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Justice Committee Comataidh a' Cheartais

Justice Committee Annual Report 2018-19



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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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



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Committee Membership



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Scottish National Party



Daniel Johnson
Scottish Labour



Liam Kerr
Scottish Conservative
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Fulton MacGregor
Scottish National Party



Liam McArthur
Scottish Liberal
Democrats



Shona Robison
Scottish National Party

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 2018 to 11 May 2019.

Overview of the Justice Committee's year



Committee meetings



Reports published



Bills scrutinised



SSIs considered

Membership changes

2. Previous Members of the Justice Committee during the reporting year—
 - George Adam (from 26 October 2017 to 6 September 2018)
 - Maurice Corry (from 29 June 2017 to 6 September 2018)
 - Mairi Gougeon (from 8 June 2016 to 26 July 2018)

- Ben Macpherson (from 8 June 2016 to 28 June 2018)

Meetings

3. The Committee held 32 meetings over this period. No meetings were held entirely in private and 25 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

Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill

4. This Scottish Government Bill was introduced in the Scottish Parliament on 12 June 2018. The main policy objective of the [Bill](#) is to improve how children and vulnerable witnesses participate in the criminal justice system by enabling the much greater use of pre-recording their evidence in advance of a criminal trial.
5. The Committee issued a call for written evidence on 4 July 2018 and took oral evidence on the Bill at five meetings between November 2018 and January 2019.
6. As well as receiving formal evidence on the Bill, Members of the Committee visited:
 - Dundee Sheriff Court on 3 September 2018, where Members discussed with Sheriff Alastair Brown current procedures for vulnerable witnesses and the proposals in the Bill
 - Edinburgh High Court on 19 and 13 December 2018, where Members viewed current facilities for pre-recording evidence. During the 19 November visit, members met with the Lord Justice Clerk informally to discuss current procedures in the High Court for pre-recording evidence and the changes proposed in the Bill
 - Statens Barnehus in Oslo, Norway, on 10 December 2018, where Members met with Norwegian police and Statens Barnehus staff to discuss the Barnahus – or “child’s house” – model for taking evidence from children

Visit by MSPs to the Barnehus, Oslo



7. The Committee unanimously agreed to the general principles of the Bill and published its [Stage 1 report](#) on 24 January 2019. This report recommended that the measures in the Bill should be extended to children and vulnerable witnesses giving evidence in domestic abuse cases. An amendment to this effect was brought forward by the Scottish Government at Stage 2 and passed by the Committee.
8. The Committee's Stage 1 report also concluded that there is a compelling case for the implementation of the Barnahus principles in Scotland, as the most appropriate model for taking the evidence of child witnesses. The Committee met informally with the Cabinet Secretary for Justice in March 2019 to discuss learning from the Committee's visit to Norway and the Scottish Government's plans in relation to developing Scotland-specific standards for Barnahus.

Management of Offenders (Scotland) Bill

9. This Scottish Government Bill was introduced in the Scottish Parliament on 22 February 2018. The main policy objectives of the [Bill](#) are to make provision for electronic monitoring of offenders and as to certain other restrictive measures imposable on offenders; to make provision about periods and processes as regards disclosure of convictions by offenders; and to make provision relating to the organisation and functions of the Parole Board for Scotland.
10. The Committee issued a call for written evidence and took oral evidence on the Bill at eight meetings between April 2018 and January 2019. The Committee's

evidence-taking was extended to take into account the two independent reviews by HMIPS and HMICS into home detention curfews following the murder of Mr Craig McClelland of Paisley.

11. The Committee also visited the offices of The Wise Group in Glasgow to meet with staff, prison mentors and also people with prior convictions to better understand the issues raised by this Bill. We also met representatives of G4S in order for them to demonstrate how electronics monitors work in practice.

Visit by members to G4S to review electronic monitoring technology



12. The Committee unanimously agreed to the general principles of the Bill and published its [Stage 1 report](#) on 31 January 2019. This report recommended that

resources for support services to help prisoners upon release were vital. The report also stressed the importance of a robust risk assessment process underpinning decisions on the use of electronic monitoring as an alternative to custody.

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

13. The Committee undertook post-legislative scrutiny of the [Police and Fire Reform \(Scotland\) Act 2012](#). The 2012 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.
14. The Committee examined 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 whether any further policy or legislative changes are required to improve the effectiveness of the Police and Fire Reform (Scotland) Act 2012.
15. The Committee issued a call for written evidence on 1 April 2018 and took oral evidence on the Act at six meetings between September and November 2018. As well as receiving formal evidence on the Bill, Members of the Committee visited Oslo to meet with representatives from the Royal Norwegian Ministry of Justice and Public Security and the National Police Directorate.
16. The Committee unanimously agreed two reports, one on the Police Service of Scotland and one on the Scottish Fire and Rescue Service. The Committee published its reports to the Parliament on 25 March 2019.
17. The [reports](#) indicated that reform had led to greater consistency of service across Scotland. Reform of the police service had particularly benefited victims of crimes such as domestic violence or sexual abuse.
18. The report on the Police Service of Scotland made a number of recommendations, including that the police complaints processes should be overhauled to create a more equitable, clear and fair system; that the Scottish Police Authority (SPA) should take a more proactive role in its oversight and scrutiny of new Police Scotland policies; and that options regarding the appointment process for the SPA Chair should be explored.
19. The report on the Scottish Fire and Rescue Service found that the 'retained duty service' was no longer fit for purpose and this needed to be addressed. This should include consideration of the pay, training and responsibilities of 'duty' firefighters.

Subordinate legislation

20. During the parliamentary year the Committee considered 27 Scottish Statutory Instruments, 6 of which were affirmative instruments and 21 were negative instruments.

21. The Committee also considered 15 Brexit-related SSIs and SIs, summarising the changes made in a [report](#) published in May 2019.

Other scrutiny work

Brexit

22. The Committee has continued to monitor developments in relation to Brexit closely insofar as this may impact on the civil and criminal justice system and policing in Scotland. The Committee took evidence from the then Cabinet Secretary, the Lord Advocate and the Secretary of State for Scotland on Brexit implications for Scotland in September 2018.
23. As stated above, the Committee has published a [report](#) on its consideration of Brexit-related subordinate legislation. In the coming weeks, the Committee expects to publish a wider report into the possible implications of Brexit on the justice and policing system in Scotland.

Alternative Dispute Resolution

24. Following two evidence sessions in the last reporting year, the Committee published its [report](#) on Alternative Dispute Resolution (ADR) on 1 October 2018. The Committee found that, whilst progress has been made to encourage greater use of ADR, availability and uptake across Scotland remains patchy. The Committee's report set out a number of changes which could address existing barriers to using ADR.

Defamation

25. Following an evidence session with the Scottish Law Commission on its Report and draft Bill on defamation, in the last reporting year, the Committee held a round-table evidence session on defamation on 12 June 2018 with witnesses from the media, legal profession and academia to explore views on the Scottish Law Commission's recommendations.
26. Between January and April 2019, the Scottish Government consulted on the reform of defamation law.

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

27. The Committee considered the work being undertaken to progress the proposed integration of the British Transport Police in Scotland into Police Scotland.
28. The Cabinet Secretary for Justice [wrote](#) to the Committee on 27 August 2018 to provide an update on the current issues in relation to the integration of railway policing in Scotland. The Cabinet Secretary indicated that Police Scotland's view

was that the re-planning activity was not providing a sufficiently strong evidence base on which to agree a new date for full integration of railway policing in Scotland. Mr Yousaf confirmed that he was to arrange a meeting with relevant stakeholders to consider options for the devolution of British Transport Police.

29. The Committee considered the proposed integration of the British Transport Police in Scotland into Police Scotland at two meetings. On 18 September the Committee took evidence from the Cabinet Secretary for Justice. Mr Yousaf informed the Committee that all options for the enhanced accountability of railway policing in Scotland were to be re-considered and that work was on-going to explore further the options for enhanced accountability to the Scottish Parliament.
30. On 13 December 2018 the Cabinet Secretary wrote to the Committee to indicate that the Scottish Police Authority and the British Transport Police Authority were to consider an interim model. The Committee considered the correspondence at its meeting of 18 December and agreed to write to the Scottish Government asking for clarification of what it was proposing and to seek the views of stakeholders on the proposal.

Remand

31. In June 2018, the Committee published its [report](#) on remand in Scotland, following a short inquiry in the preceding months. The Scottish Government [responded](#) in August 2018. During its inquiry, the Committee reviewed levels of remand in Scotland, the impact on incarceration on the prisoner and his/her family and what could be done to reduce the use of remand in Scotland. The Committee's report was [debated](#) in the Chamber on 3 October 2018.

Prosecution of Elder Abuse

32. On 18 December 2018 the Justice Committee agreed to undertake a short inquiry to considering options for the criminal prosecution of elder abuse in Scotland.
33. The Committee decided the time was right to examine this issue in light of the coming into force of various provisions in the Domestic Abuse (Scotland) Bill in April 2019. The Committee also considered the recommendations on elder abuse made by Lord Bracadale in his [report](#) on the Independent Review of Hate Crimes Legislation in Scotland in May 2018.
34. On Tuesday 26 February, the Committee took oral evidence from representatives of Action on Elder Abuse Scotland, Age Scotland, the Care Inspectorate, the Crown Office and Procurator Fiscal Service, the Law Society of Scotland and Police Scotland.
35. In addition, the Committee also received [written submissions](#) from those organisations who gave oral evidence, as well as from Dr Hannah Bows of Durham University School of Law, Protect, Social Work Scotland and Paul Greenwood, former Deputy District Attorney of San Diego County, California, USA.

36. Following this, the Committee [wrote](#) to the Cabinet Secretary for Justice, Humza Yousaf MSP on 22 March, setting out its views on the evidence received. The Committee sought a response from the Cabinet Secretary to questions arising in a number of areas. These include: the development of an agreed definition of elder abuse, the collection of reliable data on the prevalence of elder abuse, and Government plans for the for evaluating the operation of Domestic Abuse (Scotland) Act 2018.
37. The Committee has sought a response from the Scottish Government by 17 May 2019.

Professional legal education

38. On 26 June 2018, the Justice Committee held a [round-table evidence](#) session on professional legal education in Scotland. This evidence session focused on whether existing routes to qualifying as a solicitor in Scotland could be improved, in particular to remove barriers to entry to the profession for those from more disadvantaged backgrounds.
39. The Committee published a [report](#) on professional legal education on 23 September 2018. This set out recommendations to widen access to legal education and qualification, including progressing plans to introduce an apprenticeship route to qualification.

Pre-Budget & Budget scrutiny

40. As part of a recent reform to budget scrutiny in the Scottish Parliament, all committees now undertake pre-budget scrutiny of the draft budget which is subsequently published later in the calendar year. The purpose of pre-budget scrutiny is for the committees to produce, report and provide comment to the Scottish Government on the delivery, impact, and funding of existing policy priorities and any proposed changes, and how these should be funded.
41. As part of our review of the Scottish Government's proposed draft budget for 2019/2020, the Committee issued a call for evidence in September 2018 and produced its report – also informed by scrutiny of the policing budget by the Sub-Committee on Policing – in November 2018. The Scottish Government [responded](#) in December 2018.
42. The Committee's scrutiny focused on the following key aspects of the justice portfolio:
 - General priorities in the justice portfolio;
 - Funding provided to third and voluntary sector organisations for their work in civil and criminal justice matters;
 - The implications of the additional in-year spending provided to the Crown Office and Procurator Fiscal Service; and

- Planned expenditure on the police and, in particular, on the police service's ICT projects, capital projects and estates and maintenance.
43. Amongst the [recommendations](#) made, the Committee called upon the Cabinet Secretary to consider a move to multi-annual for third and voluntary sector bodies within his portfolio and welcomed his assurances that he would look into this issue.
44. The Committee also noted the view of the SPA that Police Scotland's current budget of £23 million is a "disproportionally small capital grant" for a body of this scale and importance. We noted the implications this is having on fleet maintenance where we had been told Police Scotland has a current overspend of around £6 million per year. We agreed that this is not sustainable over the medium-term.

Public petitions

45. During the reporting year the Committee continued consideration of three [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 the review of the convictions by the Scottish Criminal Cases Review Commission. The petition is sisted until that point.
 - [PE1458](#): The Petition was introduced into the Parliament in December 2012, and referred to the Committee by the Public Petitions Committee on 31 May 2018. The petition calls on the Scottish Parliament to urge the Scottish Government to create a Register of Pecuniary Interests of Judges Bill or amend present legislation to require all members of the Judiciary in Scotland to submit their interests and hospitality received to a publicly available Register of Interests. The Committee considered the Petition on 25 September 2018 and 5 February 2019, and noted the extensive consideration the Public Petitions Committee has carried out on the petition. In light of this, the Committee wrote to the Cabinet Secretary for Justice, seeking his views on the introduction of a Register of Pecuniary Interests of Judges. The Cabinet Secretary [responded](#) on 3 April 2019, stating this in his view such a register of interests is not required. The Committee will give further consideration to the petition in due course.
 - [PE1633](#): The Petition was introduced into the Parliament in January 2017, as was referred to the Committee on 9 November 2017. The Petition calls on the Scottish Parliament to urge the Scottish Government to change the law to give the people of Scotland the same legal rights as the rest of the UK by removing the requirement that the Lord Advocate must first give permission before a private criminal prosecution can be commenced in Scotland. The Committee continued its consideration of the Petition on 25 September 2018 and 5 February 2019. The Committee [agreed](#) to seek further information in relation to wider issues connected with the petition and agreed to close the petition on the basis that the original issues raised in it have been now addressed by the Lord Advocate.

Equalities, engagement and innovation

46. Equality issues were central to much of the evidence the Committee took the year.
47. For example, during its consideration of the Management of Offenders Bill, the Committee consider the issues raised by a proposed use of GPS monitoring in cases of an offender with domestic abuse convictions. This covered issues such as exclusion zones and concerns raised by groups about how swiftly women would be informed about breaches of such zones by a person wearing a tag and how Police Scotland would respond.
48. During our consideration of the Vulnerable Witnesses Bill, the issues and rights of children when giving evidence were covered in depth, including the central issue of how they could give evidence as a witness without having to appear in person in court.
49. Finally, during our remand inquiry, we took evidence on the levels of remand for women with caring responsibilities rather than alternatives to custody.
50. The Committee has sought to engage in a variety of ways during its work this year, not just formal evidence taking. The Committee has used visits and informal meetings with bodies such as The Wise Group, visits to police stations and fire and rescue stations as ways of speaking to people about the reality of issues on the ground.

Justice Sub-Committee on Policing

51. 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 11 meetings during the reporting period. One meeting was held wholly in private to consider a draft report, and eight meetings were held partly in private (to discuss work programme issues, including possible witnesses or drafts of letters).

Membership changes

52. Previous Members of the Justice Sub-Committee on Policing during the reporting year—
- Ben Macpherson (from 8 June 2016 to 28 June 2018)

Work throughout the year

53. The Sub-Committee undertook an inquiry into Police Scotland's proposal to introduce the use of digital device triage systems (cyber kiosks) for use by frontline police officers throughout Scotland, to examine mobile phones and devices. The Sub-Committee [reported](#) its findings.
54. The Sub-Committee took formal evidence on Police Scotland's planned spending and priorities and its draft budget for 2019-20. The Sub-Committee also took formal evidence on Police Scotland's digital, data and ICT strategy and its planned spending on information and communication technology for 2019-20.
55. The Sub-Committee also took formal evidence on Police Scotland's firearms licensing process.

