



The Scottish Parliament
Pàrlamaid na h-Alba

Published 22 March 2021
SP Paper 991
8th Report, 2021 (Session 5)

Justice Committee Comataidh a' Cheartais

Justice Committee Annual Report 2020-21



32

Committee meetings

Bills scrutinised



Report

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, 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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Committee Membership



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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 2020 to 24 March 2021.

Membership changes

2. Previous members of the Justice Committee during the reporting year—
 - Margaret Mitchell (from 14 June 2016 to 20 August 2020)
 - Alasdair Allan (from 25 February 2020 to 1 September 2020)
 - James Kelly (from 10 September 2019 to 25 November 2020)

Meetings

3. The Committee held 32 meetings over this period. One meeting was held entirely in private and 23 meetings partly in private. Most items taken in private were to consider draft reports or the Committee's work programme. Six meetings were held in hybrid form in Edinburgh and 26 meetings were held virtually (due to the Covid-19 public health emergency).

A year in figures - work of the Justice Committee in 2020-21



32

Committee meetings



Bills scrutinised



Reports published



SSIs considered

Witnesses

4. This year, of 159 witness appearances before the Committee, 65% were male and 35% were female.

Legislation

Children (Scotland) Bill

5. The [Children \(Scotland\) Bill](#) ('the Bill') is a Scottish Government Bill. It was introduced in the Scottish Parliament on 2nd September 2019. The Government also published a [Family Justice Modernisation Strategy](#) at the same time as the Bill, explaining other (ongoing and future) policy work in this area.
6. The Justice Committee was designated as lead committee for Stage 1 and Stage 2 scrutiny of the Bill.
7. The overarching policy objectives of the Bill were to:
 - ensure the views of the child are heard in contact and residence cases;
 - further protect victims of domestic abuse and their children;
 - ensure the best interests of the child are at the centre of contact and residence cases and Children's Hearings; and
 - further compliance with the United Nations Convention on the Rights of the Child (UNCRC) in family court cases.
8. The Justice Committee issued a [call for views](#) in respect of the Bill on 20 September 2019, with a closing date of 15 November 2019. The Committee received 75 responses to its call for evidence and 12 supplementary responses during its Stage 1 scrutiny of the Bill.
9. To support the Committee's work on the Bill, the Committee also commissioned external research from [Dr Lesley-Anne Barnes Macfarlane](#) of Edinburgh Napier University. This looked at whether the existing law and the Bill are compatible with the rights of parents and children, as set out in the [European Convention on Human Rights](#) (ECHR) and the [UN Convention on the Rights of the Child](#) (UNCRC). The [research report](#) and [summary](#) were published on 15 November 2019.
10. The Committee took formal evidence on the Bill at eight meetings, and published its [Stage 1 Report](#) on 1 May 2020, recommending to Parliament that the general principles of the Bill be approved. The Scottish Government published its [response](#) to this report on 21 May 2020.
11. The Justice Committee considered the Bill at Stage 2 on 23 June 2020, and the Bill was finally passed at Stage 3 on 25 August 2020.

Defamation and Malicious (Publications) Scotland Bill

12. The [Defamation and Malicious Publication \(Scotland\) Bill](#) was introduced in the Scottish Parliament on 2 December 2019 by Humza Yousaf, Cabinet Secretary for

Justice. It is a Scottish Government bill.

13. The Justice Committee was designated as lead committee for Stage 1 and Stage 2 scrutiny of the Bill.
14. According to the Policy Memorandum, the Bill would reform the law on defamation and verbal injury to:
 - strike a more appropriate balance between freedom of expression and the protection of individual reputation and;
 - clarify the law and improve its accessibility.
15. The Committee took oral evidence over six committee meetings from 17 March 2020 to 22 September 2020. The Committee also heard informally from MSPs with experience of court action for defamation. The Committee published its [Stage 1 Report](#) on 14 October 2020. It supported the general principles of the Bill. The Scottish Government gave its [response](#) on 29 October 2020.
16. The Bill completed Stage 2 on 26 January 2021 and was passed by the Parliament at Stage 3 on 2 March 2021.

Hate Crime and Public Order (Scotland) Bill

17. 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.
18. The Committee’s undertook a [call for evidence](#) between 4 May and 24 July 2020 and received around 2000 submissions, the majority of which were received from individuals. 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. 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.
19. The Committee published its [Stage 1 report](#) on 10 December 2020. 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.

20. Following the Committee's Stage 1 scrutiny, a number of amendments were proposed 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. It was apparent that there continued to be significant differences of view in respect of what protections might be required for other hate crime characteristics. Consequently, the Committee held a round table meeting with the Cabinet Secretary and stakeholders to debate further proposed amendments to the freedom of expression clause to be taken forward at stage 3. Additionally, the Committee published a call for views, eliciting over 200 written submissions of evidence.
21. A number of stage 3 amendments have been lodged. The Bill is scheduled to be debated in Parliament on 10 March 2021.

Domestic Abuse (Protection) (Scotland) Bill

22. [The Domestic Abuse \(Protection\) \(Scotland\) Bill](#) was introduced in to the Parliament by the Cabinet Secretary for Justice, Humza Yousaf MSP, on 2 October 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 improve the protections available for people who are at risk of domestic abuse, particularly where they are living with the perpetrator of the abuse, by providing courts with a new power to make a Domestic Abuse Protection Order (DAPO). A DAPO can impose requirements and prohibitions on a suspected perpetrator of domestic abuse such as removing them from a home they share with a person at risk and prohibiting them from contacting or otherwise abusing the person at risk while the order is in effect.
23. The Bill also provides a power for the police to impose a short-term Domestic Abuse Protection Notice (DAPN) ahead of applying to the court for a DAPO. In addition, the Bill seeks to improve the immediate and longer-term housing outcomes of victims of domestic abuse who live in social housing by creating a new ground on which a social landlord can apply to the court to end the tenancy of a perpetrator of abusive behaviour with a view to transferring the tenancy to the victim. Alternatively, an application can be made to end the perpetrator's interest in the tenancy where the perpetrator and victim are joint tenants to enable the victim to remain in the family home.
24. The Committee's undertook a [call for evidence](#) between 10 November 2020 and 4 December 2020 and took oral evidence at three meetings in December and 2020 January 2021. The Committee heard evidence from the Law Society of Scotland,

Police Scotland, organisations who support victims of domestic abuse including Scottish Women's Aid and Scottish Women's Rights Centre and housing organisations.

25. The Committee agreed to the general principles of the Bill and published its [Stage 1 report](#) on 21 January 2021. One key recommendation made in the report was that the Scottish Government undertake further consultation with Police Scotland to address concerns raised by them of the operational challenges in implementing the legislation. The Committee also emphasised the importance of taking into account victims' including children's views when an application for a DAPO is made. The Scottish Government [responded](#) on 26 January 2021 giving assurance that it would continue to engage with Police Scotland and other key stakeholders to discuss their concerns about how the powers can be used.

Culpable Homicide Bill

26. The Culpable Homicide (Scotland) Bill is a Member's Bill and was introduced in the Parliament by Ms Claire Baker MSP ("Member in Charge") on 1 June 2020. The Parliament designated the Justice Committee as the lead committee for Stage 1 consideration of the Bill.
27. The Bill and the views of the Member in Charge were considered at the Justice Committee's meeting of 6 October 2020. Evidence was taken from Claire Baker MSP and Patrick Maguire (of Thompsons Solicitors) who has supported the Member in Charge during the development of her proposal and Member's bill.
28. Due to the constrained time available for scrutiny for this Bill, the Committee took no further evidence and published a [Stage 1 report](#) on 13 November, making no overall recommendation on the general principles of the Bill.
29. The Bill fell at Stage 1 on 21 January 2021. There were 26 votes for, 89 against, and 0 abstentions.

Post-mortem Examinations (Defence Time Limit) (Scotland) Bill

30. The Post-mortem Examinations (Defence Time Limit) (Scotland) Bill is a Member's Bill and was introduced in the Parliament by Mr Gil Paterson MSP ("Member in Charge") on 21 May 2020. The Parliament designated the Justice Committee as the lead committee for Stage 1 consideration of the Bill.
31. The Bill and the views of the Member in Charge were considered at the Justice Committee's meeting of 29 September 2020. Evidence was taken from Gil Paterson MSP.
32. Due to the constrained time available for scrutiny for this Bill, the Committee took no further evidence and published a [Stage 1 Report](#) on 13 November, making no overall recommendation on the general principles of the Bill.

33. The Bill fell at Stage 1 on 26 January 2021. There were 26 votes for, 90 against, and 1 abstention.

Subordinate legislation

34. During the parliamentary year the Committee considered 34 Scottish Statutory Instruments, 12 of which were affirmative instruments and 22 were negative instruments.

Other scrutiny work

Pre-Budget Scrutiny of the Scottish Government's Draft Budget 2021-22

35. Pre-Budget scrutiny in this year was carried out through a call for written evidence only, with no oral evidence possible in part due to the pandemic and in part due to pressures of other business, namely consideration of Scottish Government legislation. Fifteen [written submissions](#) were received.
36. This year, the Committee focused in the main, on the impact of COVID-19 on the justice and policing remit. The Committee published its [findings](#), including those of the Sub-Committee on Policing on 18 December 2020. The Cabinet Secretary for Justice [responded](#) on 28 January 2021.

COVID-19

37. 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.
38. 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.
39. 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.

Petitions

40. In this reporting year, the Committee has considered the following public petitions:
 - **Petition PE1458** - is a petition by Peter Cherbi calling 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.
 - **Petition PE1370** - is a petition by Dr Jim Swire, Professor Robert Black QC, Mr Robert Forrester, Father Patrick Keegans and Mr Iain McKie on behalf of

Justice for Megrahi on opening 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.

41. At its meeting of 2 March 2021, the Committee considered these two petitions for the final time this session and agreed to keep both petitions open for a new committee to consider in session 6.

Equalities, engagement and innovation

42. Equality issues were central to much of the evidence the Committee took this year. The Justice Committee has sought to achieve a gender balance in its witnesses where this has been possible. The Committee has also been looking at other protected characteristics in its consideration of the Hate Crime and Public Order (Scotland) Bill.
43. During our consideration of the Domestic Abuse (Protection) (Scotland) Bill, the issue of how children are listened to in cases of alleged domestic abuse was a key issue covered in our report and at Stage 2.
44. The Committee has sought to engage with stakeholders in a variety of ways during its work this year, not just formal evidence taking. Due to the pandemic, visits and external meetings have not been possible and much of the Committee's informal work has been moved online.

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 11 meetings during the reporting period. No meetings were held wholly in private. All 11 meetings were held partly in private (to consider the evidence heard at each meeting and to discuss the forward work programme).

Membership changes

46. Previous Members of the Justice Sub-Committee on Policing during the reporting year:
- James Kelly (from 25 September 2019 to 25 November 2020)

Witnesses

47. This year, of 19 witness appearances before the Sub-Committee, 79% were male and 21% were female.

Work throughout the year

48. The Sub-Committee continued its scrutiny of policing during the coronavirus pandemic. It heard from the Chief Constable about Police Scotland's approach, and from John Scott QC and Professor Susan McVie on the work of the Independent Advisory Group on Police Use of Temporary Powers related to the Coronavirus Crisis. Details can be found on the Sub-Committee's [Covid-19](#) page.
49. The Sub-Committee also considered Police Scotland's plans to prepare for the United Kingdom's (UK) withdrawal from the European Union (EU) on policing in Scotland, as well as the practical implications, after the Brexit deal had been agreed.
50. The Sub-Committee undertook a short inquiry into Police Scotland's use of remote piloted aircraft systems, more commonly referred to as drones, and its plans to expand the use of body worn video cameras to all police officers. The Sub-Committee is set to publish its Report in March 2021.
51. The Sub-Committee took evidence from Dame Elish Angiolini on her final report on *Police complaints handling, investigations and misconduct issues*, and from the Scottish Government on its response to the report recommendations.
52. The Sub-Committee took formal evidence on Police Scotland's planned spending and priorities and its draft budget for 2021-22. The Sub-Committee wrote to the Justice Committee with its views.
53. The Sub-Committee also took formal evidence on police governance and

accountability and heard from Martyn Evans the new Chair of the Scottish Police Authority alongside the new Chief Executive of the Authority, Lynn Brown.

