The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

7th Meeting, 2016 (Session 4)

Tuesday 23 February 2016

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Decisions on taking business in private:** The Committee will decide whether to take items 5 and 6 in private.

2. **Family Law (Scotland) Act 2006:** The Committee will take evidence from—

   Professor Jane Mair, School of Law, University of Glasgow;

   Professor Kenneth Norrie, Law School, University of Strathclyde.

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

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

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

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

   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.

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

Scottish Sentencing Council (Submission of Business Plan) Order 2016 (SSI 2016/55);

Regulation of Investigatory Powers (Prescription of Ranks and Positions) (Scotland) Order 2016
(SSI 2016/56).

5. **Armed Forces Bill (UK Parliament legislation):** The Committee will consider a revised draft report on the legislative consent memorandum on the Armed Forces Bill (LCM(S4) 39.1).

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

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk	J/S4/16/7/1
Private paper	J/S4/16/7/2 (P)
Private paper	J/S4/16/7/3 (P)
Family Law (Scotland) Act 2006 and all accompanying documents	
Written submissions received on the operation of the Act	

Agenda item 3

Paper by the clerk	J/S4/16/7/4

Agenda item 4

Paper by the clerk	J/S4/16/7/5
Scottish Sentencing Council (Submission of Business Plan) Order 2016 (SSI 2016/55)	
Regulation of Investigatory Powers (Prescription of Ranks and Positions) (Scotland) Order 2016 (SSI 2016/56)	

Agenda item 5

Private paper	J/S4/16/7/6 (P)

Agenda item 6

Private paper	J/S4/16/7/7 (P)

Justice Committee

7th Meeting, 2016 (Session 4), Tuesday 23 February 2016

Post-legislative scrutiny of the Family Law (Scotland) Act 2006

Note by the Clerk

Purpose

1. This paper provides some background information in relation to the Committee's first evidence session on the Family Law (Scotland) Act 2006 (the 2006 Act). The Committee will hear from Professor Kenneth Norrie of Strathclyde University Law School and Professor Jane Mair of the Glasgow University School of Law. Both witnesses have provided submissions, the latter jointly with a fellow academic at Glasgow University (see annexe A, at page 3, and annexe B, at page 6).

Background

2. Committees are encouraged to carry out post-legislative scrutiny of important Bills passed by the Scottish Parliament in order to ascertain whether they appear to be meeting the policy aims that were set out for them when they were agreed to. The 2006 Act is recognised as one of the most significant reforms of family law of recent years. The Justice Committee, recognising that a small amount of time was available for post-legislative scrutiny before Parliament dissolves in late March, agreed earlier this year to take evidence on the 2006 Act.

3. Given the short time available, it was never the Committee's intention to consider the whole Act. Instead, in late January, a call for evidence was issued, targeted at selected stakeholders, and inviting views on which aspects of the 2006 Act most merited consideration. The balance of views received in response indicated that the Committee should focus on two aspects:

- the provisions on cohabitation set out in sections 25 to 29 of the 2006 Act, with particular focus on the financial consequences of the end of a cohabiting relationship (sections 28 and 29). In considering this issue, there is also the opportunity to frame more general questions about the state and coherence of Scots law in relation to adult partnerships – cohabitation, marriage and civil partnership – and the consequences of those relationships ending;
- the main reforms made by the 2006 Act in relation to parental responsibilities and rights, with particular focus on (a) the acquisition of such rights and responsibilities by unmarried fathers (section 23), and (b) the making of residence and contact orders in relation to children of a relationship, having regard to the requirement in the 2006 Act for the courts to take the risk of abuse into account when making such orders (section 24).

Useful background material

4. The 2006 Act (and a link to explanatory notes) can be found on the UK Statute Law Database at:
http://www.legislation.gov.uk/asp/2006/2/contents

5. The Scottish Executive Policy Memorandum for the Bill that became the 2006 Act is available here on the Scottish Parliament website (NB: the numbering of some provisions

in the Act may be different to the original numbering in the Bill as introduced because of amendments agreed to during the Bill's progress):
http://www.scottish.parliament.uk/S2_Bills/Family%20Law%20(Scotland)%20Bill/b36s2-introd-pm.pdf

6. All submissions received in response to the Committee's targeted call for evidence can be found on this Justice Committee webpage:
http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/96575.aspx

Next steps

7. At the meeting on 23 February, the Committee will question Professors Norrie and Mair mainly on the two aspects of the Act set out above, having regard to their written submissions (agenda item 2).

8. When it considers its work programme (agenda item 6), the Committee will then agree what further action to take on this matter, including what further witnesses to invite to give evidence on the 2006 Act at a meeting in March.

9. The Committee's work on this issue is likely to conclude with a short report to Parliament, a letter to the Cabinet Secretary for Justice, and/or a recommendation in its legacy paper to a future justice committee as to what further work it might undertake in relation to the 2006 Act in session 2016-21 of the Scottish Parliament.

ANNEXE A

Professor Kenneth McK. Norrie, Law School, University of Strathclyde

Introduction

Much of the Family Law (Scotland) Act 2006 is amending rather than substantive legislation – that is to say it amends existing legislation rather than creating new substantive rules contained in itself. Some of the issues that the Act dealt with, such as marriage and civil partnership, have been substantially overtaken by other developments; many of the Act's provisions have settled down into uncontentious law, and have created little if any problems in practice (most obviously, this is so in relation to the abolition of the status of illegitimacy (s. 21), and the extension of various statutory provisions to same-sex couples (ss. 30, 33 and the schedules)). I am unaware of problems in relation to jurisdiction and private international law (ss. 37 – 41).

There are a number of minor issues that I believe would be worth the Parliament re-examining, and one major issue. The paragraphs below deal with the minor issues first.

Divorce and Dissolution

The reduction in separation periods for divorce (s. 11 and (for civil partners) sched 1(9)) was politically contentious in 2005-06 but I think has been unproblematic in practice. A very late addition to the Bill was section 15, which permits the postponement of a divorce until a religious "divorce" has been granted: at the time I considered the provision conceptually misconceived, and am not yet persuaded that allowing civil process to be affected by religious doctrine is a good thing – but again I am unaware of it causing any problems in practice (I understand that the provision has never been used). Would anything be lost by its removal?

Marriage by Cohabitation with Habit and Repute

Section 3 of the 2006 did something that was long over-due: it abolished the discredited doctrine of marriage by cohabitation with habit and repute. This was a means by which couples who had never (formally) married could obtain all the benefits of marriage by pretending that they had indeed formally married: it was used to ameliorate the difficult positions that cohabitants would otherwise find themselves in. The abolition was a consequence of the Act's provisions conferring financial claims on cohabitants.

The abolition was not complete, however: section 3(3) and (4) effectively retain the concept where its application would protect the validity of marriages invalidly contracted abroad. Personally, I was never convinced that it was good social policy for Scots law to validate marriages which had been entered into by flawed process: the provisions were added in at a very late stage, having been explicitly requested by an MSP who had married abroad in a ceremony conducted in a language he did not understand. A gauche dinner party joke ("so I might not actually be married after all!") seemed to suggest a lacuna when none, in fact, existed. I am not aware of the provision ever having been used and it might be regarded as harmless, other than its cluttering up of the statute book.

My real concern (rejected when I raised it in 2005, and misunderstood when I raised it in 2013 as the Marriage and Civil Partnership (Scotland) Act was being debated) concerns

civil partnership. Section 3(3) and (4) of the 2006 Act validates *marriages* invalidly contracted abroad; section 4(6) of the 2014 Act extends the provision to same-sex *marriages* invalidly contracted abroad. But civil partnerships invalidly contracted abroad remain invalid and do not receive the benefit of validation that is given to marriages. This was clearly discriminatory before 2014 when same-sex couples had no option but to enter a civil partnership; it remains discriminatory in that it preferences for no sound reason the marital relationship.

I strongly urge the Scottish Parliament to consider either extending the protection to civil partnerships or, preferably, repealing the provisions so that people who marry abroad are treated in the same way as people who marry in Scotland: get the process wrong and suffer the consequences.

Children, Illegitimacy and Parental Responsibilities

Section 21 abolished the status of illegitimacy, but it did not remove all the differences in treatment between marital and non-marital children. Section 23 also provides that a child's father will obtain parental responsibilities and parental rights so long as he is registered as the father: this substantially ameliorated the position of the unmarried father who, previously, was absolved of his parental responsibilities until he married the mother of his child. However, in passing this provision, the Scottish Parliament in 2005 took the explicit decision not to make it retrospective. This means that for non-marital children born before 4th May 2006 (the date of the Act's commencement) there is only one adult to whom they can look for the exercise of parental responsibility; while for children born after then there are two adults with responsibilities for them. The argument in 2006 was that imposing parental responsibilities where none existed before would interfere too much with current family arrangements. The Act is now ten years old and the disadvantaged non-marital children are now all ten years old or more. Without amendment we will have another six years to wait until all pre-Act children are 16, but I suggest that it would be worth the Parliament's while now to make section 23 retrospective. Family relationships will have settled with the growing child, and more people will expect the law to reflect its post- and not pre-2006 position. I urge consideration to be given to this issue.

Cohabitation

The major contribution to law reform made by the 2006 Act was undoubtedly sections 25 to 31, dealing with cohabitants, and I will not be the only one to point out that it is these provisions that deserve most examination of their effectiveness.

There is little of interest in sections 26, 27 and 30, and the Scottish Government are presently (I understand) working on the Scottish Law Commission's proposals for amending the law of succession, including the succession claim of cohabitants in section 29. So the remaining provisions that require a fresh look are those in section 25 (which provides the definition of cohabitant) and section 28 (which allows claims for financial readjustment on separation.

The definition of "cohabitant" in section 25 has proved less problematical for the courts than had, perhaps, been assumed in 2006, but its wording could still be improved upon. For example, in determining whether a person is a cohabitant the court has to take account of "the nature of the relationship" – which is the very point at issue and so is circular. I am not sure that it adds anything of import to the court's consideration. The reference to "living together as if they were civil partners" looks increasingly anomalous on the face of the statute, but section 4(3) and (4) of the Marriage and Civil Partnership

(Scotland) Act 2014 requires that this phrase be read to mean "as if married". The substance of the law is clear but, requiring to be read in light of the 2014 Act, is obscure. If there is to be any amendment, then section 25(1)(b) needs to be repealed and the whole subsection replaced with a reference to a couple, irrespective of gender mix, who live together as if they were a married couple.

Section 28 has generated the most case law. Very deliberately, the Parliament in 2005 worded this provision to ensure that courts have maximum discretion. Section 28(2)(a), for example, allows the court to make "an order" but it contains no indication as to *why* the court should make an order, what goal the order is to seek, nor how the order is to be valued. The thinking in 2005 was that cohabiting couples are so very diverse that the strict delimitations to financial adjustments when married couples divorce are not suitable. I was unconvinced by that argument then, and I am even more unconvinced today. Married couples lead diverse and individual lives to no lesser extent than cohabiting couples, and if guidance for the court is suitable for married couples and civil partners, it should also be suitable for cohabiting couples. It took the Supreme Court in *Gow v Grant* (2012) to tell us that section 28 required the court to seek "fairness" (though that word never appears in section 28). Fairness, like beauty, lies in the eye of the beholder and I should prefer the legislation to set down much clearer principles to guide the court as to what the order made in section 28 should seek to achieve, and how it should be valued. The model of section 9(2)(b) of the Family Law (Scotland) Act 1985, applicable to married couples and civil partners, is worth looking at again.

The thinking behind both sections 28 and 29 is to ensure that some claim can be made by a cohabitant but that it is less valuable – or at the very least no more valuable – than the claim available to a spouse or civil partner. The Scottish Law Commission suggests in relation to succession claims that it should be valued the same, but then the cohabitant should receive only a percentage (which could be up to 100) depending on the nature of the cohabitation. This seems to be a complex mechanism to achieve what other jurisdictions achieve by imposing time-limits. Australia and New Zealand for example allow the cohabitant to make a claim on death equivalent to that of the surviving spouse, but only after the cohabitation has lasted for (usually) three years or more. There will inevitably be hard cases in which a cohabitant dies very shortly before the three years have passed, and the commencement of cohabitation is not so easily established as the commencement of marriage/civil partnership. But it is at the least arguable that these problems would arise less often than those created by the current law and so it is I think worth the Parliament's time reopening all these debates that were had ten years ago.

Kenneth McK. Norrie
Law School
University of Strathclyde
(previously adviser to the Justice 1 Committee in 2005 while it considered the Bill)
5 February 2016

ANNEXE B

Professor Jane Mair and Dr Frankie McCarthy, University of Glasgow

The submission relates solely to the provisions on cohabitation contained in the 2006 Act, sections 25-29. In summary, our concerns are as follows:

General issues

- The law of adult relationships is in need of root-and-branch review, which cannot be carried out in the abbreviated time frame allocated for the current review exercise. The issue should be referred to the Scottish Law Commission for consideration.
- The Government is currently consulting on extensive reform to the law of succession, which may result in a complete overhaul of section 29 of the 2006 Act. Succession issues should not be considered in isolation from the other cohabitation provisions in the Act.

Specific issues

- The definition of "cohabitant" in section 25 has caused difficulty for the courts, since it is impossible to say what it means to live together "as if husband and wife", or how the factors set out in section 25(2) relate to that definition. Cohabitants should be defined as a couple committed to a shared life, with a longer list given of factors which tend to demonstrate such a commitment.
- Section 28 empowers the court to make an order for financial provision on the breakdown of cohabitation. The purpose of the order should be specified – for example, to ensure the parties' needs are met after the relationship, to compensate a partner who suffered loss as a result of the relationship, to share out the assets of a relationship or some combination of the above.
- It seems the court is empowered only to make an order for a capital sum under section 28. It would be sensible to allow the court the flexibility of a range of orders, including transfer of property and transfer or sharing of a pension.
- The one year time limit on raising an action under section 28(8) should be lengthened to at least two years, with discretion to extend the time limit on cause shown.

GENERAL ISSUES

1. The need for review

The law of adult relationships has changed drastically over the past 15 years. These changes have taken place on a piecemeal basis, with the UK-wide introduction of civil partnership for same-sex couples in 2004, followed by the Scottish cohabitation provisions in 2006, then the introduction of marriage for same-sex couples in the Marriage and Civil Partnership (Scotland) Act 2014. Scots family law has drifted into a situation where there are three forms of regulated relationships: marriage, civil partnership and cohabitation. There is no adequate theoretical or functional framework underpinning the distinctions between these distinct legal relationships and, if that is not addressed, the law in practice will become increasingly complex, incoherent and ineffective.

The fundamental tension inherent in current law is summed up by these two separate statements in the Scottish Executive guidance document *Family Matters: Marriage in Scotland* (2006):

> Marriage is special, it is the pillar around which so much of the strength of family life is built, and it deserves to be cherished.[1]
>
> Families now come in all shapes and sizes and every family is important no matter how it is formed.[2]

The provisions of the 2006 Act, and the way they are being applied in practice, highlight the problems of statutory compromise. Thorough review is needed to establish the place of marriage in Scotland, what this means for civil partnership and where cohabitation fits into the framework.[3]

The focus on maintaining a distinction between marriage and cohabitation, emphasised in the Policy Memorandum which accompanied the Family Law (Scotland) Bill,[4] may also have led to the explicit non-use of existing Scots law on financial provision on divorce to influence the law on cohabitation. This is very unfortunate. Recent Nuffield-funded research by Professor Mair has revealed a strong consensus amongst practitioners as to the strength of our legislative provision on divorce, which is seen an example of Scots family law at its best. It is held in very high regard by lawyers, easily understood by parties and has had a very significant impact in encouraging private negotiation and settlement and thus reducing the burden on the courts.

The research has confirmed how well the provisions of the 1985 Act work in practice and highlights some of the areas of concern expressed by solicitors in respect of the 2006 Act: "*it's very, very difficult to advise clients at the moment about cohabitation claims because it's so woolly … whereas the '85 Act has got a bit more direction*". [Solicitor 11]

Comparing the two Acts: "*the 2006 Act – really it's how long is a piece of string? … It's very difficult to advise clients in those circumstances, because the judicial discretion is so broad and there is so little guidance that you just don't know*". [Advocate 21]

Both: "*the structure and clarity of the Act is admirable. … Clive got this right. … I like the construction … there's a logic to it*". [Solicitor 13]

Not only was it seen as being: "*user friendly for family law solicitors*" [Solicitor 17] but also: "*it's easy to explain to a client*". [Solicitor 06].[5]

A root-and-branch review of the law of adult relationships would allow us to revisit the question of whether cohabitation law should build on the good practice model contained within the existing regulation of financial provision on divorce.[6]

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[1] Scottish Executive (2006), *Family Matters: Marriage in Scotland*, p 13.
[2] Scottish Executive (2006), *Family Matters: Marriage in Scotland*, p 1.
[3] For further discussion, see J Mair, "Belief in Marriage" (2014) 5 *International Journal of the Jurisprudence of the Family* 63.
[4] It is noted at para 71 that: "the Scottish Ministers are clear that marriage has a special place in society and that its distinctive legal status should be preserved."
[5] The full report will be available on the Nuffield website shortly. For brief discussion, see E Mordaunt, "Standing the test of time?" (2014) *Journal of the Law Society of Scotland*.
[6] For further discussion of the potential benefits of building Scots cohabitation law in tandem with divorce law, including a comparison with New Zealand law which takes this tandem approach, see F McCarthy

2. Existing consultation

A Government consultation on reform to the law of succession, including proposals for extensive reform to the succession rights for cohabitants contained in section 29 of the 2006 Act, closed in September 2015. The Government has not yet published its views on the consultation or made known whether the reforms are likely to be implemented. Reforming the cohabitation provisions in the 2006 Act without knowing what further reform may come from the succession consultation seems likely to lead to inconsistent and incoherent law. These issues should be treated together.

SPECIFIC ISSUES

1. Definition of cohabitant in section 25

The definition of "cohabitant" in section 25 has caused difficulty for the courts, since it is impossible to say what it means to live together "as if husband and wife". The concept of living together as if married has little substance, due to the underlying legal question mentioned earlier: should marriage be treated as "special" in terms of its legal consequences? It is also not clear how the factors set out in section 25(2) relate to the concept of living as if married. The drafting here has been described as "intellectually incoherent".[7] In practice, the courts have tended to pay little attention to the specific factors mentioned in section 25(2), referring instead to a wider range of factors such as those listed in *Garrad v Inglis*:[8]

> (1) the length of time during which the parties lived together, (2) the amount and nature of the time the parties spent together, (3) whether they lived under the same roof in the same household, (4) whether they slept together, (5) whether they had sexual intercourse, (6) whether they ate together, (7) whether they had a social life together, (8) whether they supported each other, talked to and were affectionate to each other, (9) outward appearances, (10 their financial arrangements, whether they shared resources, household and child-care tasks, (11) the intentions of each party and whether any of them were communicated to the other party, and (12) physical separation.[9]

The focus of the court decisions to date seems to have been on the stability of the relationship, and the reasonable expectation by the parties that it will continue. When this is lost, for example by one party explicitly informing the other that they are seeking to separate, the cohabitation will be over. If it is commitment to a stable relationship that gives rise to a claim by a cohabitant, this should be explicitly stated in the legislation. A list of factors which might tend to demonstrate this level of commitment (sharing a home, interdependent finances, an intimate relationship, co-parenting) could then be included, but with no one factor being determinative.[10]

2. The purpose of an award following breakdown of cohabitation

It is not clear whether an award under section 28 is designed to share the assets of the couple as if winding up a company, or to compensate once party for losses sustained at

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"Playing the percentages: New Zealand, Scotland and a global solution to the consequences of non-marital relationships" (2011) 24(4) *New Zealand Universities Law Review* 499-522.

[7] J.M. Thomson, *Family Law in Scotland* (6th ed), 2006, 30.

[8] 2014 GWD 1-17.

[9] At para 9.

[10] For discussion, see F McCarthy, "Defining Cohabitation" 2014 SLT 143.

the hands of the other, or to provide for the needs of a party who may be economically vulnerable following the breakdown of the relationship, or whether any other purpose may be appropriate. Without a defined purpose, it is difficult to know how to take into account the matters mentioned in subsection (3), that is the extent to which the defender has derived economic advantage from the contributions made by the applicant and the extent to which the applicant has suffered economic disadvantage in the interests of the defender or any relevant child.[11] A further complexity is whether an order under section 28(2)(b) is a stand-alone order based on the economic burden of childcare or whether it too requires a balancing exercise between advantage and disadvantage during the cohabitation.

To date, awards under section 28 have been limited and much of the court time appears to have been taken up with trying to understand and apply the difficult wording of the statute.[12] In the leading case of *Gow v Grant*[13], the Supreme Court looked for the underlying principle of the section and concluded that it was "fairness". Lady Hale suggested a rather different approach to that which has been adopted by the Scottish courts to date:

> Who can say whether the non-financial contributions, or the sacrifices, made by one party were offset by the board and lodging paid for by the other? That is not what living together in an intimate relationship is all about. It is much more practicable to consider where they were at the beginning of their cohabitation and where they are at the end and then to ask whether either the defender has derived a net economic advantage from the contributions of the applicant or the applicant has suffered a net economic disadvantage in the interests of the defender or any relevant child.

This may seem a very sensible approach but it is difficult to discern it within the current statutory provision, which focuses to such an extent on the offsetting process. While there was an initially positive response to the guidance provided by the Supreme Court, this has been short lived. In a recent sheriff court appeal decision, the sheriff principal observed that he was "left with some unease that too much reliance on the broad approach of fairness runs the risk of doing violence to the terms of s28(3)(a)".[14]

3. Orders available to the court following breakdown of cohabitation

On divorce, the court is able to make a range of orders in relation to financial provision, including capital payment, property transfer, periodical allowance and pension orders.[15] By contrast, on the breakdown of cohabitation, section 28 only mentions a capital sum payment. Arguably, the general reference to "an order" in section 28(2)(b) could be interpreted as including a range of different types of order but to date that is not an approach which has been taken by the courts. Instead they have proceeded on the basis that they can only make a capital payment order albeit it can be payable in instalments. [16]

4. Time limits

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[11] For further discussion, see F McCarthy, "Cohabitation: lessons from north of the border" (2011) 23(3) *Child and Family Law Quarterly* 277-301.
[12] See Griffiths, Fotheringham & McCarthy, *Family Law* (4th ed, 2015), paras 13-93 to 13-98.
[13] 2013 SC (UKSC) 1.
[14] *Smith-Milne v Langler* 2013 Fam LR 58.
[15] Family Law (Scotland) Act 1985, s8.
[16] As, eg, in *M v I* 2012 GWD 11-205, where the sheriff made an award of £5000 in respect of the burden of childcare, payable in five annual instalments.

The problems caused by the strict time limits under the 2006 Act are already well known. A significant proportion of cases which have been reported to date, are preliminary hearings dealing with the question of whether a claim has been submitted within the time limit of one year. The Court of Session on appeal in *Simpson v Downie* has confirmed that compliance with the statutory time limit is essential.[17]

Research into the views and experiences of legal practitioners concerning the provisions found that time limits were identified by 76% of the sample of 97 solicitors as being a problem.[18] Subsequent cases would tend to confirm this early view that the imposition of a short time limit does cause problems. Particularly in the context of a long relationship, it can be difficult to pinpoint the precise date at which cohabitation ceased.

Professor Jane Mair and Dr Frankie McCarthy
9 February 2016

[17] 2013 SLT 178, at para 13.
[18] F. Wasoff, J. Miles and E. Mordaunt, *Legal Practitioners' Perspectives on the Cohabitation Provisions of the Family Law (Scotland) Act 2006*, 2010, 55, Table 5.4: unpublished report available at http://www.crfr.ac.uk/assets/Cohabitation-final-report.pdf.

Justice Committee

7th Meeting, 2016 (Session 4), Tuesday 23 February 2016

Petitions

Note by the clerk

Introduction

This paper invites the Committee to consider its ongoing petitions:

- **PE1501** and **PE1567**: Investigating unascertained deaths, suicides and fatal accidents
- **PE1370**: Independent inquiry into the Megrahi conviction
- **PE1510** and **PE1511**: Police and Fire Control Rooms

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 provided the following background information in relation to his 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

2. During consideration of petitions PE1501 and PE1567 on 29 September 2015, the Committee agreed to keep both petitions open and to write to the Lord Advocate to request additional information regarding the safeguards currently in place to ensure that investigations by the police and COPFS reach robust and sound conclusions, and the powers that families have to question the quality of such investigations. The Lord Advocate's response dated 25 November 2015 (Annexe A) reiterates much of the information already provided in previous correspondence and provides an overview of COPFS position.

Latest developments

3. During the Committee's latest consideration of the two petitions on 5 January 2016, the Committee agreed to write to the Scottish Government seeking views on the points raised by the petitioners. The Minister for Community Safety and Legal Affairs' response of 4 February 2016 (Annexe B) addresses the three specific questions posed by the Committee and is summarised below.

The Committee asked whether the Cabinet Secretary is satisfied the current arrangements provide a sufficient degree of protection to families and, where applicable, allow them to question the findings of an investigation.

4. The Minister's response states that the Scottish Government is satisfied that the current arrangements do provide a sufficient degree of protection to families and, where applicable, permit them to question the findings of an investigation.

5. It should be noted that the main focus of this section of the response is the current FAI process. Although the petitioner is asking for the introduction of a mandatory public inquiry, they are not asking that more FAIs be held but rather that a new less formal system be introduced that would allow families access to the information about a case. It has been a recurring feature of Parliamentary consideration of these petitions that official responses have tended to focus more on the FAI system than on the right to challenge conclusions reached prior to that point in the process.

The Committee asked whether the Scottish system currently offers the same level of independence of scrutiny of deaths compared to the English and Welsh counterparts.

6. The Scottish Government argues that the system of death investigation in Scotland offers not only the same level of independent scrutiny, but permits a more nuanced approach. As before, the focus of the response appears to be on the use of FAIs, rather than on the number of Coroners' inquests (which function outwith the remit of the initial investigation) when compared to the number of deaths considered by the COPFS.

7. The response acknowledges that the system in Scotland only publicly reviews a small proportion of deaths in the form of an FAI and says that all sudden, suspicious or unexplained deaths in Scotland are subject to independent investigation by COPFS under the leadership of the Lord Advocate. It is this very independence that the petitioners are questioning. It would appear that at present there is no way, other than through legal proceedings for families to question the findings of an investigation, which can be expensive.

The Committee asked whether the Cabinet Secretary would support some additional review process, outwith the current FAI mechanism, to provide additional safeguards in cases where families have legitimate concerns about the results of an investigation.

8. The Scottish Government states that it would not, at present, support an additional review process outwith the system of FAIs. The response cites a number of means by which a family might raise concerns, should they consider it necessary. The response goes on to consider the potential resource implications of a new system being introduced—

> "If an additional review process were to be added to all of these other systems of review, it is difficult to see who would carry out such a review and where the funds to support it would come from."

9. The Scottish Government also suggests that the question of who would carry out such a review raises a wider constitutional issue in relation to the role of the Lord Advocate in terms of his position as head of both the systems of criminal prosecution and of investigation of deaths in Scotland, under section 48(5) of the Scotland Act 1998.

10. The Scottish Government finally states that there is no evidence that an additional review process would find it any easier to reach conclusions in difficult cases or that it would necessarily come to different conclusions. It also states that the time taken for such an additional review process is likely to extend the period of distress for bereaved families.

11. The petitioner of PE1501 has since responded to the points raised in the Minister's letter of 16 February 2016 (Annexe C). An outline of the points raised is provided below.

Purpose

12. The petitioner attempts to clarify his position and outlines the approach he took to developing the petition. He outlines the following—

> "In the development of our petition we have taken great care to ensure that we catered for areas where we could see issues arising from our proposal. To understand these we looked extensively at FAI proposals, Coroner inquests, talked directly with families exposed to the system as it stands and we talked

directly to an ex senior police officer who has been involved in public inquests. The three main elements we could see as being barriers were;-

1 - Families not wishing to participate in any further release of information.
2 - Interfering in ongoing enquiries.
3 - Costly and overbearing procedures.

We believe that we have addressed all of this by proposing that information release would only be for families requesting this, by stipulating that we are only concerned with investigations that have been completely closed as accident or self infliction and at least initially the release of documents may be the only aspect that demands any cost implication."[1]

Cost

13. The petitioner accepts that, if a significant issue were to be identified following the release of information pertaining to a case, there may additional costs incurred. However, they see this as worthwhile if tangible benefits are incurred as a result. They do not envisage a significant of number of cases and see the introduction of review process as something which could be embraced as a learning opportunity rather than a punitive exercise.

Complaints procedure

14. The petitioner is of the view that the options outlined by the Minster in relation to the handling of complaints do not address the primary objective of the petition, which is to help families get closure. The Minister's response highlights four specific options available to families should they feel dissatisfied with an investigation, including:

- *issuing civil proceedings against those they believe are responsible*. The petitioner argues that, at present, the information required to pursue civil proceedings is often not available and is both financially and emotionally prohibitive for most families.
- *seeking a Judicial Review of a decision not to hold an FAI.* Again, the petitioner highlights the potentially prohibitive cost of such a review, which is not covered by Legal Aid but more importantly such a solution appears not to be relevant given the petitioner isn't seeking to use the current FAI system.
- *lodging a formal complaint with Police Scotland.* The petitioner recounts his own experience of Police Scotland's handling of his case which took several years and eventually led to the Police Investigations and Review Commissioner upholding his case. In the meantime, the officers who had been involved had retired and there was no examination as to why the original complaint was not upheld by the police.
- *referring the matter to the PIRC.* The petitioner accepts that his individual case was upheld by PIRC but, as highlighted above, he argues that no lessons appear to have been learned as a result.

Access to information

15. The petitioner asks how an adequate legal argument, complaint or plausible improvement can occur if there is not sufficient access to the available information. He states that—

[1] Written Submission from the petitioner, PE1501, 16 February 2016, paragraph 9, Annexe C,

"From the outset we have made it clear that we are only seeking disclosure of information in those rare but important cases in which a bereaved family want closure and subsequently may wish to challenge a COPFS finding of self infliction or accident.

We believe that a system which would meet this need would not be financially burdensome nor would it pose a threat to the constitutional position of the Lord Advocate."[2]

Options for action on petitions PE1501 and PE1567

16. The Committee may wish to agree to:

- close both petitions on the grounds that the Minister's letter goes some way towards clarifying the rights of challenge open to families (albeit that these are more limited than what the petitioners would wish for) and acknowledging that the Scottish Government's position is unlikely to change, as things currently stand,
- keep both petitions open and recommend that a future justice committee continues to look at these issues, or
- take any other action that the Committee considers appropriate, for example, the Committee could hear from the petitioners (the petitioner of PE1501 has offered to give evidence to the Committee so that they might better explain their position).

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[2] Stuart Graham, written submission to the Committee, 15 February 2016 (Annexe)

PE1370: Independent inquiry into the Megrahi conviction

Terms of petition

PE1370 *(lodged 1 November 2010): 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

17. 'Operation Sandwood' is the operational name for Police Scotland's investigation into JFM's nine allegations of criminality levelled at the Crown Office and Procurator Fiscal Service, police and forensic officials involved in the investigation and legal processes relating to Megrahi's conviction. The allegations range from perverting of the course of justice to perjury. Police Scotland's report of this operation is expected to be completed before the end of the year. The Committee has received a number of updates from JFM asking that an 'independent prosecutor' be appointed to assess the findings of Operation Sandwood.

18. The Committee previously wrote to the Lord Advocate seeking his views on the appointment of an 'independent prosecutor' as proposed by JFM. His response outlined arrangements made by COPFS to employ independent Crown Counsel not involved in the Lockerbie case to deal with the matter. JFM have rejected the involvement of independent Crown Counsel as they consider it does not represent an "independent, unbiased and constitutionally sound approach". The Committee sought further information regarding the appointment of an independent prosecutor in September 2015 to which the Lord Advocate reiterated his earlier response.

Scottish Criminal Cases Review Commission

19. On 5 November 2015, 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"[3]

Latest developments

20. On 5 January 2016, the Committee agreed to write again to the Lord Advocate, asking him to respond to JFM's most recent submission to the Committee which questions the Lord Advocate's intention to appoint Catherine Dyer, the Crown Agent, as the Crown Office official responsible for co-ordinating matters with the 'independent counsel'. The Committee requested the Lord Advocate's response by 5 February. At the time of writing this response has not been received. It will be circulated to members and published on the Committee's website as soon as it is received.

21. In the interim, JFM has provided a submission to the Committee outlining their disappointment that a response from the Lord Advocate has not yet been received (Annexe D).

Options for action on petition PE1370

22. The Committee may wish to agree to:

- keep the petition open and recommend that a future justice committee continues to monitor these issues and, in particular, progress with Operation Sandwood, or
- take any other action in relation to the petition that the Committee considers appropriate (including closing the petition).

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

23. Police Scotland announced in January 2014 the closure of a number of police control rooms. Sites at Dumfries, Stirling, Glenrothes and Glasgow Pitt Street have already closed but, following a review by HM Inspector of Constabulary in Scotland, which reported in November 2015, centres at Dundee, Aberdeen and Inverness are to remain open until staffing, systems, procedures and processes in the East and

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

West centres are consolidated and stabilised. The Scottish Government made £1.4 million available to implement HMICS findings.

24. Also in January 2014, the Scottish Fire and Rescue Service Board approved the decision to reduce the number of its control rooms handling emergency calls, from eight to three.[4] In its review published in May 2015, Audit Scotland noted comments made by HM Fire Service Inspectorate that attention 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 took evidence from the Chief Fire Officer, the Chair of SFRS Board, HM Chief inspector of SFRS and FBU Scotland on 28 April 2015. The matter of control room resilience was discussed, and the panel were unaware of a substantial loss of cover.

Latest developments

25. In January 2016, Police Scotland announced[5] that control rooms in Inverness and Aberdeen would transfer their work to Dundee later this year and provides an indicative timeline for this transfer:

- all 101 and 999 emergency calls from Dundee will be moved into the National Virtual Service Centre (NVSC) at Bilston Glen, Govan and Motherwell with effect from late June 2016,
- all 101 and 999 calls from Inverness will be moved to the NVSC by late August 2016 and, at the same time, all command and control functionality will pass to Dundee Regional Control Room,
- all telephony and command and control functionality will move from Aberdeen to the NVSC and the Dundee Regional Control Room by late October 2016.

26. At the time, Police Scotland confirmed that no changes would be implemented until approved by the Scottish Police Authority.

27. As regards, fire and rescue control rooms, the Chief Fire Officer, Alasdair Hay, told the Committee during budget scrutiny on 1 December that—

> "We have established appropriate governance arrangements including effective programme and individual project management to ensure that we do this safely. We have also engaged closely with staff on this, specifically our control room staff who have expertise in the area. To date, we have merged the Dumfries control into the Johnstone control, and last week we got the new control room in Tollcross up and running. Our Edinburgh staff have moved into that control room and we are in the process of migrating staff there from, first, Maddiston and, secondly, Thornton. It is our intention to have completed the third part of the programme by this time next year, which is to bring our Inverness and Aberdeen staff into the Dundee control room."[6]

[4] http://www.firescotland.gov.uk/media/542354/fire_control_option_appraisal_for_final_locations.pdf
[5] http://www.scotland.police.uk/whats-happening/news/2016/january/remodel-of-c3-division
[6] Justice Committee Official Report 1 December col 34. Available at: http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10252&mode=pdf

28. On 5 January 2016, the Committee agreed to keep the petitions open and to monitor the progress with the closures. The Committee made no specific request for further information either from the SFRS or Police Scotland.

Options for action on petitions PE1510 and PE1511

29. The Committee may wish to agree to:

- close both petitions on the basis that Police Scotland and the SFRS have put in place a staged process of control room closures to minimise any future difficulties,
- keep the petitions open and to recommend that a future justice committee continues to monitor these issues, or
- take any other action in relation to the petitions that the Committee considers appropriate, such as writing to the Cabinet Secretary seeking his assurances, before the end of the session, that the control room closures will not have any detrimental effect on the handling of and response to calls from the public.

ANNEXE A

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Christine Grahame MSP
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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

Response from Minister for Community Safety and Legal Affairs in relation to petitions PE1501 and PE1567, 4 February 2016

Thank you for your letter of 21 January to the Cabinet Secretary for Justice, Michael Matheson MSP, regarding Petitions PE1501 and PE1567 both of which relate to the investigation of unascertained deaths, suicides and fatal accidents. I am replying as the law underpinning the operations of fatal accident inquiries (FAIs) fall within my Ministerial responsibilities.

Petition PE1501 calls on the Scottish Parliament "*to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence release in deaths determined to be self-inflicted or accidental, following suspicious death investigations."*

Petition PE1567 calls on the Scottish Parliament "*to urge the Scottish Government to change the law and procedures in regards to investigating unascertained deaths, suicides and fatal accidents in Scotland.*"

The Scottish Government has responded on several occasions in the past in relation to Petition PE 1501 and on this occasion I will address myself to the questions which the Committee has posed.

The Committee has asked whether the Cabinet Secretary is satisfied the current arrangements provide a sufficient degree of protection to families and, where applicable, allow them to question the findings of an investigation.

Procurators Fiscal in Scotland have a traditional and long established role in the independent investigation of all sudden, suspicious, accidental and unexplained deaths to establish the cause of death and the circumstances which gave rise to the death. Fiscals will carry out a full and thorough investigation into those circumstances and will decide whether any criminal proceedings are necessary or whether it would be appropriate to instruct an FAI. The procurator fiscal will always take into account the concerns of the family when considering what enquiries should be instructed in relation to a death and their views in relation to whether an FAI should be held. Ultimately, however, the final decision on whether criminal proceedings should be taken, or on whether a FAI should be held, rests with the Lord Advocate taking into account the available evidence and the wider public interest.

Accordingly, only the procurator fiscal under the overall direction of the Lord Advocate can instruct an FAI which is a public examination of the circumstances of the death.

FAIs are judicial inquiries held in the public interest and specifically to determine the time, place and cause of death and any reasonable precautions which might be taken to prevent deaths in similar circumstances in the future.

FAIs are therefore not specifically held on behalf of the bereaved family to provide "closure" or to "hold someone to account", although some media coverage has suggested this is the case. It is not the purpose of an FAI to establish guilt or blame

in the civil or criminal sense. That said, clearly we want to improve the experience for families where we can do so.

However, if the family believe that their loved one's death was a result of, for example, negligence, then the appropriate remedy for them is to raise civil proceedings against the person whom they think is liable. If the family believe that the Lord Advocate made a mistake in deciding not to prosecute, they have a right to have that decision reviewed under section 4 of the Victims and Witnesses (Scotland) Act 2014. In relation to FAIs, the needs and desires of the family, while matters that are considered, cannot supersede the public interest and the need to learn lessons in order to avoid deaths in similar circumstances. If the family believe that the Lord Advocate made the wrong decision in relation to the holding of an FAI, then they may raise an application for judicial review of that decision.

Procurators Fiscal are acutely aware of the trauma, pain and anxiety which follows the death of a loved one. Families are already kept appraised of progress with death investigations and the likelihood and timing of criminal proceedings and the possibility of an FAI. This duty will now be given statutory underpinning by section 8 of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, which introduces a new Charter for Bereaved Families. As the Lord Advocate indicated in his letter to the Committee of 25 November 2015, the Charter provides guidance on the different stages of the death investigation process and confirms what information will be provided to a bereaved family and when. Information will be provided at any stage of the investigation on request. The information will be provided in a manner agreed with the family at the outset of the investigation and Scottish Government expects this will improve the consistency of advice and support to families.

Bereaved families will therefore be kept up to date with any significant developments throughout a death investigation. Whether or not an FAI is ultimately instructed, the nearest relatives are given the opportunity to be fully engaged in the investigative process. They will therefore have ample opportunity to meet the appointed Procurator Fiscal to discuss the findings of the investigation and raise any specific issues. Their views as to whether there should be an FAI will be explored and taken into account (though the family's views cannot be the only determining factor and indeed, sometimes there are different views within the family). The question of whether criminal proceedings are appropriate is of course ultimately for the Lord Advocate alone, bearing in mind that there must be sufficient evidence in law to prove the essential elements of any criminal charge. There is also a need for an independent and objective assessment of whether it is in the public interest to raise proceedings.

The Scottish Government is therefore satisfied that the current arrangements do provide a sufficient degree of protection to families and where applicable permit them to question the findings of an investigation.

The Committee has also asked whether the Scottish system currently offers the same level of independence of scrutiny of deaths compared to the English and Welsh counterparts.

Over 11,000 deaths are reported to the Crown Office and Procurator Fiscal Service each year. Death investigations are carried out by COPFS in around half of these, so about 5500 cases. Many of these result in criminal proceedings, with only 50-70

each year resulting in an FAI. Thus, the overwhelming majority of deaths investigated by procurators fiscal do not result in an FAI either because criminal proceedings have been initiated or because there are no factors which merit a public examination of the circumstances of the death in order to try to establish whether any recommendations may be made whereby deaths in similar circumstances may be avoided in the future. Of the 50-70 inquiries which are held each year, very few ever come to the attention of the Scottish Government, Parliament or the media.

There are some circumstances of death which result in mandatory FAIs, broadly those which occur in legal custody or as a result of an accident in the course of a person's employment. These mandatory categories were extended by section 2 of the recently enacted Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, which was passed unanimously by the Scottish Parliament. The Lord Advocate may also decide to hold an FAI if he or she decides that a death was sudden, suspicious or unexplained or occurred in circumstances giving rise to serious public concern and decides that it is in the public interest for an inquiry to be held into the circumstances of the death.

It is true that in England and Wales every unforeseen death is subject to a coroner's inquest, which is a relatively limited inquiry into the causes of death. I should point out, however, that there is a proposed member's Bill at Westminster to reduce the current number of coroner's inquests, since it is felt that too many inquests are held in circumstances where they are not considered necessary and where they may simply cause unnecessary distress to the bereaved family.

Although the system in Scotland only publicly reviews a small proportion of deaths in the form of an FAI, all sudden, suspicious or unexplained deaths in Scotland are subject to independent investigation by COPFS under the leadership of the Lord Advocate. The views of the bereaved family are also taken into account in reaching any decision on whether or not there should be a discretionary FAI or whether discretion should be exercised not 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.

In England and Wales, the investigation into a death is carried out by a medically or legally qualified coroner who then also presides over the inquest. In Scotland the death investigation is carried out by the procurator fiscal who then, in cases where an FAI is mandatory or the Lord Advocate decides that an FAI is merited, presents evidence to the sheriff at a judicial inquiry, the FAI. There is therefore an enhanced level of independent scrutiny in Scotland compared to England and Wales since the investigation is conducted independently of Government by COPFS and the public judicial inquiry is presided over by an independent judicial office holder, the sheriff.

The Scottish Government is satisfied that the system of death investigation here offers not only the same level of independent scrutiny of deaths as in England and Wales, but permits a more nuanced approach to reflect the views of families and differing circumstances.

The Committee has also asked whether the Cabinet Secretary would support some additional review process, outwith the current FAI mechanism, to provide additional safeguards in cases where families have legitimate concerns about the results of an investigation.

The Scottish Government would not support an additional review process outwith the system of FAIs. If families have legitimate concerns about the outcome of an investigation by Police Scotland and COPFS, then they can raise a complaint with Police Scotland themselves and if they remain dissasitfied can refer to the Police Investigations and Review Commissioner to review how that complaint was handled. They may also contact the Scottish Fatalities Investigation Unit within COPFS.

If they are not satisfied with a decision not to prosecute then, as noted above, they may seek a review of that decision under section 4 of the Victims and Witnesses (Scotland) Act 2014. If they are not content with a decision taken on whether to hold an FAI then they may seek judicial review of that decision. The Charter for Bereaved Families will also introduce a process of review in relation to decisions taken on whether to hold a FAI.

If an additional review process were to be added to all of these other systems of review, it is difficult to see who would carry out such a review and where the funds to support it would come from.

Furthermore, an additional review process would raise constitutional issues in relation to the position of the Lord Advocate as head of both the systems of criminal prosecution and of investigation of deaths in Scotland. Under section 48(5) of the Scotland Act 1998, any decision of the Lord Advocate shall continue to be taken by him or her independently of any other person.

I appreciate that, in some very difficult or complex cases, it is sometimes difficult for some bereaved families to accept decisions which have been taken by public officials acting in the public interest. Sometimes it may be only one part of a family which is not satisfied with the result of a death investigation and the rest of the family may be content with the conduct of the investigtion.

There is no evidence to suggest, however, that an additional review process would find it any easier to reach conclusions in difficult cases or that it would necessarily come to different conclusions. The time taken for such an additional review process is likely to extend the period of distress for bereaved families and ultimately is unlikely to provide any more “closure” in difficult and complex cases than the existing well established and well regarded procedures which are, moreover, being supplemented by the new Charter for Bereaved Families.

I hope these explanations are helpful to the Committee in their consideration of these outstanding Petitions.

Paul Wheelhouse MSP
Minister for Community Safety and Legal Affairs

ANNEXE C

Response from petitioner PE1501 to the Minister for Community Safety and Legal Affairs' correspondence to the Committee, 16 February 2016

Our petition was developed with the primary purpose of aiding the effective closure for some families when faced with the loss of a loved one and it has been determined to be accidental or self inflicted. We have steered clear of trying to make this a legal argument but one of principals conversant with a 21st century Justice system where the needs of the bereaved family is central to that system.

It should also be noted that although our family has been deeply immersed in this system for what is now approaching 9 years, this petition will deliver no benefit to our situation but is a manifestation of our learning that will hopefully help others. As with many families we want some good to come from the loss of a loved one. We have approached this without recrimination but with a desire for Scotland to have a system worthy of our social history.

In our progress through the Petitions committee and on to the Justice Committee there have been inputs from The Law Society of Scotland, Victims support Scotland and we also had Tony Whittle, ex head of West Yorkshire CID giving evidence in support of the principles of what we are asking for. Excerpts of their inputs are recorded below;-

In written evidence to the committee the Scottish Law Society commented "Given that there is not full disclosure, we have reservations about the accuracy of the Scottish Government statement that 'the nearest relatives are now given the opportunity to be fully engaged in the investigative process by COPFS'. In the absence of full disclosure, can there be full engagement?"

On the same subject Victim Support Scotland said "We support the general aim of providing a vehicle for families to receive full disclosure of information and to question the findings when the death of a loved one has been officially classed as self-inflicted or accidental by the Police and COPFS".

Tony Whittle shared that the situation in England and Wales is one where the investigating officers and experts such as Pathologists are required to give evidence on oath and are questioned by family members, and anyone else with a legitimate interest in the case. An additional benefit of this approach is that those who are involved in the investigation of sudden deaths do so with the knowledge that their investigation will inevitably be subjected to public scrutiny at either a criminal trial or an inquest.

We have also had a number of inputs from Police Scotland, COPFS, Crown Office and Government officials. While we appreciate the time they have given to our proposal we are repeatedly dismayed that they never actually address the central question pertaining to those families that do want more information and the humanity in aiding closure. There appears to be conflation of our requests, FAI's and those families that do not want any disclosure.

It should be noted that under the terms of our request that it remains only the Crown that can enforce a public inquiry without the family consent. We would never wish to add to a family's burden.

In the development of our petition we have taken great care to ensure that we catered for areas where we could see issues arising from our proposal. To understand these we looked extensively at FAI proposals, Coroner inquests, talked directly with families exposed to the system as it stands and we talked directly to an ex senior police officer who has been involved in public inquests. The three main elements we could see as being barriers were;-

1 - Families not wishing to participate in any further release of information.
2 - Interfering in ongoing enquiries.
3 - Costly and overbearing procedures.

We believe that we have addressed all of this by proposing that information release would only be for families requesting this, by stipulating that we are only concerned with investigations that have been completely closed as accident or self infliction and at least initially the release of documents may be the only aspect that demands any cost implication.

Obviously if there are significant issues found upon release then there may be further costs associated but surely this is a cost worth paying if tangible issues occur? We do not envisage many such cases but if the finding of issues is embraced as a learning opportunity rather than a punitive exercise, all we have presented is an opportunity to learn and maybe remedy whatever failings take place.

Within the list of remedies that are highlighted by the Government we can only say that they are clearly not fit for purpose with respect to the core of the petition. They are all based upon the idea of complaints being raised when we are in fact primarily asking for help in getting closure. I have no idea what experience the Committee have in actually dealing with any of these processes? We personally have more exposure than we would wish and from experience, they have cost us thousands and added many years of further unnecessary anguish.

In rejecting this proposal the letter from The Scottish Government suggests that family members who are dissatisfied can either:

a. issue civil proceedings against those they believe are responsible
b. seek a Judicial Review of a decision not to hold an FAI
c. lodge a formal complaint with Police Scotland
d. refer the matter to the PIRC

In respect of **a)** the information they would require is denied them by the current system and the cost, both financial and emotional, is likely to beyond the means of most families.

Regarding **b)** again this would be very expensive, not covered by Legal Aid and therefore is simply not a feasible option. Even if an FAI was ordered it is subject to the limitations set out above.

Our experience of point **c)** gives us no confidence that anything useful would be achieved. In our own case we submitted complaints in 2008 that were not reviewed until 2013 and many other complaints raised in 2013. The police failed to uphold our central complaints but when passed on to PIRC they were upheld. This added another year and in the time that the entire process ran the key officers we identified had retired! No one seems to ask how come such experienced officers within Police Scotland failed to uphold the initial complaint and therefore cause the delays facilitating the retirement of the officers?

Regarding point **d)** the majority of our own complaints to PIRC, many of a very serious nature, have been upheld but without any perceptible action ensuing.

Further, how does one develop adequate legal argument, complaint detail or raise plausible improvements if there is no actual access to all of the available information.

From the outset we have made it clear that we are only seeking disclosure of information in those rare but important cases in which a bereaved family want closure and subsequently may wish to challenge a COPFS finding of self infliction or accident.

We believe that a system which would meet this need would not be financially burdensome nor would it pose a threat to the constitutional position of the Lord Advocate.

footnote

There is a term in Organisational Psychology which talks of the Schizophrenic Organisation. This terminology relates to situations where Management groups fail to take cognisance of external cues and only see the information from within that supports their view of the world. Within the context of our petition we see that the Established system (Police, COPFS, Crown Office and Government) have one view and then we have those outside the system (Victim Support Scotland, Law Society Scotland and us as petitioners) trying to deliver a different perception. I don't know if I have ever witnessed a better example of a Schizophrenic Organisation.

ANNEXE D

Justice for Megrahi submission for the consideration of PE1370 by the Justice Committee on 23 February 2016

Since the last consideration of PE 1370, on 5 January 2016, nothing of import has emerged from either the Lord Advocate or the Crown Office and Procurator Fiscal Service (COPFS) that clarifies their position re JfM's request that a prosecutor entirely independent of COPFS, and who had been appointed independently of said body, receive and consider the final Police Scotland Operation Sandwood report.

On 12th January 2016, the Deputy Convenor of the Justice Committee wrote to the Lord Advocate asking that he address JFM's concerns over the manner in which he was dealing with our request for total independence from the Crown Office in the consideration of the Operation Sandwood report.

When this letter was posted on the Parliament website JfM expressed some concern that the terms of the agreement reached at the Justice Committee on 5th January to write to the Lord Advocate appeared not to have been fully met in that the 8 questions we asked the committee to put to the Lord Advocate had not been referred to. We are unaware if this issue had been resolved.

The Deputy Convenor afforded the Lord Advocate a full month in which to respond. At the time of writing, we believe that he is in default as no reply has yet been received by the Justice Committee.

Given that the submission of Police Scotland's Operation Sandwood report to the Crown Office is imminent this is a most unsatisfactory position.

It is clearly against the public and a constitutional interest that the Lord Advocate has so far failed to confirm that the police report will be considered by an authority entirely separate from the Crown Office and totally free from its influence or to lay out clearly what his intentions are.

Thus, JFM appeals to the Justice Committee of the Scottish Parliament to exercise whatever means it has at its disposal to ensure that before the Operation Sandwood Report is submitted that your committee and JfM are fully briefed on how this report will be considered and who will consider it.

ROBERT FORRESTER,
SECRETARY OF JUSTICE FOR MEGRAHI, ON BEHALF OF THE COMMITTEE OF JUSTICE FOR MEGRAHI

Justice Committee

7th Meeting, 2016 (Session 4), Tuesday 23 February 2016

Subordinate legislation

Note by the clerk

Purpose

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

- Scottish Sentencing Council (Submission of Business Plan) Order 2016 (SSI 2016/55);

- Regulation of Investigatory Powers (Prescription of Ranks and Positions) (Scotland) Order 2016 (SSI 2016/56).

2. Further details on the procedure for negative instruments are set out in Annexe A to this paper.

SCOTTISH SENTENCING COUNCIL (SUBMISSION OF BUSINESS PLAN) ORDER 2016 (SSI 2016/55)

Introduction

3. This instrument provides that the Scottish Sentencing Council must prepare and submit its initial business plan to Scottish Ministers before 26 September 2016. The instrument comes into force on 7 March 2016.

4. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at: http://www.legislation.gov.uk/ssi/2016/55/contents/made

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 9 February 2016 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. If the Committee agrees to report to the Parliament on this instrument it is required to do so by 14 March 2016.

Policy Note: Scottish Sentencing Council (Submission of Business Plan) Order 2016 (SSI 2016/55)

1. The above instrument was made by Scottish Ministers in exercise of the powers conferred by section 12(2) of the Criminal Justice and Licensing (Scotland) Act 2010 ("the 2010 Act") and all other powers enabling them to do so. The instrument is subject to negative procedure.

Policy Objectives

2. This instrument provides that the date before which the Scottish Sentencing Council ("the Council") must prepare and submit, to Scottish Ministers, the initial business plan of the Council, is 26 September 2016.

Summary
3. The 2010 Act requires the Council to submit a 3 year plan, to the Scottish Ministers, describing how it plans to carry out its functions for that period, including setting out the subject matters that the Council intends to prepare guidelines about and such other information as it considers appropriate.

4. The Council was fully established on 19 October 2015.

5. The central objective of the Council is a focus on the promotion of consistency in and a greater understanding of sentencing. It is for the Council to decide how best to meet its objectives.

6. Section 12 of the 2010 Act provides that the day by which the initial business plan for the Council must be submitted to the Scottish Ministers is that specified by order made by the Scottish Ministers. The date of 26 September 2016 has been determined to allow for sufficient time for the Council to develop a business plan and engage with the requirements for statutory consultation as laid down in section 12(6) of the 2010 Act.

Impact Assessments

7. Equality Impact Assessment (EQIA) is a tool to assist in considering how policy may impact, either positively or negatively, on different sectors of the population in different ways.

8. We have considered the impact of policy on particular groups of people (their age, race, gender, sexual orientation, religion or belief or whether disabled or not). We are not aware of any evidence that any of the equality strands will be affected by these regulations.

Criminal Justice Division
January 2016

REGULATION OF INVESTIGATORY POWERS (PRESCRIPTION OF RANKS AND POSITIONS) (SCOTLAND) ORDER 2016 (SSI 2016/56)

Introduction

7. This instrument prescribes the rank or position of staff within Food Standards Scotland who are entitled to grant authorisations for directed surveillance and covert human intelligence sources, under the Regulation of Investigatory Powers Act 2000, to help combat food fraud and other food crime in Scotland. The instrument comes into force on 7 March 2016.

8. Further details on the purpose of the instrument can be found in the policy note (see page 3 below). An electronic copy of the instrument is available at:

http://www.legislation.gov.uk/ssi/2016/56/contents/made

Delegated Powers and Law Reform Committee consideration

9. The Delegated Powers and Law Reform (DPLR) Committee considered the instrument at its meeting on 9 February 2016 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

10. If the Committee agrees to report to the Parliament on this instrument it is required to do so by 14 March 2016.

Policy Note: Regulation of Investigatory Powers (Prescription of Ranks and Positions) (Scotland) Order 2016 (SSI 2016/56)

1. The above instrument was made in exercise of the powers conferred by section 8(1) of the Regulation of Investigatory Powers (Scotland) Act 2000 ("the 2000 Act"). The instrument is subject to negative procedure.

Policy Objectives

2. This order prescribes Food Standards Scotland (FSS) and more specifically the rank or position of staff within FSS, who are entitled to grant authorisations for directed surveillance and covert human intelligence sources, under the 2000 Act, to help combat food fraud and other food crime in Scotland.

3. Under the terms of the 2000 Act the power to grant authorisations rests only with individuals holding prescribed offices, ranks and positions within a "relevant public authority". FSS is a relevant public authority, due to its being part of the Scottish Administration. This order prescribes the positions within FSS of the individuals who can grant authorisations. The power to make these types of authorisation is overseen by the Office of Surveillance Commissioners.

4. The designation of individuals within FSS is required to help maintain a similar type of directed surveillance and covert human intelligence sources that has been available to its predecessor organisation – the Food Standards Agency. In April 2015, FSS was established as Scotland's food safety body and the Food (Scotland) Act 2015 which created FSS also removed responsibility for food safety law from the UK-wide Food Standards Agency.

5. Across the UK the importance of being able to authorise directed surveillance in particular has been emphasised following the horse meat scandal. At the UK level, but not covering Scotland, the surveillance is authorised by a newly formed National Food Crime Unit. This order will ensure a similar regime will remain in place in Scotland to be authorised by either the Head of the Scottish Food Crime and Incident Unit, or by any of the 4 more senior officers within FSS.

Consultation

6. This instrument was made as a consequence of the Food (Scotland) Act 2015 ("the 2015 Act") establishing FSS and removing responsibility for all aspects of food safety and food information etc in Scotland from the UK-wide Food Standards Agency.

This policy decision was subject to two consultations in 2013. The responses and the Scottish Government response which led to the 2015 Act are all published and can be found here. As this order is delivering some consequential changes as a result of that policy, and there is no statutory requirement for consultation prior to making this order, there was no additional consultation for this instrument.

Impact Assessments

7. Equality and environmental impact assessments were considered and published as appropriate for the 2015 Act. These assessments included full consideration of the transfer of responsibilities for all regulation from the Food Standards Agency to FSS, and so no additional impact assessments are required for this instrument.

Financial Effects

8. A Business and Regulatory Impact Assessment (BRIA) was also carried out and published as appropriate for the 2015 Act, and so no additional BRIA is required for this instrument. Authorisation of directed surveillance and covert human intelligence sources is already factored into the FSS budgets.

Scottish Government
January 2016

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