION TEAMS (INTERNATIONAL AGREEMENTS) (EU EXIT) (SCOTLAND) ORDER 2019 (SSI 2019/149)

Introduction

10. The instrument is made under section 99(1) of the Police and Fire Reform (Scotland) Act 2012. The Order provides a legal basis for participation in Joint Investigation Teams (JITs) following the United Kingdom's departure from the European Union. JITs facilitate coordination of criminal investigations and prosecutions conducted in parallel by two or more countries.

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 5 June 2019.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

13. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 7 May 2019 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 3 June 2019.

Policy Note: International Joint Investigation Teams (International Agreements) (EU Exit) (Scotland) Order 2019 (SSI 2019/149)

Policy Objectives

To provide a legal basis for participation in Joint Investigation Teams (JITs) following the United Kingdom's departure from the European Union. JITs facilitate coordination of criminal investigations and prosecutions conducted in parallel by two or more countries.

Currently, the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union [2000] and the Council Framework Decision on joint investigation teams [2002/465/JHA] together provide the legal bases in EU law on which competent authorities of two or more Member States may set up a JIT.

Following the UK's departure from the EU, the legal basis for JITs with EU member states will be provided, in most cases, by the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959.

Not all EU member states have ratified the Second Additional Protocol and Scottish Ministers have not specified any international agreements under section 99(1)(e) of

the 2012 Act. Accordingly, this instrument will provide the legal basis by specifying the following United Nations Conventions for the purpose of sections 24, 90, 91 and 96 of the 2012 Act:

- United Nations Convention against Transnational Organised Crime 2000;
- United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; and
- The United Nations Convention against Corruption 2003.

This instrument will ensure that, following the UK's exit from the European Union, Scotland can continue lawfully to participate in JITs with EU member states that have (i) not incorporated into domestic law the Second Additional Protocol to the Council of Europe Convention on Mutual Assistance in Criminal Matters 1959, but which have (ii) adopted certain relevant UN Conventions described below, and which this instrument will specify for the purposes of the 2012 Act.

This measure does not seek to make changes to powers or introduce new powers, but instead specifies alternative international agreements, for the purposes of the 2012 Act, to ensure that JITs retain the same powers and operational capability that are currently provided by EU legal bases.

A similar Statutory instrument has been made by the UK Government and the Department of Justice in Northern Ireland. These instruments came into force and into operation respectively on 29 March 2019.

Specification under section 24 of the 2012 Act means that the Chief Constable is liable in respect of unlawful conduct on the part a member of a joint investigation team convened under the relevant agreements, in carrying out (or purportedly carrying out) that person's functions.

Specification under section 90 of the 2012 Act means that an assault upon a member of a joint investigation team convened under the relevant agreements will be liable to the penalties set out in that section.

Specification under section 91 of the 2012 Act means that it is an offence for a person to remove a person from custody or to assist the escape of a person in custody, where that person is in the lawful custody of a member of an international joint investigation team convened under the relevant agreements or is in the act of eluding or escaping from such custody.

Specification under section 96 of the 2012 Act means that chapter 16 of the 2012 Act which makes provision in relation to independent custody visits applies to persons in lawful custody of a member of an international investigation team convened under the relevant agreements.

European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union because it specifies alternative legal bases in the place of an EU Convention that the UK will no longer be party to after EU withdrawal.

Consultation

No consultation has been carried out as the SSI does not introduce any additional burdens on Police Scotland or other public bodies. It prevents the loss of an existing criminal justice measure that is utilised successfully by Police Scotland in investigating transnational organised crime.

Impact Assessments

No business and regulatory impact assessment has been prepared for this Order as no impact upon business, charities or voluntary bodies is foreseen.

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Justice Committee**14th Meeting, 2019 (Session 5), Tuesday 14 May 2019****Feedback from the Justice Sub-Committee on Policing****Note by the clerk**

1. On 9 May 2019, the Justice Sub-Committee on Policing met to take oral evidence on the findings and recommendations of its [1st Report, 2019 \(Session 5\): Report on Police Scotland's proposal to introduce the use of digital device triage systems \(cyber kiosks\) SP Paper 512](#). The Sub-Committee published its report on 8th April 2019.

2. At this meeting the Sub-Committee took oral evidence from Deputy Chief Constable Will Kerr, who is responsible for Local Policing at Police Scotland. Assistant Chief Constable Steve Johnson, the Head of Specialist Crime and Intelligence at Police Scotland, and then from Susan Deacon, Chair of the Scottish Police Authority. The Sub-Committee also considered written submissions from Police Scotland and the Scottish Police Authority. These submissions are available online¹.

Police Scotland

3. Police Scotland acknowledged that they should have spent more time at the outset to gain legal clarity on the use of cyber kiosks and to ensure they had the confidence of the public. Police Scotland confirmed the need to take a broader approach to decisions on the development and procurement of new technology in the future and how the public will perceive the use of ICT by Police Scotland in keeping the public safe.

4. Police Scotland flagged the rapid pace of technology on 21st century policing and the need for the police service to evolve. This is as a result of both the digital lifestyle which people lead which feeds into evidence collection across almost all types of crime. Police Scotland indicated that it cannot currently keep pace with the way in which criminals are using modern ICT, such as Serious Organised Crime gangs using the latest encryption and masking technology to thwart police investigations or criminal groups establishing IT companies to provide the latest technology to other criminals.

5. Police Scotland is to establish an ethics panel to input into all aspects of its future policy development on digital policing, how it will engage with the public and to ensure the highest standards of confidence for witnesses and victims in establishing the personal digital data they will need to find, retain and use in order to prosecute crime. The panel could consist of a broad range of stakeholders. The Sub-Committee requested further information on the ethics panel.

6. Police Scotland believe they have the legal assurance required to roll out the use of Cyber Kiosks across Scotland. They plan to provide the legal opinion and suite of documents to the external reference and stakeholder groups for consideration and give evidence to the SPA Board. If all of the documents are approved, Police Scotland will

¹ Justice Sub-Committee on Policing 4th Meeting 2019, agenda and papers:
https://www.parliament.scot/S5_JusticeSubCommitteeOnPolicing/Meeting%20Papers/Papers20190509Web.pdf

introduce the use of cyber kiosks in late summer 2019. Police Scotland will keep the Sub-Committee informed of the roll-out timetable, and assessment of the use of Cyber Kiosks.

7. Police Scotland reassured the Sub-Committee that all of its developments in ICT for investigations and policing functions are designed to protect the people of Scotland and not to undermine public confidence in the right to privacy, or to generate collateral intrusion in their lives.

8. The Sub-Committee asked Police Scotland about the recent purchase of two Remotely Piloted Aircraft Systems for use by Police Scotland. Police Scotland confirmed that they had carried out the necessary impact assessments and were currently piloting the use of the two drones in the north of Scotland.

9. Police Scotland are putting new procedures in place for the future assessment and procurement of ICT systems, and their costs. This will include considering issues such as the security of procurement, licensing, ethics and public confidence and engagement.

10. While confident of the legal basis for their use of Cyber Kiosks, Police Scotland would welcome additional clarity and assurance both in legislation, and a code of practice, on the use of cyber kiosks.

Scottish Police Authority

11. Susan Deacon, Chair of the SPA stressed the importance of ensuring policing by consent is at the heart of developments in Police Scotland. The SPA is clear that this is as vital a role, as holding the Chief Constable to account and accounting for the budgeting spend of Police Scotland.

12. Ms Deacon confirmed that the SPA and Police Scotland would consider how to improve any future consideration of the introduction of new technology to policing. Ms Deacon stated that the SPA had worked hard over the last 18 months to strengthen and expand its level of forward work planning and stakeholder engagement on developments in Police Scotland. This includes ensuring all of the SPAs meeting and papers are accessible to the public online. It also engaged with a wider community of non-police stakeholders, such as local authorities and third sector groups on developments in policing.

13. The SPA is working to develop more in-depth system to assess the ethical and legal implications of ICT development in Police Scotland, irrespective of whether that are related to spending of resources which exceeds the financial threshold for budget scrutiny by the SPA Board. The SPA's newly established Strategy, Policy and Performance Committee is playing a key role in developing these processes and leading on the work of engagement with Police Scotland on current and future project and procedural developments.

14. Susan Deacon told the Sub Committee that she and DCC Will Kerr are considering the recommendations from the Sub-Committee's report and will feed these into the ongoing process of development and change.

Committee clerk
9 May 2019