



The Scottish Parliament
Pàrlamaid na h-Alba

Published 31 May 2017
SP Paper 167
13th Report (Session 5)

Justice Committee Comataidh a' Cheartais

Justice Committee Annual Report 2016-2017



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/justice-committee.aspx>



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Introduction

1. This report outlines the work of the Justice Committee for the reporting year ending 11 May 2017. Following the Scottish election, the Parliament agreed to set up a Justice Committee with this remit: to consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice. The Committee held its first meeting on 14 June when it selected Margaret Mitchell as its Convener and Rona Mackay as its Deputy Convener.
2. During the reporting year, the Committee held 30 meetings, 22 of which were partly in private and three wholly in private. Where business was in private, it was to discuss draft reports, to choose witnesses for evidence sessions, or to discuss the Committee's work programme.
3. In October 2016, the Parliament agreed to the re-establishment of the Justice Sub-Committee on Policing, comprising seven Members of the parent Committee. The Sub-Committee is convened by Mary Fee, with Margaret Mitchell the Deputy Convener.

Overview of the 2016-17 Parliamentary year

Inquiry into the Crown Office and Procurator Fiscal Service

4. The Committee held a business planning event at Inverness in August 2016. This involved a visit to Inverness Prison and meetings with local stakeholders in the criminal justice system as well as the new Crown Agent (the chief executive of the Crown Office and Procurator Fiscal Service, or COPFS). The Committee also had a discussion with the Cabinet Secretary for Justice on his priorities for the 2016-21 Parliamentary session. The event concluded with the Committee's agreement of a work programme for the year, the centrepiece of which was an inquiry into the COPFS, focussing on its core role as public prosecutor. Given that the last Parliamentary inquiry into the COPFS concluded in 2003, the Committee agreed that further scrutiny of this crucial service would be timely.
5. The Committee took evidence at meetings from October 2016 through to January 2017, as well as making visits to Hamilton and to Edinburgh Sheriff Court. In its April 2017 report,ⁱ the Committee described the COPFS as a "just about managing" service. There was praise for the professionalism and dedication of the COPFS's hard-working staff, but the service was found to be under pressure as almost never before, with levels of delay and adjournment in the workings of the system (many of them caused by the non-attendance of witnesses) that the Committee considered unacceptable. The Committee also noted evidence of strain in the service's handling of some categories of case, particularly "everyday" summary cases in the sheriff or JP courts. The Committee concluded that victims and witnesses were often badly served by a system that left them feeling marginalised and even at times re-traumatised. Amongst a number of recommendations, the report called for a review of victims' rights in the criminal justice system.
6. The report will be debated in the Parliamentary Chamber and the Committee aims to revisit its recommendations later in the session to measure what progress the COPFS, Scottish Courts and Tribunal Service and Scottish Government are making.

Budget process

7. Every Parliamentary year subject Committees report to the Finance and Constitution Committee on budgetary considerations relevant to their remit, as part of the Parliament's overall scrutiny of the draft Scottish Government budget. Time for scrutiny was especially limited in this reporting year, so the Committee opted to focus on 2017-18 budget proposals for the COPFS, which it saw as complementary

ⁱ Justice Committee, 9th report 2017, *Role and Purpose of the Crown Office and Procurator Fiscal Service*. Available at: http://www.parliament.scot/S5_JusticeCommittee/Reports/JS052017R09Rev.pdf

to its ongoing inquiry. Evidence was taken from the COPFS itself and Audit Scotland. The Committee's finding that the COPFS was under financial pressure anticipated its main findings in the inquiry report. The Committee also called on the COPFS to heed the Auditor General's warnings about its lack of a long-term financial strategy.ⁱⁱ

Bills

8. The Committee has undertaken Stage 1 consideration of three Scottish Government Bills over the course of the Parliamentary year.
9. The aim of the **Limitation (Childhood Abuse) (Scotland) Bill** is to remove the time bar for raising civil actions for damages where the pursuer was a victim of childhood abuse. Current rules limiting the period within which an action may be raised are considered to effectively deny childhood survivors of a civil remedy.
10. The Committee took evidence from a number of stakeholders, including representatives of the legal and social work professions and the insurance industry. The Committee was particularly grateful to hear directly from survivors of childhood abuse, who spoke strongly in favour of the measures the Bill aims to provide. In its Stage 1 report, the Committee endorsed these views, commenting that the current law had created an insurmountable barrier to access to justice for survivors of childhood abuse and that survivors had been let down by the civil justice system. However, the Committee expressed concern about the potential adverse impact of the Bill on public and third sector organisations providing crucial services to children today, and asked the Scottish Government to clarify what steps it would take to take to mitigate any unintended consequences of the Bill.ⁱⁱⁱ
11. The **Railway (Policing) (Scotland) Bill** is intended as the first step in the integration of the Scottish division of the British Transport Police into Police Scotland, following on from the devolution of railway policing to the Scottish Ministers and Scottish Parliament under the Scotland Act 2016. The Bill transfers the responsibilities of the British Transport Police in Scotland to Police Scotland and enables railway operators to enter into railway policing agreements with the Scottish Police Authority. Other reforms (legislative and non-legislative) will be necessary to enable complete integration and are being taken forward separately from the Bill by the UK and Scottish Governments.
12. At Stage 1, some stakeholders said that they would welcome integration as an opportunity to create a more effective and accountable policing service. Others asked why radical reform was considered necessary, given that the BTP in Scotland is a well-regarded service, and raised concerns about the risks involved. The majority of evidence questioned why the Scottish Government had opted to proceed with full integration rather than considering other options. The Committee split on

ii Justice Committee 1st report 2017, *Scottish Government's Draft Budget 2017-18*.

Available at: http://www.parliament.scot/S5_JusticeCommittee/Reports/JS052017R01.pdf

iii Justice Committee, 7th report 2017, *Stage 1 Report on the Limitation (Childhood Abuse) (Scotland) Bill*. Available at: <https://digitalpublications.parliament.scot/Committees/Report/J/2017/4/20/Stage-1-Report-on-the-Limitation--Childhood-Abuse---Scotland--Bill-1#Executive-Summary-1>

the general principles of the Bill, with a majority in favour. The Committee agreed a number of recommendations on practical issues should integration proceed; for instance on the policing of cross-border services, where it is crucial that Police Scotland and the continuing BTP have agreed protocols and working practices in place prior to BTP responsibilities being transferred.^{iv}

13. The Committee began scrutiny of the **Domestic Abuse (Scotland) Bill** towards the end of this reporting year. The Bill aims to improve how the justice system responds to domestic abuse, including psychological and emotional abuse constituting a course of conduct rather than an isolated event, or set of such events. The Committee will complete its Stage 1 scrutiny of the Bill in the autumn of 2017.

Other legislative measures

14. The legislative consent memorandum (LCM) process enables the Scottish Parliament to signal whether it agrees to the UK Parliament legislating in matters devolved to the Scottish Parliament or altering the executive powers of the Scottish Ministers. The Committee has considered LCMs in relation to three UK Bills this year:
- the **Investigatory Powers Bill** set out a new regulatory framework for the state's surveillance powers and gives the Scottish Ministers revised powers in some areas. The Committee received written evidence from Police Scotland and the Cabinet Secretary for Justice. In its report to the Scottish Parliament, the Committee expressed no view on the merits of the UK Bill, but stated that, were the UK Bill to be agreed, it would be appropriate for it to legislate in respect of the relevant provisions set out in the LCM;^v
 - the **Policing and Crime Bill** was a wide-ranging Bill making provision amongst other things on cross-border policing issues. It also extended the Scottish Ministers' powers to levy fees for firearm offences. Responses to the Committee's call for evidence generally welcomed these provisions, and the Committee accordingly recommended to the Scottish Parliament that it consent to the UK Parliament legislating in these areas;^{vi}
 - the main purpose of the **Criminal Finances Bill** was to strengthen law-enforcement bodies' abilities to recover unlawfully obtained assets. Some of these new powers touched on matters devolved to the Scottish Parliament and some strengthened the Scottish Minister's enforcement powers. The Committee twice considered LCMs in relation to the Bill, as amendments during the Bill's passage further modified the Scottish Ministers' powers. On the basis of the evidence led, the Committee was content to recommend to Parliament that the UK Parliament legislate in the relevant areas.^{vii}

iv Justice Committee, 11th report 2017, Stage 1 Report on the Railway Policing (Scotland) Bill. Available at: <https://digitalpublications.parliament.scot/Committees/Report/J/2017/4/28/Stage-1-Report-on-the-Railway-Policing--Scotland--Bill>

v 2nd Report, 2016: *Investigatory Powers Bill LCM*. Available at: <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/101492.aspx>

15. Like predecessor justice committees, the Committee has been required to consider a large quantity of subordinate legislation. The Committee has considered 23 affirmative instruments, 24 negative instruments and two laid-only instruments on a wide variety of civil and criminal matters. Some of these provoked substantial discussion and debate; examples being an instrument excepting a number of professional regulatory bodies from the ambit of the new Apologies (Scotland) Act 2016, and an instrument concerning the conferral of certain privileges and immunities on staff of the European Southern Observatory in Scotland.^{viii}

Public petitions

16. Five public petitions^{ix} considered by the 2011-16 Justice Committee were carried forward into this session:
- Petition PE1370 calls for an independent inquiry into the 2001 conviction of Abdelbaset Ali Mohamed al-Megrahi for the Lockerbie bombing. The Committee has agreed to keep this petition open, pending the completion of a police examination of allegations of malpractice surrounding the original Lockerbie investigation:
 - Petitions PE1501 and 1567 are in similar terms; essentially calling for a change in the way the COPFS investigate deaths in Scotland where there appear to the family of the deceased to be suspicious circumstances. These petitions remain open whilst the Committee seeks further information from the COPFS;
 - Petition PE1510 calls for a Parliamentary inquiry into the closure of police and fire and rescue service centres north of Dundee. Petition PE1511 urges the Scottish Government to review the decision made by the Scottish Fire and Rescue Service to close the Inverness Control Room. Police Scotland and the SFRS have been continuing their phased programmes to close service centres in the north of Scotland over the last year. In recognition of the ongoing local concern over the programmes, the Committee has kept these petitions open in order that it may continue to monitor the situation.

vi 6th Report, 2016: *Legislative Consent Memorandum on the Policing and Crime Bill*. Available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/102332.aspx>

vii 2nd Report, 2017: *Report on the Legislative Consent Memorandum on the Criminal Finances Bill* and 10th Report 2017: *Supplementary Legislative Consent Memorandum on the Criminal Finances Bill*. Both available via: <http://www.parliament.scot/parliamentarybusiness/Bills/102324.aspx>

viii The International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2017

ix Information on these petitions available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/102590.aspx>

Other work

17. At the Committee's second meeting, on 28 June 2016, it invited HM Chief Inspector of Constabulary in Scotland, Derek Penman, to speak to his recent **review of Police Scotland's Counter-Corruption Unit**. Immediately before dissolution, the prior Justice Committee had taken evidence on the CCU following reports that it had at times acted outside the law in undertaking surveillance. This led to an exchange of correspondence on this issue with the Chief Constable. The Justice Sub-Committee on Policing intends to take further evidence on this issue in the near future, in order to monitor implementation of HM Chief Inspector's recommendations.
18. The Committee held a round-table evidence session on 24 January 2017 on **demand-led policing as a service of first and last resort**. This was in response to a growing body of evidence that the police are being increasingly called to respond to non-criminal incidents, involving, for instance, vulnerable adults or people with dementia. Following the session, the Committee made further inquiries of local authorities and health boards as to the provision of out of hour services for vulnerable people who have come into contact with the police. The Committee expects its scrutiny to feed into ongoing work by the Justice Sub-Committee on Policing considering Police Scotland's future priorities and staffing profile.
19. In September, the Committee received an informal briefing on the report of the National Prison Healthcare Network, ***Brain Injury and Offending***, following up on the interest shown in this issue by its predecessor Committee in the 2011-16 Parliamentary session. The Committee continues to monitor progress in implementing the report's main recommendations, particularly those focussed on better identifying people with brain injuries at their first point of contact with the criminal justice system.^x

^x Relevant correspondence available at: <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/100239.aspx>

Outreach

20. As noted above, the Committee made fact-finding visits to Inverness and Hamilton, meeting stakeholders in criminal justice, as well as to Edinburgh Sheriff Court as a guest of the Sheriff Principal. These visits were mainly in connection with the COPFS inquiry. Whilst in Hamilton, the Committee also visited the Police Investigations and Review Commissioner, receiving a presentation on PIRC's work from the Commissioner and other staff members.
21. A Committee visit was also made to Police Scotland's East Control Centre at Bilston, to gain a better understanding of the call-handling work undertaken there.
22. During the COPFS inquiry the Committee met privately with recent victims of crime and with former employees of the COPFS who wished to offer testimony under condition of anonymity. In its Stage 1 scrutiny of the Limitations (Childhood Abuse) (Scotland) Bill, the Committee heard private testimony from survivors of childhood abuse. The Committee considered these private meetings important and necessary, in view of the very sensitive nature of the matters under consideration. Anonymised notes of these meetings were published with the agreement of the individuals' concerned.

Justice Sub-Committee on Policing

23. The Justice Sub-Committee on Policing, which reviews the operation of the Police and Fire Reform (Scotland) Act 2012 as it relates to policing, held 13 meetings during the reporting period, ten of which were partly in private (to discuss work programme issues, including possible witnesses or drafts of letters).
24. The Sub-Committee took formal evidence on Police Scotland and the Scottish Police Authority's financial planning for 2017-18 and on the Scottish Government's policing priorities and budgeting for 2017-18.
25. The Sub-Committee also took formal evidence on a range of topics such as the Stop and Search Code of Practice, call handling, Audit Scotland's 2015-16 audit of the Scottish Police Authority and its report on the i6 programme (Police Scotland's cancelled ICT project), and on the role of local police commanders.

