



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

#### 12th Meeting, 2013 (Session 4)

Tuesday 23 April 2013

The Committee will meet at 10.00 am in Committee Room 6.

1. **Decision on taking business in private:** The Committee will decide whether to take item 5 in private.
2. **Victims and Witnesses (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Peter Lockhart, Criminal Law Committee, Law Society of Scotland;

Murdo Macleod QC, Faculty of Advocates;

Professor Alan Miller, Chair, Scottish Human Rights Commission;

and then from—

Colin McConnell, Chief Executive, Scottish Prison Service;

John Watt, Chairman, and Heather Baillie, Vice Chair, Parole Board for Scotland.

3. **Subordinate legislation:** The Committee will consider the following negative instruments—

Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2013 (SSI 2013/112);

Police Service of Scotland (Amendment) Regulations 2013 (SSI 2013/122).

4. **Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012:** The Committee will consider issues relating to the operation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

5. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

**Agenda item 2**

SPICe briefing (private paper)

J/S4/13/12/1 (P)

[Copy of the Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

**Agenda item 3**

SSI cover note

J/S4/13/12/2

[Act of Sederunt \(Fees of Shorthand Writers in the Sheriff Court\) \(Amendment\) 2013 \(SSI 2013/112\)](#)

[Police Service of Scotland \(Amendment\) Regulations 2013 \(SSI 2013/122\)](#)

**Agenda item 4**

Paper by the clerk

J/S4/13/12/3

SPICe briefing (private paper)

J/S4/13/12/4 (P)

**Agenda item 5**

Paper by the clerk - work programme (private paper)

J/S4/13/12/5 (P)

Paper by the clerk - approach to Shaping Scotlands Court Service (private paper)

J/S4/13/12/6 (P)

Work schedule (private paper)

J/S4/13/12/7 (P)

**Justice Committee**

**12<sup>th</sup> Meeting, 2013 (Session 4), Tuesday, 23 April 2013**

**Subordinate legislation**

**Note by the clerk**

**Purpose**

1. This paper invites the Committee to consider the following negative instruments:  
  
Act of Sederunt (Fees for Shorthand Writers in the Sheriff Court) (Amendment) 2013 (SSI 2013/112); and  
  
Police Service of Scotland (Amendment) Regulations 2013 (SSI 2013/122).
2. Further details of the procedure for negative instruments are set out in the Annexe attached to this paper.

**Act of Sederunt (Fees for Shorthand Writers in the Sheriff Court) (Amendment)  
2013 (SSI 2013/112)**

**Purpose of instrument**

3. This instrument increases the fees payable to shorthand writers in the Sheriff Court by 2.45%. The last increase was effected by the Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2012 (SSI 2012/101). This Act of Sederunt does not apply to fees chargeable for work done before it comes into force.

4. The instrument comes into force on 21 May 2013.

5. An electronic copy of the instrument is available at:  
<http://www.legislation.gov.uk/ssi/2013/112/contents/made>

**Subordinate Legislation Committee consideration**

6. The Subordinate Legislation Committee considered this instrument at its meeting on 16 April and agreed that there was no need to draw the Parliament's attention to the instrument on any grounds within its remit.

**Justice Committee consideration**

7. Members are invited to consider the instrument and make any comment or recommendation on it. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 13 May 2013.

## **Police Service of Scotland (Amendment) Regulations 2013 (SSI 2013/122)**

### **Purpose of instrument**

1. This instrument amends the Police Service of Scotland Regulations 2013 and the Police Service of Scotland (Special Constables) Regulations 2013, to insert a requirement about the immigration status of candidates for appointment to the Police Service of Scotland.
2. It specifies that, if a candidate is not a national of an EEA country<sup>1</sup>, they must have leave to enter or remain in the United Kingdom for an indefinite period. It has the same effect as previous arrangements under the Police (Scotland) Regulations 2004 and the Police (Special Constables) (Scotland) Regulations 2008 and similar requirements apply to other police forces in the UK. The policy note on the instrument states that “it is considered appropriate that the office of constable is restricted to people who are able to make a long-term commitment to that role, in terms of being permitted to live and work in the UK”.
3. These provisions could not be included in the 2013 Police Service Regulations or the Special Constables Regulations until the point at which power to do so was provided by the coming into force of amendments made to section 82 of the Police Reform Act 2002 by the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013. That Order came into force on 1 April 2013.
8. The instrument comes into force on 13 May 2013.
9. Further details on the purpose of the instrument can be found in the policy note on page 4 of this paper.
10. An electronic copy of the instrument is available at:  
<http://www.legislation.gov.uk/ssi/2013/122/contents/made>

### **Consultation**

11. The policy note confirms that a draft of this instrument was shared for consultation with the main police bodies, as required by section 54 of the Police and Fire Reform (Scotland) Act 2012.

### **Subordinate Legislation Committee consideration**

12. The Subordinate Legislation Committee considered this instrument on 16 April and agreed not to draw the Parliament’s attention to the instrument on any grounds within its remit.

### **Justice Committee consideration**

13. Members are invited to consider the instrument and make any comment or recommendation on it. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 20 May 2013.

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<sup>1</sup> EEA countries are: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom.

**Policy Note: Police Service of Scotland (Amendment) Regulations 2013  
(SSI 2013/122)**

1. The above instrument was made in exercise of the powers conferred by section 48 of the Police and Fire Reform (Scotland) Act 2012 and section 82(4) of the Police Reform Act 2002. The instrument is subject to negative procedure.

*Policy Objectives*

2. These Regulations amend the Police Service of Scotland Regulations 2013 and the Police Service of Scotland (Special Constables) Regulations 2013, to insert requirements about the immigration status of candidates for appointment to the Police Service. The requirement is that, if they are not nationals of an EEA State, they must have leave to enter or remain in the United Kingdom for an indefinite period.

3. This requirement is the same in terms of effect as that which applied to candidates for appointment to a police force under the Police (Scotland) Regulations 2004 and the Police (Special Constables) (Scotland) Regulations 2008, and very similar requirements apply in relation to other police forces in the UK. It is considered appropriate that the office of constable is restricted to people who are able to make a long-term commitment to that role, in terms of being permitted to live and work in the UK.

4. The power to make provision in Regulations about the nationality and immigration status of candidates for appointment to police forces derives from section 82 of the Police Reform Act 2002. That section is amended to refer to the Police Service of Scotland by the Police and Fire Reform (Scotland) Act 2012 (Consequential Provisions and Modifications) Order 2013, which only came into force on 1 April 2013. It was not therefore possible to include this provision in the Police Service of Scotland Regulations 2013 and the Police Service of Scotland (Special Constables) Regulations 2013 when they were made. Those Regulations needed to come into force themselves on 1 April to provide for the terms and conditions of constables transferring to the Police Service.

*Consultation*

5. As required by section 54 of the Police and Fire Reform (Scotland) Act 2012, a draft of these Regulations was shared for consultation with the chief constable, the Scottish Police Authority, the Scottish Police Federation, the Association of Scottish Police Superintendents, the Scottish Chief Police Officers Staff Association and the Association of Chief Police Officers for Scotland.

*Impact Assessments*

6. This Order has no effect on any equality issues. It deals with immigration status, which is not a protected characteristic, rather than nationality or national origin.

*Financial Effects*

7. The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government  
Safer Communities Directorate  
2 April 2013

### **Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Subordinate Legislation Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.

If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.

Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Subordinate Legislation Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

**Justice Committee**

**12<sup>th</sup> Meeting, 2013 (Session 4), Tuesday, 23 April**

**Offensive Behaviour at Football and Threatening Communications (Scotland)  
Act 2012**

**Note by the clerk**

**Purpose**

1. The purpose of this paper is to invite the Committee to consider recent issues which have arisen in relation to the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012.

**Background**

2. As Members will be aware, the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 came into force on 1 March 2012. Under section 11 of Act, the Scottish Ministers must review the operation of the offences in the Act for the period 1 August 2012 to 1 August 2014. The report of this review must be laid before Parliament by 1 August 2015.

3. The Committee will therefore be invited to consider the report of this review once it has been laid.

4. Members will also be aware that a number of issues have arisen recently in relation to the Act. A SPICe briefing is included with the papers which sets these out in more detail.

5. Members should note that the Crown Office is considering whether to appeal the recent decision of Dundee Sheriff Court and so Members will be advised at the meeting whether proceedings are active for the purposes of considering the issue.

**Recommendation**

6. The Committee is invited to consider this report and accompanying SPICe briefing.