



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### JUSTICE COMMITTEE

Tuesday 15 March 2016



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**Tuesday 15 March 2016**

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**JUSTICE COMMITTEE**  
**10<sup>th</sup> Meeting 2016, Session 4**

**CONVENER**

\*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

**DEPUTY CONVENER**

\*Elaine Murray (Dumfriesshire) (Lab)

**COMMITTEE MEMBERS**

\*Christian Allard (North East Scotland) (SNP)

\*Roderick Campbell (North East Fife) (SNP)

\*John Finnie (Highlands and Islands) (Ind)

Margaret McDougall (West Scotland) (Lab)

\*Alison McInnes (North East Scotland) (LD)

\*Margaret Mitchell (Central Scotland) (Con)

Gil Paterson (Clydebank and Milngavie) (SNP)

\*attended

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The David Livingstone Room (CR6)



## Scottish Parliament

### Justice Committee

*Tuesday 15 March 2016*

*[The Convener opened the meeting at 10:00]*

### Decisions on Taking Business in Private

**The Convener (Christine Grahame):** Good morning and welcome to the 10th meeting in 2016 of the Justice Committee. It is the last meeting this session—save your tears for later; you have still got work to do. *[Laughter.]* I ask everyone to switch off mobile phones and other electronic devices. I have apologies from Margaret McDougall and Gil Paterson.

Under agenda item 1, I ask members to agree to consider items 5, 6 and 7 in private. Item 5 is the committee's draft report on post-legislative scrutiny of the Family Law (Scotland) Act 2006; and items 6 and 7 are the legacy papers for the committee and the Justice Sub-Committee on Policing. Are we agreed?

**Members indicated agreement.**

### European Union Priorities

10:00

**The Convener:** Agenda item 2 is correspondence about the committee's EU priorities and, in particular, the latest response from the Minister for Community Safety and Legal Affairs, which is attached in full at annexe A of paper 1. Does Roderick Campbell, as our EU reporter, wish to say anything about the response?

**Roderick Campbell (North East Fife) (SNP):** The response is all self-explanatory; I do not have anything to add.

**The Convener:** Have members any other comments? Shall we just note the response?

I would like to know if there is life out there.

**Elaine Murray (Dumfriesshire) (Lab):** Yes.

**The Convener:** Thank you, Elaine. You came to my rescue.

## Subordinate Legislation

### Act of Sederunt (Fees of Sheriff Officers) 2016 (SSI 2016/100)

10:01

**The Convener:** Agenda item 3 is subordinate legislation. We have three negative instruments. The first instrument substitutes a new table of fees for the table in schedule 1 to the Act of Sederunt (Fees of Sheriff Officers) (No 2) 2002. The new fee levels are 1.3 per cent higher than the existing fees. The Delegated Powers and Law Reform Committee agreed to draw the instrument to the attention of Parliament because the preamble to the instrument is incorrect. The Lord President's private office has indicated that it has requested a correction slip from the statutory instrument registrar—I did not even know that we had such a person, but there you are—to correct the errors. If members have no comments, are members content to make no recommendation in relation to the instrument?

**Members indicated agreement.**

### Act of Sederunt (Fees of Messengers-at-Arms) 2016 (SSI 2016/101)

**The Convener:** The second instrument substitutes a new table of fees for the table of fees in schedule 1 to the Act of Sederunt (Fees and Messengers-at-Arms) (No 2) 2002. As with the change agreed for sheriff officers, the new level of fees represents an increase of 1.3 per cent on the existing fees. The Delegated Powers and Law Reform Committee agreed to draw the instrument to the attention of Parliament because—again—the preamble to the instrument is incorrect, and the Lord President's private office has indicated that it has requested a correction slip from the statutory instrument registrar to remove the errors. If members have no comments, are members content to make no recommendation in relation to the instrument?

**Members indicated agreement.**

### Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2016 (SSI 2016/131)

**The Convener:** The third instrument makes largely technical amendments to clarify points in the prison rules. The rules make provision for the regulation and management of prisons and young offenders institutions, and for various matters concerning detainees in those institutions, such as their classification, treatment, discipline, employment and control. The Delegated Powers and Law Reform Committee did not draw the

instrument to the attention of Parliament on any of the grounds within its remit.

**Margaret Mitchell (Central Scotland) (Con):** I have a point of clarification on paragraph 9 of page 7, which says:

“The definition of purposeful activity as detailed in Rule 84(2) is being amended to provide flexibility ... and a wide discretion over which activities a Governor can provide for prisoners.”

Have we any more details on what that means? I would not like there to be any diminution of work, vocational training and education, which we know are in short supply.

**The Convener:** You have put that on the record. The committee looked at that issue in an inquiry and considered what was meant by “purposeful activity”, to check that that was not just simply ticking boxes and really had meaning. That concern is on the record.

**John Finnie (Highlands and Islands) (Ind):** I would like to comment on the policy objectives that relate to rule 68. The appropriate level of authorisation for a police constable to interview a prisoner has been moved from chief constable to chief inspector. I think that that is very pragmatic, and I hope that it is a direction of travel that will continue, with other matters also being devolved to the appropriate level.

**The Convener:** That is also on the record.

**Christian Allard (North East Scotland) (SNP):** I welcome the policy objective regarding flexibility of faith. It is very welcome that the objective understands that prisoners will change during their time in incarceration.

**The Convener:** Are members content to make no recommendation in relation to the instrument?

**Members** *indicated agreement.*

## Annual Report

10:04

**The Convener:** Agenda item 4 is consideration of the committee’s draft annual report, which is intended to be a largely factual and statistical account of our workload over the past year. I intend to go through it page by page. If members have a comment to make, they should tell me which paragraph on the page it relates to and what change they would like to make. I hope that we can agree the report at this meeting, but, if needed, the clerks will capture members’ comments—I love that word “capture”; it makes me feel like a net—and forward a revised draft to members by close of play today.

As I have said, I will go through the report page by page, not paragraph by paragraph, but if anyone wants me to stop, they should look at me nicely and I will do so.

Do members have any comments on page 2? No? What about page 3?

**John Finnie:** In the last line of page 3, should there not be “(FBU)” after the word “Union”?

**The Convener:** So you want to put that in to explain the later reference to “FBU”.

**John Finnie:** Yes.

**Elaine Murray:** Strictly speaking, it should be “FBU Scotland” rather than “FBU”.

**The Convener:** Okay—FBU Scotland. Thank you very much. Do members have any comments on page 4?

**Christian Allard:** The end of paragraph 12 mentions

“the inability of the single police and fire services to recover VAT.”

Can we make it clear that that refers to recovering VAT from the United Kingdom Government?

**The Convener:** Well, it is a reserved matter, so I do not think that we need to do that. I am neither here nor there about it. Do you want to add “from the UK Government”?

**Roderick Campbell:** Is that right?

**The Convener:** What do you mean?

**Roderick Campbell:** Well, it is Her Majesty’s Revenue and Customs—[*Interruption.*]

**The Convener:** Bear with me a minute, please. Our correspondence on the recovery of VAT was with the UK Government.

**Roderick Campbell:** Yes, but it is just UK Government legislation.

**The Convener:** HMRC is part of the UK Government.

**Alison McInnes (North East Scotland) (LD):** It is not.

**The Convener:** Do we want to refer to “the inability of the single police and fire services to recover VAT from the UK Government”?

**Alison McInnes:** No.

**Roderick Campbell:** I do not like it.

**The Convener:** Okay, then. We will just say “the inability of the single police and fire services to recover VAT”—period. I am not going to have a firefight about it. Now you see why it is not worth while taking these items in public—we have all these discussions about a comma and so on.

**Elaine Murray:** We are not in public, are we?

**The Convener:** We are indeed.

Do members have any comments on page 5?

**Christian Allard:** I am still on page 4, convener.

**The Convener:** You are still on page 4. What do you want to say?

**Christian Allard:** I find it strange that paragraph 13, which relates to women offenders, does not mention Polmont at all.

**Alison McInnes:** We did not know about Polmont. The committee was not told about it.

**The Convener:** No, we were not.

**Christian Allard:** We were told during—

**Alison McInnes:** It was two days later.

**The Convener:** Could you please speak through the chair instead of having little conversations with each other?

**Alison McInnes:** Sorry, convener.

**The Convener:** We were not told. An announcement was made after the cabinet secretary came before the committee. That paragraph, therefore, is accurate. As a legacy report, it must be about what the committee has dealt with, not extraneous matters.

You are looking at me in a quizzical fashion, Christian.

**Christian Allard:** I just find it strange, because the committee heard about it and therefore it should be in the report.

**The Convener:** Well, we did not actually hear about it.

**Christian Allard:** This committee heard about it.

**The Convener:** No, Christian. The announcement was made after the cabinet secretary came before the committee; in fact, it was made a day or two later, if I recall. It was not made to the committee.

**Christian Allard:** So the cabinet secretary did not talk about Polmont to the committee afterwards.

**The Convener:** No.

**Christian Allard:** Not in this session.

**The Convener:** No.

**Christian Allard:** Right. I should have come to the meeting more prepared, then, because I find it strange that he did not say it.

**The Convener:** But you accept what we are saying.

**Christian Allard:** I accept what—

**The Convener:** Thank you very much. That's that page gone. Do members have any comments on page 5?

**Elaine Murray:** I have a comment about paragraph 16, convener.

**The Convener:** Let me have a look at that. What do you want to do?

**Elaine Murray:** I just think that putting the word “independent” in “‘independent’ counsel” in inverted commas almost makes it look as if we do not think that the counsel is independent.

**The Convener:** That is fine. I think that you are right, and I am happy to take out the inverted commas.

**Christian Allard:** On paragraph 17, we do not say that we gave—

**The Convener:** Which line are you on, Christian?

**Christian Allard:** The third line of paragraph 17 refers to

“Europe's response to the migration crisis”.

Are we not going to say that we passed that on to another committee?

**The Convener:** I am trying to remember whether we did that. [*Interruption.*] We did not formally ask the European and External Relations Committee; I think that we—[*Interruption.*] Maybe Roddy can help me out here.

**Roderick Campbell:** I cannot remember, to be honest.

**The Convener:** Perhaps we could insert a sentence saying, “The European and External Relations Committee also looked at migration.” Could we slip that in?

**Members** *indicated agreement.*

**The Convener:** We can put that in somewhere. That is that dealt with. If there is nothing else on page 5, do members have any comments on page 6? I have just turned the page over, and I can see that Mr Finnie is already at the stump.

**John Finnie:** In the very last sentence of paragraph 20, might it be helpful to clarify that the debate mentioned took place in the chamber?

**The Convener:** Yes. If we are talking about a debate, it will have been held in the chamber, but perhaps we have to dot the i's and cross the t's here.

Anything else? If not, that is our consideration of the annual report concluded. Thank you very much.

We will now go into private session, but before we do that—*[Interruption.]* I ask broadcasting to put the little mike switch on again.

I just want to thank everyone. I am not saying this to curry favour—there is no point now—but this is the fourth committee that I have convened and I think that you have been terrific. We have worked really hard; you have had an awful lot of work to do, and you have still been a delight to convene. I do not want members to respond with what they think about my convening—I will find that out when we are not in public session.

I also want to thank our clerks and the Scottish Parliament information centre. We have had a really heavy five years. I cannot remember who has stayed the committee's five-year course—three of us, at least, so they will know what we have had to deal with. We are about to consider our legacy paper, but I think that there is an issue of the Justice Committee being overwhelmed with legislation and being deprived of the opportunity to foray out and do some inquiries. However, we will come to that later.

That is now on the record. Before you say anything unkind about me, I move the meeting into private session.

10:12

*Meeting continued in private until 11:32.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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