The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

1st Meeting, 2016 (Session 4)

Tuesday 5 January 2016

The Committee will meet at 10.00 am in the James Clerk Maxwell Room (CR4).

1. **Subordinate legislation:** The Committee will take evidence on the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Community Justice Scotland as Specified Authority) Order 2016 [draft] from—

   Paul Wheelhouse, Minister for Community Safety and Legal Affairs, Ingrid Roberts, Community Justice Division, and Carolyn O'Malley, Directorate for Legal Services, Scottish Government.

2. **Subordinate legislation:** Paul Wheelhouse (Minister for Community Safety and Legal Affairs) to move—

   S4M-14967—That the Justice Committee recommends that the Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Community Justice Scotland as Specified Authority) Order 2016 [draft] be approved.

3. **Draft Budget Scrutiny 2016-17:** The Committee will take evidence on the Scottish Government's Draft Budget 2016-17 from—

   Michael Matheson, Cabinet Secretary for Justice, Neil Rennick, Director, Justice Directorate, Don McGillivray, Deputy Director, Safer Communities Directorate, and John Nicholson, Safer Communities Directorate, Scottish Government.

4. **Abusive Behaviour and Sexual Harm (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

   Michael Matheson, Cabinet Secretary for Justice, Philip Lamont, Criminal Justice Division, Patrick Down, Criminal Justice Division, Ian Fleming, Safer Communities Division, and Catherine Scott, Directorate for Legal Services, Scottish Government.

5. **Public petitions:** The Committee will consider the following petitions—

   PE1280 by Dr Kenneth Faulds and Julie Love on fatal accident inquiries;

   PE1370 by Dr Jim Swire, Professor Robert Black QC, Robert Forrester, Father Patrick Keegans and Iain McKie on Justice for Megrahi;

   PE1479 by Andrew Muir on complaints about solicitors;

   PE1501 by Stuart Graham on public inquiries into self-inflicted and accidental deaths following suspicious death investigations;

   PE1510 by Jody Curtis on the closure of police, fire and non-emergency service centres north of Dundee;

   PE1511 by Laura Ross on the decision made by the Scottish Fire and Rescue Service to close Inverness control room;

   PE1567 by Donna O'Halloran on investigating unascertained deaths, suicides and fatal accidents in Scotland.

6. **Subordinate legislation:** The Committee will consider the following negative instrument—

   Management of Offenders etc. (Scotland) Act 2005 (Commencement No. 8 and Consequential Provisions) Order 2015 (SSI 2015/397).

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The papers for this meeting are as follows—

Agenda items 1 and 2

Paper by the clerk	J/S4/16/1/1
Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Community Justice Scotland as Specified Authority) Order 2016	

Agenda item 3

Paper by the clerk	J/S4/16/1/2
Private paper	J/S4/16/1/3 (P)
Scotland's Spending Plans and Draft Budget 2016-17	

Agenda item 4

Paper by the clerk	J/S4/16/1/4
Private paper	J/S4/16/1/5 (P)
Abusive Behaviour and Sexual Harm (Scotland) Bill, accompanying documents and SPICe briefing	
Written submissions received on the Bill	

Agenda item 5

Paper by the clerk	J/S4/16/1/6

Agenda item 6

Paper by the clerk	J/S4/16/1/7

Justice Committee

1st Meeting, 2016 (Session 4), Tuesday 5 January 2016

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:

PUBLIC APPOINTMENTS AND PUBLIC BODIES ETC. (SCOTLAND) ACT 2003 (TREATMENT OF COMMUNITY JUSTICE SCOTLAND AS SPECIFIED AUTHORITY) ORDER 2016 [DRAFT]

Introduction

2. This instrument is made under powers conferred by section 3(3) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003.

3. The instrument provides that Community Justice Scotland, for the purpose of or in connection with appointments to that body, is to be treated as if it were a specified authority listed in schedule 2 to the Public Appointments and Public Bodies etc. (Scotland) Act 2003

4. Further details on the purpose of the instrument can be found in the policy note (see below) and an electronic copy of the instrument is available at: http://www.legislation.gov.uk/sdsi/2016/9780111030035/contents

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 20 November 2015 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

6. The Justice Committee is required to report to the Parliament on the instrument by 15 January 2016. The instrument is subject to affirmative procedure (Rule 10.6 of Standing Orders). The Minister for Community Safety and Legal Affairs has lodged motion S4M-14967 proposing that the Committee recommends approval of the instrument. The Minister is due to attend the meeting on 5 January to answer any questions on the instrument, and then, under a separate agenda item, to speak to and move the motion for approval. It is for the Committee to decide whether or not to agree to this motion, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instrument.

7. **The Committee will be asked to delegate to the Convener authority to approve the report on the instrument for publication.**

Policy Note: Public Appointments and Public Bodies etc. (Scotland) Act 2003 (Treatment of Community Justice Scotland as Specified Authority) Order 2016 [draft]

1. The above instrument was made in exercise of the powers conferred by section 3(3) of the Public Appointments and Public Bodies etc. (Scotland) Act 2003 ("the 2003 Act").

2. The instrument is subject to affirmative procedure.

Policy Objectives

3. This order is designed to allow the appointments to the Board of Community Justice Scotland to be regulated by the Commissioner for Ethical Standards in Public Life.

4. The Community Justice (Scotland) Bill is currently being considered by the Scottish Parliament and passed Stage 1 on 19 November 2015. One of the principle purposes of the Bill is to create a new Executive Non-Departmental Public Body (NDPB) to provide leadership for the Community Justice sector in Scotland. It makes provision for the creation of Community Justice Scotland and for the appointments to the Board to be regulated under the 2003 Act.

5. It is proposed in the Bill that Community Justice Scotland will take on its full functions from 1 April 2017. In order for this timetable to be met, a section 3(3) order under the 2003 Act will be required so that Community Justice Scotland will be treated as a regulated body ahead of the Bill being passed by Parliament and coming into force.

6. Following the precedent being set by a number of other new public bodies, this order is being laid following the conclusion of the Stage 1 debate. This is to allow the recruitment of the Board to begin so that the Chair will be in place in early Summer 2016 and can be involved in the recruitment of the Chief Executive. The Board will then be recruited and will be in place in early Autumn 2016. The Audit Scotland report on merging public bodies, "Learning the Lessons of Merging Public Bodies" recommends that the leadership of merged and new bodies is in place 6 months ahead of the new body taking on its full functions. This order is designed to help this recommendation to be met.

7. Scottish Ministers could make appointments to the first Board of Community Justice Scotland on an unregulated basis, meaning that this order would not be necessary. However, it was felt to be important for the appointments process to be as rigorous and transparent as possible and that the involvement of the Commissioner for Ethical Standards in Public Life was desirable in achieving this.

Consultation

8. "Redesigning the Community Justice System – A Consultation on Proposals" was launched in December 2012, setting out three options for the change identified by

the Commission on Women Offenders report in April 2012 which stated that "*there were significant structural and funding barriers to the effective delivery of offender services in the community and that radical reform was required*". 112 written responses were received however analysis of those responses showed no clear preference for any of the options provided. Further consultation was carried out with stakeholders to develop a fourth option which was announced by the Cabinet Secretary for Justice in December 2013. A further consultation on the detail for "The Future Model for Community Justice in Scotland" was launched on 9 April 2014 and closed on 2 July. Overall the consultation responses received were supportive of the model.

9. Consultation with stakeholders has continued through the development of the Bill and the Parliamentary process. As there is general support for the establishment of Community Justice Scotland and this order merely allows for the appointments to be regulated in line with the provisions of the Bill, specific consultation on this instrument was not felt necessary. The Minister for Community Safety and Legal Affairs wrote to the Conveners of the Justice Committee and the Delegated Powers and Law Reform Committee who are considering the Bill to inform them of the proposal to lay this order. The letter is available here:
http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20151116PWtoCG.pdf

Impact Assessments

10. An Equality Impact Assessment is not necessary as the instrument in itself does not have any equalities impacts. A full Equality Impact Assessment was carried out in the development of the Bill.

11. A Business and Regulatory Impact Assessment was not considered to be necessary for this instrument as the order itself does not create any new burdens on business, charities or the voluntary sector. A Business and Regulatory Impact Assessment, which included the creation of Community Justice Scotland, was undertaken in the development of the Bill.

12. The Business and Regulatory Impact Assessment and the Equality Impact Assessment are available here:
http://www.gov.scot/Publications/2015/05/6773/1
http://www.gov.scot/Publications/2015/05/4023/1

Financial Effects

13. The instrument will have no direct financial effects as it merely allows for the regulation of the appointments process. Any costs incurred from the recruitment of the Board are covered in the Financial Memorandum to the Bill and are likely to be minimal.

Scottish Government
Justice Directorate
17 November 2015

Justice Committee

1st Meeting, 2016 (Session 4), Tuesday 5 January 2016

Scottish Government's Draft Budget 2015

Note by the Clerk

Purpose

1. This paper provides background information in advance of the Committee's 5 January evidence session on the Scottish Government's Draft Budget 2016-17.

Background

2. The Scottish Government's Draft Budget 2016-17[1] was published on 16 December and is available at: http://www.gov.scot/Resource/0049/00491140.pdf

3. The Committee previously agreed to invite the Cabinet Secretary for Justice to give evidence on the Draft Budget 2016-17 on 5 January 2016 and to focus its scrutiny on three areas of spend: policing, the fire and rescue service, and the Crown Office and Procurator Fiscal Service. To inform the evidence session with the Cabinet Secretary, the Committee issued a call for views and heard from Police Scotland, the Scottish Police Authority, the Scottish Fire and Rescue Service, and the COPFS on 1 December. Because of this year's late publication of the Draft Budget (it is normally published in September), these witnesses were able to make comment only in relation to their financial planning for 2016-17, rather than on the Draft Budget itself.

4. Written submissions received are available at:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/94259.aspx

5. The official report of the 1 December evidence session can be accessed at:
http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10252

Key issues raised in evidence

6. A range of views[2] were raised in evidence, including

Policing

- a forecast deficit of £25.3 million for this financial year,
- challenges in achieving savings where 94% of the budget is composed of employee-related costs,
- continued pressure on budgets due to inability to recover VAT payments,
- resource planning underway to support developing threats, such as cybercrime and terrorism,
- differing views on whether Police Scotland should have more flexibility around the composition of its workforce,
- certain staff functions being covered by police officers, and
- uncertainty over the funding of additional police officers by local authorities.

Fire and rescue service

- staff costs comprising 79% of the budget and 58% of the savings achieved,

[1] The Scottish Government's annual draft budget is usually available in September but it is later this year as a consequence of the UK Government's Spending Review being published on 25 November 2015.
[2] There were differing views amongst witnesses on some of these issues.

- flexibility over firefighter numbers had enabled development of an appropriate crewing model based around community and firefighter safety,
- the need for the retained duty system to be re-examined as part of a wider redesign of the service,
- continuing recruitment challenges in the north-east of Scotland,
- savings had been achieved through rationalisation of assets, contracts, and control rooms, the new crewing model and new systems and processes,
- training budgets and training time were being protected, and
- continued pressure on budgets due to inability to recover VAT payments.

COPFS

- pressure on resources arising from high levels of complex and serious cases, particularly sexual offence cases, and additional work arising from recent legislative changes,
- savings had been achieved through digital and estates strategies, collaborative contracts, investment in IT, new processes and systems, and an increase in the use of diversions from prosecutions where appropriate,
- new pressures in 2016-17 from implementation of a 'milestone charter' to improve communication with bereaved families,
- differing views on whether internal targets for processing cases were routinely being met, and
- additional permanent staff had been recruited this year, the first in some time.

Draft Budget 2016-17

7. The Draft Budget 2016-17 proposes a reduction in the justice budget of £96.1 million (in cash terms) compared to the previous year, with increases in the SPA and Police Central Government budget lines and a cash term reduction in the SFRS budget. It proposes a small increase in the COPFS budget of £0.4m in cash terms (a fall in real terms).

8. The Scottish Government's priorities for 2016-17 are detailed in the Draft Budget document in relation to policing, the fire and rescue service and the COPFS, including to:

- support a modern and effective police service to ensure the safety and security of Scotland's people and communities,
- work with the SPA, Police Scotland and the SFRS to ensure the consolidation of the benefits of police and fire service reform,
- reduce the harm from fires and other emergencies through a focus on prevention,
- ensure that Scotland is appropriately and proportionately ready and able to address a sustained high level of terrorist threat and deal with violent extremism,
- prosecute complex, serious and organised crime before the High Court and Sheriff and Jury courts and conduct prosecutions before the Justice of the Peace and Sheriff courts in respect of anti-social behaviour, domestic abuse and hate crime,
- continue work on cold cases to deliver justice to families of murder victims where it has not previously been possible to do so,
- take action to recover associated proceeds of crime, and
- meet the challenges arising from changes in the legal environment, including changes in the causes of crime, judicial decisions and planned legislation.

Next steps

9. The Committee will take evidence from the Cabinet Secretary for Justice in relation to the Scottish Government's Draft Budget 2016-17 on 5 January.

Justice Committee

1st Meeting, 2016 (Session 4), Tuesday 5 January 2016

Abusive Behaviour and Sexual Harm (Scotland) Bill

Note by the Clerk

Purpose

1. This paper provides some background information in advance of the Committee's fourth and final evidence session on the Abusive Behaviour and Sexual Harm Bill to be held on 5 January. The Committee will hear from the Cabinet Secretary for Justice and Scottish Government officials.

Background to the Bill

2. Following the publication of *Equally Safe*: *Scotland's strategy for preventing and eradicating violence against women and girls* in June 2014, the Scottish Government undertook a consultation exercise in March of this year, aimed at reforming the law to address domestic abuse and sexual harm offences (Equally Safe – Reforming the criminal law to address domestic abuse and sexual offences).

3. The consultation sought views on the proposal to create specific criminal offences for domestic abuse and for the non-consensual sharing or distribution of private images. In addition, the consultation also sought views on three additional reforms intended to improve how the justice system addresses crimes of domestic abuse and sexual offending, including:

- Introducing statutory jury directions for sexual offence cases
- Allowing cases of sexual offences against children committed elsewhere in the UK to be prosecuted in Scotland, and
- Expanding the disposals available to the court to protect victims from harassment.

The Bill

4. The Abusive Behaviour and Sexual Harm (Scotland) Bill was, along with accompanying documents, introduced in the Parliament on 8 October 2015 by the Cabinet Secretary for Justice, Michael Matheson. According to the Scottish Government, the Bill's overarching objective is to improve how the justice system responds to abusive behaviour, including domestic abuse and sexual harm, which will help to improve public safety by ensuring that perpetrators are appropriately held to account for their conduct.

5. The Bill deals with a number of distinct areas:

- **Section 1** enables offences involving the abuse of a partner, or ex-partner to be treated as aggravated offences, meaning that the convicted person may be liable to a tougher sentence;

- **Section 2** creates a new offence of disclosing, or threatening to disclose, an intimate photograph or film. The Committee would be particularly interested in hearing views on whether there is a gap in the law that justifies the creation of a new offence and, if so, whether the definition of the offence in section 2 is sufficiently robust;

- **Section 5** amends current law to allow non-harassment orders, in some circumstances, be granted against individuals who have not been convicted of misconduct towards another person;

- **Section 6** would require a judge to give particular directions to the jury in sexual offence cases about whether to draw inferences from particular evidence being led or not led;

- **Sections 7 and 8** would enable the Scottish courts to prosecute sexual offences against children or young people committed elsewhere in the UK;

- **Chapters 3 and 4 of Part 2** would reform the system of civil orders available to protect individuals and communities from individuals considered to be at risk of causing sexual harm.

Stage 1 scrutiny

6. The committee issued its call for written evidence on 13 October 2015, with a closing date of noon on 17 November 2015.

7. Scrutiny at stage 1 involves consideration of the Bill's general principles. In the case of this Bill, this involves hearing views on whether the provisions contained within the Bill would strengthen the law to protect victims of abusive behaviour and sexual harm. The Committee has agreed the following schedule for oral evidence:

- 17 November - Legal professionals, Police Scotland and academics
- 24 November – Children's Commissioner, Scottish Human Rights Commission and third sector organisations mainly representing victims of sexual crime and domestic abuse
- 8 December - judiciary (Lord Justice Clerk and Sheriffs' Association)
- 5 January (postponed from 15 December owing to late change to agenda) – Scottish Government

8. Following consideration of oral and written evidence the Committee will publish its Stage 1 report early in the New Year.

Justice Committee

1st Meeting, 2016 (Session 4), Tuesday 5 January 2016

Petitions

Note by the clerk

Introduction

This paper invites the Committee to consider its ongoing petitions:

PE1280: Fatal Accident inquiries on deaths abroad

PE1501 and **PE1567**: Investigating unascertained deaths, suicides and fatal accidents

PE1370: Independent inquiry into the Megrahi conviction

PE1479: Legal profession and the legal aid time bar

PE1510 and **PE1511**: Police and Fire Control Rooms

PE1280: Fatal Accident inquiries on deaths abroad - Lodged: 05 September 2009

Terms of the Petition
The Petition calls on the Scottish Parliament to urge the Scottish Government to give the same level of protection to the families of people from Scotland who die abroad as is currently in place for people from England by amending the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 to require the holding of an FAI when a person from Scotland dies suddenly or unexpectedly while abroad.

At present, the powers of the procurator fiscal to carry out inquiries into fatal accidents and sudden deaths ('FAIs') are set out in the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. The terms of section 1 mean that an FAI can only be held where the death occurred in Scotland.

Background

The Committee considered this petition in the context of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill, which would replace the 1976 Act. One of the main changes made by the Bill is provision (at section 6) for fatal accident inquiries to be carried out, at the Lord Advocate's discretion, into deaths that take place abroad, provided certain conditions are met (including that the body has been brought back to Scotland). The Committee took evidence from the petitioner Julie Love, chairperson of the group Death Abroad - You're Not Alone on 5 May 2015.[1]

Ms Love agreed that this provision would be both "helpful" and would "make a difference".[2] Asked whether she was concerned that, under the Bill, FAIs for deaths abroad would be discretionary and not mandatory, Ms Love replied "Definitely not. Investigations will be carried out in other countries and we do not want to mimic them in this country."[3]

The committee published its stage 1 report on the Bill on 1 July 2015. The Committee welcomed the main changes made by the Bill, and also called for an amendment to give the Lord Advocate the option to authorise an FAI for a death abroad, where a body has not been repatriated.

Recent developments

At its meeting on 22 September, the Committee agreed to keep the petition open until the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill had been passed by the Parliament.

Stage 2 consideration, concluded on 3 November and included a single amendment to section 6 which removed line 34. Line 34 required that a person's body be brought back to Scotland for an inquiry to be held and thus appears to address the concerns raised by the Committee regarding repatriation.

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[1] Available at: http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9935&i=90947
[2] Col 19
[3] Col 26

Stage 3 concluded on 10 December. Section 6 is a follows:

6. Inquiries into deaths occurring abroad: general

(1) Subsection (3) applies to the death of a person if—

(a) the death occurred outwith the United Kingdom, and
(b) at the time of death, the person was ordinarily resident in Scotland.

(2) But that subsection does not apply to the death of a person within section 12(2) or (3) of the Coroners and Justice Act 2009 (investigation in Scotland of deaths of service personnel abroad).

(3) An inquiry is to be held into a death to which this subsection applies if the Lord Advocate—

(a) considers that the death—
(i) was sudden, suspicious or unexplained, or
(ii) occurred in circumstances giving rise to serious public concern,

(b) considers that the circumstances of the death have not been sufficiently established in the course of an investigation in relation to the death, 5

(c) considers that there is a real prospect that those circumstances would be sufficiently established in an inquiry, and

(d) decides that it is in the public interest for an inquiry to be held into the circumstances of the death.

Options:

Given the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill would appear to largely address the main concerns raised by the petitioner, members may wish to close the petition at this stage.

PE1501 and PE1567: Investigating unascertained deaths, suicides and fatal accidents

Terms of petitions

PE1501 (lodged 13 December 2013): The Petition calls on the Scottish Parliament to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence released in deaths determined to be self-inflicted or accidental, following suspicious death investigations.

The Petitioner provides the following background information in relation to their petition:

> "In our own case a death was immediately treated as self-infliction and not investigated despite being re-opened after inputs from the family. The police and Fiscal's service were found to be negligent and of misleading the family. The investigation had many issues and an FAI was instructed. The FAI validated much of the families concerns and served as the basis of a request for an independent investigation. […] The police investigated the death but were unable to pursue a number of avenues owing to previous failings, actions and the passage of time. Today this death is now open and suspicious. This case would not have been treated as self-infliction with such haste if subject to scrutiny. Likewise, loss of pertinent evidence would have been restricted by prompt challenging of available evidence.
>
> The current system in Scotland, only requires that a death deemed to be self-inflicted or accidental is based upon probability rather than beyond reasonable doubt as in criminal cases. This has the effect that families are presented with information that supports the conclusion but have no access to anything that may contradict this. This prohibits families from effectively defending loved ones if they do not believe the findings. In essence they must carry out their own investigations if they are to raise questions to challenge findings. Also, the current system, appears to lack the effective independence required under Article 2 as the decision makers, police and the Fiscal, are both responsible for the investigation and thus cannot be deemed to independent when reviewing the findings.

PE1567 (lodged 28 April 2015): The Petition calls for the Scottish Parliament to urge the Scottish Government to change the law and procedures in regard to investigating unascertained deaths, suicides and fatal accidents in Scotland. As with PE1501, the petitioner's key concerns appear to be:

- That there should be a mechanism for challenging or reviewing Crown Office and Procurator Fiscal Service (COPFS) conclusions in relation to death investigations particularly where this follows a police investigation into the death that family members consider cursory or defective, and

- That families should generally be included more in the decisions reached in such investigations

Background

The committee raised concerns about the way in which unexplained or self-inflicted deaths are investigated in different parts of the country during its consideration of the Fatal Accidents and Sudden Deaths etc. (Scotland) Bill (FAI Bill) at stage one.

The committee made no specific recommendations in its stage one report that would be likely to address the concerns raised in both petitions. Much of the petitioners' concerns appear to relate to the ability of families to question both validity of a police investigation and the corresponding decision taken by the COPF, rather than the FAI process, which comes into operation at a slightly later stage and is the main focus of the Bill.

Several of the Cullen Review's recommendations to improve communication between the COPFS and bereaved families are being brought forward in, or in parallel with, the Scottish Government's current FAI Bill. These include:

- The introduction of a "milestone charter", setting out timescales for investigations and decisions in relation to a death being investigated by the COPFS, and the information families can expect to receive during the process;

- Provision in the Bill (section 8) requiring the Lord Advocate to give written reasons (on request) for a decision not to hold an FAI. However, it does not require the procurator fiscal to give reasons for upholding a police investigation which concludes that a death is not suspicious.

Recent developments

During consideration of the Petition on 29 September the Committee agreed to keep both petitions open and write to the Lord Advocate to request additional information regarding the safeguards that are currently in place to ensure that investigations reach robust and sound conclusions, and what powers families have to question the quality of such an investigation.

The Lord Advocate's response dated 25 November (Annexe A) reiterates much of the information already provided in previous correspondence and provides an overview of the COPFS's position.

On page 3 of Annexe A, the Lord Advocate makes reference to the Crown's approach to communicating with family members, which has now been formalised in the Charter for Bereaved Families (formally referred to as the milestone charter). A draft copy of the charter can be viewed via the committee's website.[4]

The Charter sets out the different stages of the investigation process and confirms what information will be provided to bereaved families and when. In addition, information will be provided at any stage of the investigation upon request. Where a

[4] http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20151030COPFStoCG.pdf

family member has additional communication or support needs COPFS will endeavour to meet those needs where possible. Should the family decide at any stage that they wish information to be provided in a different way to what has been agreed, the COPFS will respect these wishes.

While the introduction of the Charter goes some way to address the concerns raised by the petitioners, there remain a number of areas of disagreement.

Article 2 of the European Convention on Human Rights

As noted, the PE1501 petitioners referred to Article 2 of the European Convention on Human Rights: the right to life. The courts have interpreted this to include a duty on governments to investigate loss of life in certain circumstances. The purpose of such investigations is to ensure that laws protecting life can be enforced and that the state can be held to account where it is responsible. The Scottish Government argues that an FAI is not required in all circumstances to which Article 2 applies. Instead, the death investigation carried out by COPFS may meet the required standards.

The Petitioner's response (PE1501) to the Lord Advocate's letter dated 25 November (Annexe B) states that in England and Wales, every unforeseen death is subject to a Coroner's inquest. By contrast, the system in Scotland only publicly reviews a small proportion of deaths in the form of FAI's. The petitioner is of the view that:

> "The vast majority of those deaths are prescribed by their nature to warrant an FAI. There is no randomness or depth of public scrutiny of the deaths that lie out with those previously prescribed."
>
> It is therefore the petitioner's contention that such a test does not meet the requirement in article 2 regarding the requirement for independence and public scrutiny.

The Lord Advocates letter dated 25 November acknowledges "that there are proportionally more coroner's inquests in England and Wales than there are FAIs in Scotland, but this does not mean that there is not the same level of investigation in to these types of deaths in Scotland.

The Petitioner goes on to question the independence of the COPF, proposing that:

> "If an FAI is granted, the Fiscal takes the lead in developing the information to be reviewed. If this did involve serious questions about an investigation, we have the situation that the individual who leads an investigation will lead the review into his/her own investigation, notwithstanding that they are highly unlikely to request an FAI to question their own efforts."

The Lord Advocate's position remains that:

> "Any deaths investigation by COPFS is carried out impartially and in the public interest, with an acknowledgement of a range of considerations including the interests of the family of deceased."

Review Process

Both petitions call for the creation of an appeals system, which includes family members in any decisions made in relation to an investigation.

The Lord Advocate's letter outlines a number of avenues available to families, should they be unsatisfied with the way in which an investigation has progressed (outlined in on page 4 of the letter, as set out in Annexe A).

This appears to fall short of a more formal appeals process which might question the final legal decision made by the Lord Advocate, as proposed by the petitioners.

However, the Lord Advocate's position in relation to reviewing a legal decision remains that:

> "It is entirely appropriate the final legal decision, short of judicial review, on the extent of any further investigation rests with the Lord Advocate, who acts independently as the heads of COPFS. I am committed to the effective, impartial and prompt investigation of the deaths and am mindful of the State's obligation under Article 2 of the European convention of Human Rights. This means that any investigation must be independent, reasonably prompt, open to a sufficient element of public scrutiny and one in which family members must be involved to an appropriate extent."

Options

The committee can:

- Close both petitions on the grounds that the Charter for Bereaved families goes some way to addressing the petitioner's concerns, and the Lord Advocate's letter goes some way towards clarifying the limited rights of challenge open to families and acknowledging that the COPF's position regarding the challenging of a decision is unlikely to change, as things currently stand.

- Write to the Cabinet Secretary asking if any other assurances can be given to families who question the validity of a police investigation and subsequent decision made by the COPF,

- Take any other action that the Committee considers appropriate (for instance, members will see from the attached letter from that petitioner PE1501 has offered to give evidence to the committee on this matter so that they might better explain their position).

PE1370: Independent inquiry into the Megrahi conviction – Lodged: 01 November 2010

Terms of the petition

The petition on behalf of Justice for Megrahi (JFM), calls for the opening of an 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.

Background

Operation Sandwood

At its meeting on 21 April 2015, the Committee considered an update received from Justice for Megrahi, which included a request to consider the appointment of an "independent prosecutor" to assess the findings of the forthcoming Police Scotland investigation known as "Operation Sandwood". 'Sandwood' is the operational designation for Police Scotland's investigation of JFM's nine allegations of criminality levelled at Crown, police and forensic officials involved in the investigation and legal processes relating to the Lockerbie/Zeist affair which led to Megrahi's conviction. The allegations range from perversion of the course of justice to perjury. Police Scotland's final "Sandwood" report is expected to be completed before the end of the year.

The Committee previously agreed to write to the Lord Advocate seeking his views on the appointment of an "independent prosecutor". His response outlined arrangements made by the Crown Office to employ an independent Crown Counsel who had not been involved in the Lockerbie case to deal with the matter. JFM have reject the involvement of an independent Crown Counsel because it does not represent an "independent, unbiased and constitutionally sound approach.'

Police Scotland regularly meets with JFM to discuss ongoing issues regarding the case. At its meeting of 28 April officers highlighted the appointment of an independent QC to enhance the professional integrity of the investigation separate from the appointment by the Crown office.

High Court ruling

Separately, in December 2014 the Scottish Criminal Cases Review Commission asked the High Court for a ruling on the legal status of the victims' relatives, to enable it to decide whether they can pursue an appeal on Megrahi's behalf. It ruled in July that the victims' relatives had no legitimate interest to institute an appeal against the deceased's conviction.[5] It appears that the only method by which an appeal against the deceased conviction could be instigated is through the deceased's relatives or the executor of his estate. Whilst there have been some reports indicating that Meghrahi's family wish to be involved in an appeal, the Court

[5] Available at: http://www.scotcourts.gov.uk/search-judgments/judgment?id=8ea3e6a6-8980-69d2-b500-ff0000d74aa7

proceeded on the basis that the SCCRC's reference was on behalf only of certain victims of the bombing.

Recent developments

Operation Sandwood
Following consideration of the petition on 22 September, the Committee agreed to write to the Lord Advocate again requesting more information about the appointment of an independent prosecutor to examine the findings of the Police investigation "Operation Sandwood". The response, attached in Annexe C does not add to the earlier response provided and cites an earlier response sent to JFM (Annexe D) which the committee had sight of last time I considered the petition.

JFM have now responded directly to members reiterating their concerns about the impartiality of the COPF in handling this case and have sought assurances that independent consideration of the police investigation be agreed to. To date both the Scottish Government and COPF have concluded this is not necessary.

Clerks expect a further response from JFM in due course. This will be forwarded to members as soon as it is received.

Scottish Criminal Cases Review Commission
On 5 November the Scottish Criminal Cases Review Commission (SCCRC) announced that: "it is not in the interests of justice" to continue with a review of the conviction of the late Abdelbaset Ali Mohmed Al Megrahi. Consequently, the application has been refused."

In a news release published that day The Commission's Chairman, Jean Couper said:

> "A great deal of public money and time was expended on the Commission's original review of Mr Megrahi's case which resulted, in 2007, in him being given the opportunity to challenge his conviction before the High Court by way of a second appeal. In 2009, along with his legal team, Mr Megrahi decided to abandon that appeal. Before agreeing to spend further public money on a fresh review the Commission required to consider the reasons why he chose to do so. It is extremely frustrating that the relevant papers, which the Commission believes are currently with the late Mr Megrahi's solicitors, Messrs Taylor and Kelly, and with the Megrahi family, have not been forthcoming despite repeated requests from the Commission. Therefore, and with some regret, we have decided to end the current review. It remains open in the future for the matter to be considered again by the Commission, but it is unlikely that any future application will be accepted for review unless it is accompanied with the appropriate defence papers. This will require the cooperation of the late Mr Megrahi's solicitors and his family"[6]

[6] http://www.sccrc.org.uk/ViewFile.aspx?id=689

Options

The Committee can:

- Keep the petitions open and monitor the progress of “Operation Sandwood”,
- Take any other action in relation to the petition that the Committee considers appropriate (including closing the petition)

PE1479: Legal profession and the legal aid time bar – Lodged 10 May 2013

Terms of the Petition

The Petition calls on the Scottish Parliament to urge the Scottish Government to amend the Legal Profession and Legal Aid (Scotland) Act 2007 by removing any references to complaints being made timeously.

Section 4(1) of the Legal Profession and Legal Aid (Scotland) Act 2007 provides that the Scottish Legal Complaints Commission is not under an obligation to investigate complaints which are not made "timeously". Section 4(3)(a) of the Act allows the SLCC to set time limits defining what "timeously" means. On this basis, the SLCC has adopted rules which explain that: "A complaint will not be accepted (unless the Commission considers that the circumstances are exceptional) if it is made more than 1 year after the professional misconduct, unsatisfactory professional conduct or conviction suggested by it appears to have occurred.

Recent developments

During its consideration of the petition on 21 April 2015 the committee agreed to keep this petition open until after the Scottish Legal Complaints Commission's rules changed. These changes were due to take effect in July 2015 but have been delayed. Once introduced they will increase the time from one to three years and will coincide with an alternative dispute directive resolution procedure. (NB: in his appearance before the Public Petitions Committee, the petitioner's preference was for there to be no time bar.)

At its meeting on 29 September, the Committee agreed to write to the SLCC requesting additional information about the likely deadline for a decision on the legal time bar.

Members will have seen from the response provided by Neil Stevenson the new Chief Executive (Annexe E), which explains that:

> "As previously indicated, changes to the SLCC's time limits were to be considered hand-in- hand with the ADA Directive requirements, and that was the basis on which we consulted all parties. Now that ADA is not a current consideration, we can't rely on that consultation, as a primary justification given for the change is now not there. We intend to re-open discussions around our time limits and, in due course, undertake a further consultation around this and any other proposed Rule changes which may be identified."

Options

The committee can:

- Close the petition, on the basis that the SLCC will consult again on the issue.

- Write to the SLCC to request further details on when a decision might be made and, as appropriate, express a view on whether the time bar should extended,

- Take any other action in relation to the petition that the Committee considers appropriate (for instance, take evidence or seek further information from relevant stakeholders).

PE1510 and PE1511: Police and Fire Control Rooms
Terms of the petitions

PE1510 (lodged 23 March 2014) calls on the Scottish Parliament to undertake a committee inquiry into the closure of Police, Fire, and Non-Emergency Service Centres north of Dundee. In particular, the major concerns raised have been the loss of public knowledge; public safety; officers being off the street and overwhelmed in managing the increased workload this would create.

PE1511 (lodged 27 March 2014) calls on the Scottish Parliament to urge the Scottish Government to review the decision made by the Scottish Fire and Rescue Service to close the Inverness Control Room.

Background

With specific regard to the Scottish Fire and Rescue services, Audit Scotland published its review in May of this year, following the merger of the eight fire and rescue services in 2013. The review notes the comments made by Her Majesty's Fire Service Inspectorate (HMFSI) and in particular, the attention that must be paid to staff retention and engagement with regard to the pending finalisation of control room structures to avoid any reduction in operational response.

The Committee also took evidence from the Chief Fire Officer, the chair of SFRS, HM Chief inspector of SFRS and FBU Scotland on 28 April. The matter of control room resilience was discussed, and the panel were unaware of a substantial loss of cover. The transcript from that meeting can be viewed here:

http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9921&i=90842

In his recent statement on Policing, Michael Matheson, Cabinet Secretary for Justice agreed to implement HMICS recommendations concerning the control centre reform programme, stating:

> "it should take place only when the current control rooms in Govan and Bilston Glen have a full complement of trained staff, and when the systems and processes are capable of taking additional call demand from the north, when the new area control room in Dundee is fully operational, and after a detailed and independently assured transition plan is developed and delivered. HMICS recommends that centres in Dundee, Aberdeen and Inverness should remain open while that takes place. That is what will now happen. The remaining phase will proceed only once the Scottish Police Authority and HMICS are completely reassured that all the issues have been addressed."

Recent developments

At its meeting on 29 September, the Committee agreed to keep the petition open until the final HMICS report on call handling was published. The report, published on 10 Nov 2015 makes no specific recommendation regarding the closure of Northern control room.

However, the Justice Sub-committee on Policing took evidence from Derek Penman, HM inspector of Constabulary in Scotland on 3 December. At that meeting, Mr Penman was asked about the retention of Northern control rooms and outlined that:

> "The end-state model is to build what Police Scotland refers to as a virtual service centre, which is in effect the Motherwell, Govan and Bilston Glen sites joined together by technology to act as one. That centre would have the ability to support area control rooms in the east, west and north. Calls from anywhere in the country would come into the virtual service centre, which would have the ability to direct the incident to an area control room so that it could be managed by the officers who would attend.
>
> That technology is not in place at the moment. If there is not the link between the service centre and the area control rooms, the system has to rely on the manual transfer of information. Our view in the interim report is that that introduces a degree of risk.
>
> Police Scotland needs to consolidate the virtual service centre and ensure that it is properly staffed and equipped, that the technology is working with robust processes and that the control room in the north, which will be in Dundee, is up, resourced and properly working, with the technology tested, before any call centres in the north start to close."[7]

Options

The Committee may wish to:

- Close petition PE1510 on the basis that the HMICS final report has now been published and the Cabinet Secretary has agreed to implement the HMICS recommendations,
- Keep petition 1510 open and monitor progress,
- Close petition PE1511 on the basis that the committee may wish to take into account the issues it raises at a future evidence session on fire services reform, which the Committee may report on before the end of the session,[8]
- Keep petition PE1511 open on the basis that the committee may wish to take into account the issues it raises at a future evidence session on fire services reform, which the Committee may report on before the end of the session.
- Take any other action in relation to the petitions that the Committee considers appropriate (for instance, take additional evidence to that set out in the

[7] Justice Sub-Committee Official Report 3 December col 4. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10260&mode=pdf

[8] By virtue of the Police and Fire Reform (Scotland) Act 2012, section 124

preceding bullet points or request further information from relevant stakeholders).

ANNEXE A

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Christine Grahame MSP
Convener of Justice Committee
c/o Justice Committee Clerks
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Edinburgh
EH99 1SP

25th November 2015

Dear Christine,

Thank you for your letter dated 30 October 2015 regarding consideration of 'Petition PE1501: Public inquiries into self-inflicted and accidental deaths following suspicious death investigations'. As you will be aware, Stephen McGowan, Deputy Director of Serious Casework at COPFS, previously wrote to the Convener of the Public Petitions Committee on 13 February 2014 setting out the Crown's position in relation to various aspects of the Petition. He also gave evidence to the Public Petitions Committee on 3 June 2014 in this respect. Additionally, the Crown Agent sent a letter to you on 21 January 2015, with further information on the level of investigation carried out into deaths classed as self-inflicted in Scotland. As your current enquiry also relates to 'Petition PE1567: Investigating unascertained deaths, suicides and fatal accidents', it may be worth re-emphasising some of the information provided in previous correspondence.

Petition PE1567 raises questions about the way in which COPFS investigates unascertained deaths, suicides and accidental deaths and compares the system with the coroner system in England and Wales. As you will be aware, the role and function of COPFS with respect to deaths in Scotland differs from that of a coroner in England and Wales. A coroner is an independent judicial office holder, either medically or legally qualified, who enquires into violent or unnatural deaths, sudden deaths of unknown cause and deaths which have occurred in prison. Where suicide is suspected, a coroner's inquest is mandatory regardless of the wishes of the bereaved family.

An inquest in England and Wales is a limited, fact-finding inquiry, to establish the causes of a death. This is different from a Fatal Accident Inquiry (FAI) in Scotland, which also seeks to establish whether there were any reasonable precautions which may have prevented the death or whether there were any defects in any system of working which contributed to the death or any accident resulting in the death.

It is correct to state that there are proportionally more coroner's inquests in England and Wales than there are FAIs in Scotland, but this does not mean that there is not the same level of investigation in to these types of deaths in Scotland.

COPFS acknowledges that an investigation in to any death can be challenging and distressing for family members, but that this can be compounded when there is any dubiety about the circumstances surrounding the death. The investigation of any sudden, suspicious, unexpected or unexplained death forms a key part of the work of COPFS. In particular, the investigation of unresolved homicides is a priority, which was why a Cold Case Review Unit was established in 2011 to pursue those who have avoided initial detection for homicide.

Although initial enquiries in to any death are conducted by the Police Service of Scotland, the Procurator Fiscal can be involved at a very early stage and will direct the police investigation, particularly where there appears to be any suspicious circumstances. In all cases, the Procurator Fiscal will receive a report from the police and additional information will be requested if this is thought to be necessary to ensure a thorough investigation in terms of Article 2 of the European Convention of Human Rights. This additional information can include witness statements, medical records, expert reports or any other further enquiries that are considered appropriate.

The extent of any investigation in to a death will always depend on the facts and circumstances of a particular case. The family's views are clearly an important consideration during this process and it is recognised by COPFS that Article 2 of the European Convention of Human Rights requires that an effective investigation into deaths must involve the nearest relatives to an appropriate extent. However, the views of the family are not the sole consideration during any investigation - indeed, it is entirely possible for different family members to have opposing ideas and concerns about the extent of the investigation. Some family members may not wish for any further enquiries to be made, on the basis that they feel it to be an invasion of the deceased's privacy. Any deaths investigation by COPFS is carried out impartially and in the public interest, with an acknowledgement of a range of considerations including the interests of the family of the deceased.

Article 2 of the European Convention of Human Rights does not go so far as to require all proceedings following an investigation into a violent death to be public. The degree of public scrutiny required may vary from case to case: Anguelova v Bulgaria (2004) 38 EHRR 31; Ramsahai v The Netherlands (2008) 46 EHRR 43. It is the experience of COPFS that most families in such circumstances do not wish a mandatory Inquiry in public to take place and this raises important considerations in terms of Article 8 of the convention, the right to respect for private and family life.

As detailed in the letter from the Crown Agent to you, dated 21 January 2015, deaths which raise the possibility of being caused by self-inflicted injury can be categorised as follows:

(a) Deaths where there are clearly no suspicious circumstance and there is a strong basis on the facts and circumstances to indicate it was self-inflicted/suicide, for example where there is an obvious mechanism of death suggesting suicide and a suicide note has been left.

(b) Deaths where there are clearly no suspicious circumstances and the facts indicate it was self-inflicted/suicide but where the mechanism/cause of death requires further investigation, for example where it appears that the deceased has taken drugs to end their life, but toxicology is required to confirm that.

(c) Deaths where there are clearly no suspicious circumstances but from the facts it is not clear that the deceased intended to take their own life.

(d) Deaths where there are clearly no suspicious circumstances and the facts indicate it was self-inflicted/suicide, but the background circumstances necessitate a more detailed investigation, for example where the deceased was either under medical care or had recently been, perhaps for depression, and concerns have been raised about the standard of care or where perhaps a critical incident review has taken place.

(e) Deaths where suspicious circumstances cannot be ruled out and full investigation is required in order to rule out homicide.

I enclose a copy of this letter for your information, which sets out the level of investigation involved in each of the categories referred to above, but would like to draw your attention specifically to the fact that where suspicion cannot be ruled out , the death must be investigated as a suspicious death. This remains the case until such time as the Procurator Fiscal is satisfied that there are no longer reasonable grounds to suspect that the death may be homicidal or caused by the criminal act of another person. In order to rule out homicidal or criminal acts, a detailed further investigation will be required, which may include a full forensic examination of the locus including fingerprint examination, DNA analysis, toxicological examinations, examination of any available CCTV evidence and analysis of mobile phones and other devices.

Petition PE1567 calls for the creation of an appeals system in an effort to include family members in any decisions made in relation to the investigation. I also note that in relation to Petition PE1501 the Justice Committee is now looking for further information on the police investigation and what opportunity families have to scrutinise an investigation if they consider that they have reasonable grounds to question its reliability. You have also asked what safeguards are currently in place to ensure that police investigations reach robust and sound conclusions in these types of cases.

As you will be aware, the Crown's approach to communicating with family members is now being formalised in the 'Charter for Bereaved Families', which is due to be published when legislation is passed.

It will confirm that the family will be kept updated throughout the investigation and that they will be advised of any significant developments. Where the family of the deceased wish to be advised of the information uncovered as a result of the investigation then the Procurator Fiscal will appraise them of what the investigation has found and share all relevant information as far as possible. If family members wish to have sight of evidence obtained during the investigation such as pathology or other expert reports and photographs then this will be disclosed in as sensitive a way as possible. For instance sometimes the post mortem report disclosure will be arranged through the family GP where, for example medical terms require to be explained and the family prefer that is done in such a setting. Any further investigation that may be required as a result of additional matters which may be raised by family members will be considered and, if appropriate, instructed and the results explained.

Communicating with family members is a two-way process, and the Procurator Fiscal will always take into account the concerns of the family when considering whether any further enquiries should be instructed. Their views are also taken in to account when reaching any decision on whether or not there should be a discretionary Fatal Accident Inquiry or whether I should exercise discretion no to hold an inquiry into a death falling into the mandatory category on the basis that the circumstances of the death have been sufficiently established during criminal proceedings.

If the family are unhappy about how the investigation is progressing, they can let the police or the Procurator Fiscal know about this at any time. There are also a number of formal remedies which are available to them. If they are unhappy about the standard of service they receive from the police, they can follow an established process to make a complaint. It is also possible to complain to the Police Investigations and Review Commissioner, who can conduct a complaint handling review.

If families are unhappy about the investigation by the Procurator Fiscal, again a formal complaints procedure can be followed. Information about this procedure is available on the COPFS public website. During this process, if it is felt that further enquiries should be made in to the circumstances surrounding a death, then these will be instructed. Additionally, as the 'Charter for Bereaved Families' will confirm, it will also be possible for family members to seek a review of a decision taken on whether a Fatal Accident Inquiry should be held.

If the family are dissatisfied with how COPFS have handled their complaint they are entitled to raise that with the Scottish Public Services Ombudsman (SPSO). It should be noted however, that while the SPSO is the final stage for concerns about how COPFS have handled a complaint, they are not an appeal body for any legal decisions we have taken.

It is entirely appropriate that the final legal decision, short of judicial review, on the extent of any further investigation rests with the Lord Advocate, who acts independently as the head of COPFS. I am committed to the effective, impartial and prompt investigation of deaths and am mindful of the State's obligations under Article 2 of the European Convention of Human Rights.

This means that any investigation must be independent, reasonably prompt, open to a sufficient element of public scrutiny and one in which family members must be involved to an appropriate extent. In some circumstances this will necessitate the holding of a Fatal Accident Inquiry, but not in all cases. If there is any evidence at any time during this investigation of criminality, then this will be pursued in accordance with our commitment to give priority to the prosecution of serious crime.

Best wishes,

Frank.

FRANK MULHOLLAND QC

ANNEXE B

Attention: Justice Committee

Thank you once again for taking the action to request this response from The Lord Advocate and for having the opportunity to respond to it. In reading this letter, I recognise that it is responding to two Petitions and while on the surface they may seem similar, they in fact cover completely different stages of the investigation process.

I think that the letter does not add much to what has been said before from COPFS on this matter. Regardless of that, I do regard any improvement in working with the family and the setting up of the Cold Case Unit as a positive factor. However, whilst the implementation of these changes will undoubtedly improve the service provided, it is clear from the letter that this unit will only consider 'unresolved homicides' and will not impact on cases determined to be self inflicted or accidental. It is these cases that cause us serious concern. What must be recognised is that, to implement these improvements, we must see that the improvement was deemed to be needed. This is not in any shape a criticism of the past but a recognition that at any given time we gain insight and see the opportunity to raise our standards.

It is in this context that we have raised our petition.

Our petition is not about how the investigation is handled nor is it a criticism of Police Scotland in comparison to The Police across the rest of the UK. Our petition is a suggestion on how to help families that feel the need for greater insight to help aid closure when losing a loved one. It is about how they are considered within our system. The information given in this letter does not address this, as it is still very much from the COPFS perspective of what they think the family needs. It concerns me that this has been a consistent theme from the outset in the responses given. In setting out our Petition we have recognised and accepted that some families will not want to have a public review, but surely we need a method to help those that do?

If you have read the papers recently, you will see that the story of Annie Borgesson is raised again. This is continuously raised through the anguish of her mother and her family wanting what they would see as the truth. This is 10 years of torture for this family and there will **never** be an end for them as we do not have a system that aids their closure. The essence of our argument lies at the heart of this situation, if the investigation into Annie's death was thorough and conclusive, what harm can there be to facilitate a full release of available documents. If this family saw this and it helps them see why the conclusion was reached surely that is in everyone's interest? Instead they investigate and find things that they bring to the police and are told this is not new information. How can the family have known this if they have not had access to all of the information available. Not only are they subject to an ongoing trauma but they may be pursuing actions on areas already known to our authorities. This is not only a waste but it is inherently and needlessly cruel. Surely there should be a presumption that the family may have access to any relevant information unless its release would cause a real risk of serious prejudice to an important public interest.

We recognise that there may be some concern from some families or members of families that may not want a public hearing, but raising this point disregards our inputs on managing this. It is also an argument given based upon nameless people in anecdotal situations as opposed to real families right now and as far as I have seen almost every year asking for greater disclosure.

I believe that valid concerns have to be understood and in doing so they can also be thoughtfully and compassionately managed.

It is recognised in the letter that there is a disparity in the number of inquests held in England and Wales in comparison to Scotland. I think that this disparity has to be addressed on two levels. The first is asking if we are truly a nation that believes in Social Justice, is it right that the people of Scotland have significantly less rights than those in England and Wales, to review, question and if needed challenge findings through a public vehicle? This is a purely emotional, compassionate and logical question and in no way a legal question. I think it is important to ensure that the system we have, while being legally sound has the compassion and consideration you would expect from a modern open society.

The second part is the legal question and this is a question rather than any opinion. Both England and Scotland are guided by and expected to live to the Articles of The Human Right Convention. We see that in England and Wales that every unforeseen death is subject to a Coroners inquest and is thus tested publicly and therefore one must believe that there can be no doubt it fully meets the requirement of independence and public scrutiny.
In contrast we see that in Scotland we only publicly review a very small proportion of deaths in the form of FAI's. The vast majority of those deaths are prescribed by their nature to warrant an FAI. There is no randomness or depth of public scrutiny of the deaths that lie out with those previously prescribed.
We also have to look at the question of independence in a similar fashion. In Scotland it is noted by the Lord Advocate that the investigation into a sudden or suspicious death will be led by the Fiscal. It is the Fiscal that is expected to raise a requirement for an FAI if it is deemed to be required and this is in turn reviewed by the Lord Advocate. If an FAI is granted, the Fiscal takes the lead in developing the information to be reviewed. If this did involve serious questions about an investigation, we have the situation that the individual who leads an investigation will lead the review into his/her own investigation, notwithstanding that they are highly unlikely to request an FAI to question their own efforts.

Therefore, do we feel that today we meet the moral intent of Article 2 with regards independence and public scrutiny or does it meet the legal minimum expectations? I think that these may be two very different sets of expectations. I am not for one minute wanting to get into a legal argument but I do ask that we do everything to deliver a moral resolution.

I would also like to offer the opportunity for your Committee to speak to my wife and I regarding the many aspects of our legal system from the perspective of a bereaved family in a suspicious death situation. We have considerable experience of PCCS, PIRC , COPFS, initial handling of the death, dealing with questions, subsequent investigations and an FAI. We believe that because we have had full access to the documents that we are asking for others we can give greater depth of insight than most. We would happily talk of situations and principle but happily not name individuals. It is our sole intent to try and use this petition as a vehicle to improve our system, we in no way intend to use this to have a go at anyone. Like most bereaved families we have spoken to, we want the death of our son and the issues we have faced to be the stimulus for improvement and to help ensure that others don't have to go through what we have.

I also, think that talking to Tony Whittle, who has provided us with excellent guidance, would be of great benefit. Tony was head of West Yorkshire CID and can talk to the impact on police by releasing the level of information we request. Tony can also talk to his view of

how this impacts public and police relationships from a real hands on perspective rather than a theoretical analysis.

Stuart Graham

ANNEXE C

THE RT HON FRANK MULHOLLAND QC

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Justice Committee Convener
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The Scottish Parliament
Edinburgh
EH99 1SP

6th October 2015

Dear Christine,

Thank you for your letter of 24 September. The issues raised in your letter have been dealt with in my offices letter to Justice for Megrahi in response to their letter dated 24 August to me. I enclose a copy of the letter for your information.

As you will appreciate I have not been involved in the 'Operation Sandwood' investigation and the appointment of independent counsel in respect thereof. The appointment was dealt with by officials who have had no involvement in the Lockerbie investigation.

I was not involved in the process other than to indicate the criteria for appointment which has been set out by me in correspondence.

Best wishes,

Yours,

FRANK MULHOLLAND QC

ANNEXE D

THE RT HON FRANK MULHOLLAND QC

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Robert Forrester
Secretary
Justice for Megrahi
11 Bridge Street
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CA6 5UB

18th September 2015

Dear Mr Forrester,

Thank you for your letter of 24 August concerning the appointment of an Independent Prosecutor.

Further to the Lord Advocate's letter of 8 May 2015 to the Justice Committee, the Lord Advocate can confirm that he has had no involvement in the appointment of Counsel undertaking this work. The Independent Counsel who is undertaking this work is not under the direction of the Lord Advocate. The Lord Advocate considers it important that any criminal allegations against persons who were representing the Crown are dealt with independently of the Crown. As indicated above steps have been taken to ensure this is the case.

Regards

DAVID STEWART
Private Secretary

ANNEXE E

Scottish Legal Complaints Commission
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Tel 0131 528 5111
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www.scottishlegalcomplaints.org.uk
Legal Post, 86, Edinburgh 2

Christine Grahame, MSP
Convener, Justice Committee
The Scottish Parliament
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26 October 2015

Dear Christine

PETITION PE 1479– ANDREW MUIR
RULES OF THE SLCC

Thank you for your letter of 1 October regarding the above.

I should like to say at the outset that I am very sorry to learn that previous requests for clarification of the SLCC's position in relation to the proposed changes to our time limit Rules have met with no response. After a search I have been unable to locate any recent requests and was unaware that this matter was outstanding. I did not receive a handover from my predecessor, and can only apologise if the mix up happened because of that.

I am aware that my predecessor wrote to you in December of last year. At that point it had been our intention to introduce a new rule on time bar by July 2015 to contain, as a minimum, the extended time limits contained in the draft Rules consulted upon at the end of 2014, plus any further changes which were required by the EU ADR Directive.

Since that date, we have been considering the ADR Directive and, in particular, the advantages and disadvantages of our potential compliance with it. In particular, we identified that compliance would require changes to our primary legislation which could not be achieved within the relevant timescales. We reached this conclusion in discussion with the Scottish Government Justice Department, as their view was that they should not need to pass legislation due to Westminster's implementation of an EU Directive. We have continued to debate this and it was only at September's Board meeting that the SLCC agreed not to apply to be an ADR entity at this stage

As previously indicated, changes to the SLCC's time limits were to be considered hand-in-hand with the ADR Directive requirements, and that was the basis on which we consulted all parties. Now that ADR is not a current consideration, we can't rely on that consultation, as a primary justification given for the change is now not there.

We intend to re-open discussions around our time limits and, in due course, undertake a further consultation around this and any other proposed Rule changes which may be identified.

I would be delighted to meet with you to discuss this matter further, or to hear your views on how we could perform better as an organisation. One of my first tasks since arriving three months ago has been to start trying to develop a longer term plan to improve our performance. We need to consult on our plans in January under our statute, but earlier input from those with specific experience of the system would be hugely valuable.

Yours sincerely

Neil Stevenson
Chief Executive Officer

Justice Committee

1st Meeting, 2016 (Session 4), Tuesday 5 January 2016

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:

MANAGEMENT OF OFFENDERS ETC. (SCOTLAND) ACT 2005 (COMMENCEMENT NO. 8 AND CONSEQUENTIAL PROVISIONS) ORDER 2015 (SSI 2015/397)

Introduction

2. This instrument ("SSI 397") is made under powers conferred by section 22(1) and 24(2) and 24(3) of the Management of Offenders etc. (Scotland) Act 2005 and laid under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

3. SSI 397 comes into force on 31 March 2016 (but see discussion below).

4. Further details on the purpose of the instrument can be found in the policy note (see page 3 below).

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform (DPLR) Committee considered SSI 397 at its meeting on 8 December 2015 and agreed to draw it to the attention of the Parliament. The DPLR Committee raised serious concerns about the instrument (see Annexe B on page 6 below), noting that it appeared to have been introduced under the negative procedure when the affirmative procedure should have been used. In its response to the Committee, the Scottish Government acknowledged that it had used the wrong procedure (it also acknowledged a drafting error identified by the DPLR Committee) and has since laid two instruments intended to replicate the effect of SSI 397. These will be considered by the DPLR Committee and, as appropriate, by this Committee, in due course. The amending instruments would come into force on the same day that SSI 397 was intended to come into force.

6. Negative instruments are made by Ministers before being laid. They automatically come into force at a future date specified in the legislation, unless a motion to annul is passed by the Parliament. The Scottish Government's position (as set out in communications with officials and with the DPLR Committee[1]) is that, because the wrong procedure was used, SSI 397 is simply not law, and will not become law, and therefore either need not or, being non-existent, cannot be revoked. And if this turned out to be incorrect (only the courts can definitively adjudicate on the legal status of a laid instrument), the two amending instruments would, in any case

[1] Delegated Powers and Law Reform Committee, Official Report, 15 December 2015. [Available at http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10283]

supersede SSI 397. Therefore, the Scottish Government argues, no further action is necessary in relation to SSI 397.

7. The DPLR Committee, whilst not expressing disagreement with the Scottish Government's view on the legal position, has criticised this approach, arguing that, if only for the sake of tidying the statute book and avoiding any future confusion, the Scottish Government should take appropriate, formal steps to provide clarity that the instrument is not law.[2] The Scottish Government has pointed out that it has removed the instrument from its own online publications and has successfully instructed its removal from Legislation.gov.uk (also known as the Statute Law Database), the official online record of the UK's in-force statute law. The Scottish Government therefore considers that it has taken adequate steps to clarify the instrument's status (or non-status) and to avoid confusion as to the state of the relevant law.

Justice Committee consideration

8. SSI 397 having been laid as a negative instrument, and not having been formally revoked under the appropriate procedure, it is considered necessary for the Scottish Parliament to continue to treat it in the usual way under the negative procedure. Accordingly, following its consideration by the DPLR Committee, the instrument has now been placed on the Justice Committee's agenda.

9. It is for this Committee to decide what further steps to take in relation to SSI 397. This could include reporting on the instrument, which under the "40-day rule", must be done by 11 January. However, the Committee may wish to bear in mind that subject Committees reporting on negative instruments would ordinarily be expected to focus their comments on policy issues, rather than on concerns such as those outlined at length above, which are more properly for the DPLR Committee – and the DPLR Committee has already reported or publicly commented on those issues.[3]

10. As far as scrutiny of the *policy* of SSI 397 is concerned, the Committee may wish to be mindful of the Scottish Government's view (a) that the instrument is not law, and (b) that, even if this is incorrect, the two amending instruments would supersede it at the moment of its coming into force. As noted above, there will be the usual opportunity for the Committee to consider those instruments in due course.

12. Further details on the procedure for negative instruments are set out in Annexe A on page 5 of this paper.

[2] Delegated Powers and Law Reform Committee, Official Report, 15 December 2015. [Available at http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10283] Under the relevant legislation (the Interpretation and Legislative Reform (Scotland) Act 2010), it would appear that the formal, express method to revoke the instrument would be by means of laying a revocation instrument under the affirmative procedure. (A difficulty arises as to a motion to annul, as the negative procedure must properly apply for that method to be possible, but, as noted, the instrument was laid by virtue of powers that were properly subject to the affirmative procedure.) The power to lay such a revocation lies only with the Scottish Government.

[3] The Committee may also wish to note that the Scottish Government has offered to write to the DPLR Committee, copied to the Justice Committee, further setting out its position on instrument 397, in the light of exchanges between the DPLR Committee and the Minister for Parliamentary Business at that Committee's 15 December meeting. This letter will be forwarded to Members when it arrives.

Policy Note: Management of Offenders etc. (Scotland) Act 2005 (Commencement No. 8 and Consequential Provisions) Order 2015

1. The above instrument is made in exercise of the powers conferred by section 22(1) and 24(2) and 24(3) of the Management of Offenders etc. (Scotland) Act 2005. It is laid before Parliament under section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010.

Policy Objectives

2. Section 10 of the Management of Offenders etc. (Scotland) Act 2005 (the 2005 Act), requires the Police, Local Authorities, Health Boards and the Scottish Prison Service as the Responsible Authorities to establish multi-agency arrangements to assess and manage the risk posed by certain categories of offender. Commencement of relevant sections has taken place in respect of registered sex offenders and mentally disordered restricted patients.

3. The Multi-Agency Public Protection Arrangements (MAPPA) provide these arrangements through guidance issued by Ministers under section 10(6) of the 2005 Act. The purpose of MAPPA is public protection and the reduction of serious harm. MAPPA aims to achieve this by providing a framework for agencies to share information, jointly assess risk and apply resources proportionately to manage the risk of serious harm posed to the public by relevant offenders.

4. The purpose of this order is to allow the extension of MAPPA beyond registered sex offenders and restricted patients by providing the responsible authorities with the ability to include in the arrangements certain high risk offenders managed in the community, where they assess that a risk of serious harm to the public exists which requires an active multi-agency response.

5. This order will achieve this objective by commencing section 10(1)(e) and 10(2)(b) of the 2005 Act, insofar as they are not already in force, and in respect of the latter for the purposes of section 10(1)(e) only. This applies the duty to cooperate on the responsible authorities in respect of any person who has been convicted of an offence if, by reason of that conviction, the person is considered by them to be a person who may cause serious harm to the public. Section 10(2)(b) provides that it is immaterial where the offence considered under section 10(1)(e) was committed.

6. This order also makes a consequential amendment to the Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007 to ensure bodies currently under a duty to cooperate with the responsible authorities regarding the management of relevant offenders, will continue to do so in respect of those brought into arrangements through further commencement of section 10(1)(e) of the 2005 Act.

Consultation

7. The then Scottish Executive's public consultation *Reduce, Rehabilitate and Reform – A Consultation on Reducing Reoffending in Scotland,* ran from 2 March – 25 May 2004, the conclusions of which informed development of these provisions within the 2005 Act.

8. In addition, an advisory group comprising representatives of the responsible authorities (Police Service of Scotland, Scottish Prison Service, Social Work Scotland) was established in spring 2014 under a remit to advise the Scottish Government on options to extend MAPPA to further offenders posing a risk of serious harm, and to support planning for future implementation subject to parliamentary approval of the relevant provisions. The Risk Management Authority, COSLA, MAPPA coordinators and NHS mental health practitioners were also represented.

9. Regular meetings of the advisory group took place over 2014 and early 2015 to discuss how the MAPPA extension could be applied through guidance to ensure that application would be focused proportionately to those posing a risk of serious harm to the public. The group also contributed to the development of new guidance to be issued under section 10(6) of the 2005 Act.

10. Meetings also sought to support the responsible authorities in considering the impacts of the policy, what preparations could be required to ensure that practitioners would be ready to apply the new MAPPA category and to help partners plan for its implementation, subject to parliamentary approval. Similar discussions also took place within the Justice Tripartite Group representing the responsible authorities, MAPPA National Strategy Group and MAPPA Coordinators Group.

11. A number of meetings were also held with MAPPA partners from across Scotland, in particular members of local MAPPA Strategic Oversight Groups comprising criminal justice social work managers, MAPPA coordinators and local Police representatives. Input was also sought over the engagement period from the national Violence Reduction Unit, Care Inspectorate, Strathclyde University Centre for Youth Justice and members of the NHS Scotland Forensic Network.

Impact Assessment and Financial Effects

12. A Business and Regulatory Impact Assessment has been completed in respect of this instrument and the policy to extend MAPPA. No significant negative financial impacts were identified on the Scottish Government, businesses or the public sector.

13. An Equality Impact Assessment has also been completed in respect of this policy. No significant negative impacts were identified on any persons with protected characteristics.

Scottish Government
Safer Communities Division
18 November 2015

ANNEXE A

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 Delegated Powers and Law Reform 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 Delegated Powers and Law Reform 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.

Guidance on subordinate legislation

Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/64215.aspx

ANNEXE B

Extract from the Delegated Powers and Law Reform Committee's 79th Report, 2015 (Session 4)

Management of Offenders etc. (Scotland) Act 2005 (Commencement No. 8 and Consequential Provisions) Order 2015 (SSI 2015/397) (Justice)

1. Section 10 of the Management of Offenders etc. (Scotland) Act 2005 ("the 2005 Act") requires the police, local authorities, health boards and the Scottish Prison Service as the "responsible authorities" to establish multi-agency arrangements, to assess and manage the risk posed by certain categories of offender. Commencement of relevant provisions of the 2005 Act has already taken place in respect of registered sex offenders and mentally disordered restricted patients.

2. The Multi-Agency Public Protection Arrangements ("MAPPA") provide these arrangements through guidance issued by the Scottish Ministers under section 10(6) of the 2005 Act. MAPPA provides a framework for agencies to share information, jointly assess risk and apply resources proportionately, to manage the risk of serious harm posed to the public by relevant offenders.

3. The general purpose of this Order is to extend MAPPA beyond registered sex offenders and restricted patients, by providing the responsible authorities with the ability to include in the arrangements certain high risk offenders managed in the community, where they assess that a risk of serious harm to the public exists, which requires an active multi-agency response.

4. The Order implements that objective by commencing section 10(1)(e) and 10(2)(b) of the 2005 Act, insofar as they are not already in force, and in respect of the latter for the purposes of section 10(1)(e) only. The provisions are commenced with effect from 31 March 2016. (Articles 2 and 3).

5. The commencement of those provisions applies the duty to cooperate which the responsible authorities have, in respect of any person who has been convicted of an offence if, by reason of that conviction, the person is considered by them to be a person who may cause serious harm to the public. Section 10(2)(b) provides that it is immaterial where the offence considered under section 10(1)(e) was committed.

6. The Order also makes a consequential amendment to the Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007. This makes provision that the bodies which are currently under a duty to cooperate, with the responsible authorities regarding the management of relevant offenders, will do so in respect of those brought into the arrangements through the further commencement of section 10(1)(e) of the 2005 Act. (Article 4).

7. When considering the instrument, the Committee asked questions of the Scottish Government in relation to the enabling powers to make the consequential amendment in article 4, as well as on a drafting error. The correspondence is reproduced in the Appendix on page 9 of this paper.

8. The Committee considered why it is proposed that, and the Order has been drafted on the basis that, it is subject to the negative procedure. Section 33 of the Interpretation and Legislative Reform (Scotland) Act 2010 is relevant. Section 33 permits a combined use of powers in a Scottish statutory instrument. Where a commencement of provisions which is subject to "laid only" procedure (as for articles 2 and 3 of this instrument) is combined with a use of power which is subject to either the negative or the affirmative procedure, the instrument may combine the provisions. In that event however, the whole instrument requires to be subject to the higher scrutiny level.

9. The Scottish Government has confirmed in response to the Committee that (on reflection) the consequential amendment which is made by article 4 is an amendment to an 'enactment'. As provided for by the powers contained in section 22(2) and (4) of the 2005 Act, the consequential amendment requires to be subject to the affirmative procedure. The Scottish Government has acknowledged that the provision should therefore have been laid in draft, only to be made after approval by the Parliament by resolution, in order to be *intra vires* (within the powers enabled by the 2005 Act). The Scottish Government will remedy this by means of corrective legislation. The Committee agrees that there is doubt as to the *vires* of article 4 of the instrument.

10. The Scottish Government has also confirmed that it will address a drafting error in article 3 of the instrument, by means of corrective legislation. The error is explained in paragraph 23 below.

11. **The Committee therefore draws the Order to the attention of the Parliament on the following reporting grounds:**

12. **Firstly, on ground (e) as there appears to be a doubt whether article 4 is intra vires. Article 4 makes a consequential amendment of the Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007, by virtue of the powers contained in section 22(2) and (4) of the 2005 Act.**

13. **By virtue of those powers as read with section 29 of, and Schedule 3 to, the Interpretation and Legislative Reform (Scotland) Act 2010, the consequential amendment must be subject to the affirmative procedure and the provision laid in draft. There is a doubt as to the vires of article 4, given that the Order has been made prior to laying, and not laid in draft for approval by resolution of the Parliament.**

14. **Secondly, on the general ground as it contains a drafting error. Article 3 brings into force section 10(2)(b) of the 2005 Act in so far as not already in force, but only for the purposes of section 10(1)(e) of the 2005 Act. In article 3 the qualification "for the purposes of section 10(1)(e)" is duplicated, which confuses the provision.**

15. **The Committee notes that the Scottish Government has undertaken to lay corrective legislation to remedy both of these issues. It is understood that this would come into force on 31 March 2016, the same time as the Order.**

16. **The Committee does not find this satisfactory.**

17. **The Committee considers that it is unacceptable for a provision which is of doubtful vires to remain on the statute book. Correcting the errors identified by the Committee is welcomed, but this should happen as a matter of some urgency and should entail the removal of the consequential amendment at article 4 from the statute book.**

18. **The Committee urges the Scottish Government to take all steps necessary to remedy the issues raised by the Committee and to do so as soon as possible.**

19. **The Committee will return to this issue when it considers the amending instruments and will reflect at that point on the Scottish Government's response to its concerns.**

Appendix

Management of Offenders etc. (Scotland) Act 2005 (Commencement No. 8 and Consequential Provisions) Order 2015 (SSI 2015/397)

On 25 November 2015, the Scottish Government was asked:

1. Article 4 makes a consequential provision by virtue of the power in section 22(1) of the 2005 Act, to amend the Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007 ("the 2007 Order"). Section 22(2) of the Act enables the order to amend any "enactment" (including any provision of the Act). Section 22(4) provides that an order made by virtue of section 22(2) is subject to the affirmative procedure (having regard to Schedule 3 to the Interpretation and Legislative Reform (Scotland) Act 2010). This Order is drafted and has been made on the basis that it is subject to the negative procedure.

It appears that "enactment" for those purposes is not defined within the 2005 Act. We assume that "enactment" as used in section 22 has the same meaning as in section 10(1)((b)(ii), and (4) of the Act which (in general terms) refers to supervision of offenders' functions of the Scottish Ministers under any enactment, and the functions of persons as specified in section 10(3) and responsible authorities' functions under "any enactment".

We also note that a previous Order, the Management of Offenders etc. (Scotland) Act 2005 (Members' Remuneration and Supplementary Provisions) Order 2008 (SSI 2008/30) was, in accordance with section 22(4) of the 2005 Act and another provision, laid in draft and made after approval by resolution. That Order amended subordinate legislation (SSI 2006/182), rather than an Act.

Please explain therefore why it has been considered that the consequential modification of the 2007 Order is not a modification of an "enactment" which in accordance with section 22(2) and (4) of the 2005 Act requires the Order to be subject to the affirmative procedure (and so requiring an Order to be laid in draft)?

2. The explanatory note to the Order states that article 3 brings into force section 10(2)(b) in so far as not already in force but only for the purposes of section 10(1)(e) of the Management of Offenders etc. (Scotland) Act 2005 ("the 2005 Act"). However article 3 duplicates those purposes- "for the purposes of section 10(1)(e) of that Act in so far as not already in force for the purposes of section 10(1)(e)."

Would you agree this is an error, and if so, would corrective action be proposed?

The Scottish Government responded as follows:

1. The Scottish Government agrees that the consequential modification of the Management of Offenders etc. (Scotland) Act 2005 (Specification of Persons) Order 2007 ("the 2007 Order") is an amendment to an 'enactment'. Under section 22(4) of the Management of Offenders etc. (Scotland) Act 2005 ("the 2005 Act") any amendment to the 2007 Order via section 22(2) of the 2005 Act requires to be subject to the affirmative procedure and laid in draft and approved by the Scottish Parliament, in order to be intra vires.

As this has not been done, the Scottish Government will bring forward appropriate legislation to commence the relevant provision in section 10 of the 2005 Act and to amend the 2007 Order. The intention remains for this to come into force on 31st March 2016.

2. The second point made by the Committee will be addressed by the Scottish Government when bringing that legislation forward.