

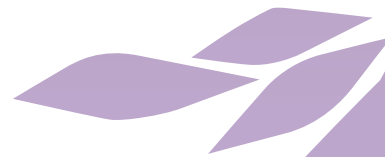


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Justice Committee Comataidh a' Cheartais

Justice Committee Annual Report 2017-18



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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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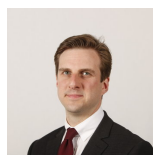
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Scottish Conservative
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Scottish National Party



Liam McArthur
Scottish Liberal
Democrats

Introduction

1. This report outlines the work of the Justice Committee ("the Committee") and the Justice Sub-Committee on Policing (the "Sub-Committee") during the Parliamentary year from 12 May 2017 to 11 May 2018.

Overview of the Justice Committee year



34

Committee meetings



Reports published



Bills scrutinised



SSIs considered

Membership changes

2. Previous Members of the Justice Committee during the reporting year—
 - Mary Fee (8 June 2016 - 9 January 2018)
 - Fulton MacGregor (8 June 2016 - 19 April 2018)

- Oliver Mundell (8 June 2016 - 29 June 2017)
- Douglas Ross (8 June 2016 - 11 June 2017)
- Stewart Stevenson (8 June 2016 - 26 October 2017)

Meetings

3. The Committee held 34 meetings over this period. Two meetings were held entirely in private and 24 meetings partly in private. Most items taken in private were to consider draft reports or the Committee's work programme. All meetings were held in Edinburgh.

Legislation

Domestic Abuse (Scotland) Bill

4. This Scottish Government Bill was introduced by the Cabinet Secretary for Justice, Michael Matheson MSP, on 17 March 2017. The Bill creates a new offence of engaging in an abusive course of conduct, which can include psychological and emotional abuse, against a partner or ex-partner.
5. Following a call for evidence in the previous reporting year, the Committee took evidence on the Bill at six meetings in May and June 2017. On 16 May, Committee Members heard private testimony from victims of domestic abuse supported by Scottish Women's Aid, Victim Support Scotland, and Shakti Women's Aid.
6. The Committee published its [Stage 1 report](#) to the Parliament on 21 September 2017. Members unanimously agreed with the general principles of the Bill, and were persuaded that there was a gap in the law in relation to psychological abuse which needed to be addressed.
7. The Bill's proposed changes to criminal procedure, evidence and sentencing in relation to domestic abuse were also generally welcomed. For example, the Committee supported the provisions in the Bill which would require the court to consider making a non-harassment order (NHO)ⁱ in domestic abuse cases without the need for an application by the prosecution. However, the Committee was sympathetic to calls for a change to the law on NHOs to allow criminal courts to impose them for the protection of children. During its consideration of the Bill at Stage 2, the Committee agreed a number of amendments so that an NHO in a domestic abuse case, in addition to protecting the victim, could also cover children involved in the case.
8. At Stage 2, the Committee also took further evidence on emergency barring orders (EBOs). EBOs are short-term orders designed to protect victims who may otherwise feel compelled to flee their homes. Following this, the Scottish Government [wrote](#) to the Committee outlining plans to consult on the possibility of introducing some form of EBO in Scotland.

Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill

9. This Scottish Government Bill was introduced by the Cabinet Secretary for Justice, Michael Matheson MSP, on 1 June 2017. The principal policy objective of the Bill is to increase access to justice by creating a more accessible, affordable and equitable civil justice system. It makes a number of changes to the funding and

ⁱ Non-harassment orders (NHOs) are intended to provide a means of ensuring that ongoing harassment by one individual of another can be prevented. This may mean ordering a person to refrain from having contact with the victim or ordering them to stay away from particular places.

costs associated with civil court actions, including regulating success fee agreements (often known as "no win, no fee" agreements) and introducing qualified one-way costs shifting for personal injury actions (QOCS) so that an unsuccessful pursuer would not be liable to pay the defender's costs. The Bill also provides for court rules to be introduced to allow one set of court proceedings to be brought on behalf of two or more people with similar claims - referred to as "group proceedings" in the Bill.

10. The Committee issued a call for written evidence in June 2017 and took evidence on the Bill at six meetings between September and November 2017. The Committee published its [Stage 1 Report](#) to the Parliament on 21 December 2017. While unanimously agreeing to the general principles of the Bill, the Committee highlighted a number of areas where the Bill could be improved. For example, the Committee recommended that there should be further safeguards to protect pursuers where their solicitor is acting under a no win, no fee agreement, as well as additional measures to ensure the Bill did not lead to a rise in unmeritorious or fraudulent claims.
11. The Committee also heard evidence that the practices of some claims management companies, particularly the use of cold calling, had a negative impact on consumers. During the Committee's scrutiny of the Bill, amendments were made to the Financial Guidance and Claims Bill in the UK Parliament, to extend to Scotland the regulation of claims management companies by the Financial Conduct Authority. While the Committee welcomed this development, it recommended that the provisions in the Civil Litigation Bill should not be brought into force until such regulation is in place.
12. A number of amendments were brought forward and agreed to at Stage 2. These included amendments to:
 - clarify that claims management companies have to comply with the Bill's provisions on the regulation of success fee agreements;
 - require post-legislative scrutiny within five years of the Bill coming into force;
 - give the courts discretion to allow group proceedings on an opt-outⁱⁱ basis.

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

13. This was a Member's Bill, which was introduced by James Kelly MSP on 21 June 2017. The Bill sought to repeal the Offensive Behaviour at Football and Threatening

ii As introduced, the Bill only provided for group proceedings to be brought on an opt-in basis, where the pursuer must expressly consent to be part of the action. This is opposed to an opt-out system, where the court agrees a definition of those affected by the proceedings. Anyone covered by the definition is deemed to consent to court action on their behalf unless they expressly opt out. During its Stage 1 scrutiny of the Bill, the Committee heard that opt-out proceedings could have benefits for consumers particularly in low value claims.

Communications (Scotland) Act 2012 (“the 2012 Act”) in its entirety, as well as providing transitional provisions for those currently charged with offences under the 2012 Act.

14. The Committee issued a call for written evidence in June 2017 and took evidence at six meetings between October and December 2017.
15. The Committee also undertook a number of visits to football matches as part of its information-gathering in relation to the Bill. Members attended three fixtures in September and October 2017: Rangers v. Celtic on Saturday 23 September 2017; Hibs v. Hearts on Tuesday 24 October 2017; and Hearts v. Rangers on Saturday 28 October 2017. As well as observing the pre- and post-match policing arrangements and speaking with club and league officials, the visits provided an opportunity to understand the crowd dynamics and the challenges faced when policing high-profile matches.
16. The Committee also agreed to gather the views of young people on issues related to the repeal of the 2012 Act through the use of a school questionnaire. An on-line questionnaire was sent to all 364 secondary schools in Scotland and issued to the 19 secondary schools who visited the Scottish Parliament in September 2017. The pupils were given a short activity which provided them with an overview and context of the 2012 Act before being asked to complete the on-line questionnaire. The questionnaire contained 11 questions and received 1441 responses.
17. The Committee published its [Stage 1 report](#) to the Parliament on 18 January 2018. The Committee split on the general principles of the Bill, with the majority in favour. However, in its report, the Committee unanimously condemned sectarianism, hate crime and offensive behaviour. It also recommended that the Scottish Government consider introducing a definition of sectarianism in Scots Law. The Scottish Government [announced](#) in March 2018 an independent working group to look at the scope for establishing a legal definition of sectarianism in Scots Law.

Management of Offenders (Scotland) Bill

18. This Scottish Government Bill was introduced by the Cabinet Secretary for Justice, Michael Matheson MSP, on 22 February 2018. The Bill seeks to make changes to:
 - the electronic monitoring of offenders in the community – extending the potential for monitoring, both in terms of what other measures it can be combined with and the use of new technologies;
 - the disclosure of convictions – reducing the length of time most people with convictions have to disclose them (e.g. when applying for work) and extending the range of sentences covered by rules limiting the need to disclose; and
 - the Parole Board for Scotland – various reforms relating to the composition, appointment, functions and governance of the Parole Board.
19. The Committee issued a call for evidence in March 2018 and began taking oral evidence in April 2018. The Committee will continue its scrutiny of the Bill at Stage

1 in the next reporting year. It intends to publish its Stage 1 report to the Parliament by the end of June 2018.

Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012

20. In March 2018, the Committee agreed to undertake post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012. This Act created a single police service and a single fire and rescue service, replacing the eight police forces and the eight fire brigades that had existed previously. The Committee agreed to examine whether:
- the policy intentions of the Police and Fire Reform (Scotland) Act 2012 have been realised and are being delivered in relation to the police service and the fire and rescue service; and
 - any further policy or legislative changes are required to improve the effectiveness of the Police and Fire Reform (Scotland) Act 2012.
21. The Committee issued a call for written evidence on 1 April 2018 and will take oral evidence at future meetings in autumn 2018.

Subordinate legislation

22. During the parliamentary year the Committee considered 49 Scottish Statutory Instruments, 21 of which were affirmative instruments and 28 were negative instruments.

Other scrutiny work

Remand

23. On 16 January 2018, the Committee held a round-table evidence session to explore issues around the use of [remand](#) in Scotland. This primarily focused on the circumstances in which an accused person can be detained in prison prior to trial, although a person can also be detained in prison once convicted prior to sentencing or pending appeal.ⁱⁱⁱ The round-table evidence session raised a number of issues about the use of remand including:
- concerns that remand was being over-used as a way to ensure attendance at court;
 - the negative impact of a period on remand for the prisoner and their family;
 - the availability of alternatives to remand, such as supervised bail, and the role of the third sector in providing such alternatives;
 - the limited opportunities for prisoners held on remand to undertake purposeful activity or to access support services.
24. The Committee agreed to take further evidence to explore these issues in more depth. It issued a targeted call for written evidence to relevant stakeholders and took oral evidence at five meetings between February and April 2018. The Committee also sought information from all local authorities in Scotland on the availability of alternatives to remand, as well as the availability of support to mitigate the possible negative effects of remand on both prisoners and their families.
25. On 17 April 2018, the Committee visited Circle - an Edinburgh-based charity providing support to children and families. The Committee heard about the work Circle undertakes with families affected by imprisonment and its services for female offenders, including those on remand.
26. The Committee intends to publish a report on remand by the end of June 2018.

Brexit

27. During the reporting year, the Committee held three-round table evidence sessions on the [implications of the UK's withdrawal from the European Union for the Scottish justice system](#). These round-table evidence sessions covered:
- family law (30 January 2018)
 - civil, commercial and consumer law (30 January 2018); and
-

ⁱⁱⁱ This term 'remand' can also be used to refer to when an alleged offender is held in police custody before a first appearance in court. This aspect of remand was not the focus of the Committee's inquiry.

- policing and criminal justice (20 February 2018).
28. A number of important issues were raised during these round-table evidence sessions including in relation to the recognition and enforcement of civil court judgements, the future role of the Court of Justice of the European Union, and options for retaining involvement in agencies such as Europol. The Committee also heard of the need to ensure that the specific issues relating to Scotland's separate justice system are reflected in UK Government negotiations with the EU.
29. At its meeting on 20 February 2018, the Committee agreed to invite the Secretary of State for Scotland to give evidence at a future Committee meeting to enable him to respond to the issues raised during the round-table evidence sessions. The Secretary of State is due to give evidence to the Committee in June 2018, following which the Committee will hear from the Cabinet Secretary for Justice and the Lord Advocate.

Alternative Dispute Resolution

30. On 6 February 2018, the Committee held a round-table evidence session on [Alternative Dispute Resolution](#) (ADR). This explored the current availability of different forms of ADR methods in Scotland, as well as steps that could be taken to promote greater use of ADR. On 6 March 2018, the Committee held a further evidence session to explore specific issues relating to the use of ADR in family law cases, including domestic abuse cases. The Committee intends to publish a short report on ADR in autumn 2018.

Defamation

31. On 23 January 2018, the Committee received a briefing from the Scottish Law Commission on its Report and draft Bill on [defamation](#). The Committee heard that reform is necessary to modernise the law of defamation for the age of the internet and social media. The Committee subsequently [wrote](#) to the Scottish Government to seek an update on its intended response to the Scottish Law Commission's Report. The Government [replied](#) on 19 March 2018 stating that it was considering the Report but that it was "too early" to have reached a concluded response.
32. The Committee will hold a round-table evidence session on defamation in June 2018 with witnesses from the media, legal profession and academia to explore views on the Scottish Law Commission's recommendations.

Proposed integration of the British Transport Police in Scotland into Police Scotland

33. In its Stage 1 report on the Railway Policing (Scotland) Bill the Justice Committee recommended that the Scottish Government provide 6 monthly progress reports to

the Scottish Parliament on the work of the joint programme board, which is tasked to progress integration of the British Transport Police in Scotland into Police Scotland.

34. In the Minister for Transport and the Islands' update letter of 20 February, Mr Yousaf indicated that the current scheduled date of integration of 1 April 2019 would not be achieved. This was due to further time being required to deliver integration most effectively and safely for railway passengers, staff and officers.
35. On 1 May 2018, the Committee held an evidence session on the progress of the [integration of the British Transport Police in Scotland into Police Scotland](#) to consider the reasons for the delay and to consider the details of the re-planning exercise.
36. The Committee heard that the safety issue in relation to the decision to pause integration related to the disparate information technology systems used by Police Scotland and the British Transport Police. It also heard that engagement with stakeholders on a range of issues, such as agreement on pensions and terms and conditions, had not been carried out effectively. The Committee was given a reassurance that this would be prioritised. The Committee asked to be kept updated on the progress of the re-planning exercise and the proposed gateway review process.

Civil actions for rape and other serious sexual offences

37. In December 2017, the Committee agreed to request written evidence from targeted stakeholders on civil actions for rape and other serious sexual offences. The Committee sought views on a number of issues including the reasons why a victim may bring a civil action and any lessons that can be learnt from instances where there has been a successful civil case but no criminal prosecution.
38. The Committee received 8 written responses which are published on the Committee's [webpage](#). The Committee intends to hold an evidence session on this topic in autumn 2018.

Budget scrutiny

39. The Scottish Government published its draft budget for 2018-19 on 14 December 2017. The Committee agreed to focus [its scrutiny](#) on the Crown Office and Procurator Fiscal Service (COPFS) budget. As part of its scrutiny, the Committee was keen to hear views on whether any progress had been made since its [inquiry into the role and purpose of the COPFS](#), which it completed in April 2017.
40. The Committee took evidence from the Lord Advocate and Crown Agent at its meeting on 19 December 2017 and published its [report](#) on the draft budget on 11 January 2018. The Committee welcomed the real term increase in the 2018-19 budget allocation for the COPFS, and in particular the indication from the Lord

Advocate and the Crown Agent that this would provide for stability in staff numbers in 2018-19. However, the Committee raised concerns about the impact of job losses in previous years on workload and staff well-being. It also undertook to continue to monitor the impact of measures to improve the efficiency and effectiveness of the COPFS.

41. In addition, the Justice Sub-Committee on Policing undertook scrutiny of the police service's financial planning for 2018-19 (ahead of the publication of the draft budget) and wrote to the Justice Committee with its findings (contained in Annex A of the Committee's report).

Public petitions

42. During the reporting year the Committee continued consideration of five petitions referred to it in previous years:
- [PE1370](#): Justice for Megrahi, calling for an independent inquiry into the 2001 conviction of Abdelbaset Ali Mohamed al-Megrahi for the bombing of Pan Am flight 103 in December 1988. The Committee agreed to keep the petition open pending the completion of Operation Sandwood (a police examination of allegations of malpractice surrounding the original Lockerbie investigation).
 - [PE1501](#) and [PE1567](#): both in similar terms, calling for changes to the investigation of suspicious deaths. On 5 September 2017, the Committee agreed to close the petitions on the basis that the Scottish Government and the Crown Office and Procurator Fiscal Service had responded to the issues raised by the petitioners.
 - [PE1510](#): calling for a Parliamentary inquiry into the closure of police and fire service centres north of Dundee. On 19 December 2017, the Committee agreed to close Petition 1510 on the basis that the Committee has considered the matters raised by the petition, and no further submissions have been received from the petitioner since January 2017.
 - [PE1511](#): urging the Scottish Government to review the decision made by the Scottish Fire and Rescue Service to close the Inverness Control Room. On 27 March 2018, the Committee agreed to close the petition on the basis that would keep the issues it raised under review as part of its future scrutiny of police and fire and rescue services.
43. During the reporting year, one new petition was referred to the Committee:
- [PE1633](#): calling for a change in the law to remove the requirement that the Lord Advocate must first give permission before a private criminal prosecution can be commenced in Scotland. This petition was referred to the Committee on 9 November 2017, and the Committee first considered it at its meeting on 19 December 2017. Prior to the Committee's next consideration of the petition at its meeting on 27 March 2018, eight [written submissions](#) were received. The Committee agreed to keep the petition open and write to the Scottish Government seeking its response to the written submissions and to seek advice on the Scottish Parliament's legal competence in relation to the petition.

Equalities, engagement and innovation

44. The Committee mainstreams equalities issues throughout its work. The Committee has also sought to hear from people less likely to engage with the Parliament. As noted earlier in this report, the Committee heard directly from victims of domestic abuse as part of its scrutiny of the Domestic Abuse (Scotland) Bill. The Committee also undertook visits to football matches and gathered views from secondary school pupils as part of its scrutiny of the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill. During its inquiry into remand, it undertook a visit to Circle - a charity working with families including those affected by imprisonment.

Justice Sub-Committee on Policing

45. 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 17 meetings during the reporting period. One meeting was held wholly in private and ten partly in private (to discuss work programme issues, including possible witnesses or drafts of letters).
46. The Sub-Committee took formal evidence on the police service budget planning for the financial year 2018-19. It took formal evidence on governance of the Scottish Police Authority over three meetings and from the Inspectorate of Constabulary in Scotland on its Review of the Scottish Police Authority.
47. The Sub-Committee also took formal evidence on a number of Information and Communications Technology (ICT) issues including Audit Scotland's 2015/16 Audit Reports on the Scottish Police Authority and on the i6 programme (Police Scotland's cancelled ICT project), deployment of police body worn video cameras, and Police Scotland's proposed use of digital device triage systems (cyber kiosks). Other topics scrutinised include Police Scotland's internal complaints procedures, its custody provision, and its engagement with black and minority ethnic communities in Scotland, Durham Constabulary's reports on Police Scotland's former Counter Corruption Unit, and Her Majesty's Inspectorate of Constabulary in Scotland's strategic review of undercover policing in Scotland.

