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Justice Committee Comataidh a' Cheartais

Justice Committee Legacy Report, Session 5



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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.



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Introduction

1. This report summarises the work undertaken by the Justice Committee in Session 5. It also suggests possible issues that our successor committee may wish to explore in Session 6.

Overview of Session 5

2. Full details of our work in Session 5 can be found in our annual reports. As with previous sessions, our workload has been dominated by legislation. This has limited our ability to undertake our own inquiries or other scrutiny work.
3. Our predecessor committee suggested that future governments should revisit the volume of justice Bills. It is disappointing that this did not happen in Session 5. There have been several important issues which we have not had time to fully consider in this session. As we suggest below, some of these may be areas of work for our successor committee. However, for that to be possible, **the next government must review the amount of justice-related legislation and allow greater scope for our successor committee to initiate its own scrutiny work.**
4. Where we did have time in Session 5 for our own work, we tended to focus on criminal justice issues: our three inquiries related to the Crown Office and Procurator Fiscal Service, remand, and secure care places for children and young people. We had less time to explore in any depth issues facing the civil justice system. In particular, as we discuss further below, we were not able to consider concerns expressed by different stakeholders throughout the session about legal aid and the costs of accessing justice.

Bills considered by the Committee

5. The Committee considered 14 Bills during Session 5, as set out in Table 1 below. 11 of these were Scottish Government Bills, with the other three being Members' Bills

Table 1: Bills considered in this parliamentary session

Bill	Main purpose	Date passed by the Parliament
Limitation (Childhood Abuse) (Scotland) Bill	To remove the limitation period, also known as 'time bar', for civil claims relating to childhood abuse	22 June 2017
Railway Policing (Scotland) Bill	To provide the legal framework for devolved railway policing in Scotland	27 June 2017
Domestic Abuse (Scotland) Bill	To create a new offence of engaging in an abusive course of conduct against a current partner or an ex-partner	1 February 2018
Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill (Member's Bill introduced by James Kelly MSP)	To repeal the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012	15 March 2018
Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill	To increase access to justice in civil cases by making the costs of court action more predictable and increasing the available funding options	1 May 2018
Vulnerable Witnesses (Criminal Evidence) (Scotland) Bill	To improve how children and vulnerable witnesses participate in the criminal justice system by enabling the greater use of pre-recorded evidence	9 May 2019
Management of Offenders (Scotland) Bill	To expand the use of electronic monitoring for offenders, reform rules on the disclosure of previous convictions, and make changes to how the Parole Board for Scotland operates	25 June 2019
Scottish Biometrics Commissioner Bill	To set up the post of a Scottish Biometrics Commissioner	10 March 2020
Children (Scotland) Bill	To reform the law which applies to resolve disputes between parents about their children (e.g. who they should live with)	25 August 2020
Defamation and Malicious Publication (Scotland) Bill	To modernise and simplify the law of defamation (and the related action of malicious publication)	2 March 2020
Hate Crime and Public Order (Scotland) Bill	To modernise, consolidate and extend hate crime legislation in Scotland	11 March 2020
Culpable Homicide (Scotland) Bill (Member's Bill introduced by Claire Baker MSP)	To create two new statutory offences where death is caused recklessly or by gross negligence	The Bill did not pass Stage 1 in the Parliament (21 January 2020)
Post-mortem Examinations (Defence Time Limit) (Scotland) Bill (Member's Bill introduced by Gil Paterson MSP)	To introduce a time limit on the period in which the defence can instruct its own post-mortem examination where someone has been charged with an offence in connection with causing or contribution to a death	The Bill did not pass Stage 1 in the Parliament (26 January 2020)
Domestic Abuse (Protection) (Scotland) Bill	To improve the protections available for people who are at risk of domestic abuse, particularly where they are living with the perpetrator of the abuse	17 March 2020

Other legislative work

Post-legislative scrutiny

6. In 2018, we 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. During our post-legislative scrutiny we considered the whole of the 2012 Act, scrutinising whether the policy objectives had been delivered and, if not, the reasons for this. We published two reports on the 25 March 2019 – one on the Police Service of Scotland and the other on the Scottish Fire and Rescue Service. While overall, these reports highlighted improvements in our police and fire services since the 2012 Act, we also identified the need for further changes in areas such as the police complaints processes and the role of the Scottish Police Authority.

Subordinate legislation

7. Throughout the session we considered a large volume of subordinate legislation, covering issues from legal aid to the introduction of new limits for drug driving. Most of the subordinate legislation considered by the Committee was largely uncontroversial and did not require more in-depth scrutiny.
8. One exception to this was the [Presumption Against Short Periods of Imprisonment \(Scotland\) Order 2019](#). This Order extended an existing presumption against short sentences of three months or less to those of 12 months or less. Before the Order was laid, the Committee sought written evidence from targeted stakeholders. We received over 40 submissions, most of which supported the change although a number raised issues around resources. We then took oral evidence at two meetings in June 2019, from representatives from criminal justice and social work organisations and then from the Cabinet Secretary for Justice. Our [report](#) on the Order emphasised the importance of monitoring the impact of the change and ensuring that adequate resources are provided to ensure that community-based alternatives work as effectively as possible.

Inquiries

The role and purpose of the Crown Office and Procurator Fiscal Service

9. At the start of Session 5, we undertook an inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (COPFS). This inquiry focused on the core role of the COPFS, its effectiveness and efficiency, how well it works with its stakeholders and the support it provides to witnesses and victims of crime. We also examined its responsiveness to new challenges and opportunities, such as the evolving nature of crime and advances in technology.
10. During almost five months of evidence-taking, we heard praise for the COPFS, its professionalism and its dedicated, hard-working staff. Our [report](#), published in April 2017, concluded that, on the whole, the public should have confidence that the COPFS is a rigorous and fair prosecutor. However, we also heard that the service was under considerable pressure. Witnesses' overall perception was of a "just about managing" prosecution service, lacking the time and resources to always get things right.
11. In our report, we made recommendations on a wide range of areas from resources and funding to improved support for victims and witnesses. As is discussed further below, during our annual budget scrutiny work throughout the session, we continued to monitor changes and improvements within the COPFS.
12. Our inquiry also examined the role and function of the Inspectorate of Prosecution in Scotland, which provides an independent check on the COPFS. Two issues emerged: the Inspectorate's low profile and the lack of awareness of its output, and a perception that its independence may be compromised by routinely employing seconded or former COPFS staff. In December 2019, Laura Paton was appointed as the new HM Chief Inspector of Prosecution in Scotland. Due to the COVID-19 pandemic and other pressures on our workload, the Committee has not been able to hear from the new Inspector since she was appointed.
13. As is discussed further below, our inquiry did not focus in any depth on the dual role of the Lord Advocate, who is both a full member of the Scottish Government and independent head of the prosecution service. The appropriateness of that dual role has recently been called into question and may be an issue our successor committee wishes to consider in Session 6, alongside other related issues about how the COPFS is currently operating.

The use of remand in Scotland

14. Following a roundtable evidence session on the use of remand in Scotland in December 2017, the Committee carried out a focused inquiry on the issue, seeking written evidence from targeted stakeholders and taking oral evidence at five meetings between February and April 2018. Our [report](#), published in June 2018, called for more data on the reasons for the use of remand, as well as more stable

and consistent funding for supervised and supported bail programmes.

15. In January 2020, the Scottish Government commissioned research into the reasons behind decisions on bail and remand. And in November 2020, subordinate legislation came into force which allows electronic monitoring to be used while someone is on bail before trial.

Secure care places for children and young people in Scotland

16. In April 2019, the Committee agreed to undertake a short inquiry to look at key issues relating to the provision of mental health services and secure care places for children and young people in Scotland. Our inquiry looked at the current and future capacity and structure of the secure care system in Scotland. It also touched upon the care of young people imprisoned in HMP YOI Polmont, following the deaths in custody there of Katie Allan (21) in June 2018 and William Brown (16), also known as William Lindsay, in October 2018.

Other scrutiny work

17. During the course of the session, we undertook work on a number of other issues where either a full inquiry was not possible due to the time available or would not have been merited. Table 2 provides an overview of this work.

Table 2: Other scrutiny work

Topic	Committee work
Demand-led policing	Roundtable evidence session (January 2017).
Civil actions for rape and other sexual offences	Written evidence sought from relevant organisations (December 2017).
Alternative dispute resolution	Two roundtable evidence sessions (February and March 2018). Committee report published October 2018.
Defamation	Briefing from the Scottish Law Commission (January 2018), followed by a roundtable evidence session (June 2018). The Scottish Government subsequently introduced the Defamation and Malicious Publication (Scotland) Bill in December 2019.
Professional legal education	Roundtable evidence session (June 2018). Committee report published September 2018.
Prosecution of elder abuse	Written evidence sought from relevant stakeholders and oral evidence session (February 2019). As part of our consideration of the Hate Crime and Public Order (Scotland) Bill later in the session, we published research commissioned from Dr Hannah Bows which reviewed proposed reforms to address victimisation of older adults.
Proposed integration of the British Transport Police into Police Scotland	Three evidence sessions (May, September and December 2018) as well as seeking written evidence and regular updates from the Scottish Government.

Brexit

18. Throughout the session, the Committee has carried out work relating to the UK's exit from the European Union. Throughout 2018, while the UK's exit was being negotiated, the Committee took evidence on the potential impact of Brexit on the civil and criminal justice systems and policing in Scotland, before publishing a [report](#) in June 2019. We also considered a number of statutory instruments relating to the UK's exit from the EU.
19. It is likely that in Session 6, our successor committee will continue to scrutinise legislation to provide for the UK's position as a non-EU member and to consider the impact of new arrangements on the criminal and civil justice systems and policing in Scotland.

COVID-19

20. The COVID-19 virus has had a substantial impact on the justice and policing remit in Scotland. Courts have been closed, substantial new powers have been provided to Police Scotland, the prison service has had to significantly change the regime in prisons and deal with outbreaks of the virus and many other parts of the sector have been impacted.

21. The Committee has, and continues to have, a focus on scrutiny of the efforts by the Scottish Government and other bodies to deal with the virus and the implications for the functioning of our justice system and for policing and the provision of fire and rescue services in Scotland.
22. Part of the scrutiny by the Committee consisted of a [regular exchange of letters](#) with the Scottish Government and others, raising issues of concern. The Committee also undertook a short inquiry into court closures and the impact on the criminal and civil justice system, including the backlog of cases, publishing a [report](#) on 28 September 2020.
23. Whilst it is not clear if the pandemic will still be a feature in Scotland after a new Justice Committee is formed, the impacts of the virus on the justice system and policing will continue to be felt. A subsequent section of this report sets out our views for our successor.

Annual budget scrutiny

24. As part of the Parliament's overall annual scrutiny of the Scottish Government draft budget, subject committees are responsible for reporting on budgetary considerations relevant to their remit. For the 2017/18 and 2018/19 draft budgets, our scrutiny work focused on the budget for the COPFS.
25. In subsequent years, following reform to budget scrutiny in the Scottish Parliament, the Committee undertook pre-budget scrutiny prior to the draft budget being published later in the year. The purpose of this pre-budget scrutiny is to allow committees to 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.
26. In advance of the 2019/20 draft budget, the Committee focused its pre-budget scrutiny on: 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 additional in-year spending provided to the COPFS; and planned expenditure on the police. 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.
27. In advance of the 2020/21 draft budget, the Committee focused on budgets for prisons and prison-related health, education, employment and through-care programmes as part of this year's scrutiny. We also sought an update on third and voluntary sector funding in the criminal justice sector.
28. Our scrutiny in advance of the 2021/22 draft budget focused on the impact of COVID-19.

Petitions

29. The Committee has considered seven petitions throughout Session 5. Two of these

petitions remain open.

30. The first of these is **Petition 1370**, which calls on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohmed al-Megrahi for the bombing of Pan Am flight 103 in December 1988 (lodged November 2010). In 2018, the Committee sisted its consideration of the petition, when the Scottish Criminal Cases Review Commission (SCCRC) announced a review into the subject matter broadly covered by the petition in order to decide whether it would be appropriate to refer the matter for a fresh appeal.
31. In March 2020, the Scottish Criminal Cases Review Commission completed its review and referred the case to the High Court of Justiciary for determination. In January 2021, the Court of Appeal rejected both grounds of appeal from Megrahi's family. According to media reports, the family are lodging an appeal to the UK Supreme Court.
32. At our meeting of 2 March 2021, we agreed to keep this petition open for Session 6, and leave the issue of the merits of a public inquiry to be considered by our successor, once legal proceedings are complete.
33. The second petition which remains open is **Petition 1458**, which 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 (lodged December 2012).
34. Both the Scottish Government and the Lord President have repeatedly indicated that they do not support a register. In March 2020, the Committee agreed to hold a roundtable on the petition with constitutional and academic experts. However, due to the COVID-19 pandemic and pressures of competing work it has not been possible to hold such a roundtable.
35. At our meeting of 2 March 2021, we agreed to keep this petition open for Session 6, and leave the issue of the merits of a Register to be considered by our successor.

Engagement work

36. Throughout Session 5, we have sought to hear from people less likely to engage with the Parliament and to gather information and evidence in different ways. Examples of this include:
 - private meetings with survivors of domestic abuse;
 - fact-finding visits to prisons, police and fire stations, courts and third sector organisations;
 - online surveys; and
 - informal meetings with children and young people.
37. This work has been invaluable in informing the recommendations we have made on

different issues throughout the session, and we are grateful to all those who gave their time to make such work possible.

38. We recognise that other committees have benefited from more innovative forms of engagement, such as the use of citizens' panels. **Our successor committee may wish to consider how it can use different engagement methods more routinely in its work in Session 6.**

Possible issues for Session 6

39. Below we suggest some issues which our successor committee may wish to consider in Session 6.

Crown Office and Procurator Fiscal Service

40. As discussed above, at the start of Session 5, we undertook a significant inquiry into the role and purpose of the COPFS. While we continued to monitor the work of the COPFS during the remainder of the session, due to time constraints, we were not able to explore more recent issues, particularly those arising from the malicious prosecution of individuals involved in the administration and liquidation of Rangers Football Club and those relating to the dual role of the Lord Advocate.
41. While the specific circumstances of these cases will be considered by a public inquiry, we believe they raise broader questions about how the COPFS currently operates, which our successor committee may wish to consider as the basis for an inquiry early in Session 6. For example, our 2017 inquiry did not look in any depth at the appropriateness of the dual role of the Lord Advocate, who is both a full member of the Scottish Government and independent head of the prosecution service. While our report noted that some questions were posed as to how the Lord Advocate maintained his independence in practice, given that he is also a Minister and is subject to the principle of collective ministerial responsibility, as well as being principal legal adviser to the Scottish Government, our discussion of this issue was not extensive. We also did not look at the appointments process for the Lord Advocate.
42. **Should our successor committee undertake an inquiry in this area, it may also wish to consider broader issues of governance and accountability in the COPFS, as well as revisit the role of the Inspectorate of Prosecutions.**

Legal aid

43. Throughout the session, for example, when considering related statutory instruments, we heard of the ongoing pressures on legal aid and the negative impact that this is having for both legal professionals and people trying to access the justice system.
44. In February 2018, the Scottish Government published the [report](#) of an independent review of legal aid. The report set out a 10-year vision alongside a wide range of recommendations to deliver a simpler, more flexible system which is also sustainable and cost-effective. The Government [responded](#) to this review in November 2018. In June 2019 the Scottish Government launched a consultation on the longer-term reforms suggested by the independent review. The [analysis](#) of that consultation states that the Scottish Government will continue to engage with key stakeholders with a view to introducing legislative reform.
45. Due to other demands on our workload, we have not been able to consider the development of these proposed reforms in any depth – for example, we have not

heard from Martyn Evans, who chaired the independent review. Nor have we taken evidence on issues repeatedly raised by the Law Society and others on concerns about the current levels and availability of legal aid. We have also heard concerns about the lack of legal aid provision in remote and rural areas.

46. At our meeting of 2 March 2021, Members made a number of comments in relation to reform of legal aid, agreeing to write to the Minister for Community Safety for an update, and expressing views that legal aid should be looked at again in session 6.
47. **Our successor committee may, therefore, wish to consider undertaking some of this work to explore views on the necessary reforms to the legal aid system, particularly if legislative reform seems likely later in Session 6.** This may help members prepare for any bill brought in to reform legal aid in session 6.

Impact of COVID-19

48. Since the start of the COVID-19 pandemic, the Committee has monitored the impact on the justice system and police. Our pre-budget scrutiny in advance of the 2021-22 draft budget emphasised that the response to the pandemic has had major financial implications for many organisations in the sector. And in September 2020, we published a report highlighting the significant backlog of cases in the courts, particularly for solemn criminal cases. While we have supported initiatives to allow cases to progress as much as possible, we have also heard some concerns that the measures taken could impede access to justice.
49. It is likely that COVID-19 will continue to have an impact on the justice system and policing for some time to come. **Our successor committee may wish to continue to monitor this impact and the steps taken to address issues such as, for example, court backlogs. One strand of future work will be the extent to which some current practices brought in by the pandemic continue and whether this has an impact on access to justice or the efficacy/equity of the justice process.**

Funding in the justice portfolio

50. Throughout the session there have been recurring issues in the evidence we have taken as part of our annual budget scrutiny. These include:
- the need for multi-year settlements for third sector bodies that offer advice and support to provide them with longer term financial security and avoid the inefficiencies of yearly budget bids. Such settlements are already being developed for health boards;
 - the relatively low levels of capital expenditure provided for our prisons, police, fire and rescue services, all of whom have highlighted significant problems with an ageing estate and assets; and
 - the need to shift expenditure away from funding custodial sentences and new prisons into offender management and preventative spend.

51. We welcome the efforts that have been made in these matters but not enough progress has been made. At some stage, any Scottish Government will need to make the shift in planning and policy and begin to invest accordingly rather than continue with the business as usual, short-term, year-on-year approach that we currently follow. **Our successor committee may, therefore, wish to review what steps can be taken to make this shift, given Scottish and UK budget processes, when it carries out its annual budget scrutiny.**

Prisons

52. Throughout the session we have considered a number of issues relating to prisons and have undertaken fact-finding visits to different Scottish prisons. During our pre-budget scrutiny of the 2020/21 draft budget, we heard about the considerable pressures facing the prison system, not least in relation to the relationship between the budgets for the prison estate and community justice.
53. In part, the pressures facing the prison system are due to the absolute numbers currently housed in prison in Scotland. This includes the persistent high levels of prisoners on remand. There are a variety of other challenges, such as the level of prison staff absences, an ageing prison estate in some parts, current budgetary resources, increased pension age for staff, problems with drug use in prisons and the challenges of looking after such large numbers of prisoners and their health and welfare needs.
54. The COVID-19 pandemic has brought its own significant challenges for the prison system, such as delays to progression programmes, access to families etc. **Our successor committee may wish early in Session 6 to review what, if any, progress has been made in addressing these challenges.**

Hate crime

55. The [Hate Crime and Public Order \(Scotland\) Bill](#) was introduced in to the Parliament by the Cabinet Secretary for Justice, Humza Yousaf MSP, on 23 April 2020. The Parliament designated the Justice Committee as the lead committee for Stage 1 consideration of the Bill. The policy objective of the Bill was to consolidate existing hate crime legislation into one statute and modernise and extend current legislation by adding age as a characteristic in new provisions for aggravation of offences by prejudice; create new offences relating to stirring up hatred that apply to all listed characteristics; update the definition of transgender identity including removing the term “intersexuality” and creating a separate category for variations in sex characteristics; and include a power to enable the characteristic of sex to be added at a later date. The Bill also abolishes the common law offence of blasphemy.
56. This Bill proved to be very controversial and the Committee received an unprecedented volume of submissions at Stage 1; over 2,000 written submissions in our first call for evidence and a further 276 as part of a time-restricted call for views on proposed freedom of expression amendments.

57. The Committee thereafter took oral evidence at five meetings in October and November 2020 from a wide range of stakeholders including legal and police bodies, arts and media, faith and non-faith groups, race organisations, women's rights groups and organisations representing listed hate crime characteristics including race, age, sexual orientation, disability, transgender identity and variations in sex characteristics.
58. The Committee published its [Stage 1 report](#) on 10 December 2020, agreeing this unanimously. The report made a number of recommendations to the Scottish Government. Key recommendations sought clarification on what should constitute abusive behaviour; whether behaviour within the scope of stirring up offences should be required to have a public element even when taking place in a private dwelling; that freedom of expression provisions should be deepened and broadened; clarification on the reasonableness defence and recommended that the existing offence of racially aggravated harassment (Section 50A) should be consolidated into the Bill. The Scottish Government [responded](#) on 14 December 2020.
59. Right from the outset, the original form of the Bill changed, and this process of substantive amendment continued right through the Bill's passage, in no small part due to the work of the Committee.
60. Ahead of the Committee's Stage 1 scrutiny, the Cabinet Secretary wrote to the Convener setting out amendments that the Scottish Government intended to lodge at Stage 2 which would make the stirring up offences "intent only" and remove Section 4 of the Bill relating to public performances. At Stage 2, stirring up hatred offences applying to hate crime characteristics other than race were amended to require an intention to stir up hatred, proposed offences on the possession of inflammatory material were removed and provisions seeking to protect freedom of expression in relation to religion were strengthened. And at Stage 3, on 10 March, further changes were made to the Bill, including restating rights under ECHR Article 10 and emphasising the right to offend, shock or disturb, in relation to a reasonableness defence.
61. Although the Bill was passed at Stage 3 by division, a number of issues remain. First, sex is not one of the characteristics currently covered by the Bill, which does allow the Scottish Government to do so through the use of secondary legislation at a later date. In advance of that, the Scottish Government has set up a Working Group to look into the merits of this and proposals for the use of a statutory hate crime aggravator to tackle misogyny or a new offence of misogynistic harassment. Second, the extent to which people are prosecuted in courts or investigated by the police for allegations made will be important to monitor.
62. **Our successor may wish to engage with the Chair of the Working Group during 2021/22 and also, once commenced, monitor developments in our courts and police service.**

Implementing the Barnahus principles in Scotland

63. During our consideration of the [Vulnerable Witnesses \(Criminal Evidence\) \(Scotland\) Bill](#), we heard a compelling case for the implementation of the Barnahus

principles – or child’s house model – in Scotland, as the most appropriate model for taking the evidence of children. In December 2018, we visited a Barnahus in Oslo, where we were extremely impressed by the facilities and support available.

64. While no proposals on introducing a child’s house model were included in the Bill, the Cabinet Secretary for Justice commissioned the development of Scotland-specific standards for Barnahus. Healthcare Improvement Scotland and the Care Inspectorate were commissioned to develop these standards. Our hope, as set out in our [Stage 1 report](#) on the Bill, was that progress would be made on implementing Barnahus in Scotland by the end of Session 5. However, work on the standards was suspended due to the impact of the COVID-19 pandemic.
65. An update from the Cabinet Secretary in January 2021 stated that work on the standards had been recommenced under a revised timetable. This revised timetable involves two phases – a scoping phase and a standards development phase. Draft standards are due to be published for consultation by the end of 2021, and should be finalised by summer 2022. **Our successor committee may wish to keep this work under review, in order to ensure that progress is made as quickly as possible.**

Children (Scotland) Bill

66. During our consideration of the [Children \(Scotland\) Bill](#), we strongly supported proposals contained within the Bill to regulate child contact centres. However, our [Stage 1 report](#) also highlighted significant concerns about the practical and resource implications of regulation for existing contact centres (which are largely operated by Relationships Scotland).
67. We also supported plans for regulation of child welfare reporters and curators, while calling for a more thorough assessment of the training needs of these officials.
68. The Scottish Government intends the new regulatory regimes to be operational from April 2023. **Our successor committee may wish to seek an update on the progress towards regulation and, in particular, the resources and other help available to contact centres to meet the new requirements.**

Independent review into police complaints handling, investigations and misconduct issues

69. As noted above, following our post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012, we recommended changes to the police complaints processes. At the same time as we were conducting our post-legislative scrutiny of the 2012 Act, the Scottish Government announced an independent review into police complaints handling, investigations and misconduct issues, to be led by Dame Elish Angiolini QC.
70. Dame Elish published her [final report](#) in November 2020. In his most recent appearance before our Sub-Committee on Policing, the Cabinet Secretary said that

he and the Lord Advocate intended “to accept the vast majority of Dame Elish’s recommendations, many as specifically set out” and “explore other routes or mechanisms that might achieve the desired outcome.” He also said comprehensive primary legislation would be introduced, covering the necessary legislative changes in a single instrument where possible. When it is necessary he said, that will be supported by secondary legislation, to avoid a piecemeal approach.

71. **Our successor may wish to keep track on the progress of implementing the recommendations that do not require legislation and ensure there is sufficient time to scrutinise any primary legislation that is introduced in session 6.**

Independent review into the handing of deaths in custody

72. In November 2019, shortly before we published our report on secure care places for children and young people, the Scottish Government asked HM Chief Inspector of Prisons to carry out an independent review into the handling of deaths in prison custody.
73. The Review was instructed to enable the identification of and to make recommendations for areas for improvement to ensure appropriate and transparent arrangements are in place in the immediate aftermath of deaths in custody within Scottish prisons, including deaths of prisoners whilst in NHS care.
74. It was later announced that Professor Nancy Loucks OBE, Chief Executive of Families Outside, and Judith Robertson, Chair of the Scottish Human Rights Commission, would join Wendy Sinclair Gieben as co-Chairs of the review.
75. **The pandemic has delayed the review and work on this is still underway. Our successor committee may wish to monitor progress.** The latest [update](#) on progress was published earlier in March 2021.

Independent review of legal services regulation in Scotland

76. In April 2017, the Scottish Government announced an independent review of legal services regulation in Scotland, to be chaired by Esther Robertson. The [review's report](#), published in October 2018, made 40 recommendations aimed at reforming and modernising the existing legal services regulatory framework.
77. The Scottish Government [responded](#) to this report in June 2019, stating that it would consult on the recommendations made by the review. That consultation has not yet taken place, however, the Scottish Government launched a consultation in December 2020 focusing on potential improvements to the legal complaints system.
78. In March 2020, the Competition and Markets Authority (CMA) published its [research report](#) into certain aspects of the Scottish legal services sector. This research was undertaken to support the Scottish Government’s response to the Robertson review.

79. We had hoped to hear from both Esther Roberton on her recommendations and the CMA on its research findings before the end of the session. However, due to other work that has not been possible. **It may be that our successor committee wishes to do so early in Session 6.**

Review group on specialist courts for serious sex offence cases

80. On 18 March, Lady Dorrian published a report from her [review](#) of the way Scotland's judicial system tries serious sex offences. She is proposing the establishment of new, standalone specialist courts, as well as a raft of other measures. These include the presumed use of pre-recorded evidence; measures to improve the current experience of complainers with a particular focus on improved communication; and, steps to enhance jury involvement.
81. **This important review might be an issue that our successor wants to return to in the early part of session 6.**

Justice Sub-Committee on Policing

82. The Police and Fire Reform (Scotland) Act 2012 requires the Parliament to make arrangements for keeping under review the operation of the Act. As had been done in Session 4, the Parliament agreed at the start of Session 5 to establish a Sub-Committee on Policing with the remit to consider and report on the operation of the Act as it relates to policing. The Sub-Committee has produced a separate legacy report for its work in Session 5.
83. **The decision as to whether there should be a Sub-Committee in Session 6 will be for our successor Justice Committee. At the end of its legacy report, the Sub-Committee set out some questions that our successor committee may wish to bear in mind to inform that decision. These should be considered at an early meeting of the new session.**

Workload of the Justice Committee

84. As discussed at the outset of this report, our workload in Session 5 has been dominated by scrutiny of Scottish Government Bills, particularly so towards the end of this session. As such, there has been very little scope for us to initiate our own scrutiny work. Often this has meant that we have not been able to consider important issues, such as the availability of legal aid or prison reform. And we would not have had time to scrutinise many of the policing issues which have had to be referred to the Sub-Committee on Policing.
85. **The Committee believes that future justice committees must have the time to properly scrutinise legislation and initiate their own work. Both the Parliament and the Scottish Government should keep the justice workload under review throughout Session 6 and take steps to achieve a better balance between legislative scrutiny and inquiry work. We recommend that our successor committee explores this issue with the Parliamentary Bureau when the committees are established at the start of session 6.**

