



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

8th Meeting, 2016 (Session 4)

Tuesday 1 March 2016

The Committee will meet at 10.00 am in the David Livingstone Room (CR6).

1. **Police Scotland:** The Committee will take evidence on internal communications at Police Scotland, and Police Scotland's policies and procedures in relation to the protection of staff who report wrongdoing or malpractice within the organisation from—

Chief Constable Philip Gormley, and Deputy Chief Constable Neil Richardson, Police Scotland;

Andrew Flanagan, Chair, and John Foley, Chief Executive, Scottish Police Authority.

2. **Abusive Behaviour and Sexual Harm (Scotland) Bill:** The Committee will consider the Bill at Stage 2.
3. **Petition PE1370:** The Committee will consider the petition by Dr Jim Swire, Professor Robert Black QC, Robert Forrester, Father Patrick Keegans and Iain McKie on Justice for Megrahi.
4. **Subordinate legislation:** The Committee will consider the following negative instruments—

Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51);

Civic Government (Scotland) Act 1982 (Metal Dealers and Itinerant Metal Dealers) (Verification of Name and Address) Regulations 2016 (SSI 2016/73);

Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2016 (SSI 2016/89).

Peter McGrath
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
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The papers for this meeting are as follows—

Agenda item 1

Paper by the clerk	J/S4/16/8/1
Private paper	J/S4/16/8/2 (P)

Agenda item 2

[Abusive Behaviour and Sexual Harm \(Scotland\) Bill and all associated documents](#)

Agenda item 3

Paper by the clerk	J/S4/16/8/3
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Agenda item 4

Paper by the clerk	J/S4/16/8/4
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[Police Service of Scotland \(Senior Officers\) \(Performance\) Regulations 2016 \(SSI 2016/51\)](#)

[Civic Government \(Scotland\) Act 1982 \(Metal Dealers and Itinerant Metal Dealers\) \(Verification of Name and Address\) Regulations 2016 \(SSI 2016/73\)](#)

[Restriction of Liberty Order etc. \(Scotland\) Amendment Regulations 2016 \(SSI 2016/89\)](#)

Justice Committee**8th Meeting, 2016 (Session 4), Tuesday 1 March 2016****Police Scotland****Note by the clerk****Purpose**

1. This paper provides background information in advance of the Committee's evidence session with Police Scotland and the Scottish Police Authority on 1 March in relation to Police Scotland's internal communications and its policies and practices on the protection of staff who report wrongdoing or malpractice within the organisation.

Background

2. Following the Interception of Communications Commissioner's statement¹ of 25 November 2015 that Police Scotland had breached the Acquisition and Disclosure of Communications Data Code of Practice 2015, the Committee took evidence from Police Scotland, the SPA and the Cabinet Secretary for Justice on the background to the statement and on Police Scotland's governance arrangements in relation to the interception of communications.² The official reports of these meetings are available at the links below:

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10280> (15 Dec 2015)

<http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10307> (12 Jan 2016)

3. On 2 February, the Committee agreed to invite the Chief Constable and the SPA to give evidence on two wider issues: internal communications at Police Scotland, and Police Scotland's policies and practices in relation to the protection of staff who report wrongdoing or malpractice within the organisation. This session is intended to build on the Committee's evidence-gathering on the interception of communications while moving the debate on to matters of public interest concerning the work of Police Scotland.

Internal communications

4. Police Scotland's Communications and Engagement Strategy 2015-16³ includes a section on internal communications which sets out the following objectives:

- to present corporate information and key messages, timeously, accurately and effectively,
- to manage the Police Scotland intranet to embed the site as the key 'go to' point for all local policing, national specialist services, corporate services and corporate information and as a key distribution point for key messages and corporate information,
- to embed two-way communication between stakeholders and for this communication to be open and transparent,
- to present key messages to embed locally-focused policing supported by specialist national services, and
- to measure officer and staff engagement.

¹ [IOCCO's statement](#) of 25 November 2015.

² The Committee heard from Deputy Chief Constable Neil Richardson, John Foley, Chief Executive of the Scottish Police Authority, and the Cabinet Secretary for Justice, on 15 December 2015, and from Assistant Chief Constable Ruairaidh Nicolson on 12 January 2016.

³ [Police Scotland's Communications and Engagement Strategy 2015-16](#).

5. The Justice Sub-Committee on Policing previously heard concerns regarding internal communications at Police Scotland, including during local policing visits where officers described being “bombarded” with “an explosion of information” and being expected to respond to requests for particular statistics within unrealistic timescales.⁴

6. In September 2015, Axiom Consultancy published results⁵ of the first survey of SPA and Police Scotland officers and staff, highlighting particular issues with internal engagement, including a heavy reliance on cascading information by email and through the intranet, where personal methods, such as through line management or team/shift briefings, was preferred. Respondents also said they wanted to see a reduction in the number of emails they received that they considered irrelevant to them.

Protection for staff reporting wrongdoing or malpractice

7. The Public Interest Disclosure Act 1998⁶ sets out the protection for whistleblowers from detrimental treatment by their employer. The UK Government states in its guidance on whistleblowing for employees that police officers are covered by this legislation.⁷

8. In June 2015, the SPA reported⁸ on its review of whistleblowing arrangements within Police Scotland, which addressed: policies and procedures, effectiveness of process (including guidance on how to ‘whistleblow’), employee awareness, governance and oversight of process, and internal reporting. The report states that “Police Scotland does not have a ‘whistleblowing policy as such’”, but uses the phrase ‘Integrity Matters’ to cover what would be considered whistleblowing activity and that a Counter Corruption Unit intranet website introduced in March 2015 is a “standalone process” for employees to raise concerns of a whistleblowing nature. It recommended that reports on Integrity Matters would be reviewed on a quarterly basis by the SPA’s Audit and Risk Committee (ARC) and its Human Resources and Remuneration Committee, and that full reporting of all incidents (of whistleblowing) should be reported to the ARC on a quarterly basis.

Next steps

9. The Committee will take evidence from the Chief Constable, Philip Gormley, Deputy Chief Constable Neil Richardson, Andrew Flanagan, SPA Chair, and John Foley, SPA Chief Executive, at its meeting on 1 March 2016.

⁴ [Note of Justice Sub-Committee on Policing visits to Dumfries, Glenrothes and Elgin](#) (June and September 2016)

⁵ [Results of SPA/Police Scotland opinion survey](#) (September 2015)

⁶ [The Public Interest Disclosure Act 1998](#)

⁷ [UK Government guidance on whistleblowing for employees](#) (updated July 2015)

⁸ [SPA report on its review of whistleblowing arrangements within Police Scotland](#)

Justice Committee

8th Meeting, 2016 (Session 4), Tuesday 1 March 2016

Petitions

Note by the clerk

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

1. 'Operation Sandwood' is the operational name for Police Scotland's investigation into Justice for Megrahi's (JFM) 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. The Committee was previously advised that Police Scotland's report on this operation would be completed before the end of the 2015 but clerks understand that this is not the case.

Latest developments

2. On 21 September 2015 the Committee received a letter from JFM (Annexe A), which posed eight specific questions relating to the appointment of independent Counsel to evaluate the report arising at the conclusion of Operation Sandwood. Because the letter referred to information provided to JFM by the Lord Advocate, and had arrived so close to the date of the meeting (on 22 September), the Convener took the decision not to circulate it to members until the Lord Advocate had confirmed he was happy for it to be published. The response was circulated to Members after the meeting on 22 September and has been published on the Committee's webpage.

3. At the 22 September meeting, the Committee agreed to write to the Lord Advocate (Annexe B) seeking further information regarding the appointment of independent Counsel to evaluate the report arising from Police Scotland's Operation Sandwood. The letter asked for more information about (1) the appointment process itself, (2) whether the person appointed is a current or former prosecutor with the Crown Office and Procurator Fiscal Service or is a practising lawyer in another jurisdiction, and (3) what other measures or protocols have been put in place to guarantee the Counsel's independence.

4. The Lord Advocate's short response dated 6 October (Annexe C) does not provide a direct response to these three points. It explains that he has not been involved in the Operation Sandwood investigation nor the appointment of independent counsel. The letter also states that the appointment was dealt with by officials who had no involvement in the Lockerbie investigation. The letter states that issues raised had been dealt with by the Lord Advocate's Office in their response to JFM's letter (Annexe D) dated 24 August, although again this letter does not directly address the three points the Committee raised.

5. JFM provided an additional submission to the Committee on 5 November 2015, (Annexe E) (forwarded to Members 9 November 2015) which includes reference to the eight specific questions posed to the Lord Advocate.

6. On 5 January 2016, the Committee agreed to write to the Lord Advocate (Annexe F), asking him to respond to JFM's most recent submission to the Committee (Annexe G) 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. The response was not received until 9.44am on 23 February just before the start of the Committee meeting at 10 am.

7. The Lord Advocate's letter of 23 February (Annexe H) explains that an independent senior counsel at the Scottish bar, with no prior involvement in the Lockerbie investigation and associated prosecution, has been appointed to undertake prosecutorial functions in relation to the Police investigation. This role includes providing an independent legal overview of the evidence, conclusions and recommendations and directing the inquiry when required.

8. The letter makes specific points in response to JFM's criticism that the Crown Agent lacks sufficient impartiality to have any role in the investigation. No general comment is made in response to the Deputy Convener's query as to "what procedures are in place to ensure an appropriate level of impartiality in instances where there have been complaints involving the COPFS's handling of a case."

9. The Committee has since received an additional submission from JFM dated 24 February 2016 (Annexe I). The letter reiterates their position with regards to the role of the current Crown Agent in the process and seeks clarification as to the appointment of the independent counsel. It also raises the question of the powers the COPFS might have to ignore or change the recommendations made by the independent counsel.

Options for action on petition PE1370

10. The Committee may wish to agree to:

- **request more information regarding the progress of Operation Sandwood,**

- **ask for more specific information about the appointment of the “independent” Crown Counsel, in line with the points made above,**
- **take no further action on the petition before dissolution (without closing it) and leave it for a future justice committee to decide what further action, if any, to take on it.**

ANNEXE A

21st September 2015

Dear Convenor,

JFM Petition: PE1370

This letter is a supplement to our submissions of 26th May 2015 and 15th September 2015

Further to Tuesday's consideration of our Petition we feel we should bring to the committee's attention recent correspondence we have had with the Lord Advocate which has relevance to the committee's deliberations.

We wrote to him privately on the 24th August requesting that Counsel appointed to consider any police report resulting from the ongoing police 'Operation Sandwood' enquiry into our 9 criminal allegations, *'should be chosen by a person or body entirely outwith the Crown Office and not connected to it and that this counsel should be entirely independent not only of the Lockerbie enquiry but of the Crown Office.'*

We received a response in the attached letter dated 18th September 2015 from David Stewart the Lord Advocate's Private Secretary.

In it he indicates that the Lord Advocate, *'has had no involvement in the appointment of counsel undertaking this work'* and *'the Independent Counsel who is undertaking this work is not under the direction of the Lord Advocate'*.

This letter echoes the response you received from the Lord Advocate on 8th May this year that an independent Crown Counsel would be appointed to consider any report emanating from the ongoing police investigation known as 'Operation Sandwood'. However, there are differences in the terminology used, notably the term 'Independent Counsel' rather than 'independent Crown Counsel'. We also draw your attention to the letter's statement that *'the Lord Advocate considers it important that any criminal allegations against persons who were representing the Crown are dealt with independently of the Crown.'*

Unfortunately neither letter addresses the concerns we intimated to you in our previous submissions and both totally fail to layout the process by which this independence is going to be achieved.

In an effort to ascertain that process we would respectfully request that you ask the Lord Advocate the following questions on our behalf.

- What is the status of the appointed independent Counsel? Is he/she, Crown Counsel, from the Crown Office or an Advocate Counsel with no previous

service or association with the Crown Office?

- Who appointed the independent Counsel ? If it was not the Crown Office ,who was it?
- What are the Terms of Reference' under which the independent Crown Counsel/ Counsel is working and who created them?
- Under whose 'direction' is the independent Crown Counsel/Counsel working?
- Will the independent Crown Counsel/Counsel receive the police report directly from the police/police QC without any intervention or comment by the LA or Crown Office and before those authorities are aware of the report's contents?
- Will the independent Crown Counsel/Counsel make a totally independent decision on prosecution without any input from the Crown Office?
- Can the Crown Office change any recommendation to prosecute/not to prosecute made by the independent Crown Counsel/Counsel?
- Will the independent Crown Counsel/Counsel recommendations be implemented in full and if not who will make this decision re-implementation?

We believe that answers to these questions are essential if we are to have any faith that a truly independent assessment of the police report will be carried out.

We would also remind you that in our submission of 15th September we stated.

'In particular JFM wishes to emphasise the following passage from page 4 of its 26th May letter:

'We strongly believe that in order to acquire a fair, unprejudiced and truly independent reading of the final police report a special prosecutor must be appointed by a process independent of the Lord Advocate and the Crown Office, and must be seen to exercise his/her decision-making and prosecutorial functions without reference to the Lord Advocate and the Crown Office.

Since the Lord Advocate's position and independence as head of the prosecution system in Scotland is enshrined in the Scotland Act, such a

mechanism must be put in place by the Lord Advocate himself, failing which, the Scottish Government should seek from the UK Government a Section 30 Order in Council to enable the Scottish Government to do so.'

We believe that these facts offer the Justice Committee a way forward.' Effectively we believe that as things stand the Lord Advocate has the power to put a totally independent process in place and the Scottish Government has a duty to ensure that this is done and to monitor its effectiveness in the public interest.

JFM apologises for the lateness of this supplement but believes that further enquiry is necessary by the Justice Committee to ensure that a totally independent assessment of the Operation Sandwood report is delivered as apparently promised by the Lord Advocate.

ANNEXE B

Letter to Lord Advocate 24 September

Dear Lord Advocate

Petition PE1370: Justice for Megrahi

At its meeting on 22 September, the Committee considered petition PE1370 by Justice for Megrahi (JFM) calling on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the conviction of Abdelbaset Ali al-Megrahi for the bombing of Pan-Am flight 103 in December 1988.

The Committee agreed to keep the petition open. During its consideration, the Committee agreed to write seeking further information from you regarding the appointment of an independent Counsel to evaluate the report arising from Police Scotland's ongoing "Operation Sandwood" investigation. Members would be particularly interested in knowing more about the appointment process itself, whether the person appointed is a current or former prosecutors with the Crown Office and Procurator Fiscal Service or is a practising lawyer in another jurisdiction, and what other measures or protocols have been put in place to guarantee the Counsel's independence.

A transcript from the discussions is attached to this letter for your consideration.

Christine Grahame MSP
Convener, Justice Committee

ANNEXE C

THE RT HON FRANK MULHOLLAND QC



LORD ADVOCATE'S CHAMBERS
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*calls cost 7p a minute plus your phone company's charge

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Christine Graham MSP
Justice Committee Convener
c/o Justice Committee Clerks
Room T2.60
The Scottish Parliament
Edinburgh
EH99 1SP

FM

October 2015

Dear Christine,

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

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

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

Best wishes,

Frank

FRANK MULHOLLAND QC



INVESTOR IN PEOPLE
The Scottish Executive

ANNEXE D

THE RT HON FRANK MULHOLLAND QC



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

18th September 2015

Dear Mr Forrester,

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

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

Regards
David Stewart

DAVID STEWART
Private Secretary

ANNEXE E

Justice for Megrahi

Secretary: Robert Forrester, 11 Bridge Street, Longtown, Cumbria, CA6 5UB.
Telephone: 01228 792838 Mobile: 07981 716177 email: forrester.robert@gmail.com

Christine Grahame MSP.
Convenor of the Justice Committee of the Scottish Parliament.
The Scottish Parliament,
Edinburgh, EH99 1SP

Date: 5th November 2015

Dear Convenor,

JFM Petition: PE1370: Legal and Constitutional Position of the Lord Advocate

As you will be aware Justice for Megrahi (JFM) has serious concerns about the position the Lord Advocate and Crown Office intend to take in relation to the police report from 'Operation Sandwood' which it is anticipated will be submitted before the end of this year.

For the reasons we have presented to your committee we are determined that an 'independent prosecutor', not associated in any way with the Crown Office and totally independent of its influence, must be appointed to assess and decide on any action to be taken on the police report.

Despite approaches from JFM and your committee in this regard, we believe the Lord Advocate has failed to make his position and that of the Crown Office clear.

This raises important legal and constitutional issues and in an effort to clarify matters we have today written the attached letter to the Lord Advocate.

We have also written separately to the Cabinet Secretary for Justice seeking to establish his position and that of the Scottish Government in relation to these issues.

We greatly value your committee's continuing oversight of our petition and will update you on any relevant responses we receive.

Please do not hesitate to contact me if further information is required.

Yours faithfully,



Robert Forrester
Secretary of Justice for Megrahi

Justice for Megrahi

Secretary: Robert Forrester, 11 Bridge Street, Longtown, Cumbria, CA6 5UB.
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Appendix A

**The Rt.Hon. Frank Mulholland QC.
The Lord Advocate's Chambers,
25 Chambers Street,
Edinburgh EH1 1LA.**

Date: 5th November 2015

Dear Lord Advocate,

Justice for Megrahi: Criminal Allegations: Appointment of Independent Prosecutor

I refer to my previous letter of 24th August 2015, your response of 18th September and your recent correspondence with the Justice Committee on the above subject.

JFM is still unclear as to your intentions in respect of any report emanating from the police 'Operation Sandwood' investigations.

To assist us in our understanding we would appreciate it if you would answer the following questions.

1. What is the status of the appointed independent Counsel? Is he or she a present or former member of Crown Office staff? Or a member of the Bar who has had no previous association with Crown Office?
2. Who appointed the independent Counsel? If it was not the Crown Office, who was it?
3. What are the 'Terms of Reference' under which the independent Counsel is working and who created them?
4. Under whose 'direction' is the independent Counsel working?
5. Will the independent Counsel receive the 'Operation Sandwood' report directly from police/police QC without any intervention or comment by the LA or Crown Office and before those authorities are aware of the report's contents?
6. Will the independent Counsel make a totally independent decision on the report without any input from the Crown Office?
7. Will Crown Office have authority to reject or change any recommendation made by the independent Counsel?
8. Will the recommendations of the independent Counsel be implemented in full and if not who will make this decision?

We believe that answers to these questions are essential if we are to have any faith that a truly independent and objective assessment of the police report will be carried out.

Given the importance of the legal and constitutional issues under debate we have written to the Cabinet Secretary for Justice and the Convenor of the Justice Committee and have supplied them with a copy of this letter.

We look forward to an early response.

Yours faithfully,

A handwritten signature in red ink, appearing to be 'RF', is positioned above the typed name of Robert Forrester.

**Robert Forrester, Secretary of Justice for Megrahi,
on behalf of the Committee of Justice for Megrahi.**

ANNEXE F



The Rt Hon Frank Mulholland QC
Lord Advocate

By email

All correspondence c/o:
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12 January 2016

Dear Lord Advocate

Petition PE1370: Justice for Megrahi

At its meeting on 5 January 2016, the Committee considered petition PE1370 by Justice for Megrahi (JFM) calling on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the conviction of Abdelbaset Ali al-Megrahi for the bombing of Pan-Am flight 103 in December 1988.

During its consideration, the Committee agreed to keep the petition open and decided to write seeking further information regarding your response to JFM dated 24 December, which explains that Catherine Dyer will now function as the Crown Office point of contact.

JFM's letter to the Committee dated 4 January 2016 (attached) questions this appointment on the grounds that Mrs Dyer's involvement might undermine the independence of the crown counsel tasked with considering any findings of the Operation Sandwood team.

The Committee would be grateful if you could respond to the concerns raised by JFM and explain what procedures are in place to ensure an appropriate level of impartiality in instances where there have been complaints involving the COPFS's handling of a case.

The Committee would appreciate a response by Friday 5 February 2016.

Yours sincerely

Elaine Murray MSP
Deputy Convener, Justice Committee

ANNEXE G

Justice for Megrahi emergency supplement to its communication with the Justice Committee of the Scottish Parliament on 25th December 2015

Introduction

This additional submission relates to a response JfM received from the Lord Advocate dated 24th December, 2015, (copy attached) relating to the former's request to have an independent prosecutor appointed to consider and make decisions on the Police Scotland 'Operation Sandwood' report which is due shortly.

This update should be read in conjunction with our previous submission dated 25th December and to others related to our request for an independent prosecutor to be appointed.

Information

We have received a response from the Lord Advocate (copy attached) to our letter of 5th November (copy attached)

In our opinion the latest missive from the Lord Advocate makes his position and that of the Crown Office even more untenable and fails to answer the 8 questions we put to him in our letter of 5th November. (copy attached) We repeat our request for the Justice Committee to ask these questions

The Lord Advocate indicates that Catherine Dyer the Crown Agent will be the Crown Office official responsible for co-ordinating matters with the 'independent counsel' they claim to have appointed.

In his letter of 6th October, 2015, to the JC the Lord Advocate states he decided on the criteria for the appointment of the 'independent prosecutor'. From this it is clear that he approved Mrs Dyer's appointment even although she as Crown Agent is his principal legal adviser on prosecution matters. Any claim of 'independence' from him is unrealistic at best.

The Lord Advocate lays great stress on Mrs Dyer's independence stating that she, '*has had no involvement whatsoever in the investigation into the bombing of Pan Am 103 over Lockerbie on 21st December 1988.*'

This reply is disingenuous.

During 2012 and specifically in letters dated 31 October and 13 December 2012 author John Ashton, a close associate of JFM whose work formed the basis of some of the nine criminal allegations, complained about misleading public statements made by COPFS in relation to his book '*Megrahi: You are my jury – The Lockerbie evidence*'.

This major work, published on 27 February 2012, followed detailed research into the flaws in the investigation and trial of the two Libyans at Camp Zeist.

On 7th February 2013 Mr Ashton received an official response to his complaints from Crown Agent Catherine Dyer in which she stated that her rejection of the complaints was based on her own '*review of the whole circumstances surrounding your complaint*'. (copy attached)

It is difficult to avoid the conclusion that as Mrs Dyer had carried out such a comprehensive review she must have been well aware of the contents of Mr Ashton's book and in dismissing Mr Ashton's complaints had formed an opinion regarding them.

It is also very possible that not only was she fully aware of the public statements made by the LA/Crown Office in September 2012 and December 2012 dismissing JfM's 9 criminal allegations and vilifying the JFM 'conspiracy theorists' who made them but that she might well have played a part in creating them.

<http://lockerbiecase.blogspot.co.uk/2012/09/deliberately-false-and-misleading.html>
<http://lockerbiecase.blogspot.co.uk/2012/12/pro-megrahi-backers-flayed-by-new-lord.html>

It is also worthy of note that in 2010 Mrs Dyer took over as Crown Agent from Norman McFadyen who led the Crown's discredited investigation into the Lockerbie case.

There is a clear continuity between him and Dyer and many of her staff would have been intimately involved in Lockerbie. This virtually ensures that most if not all those working under her would only be too aware of the Lockerbie investigation and aftermath and that some of those she would be seeking advice from would have been closely involved in the Megrahi prosecution.

She might have had no involvement in the Lockerbie investigation itself but she certainly played a major part in defending the Crown Office position.

By any definition she cannot claim to be an independent mind capable of liaising with an independent prosecutor in an objective and unbiased way.

This latest in information from the Lord Advocate only seems to reinforce our argument that it will prove impossible to find anyone in the Crown Office who could be termed 'independent' from the LA's influence or who will be totally unaware of a case which has been a cause célèbre since 1988.

As argued in our previous submissions to the Justice Committee it is essential that a prosecutor totally independent to the Crown Office be appointed to consider the Police Report into our 9 allegations and to make decisions on that report totally independent of the Crown.

The above facts appear to make it even more important that the Lord Advocate be challenged to answer the 8 questions we lodged and to reconsider his decision to appoint Mrs Dyer or indeed anyone associated with the Crown Office to be in any way involved in the consideration of the police report into our allegations.

We would also inform you that two senior independent legal sources have confirmed that in their opinion the Lord Advocate might well have a case to answer in relation to his bias and prejudice in dealing with our 9 criminal allegations.

Robert Forrester

Secretary.

The Committee of Justice for Megrahi.

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ANNEXE H

Letter from Lord Advocate to Committee, 23rd February 2016

Thank you for your letter of 12 January 2016 in relation to the above in which you seek further information about the process to ensure impartiality when there have been complaints about COPFS handling of the case.

The allegations made by JFM are being considered by Police Scotland in accordance with due process. An independent senior counsel at the Scottish bar, with no prior involvement in the Lockerbie investigation and associated prosecution, has been appointed to undertake prosecutorial functions in relation to the Police investigation. This role includes providing an independent legal overview of the evidence, conclusions and recommendations and directing the inquiry when required.

I note that JFM suggest that because Mrs Dyer considered, and did not uphold, a complaint by Mr Ashton in her correspondence to him in February 2013 that she cannot be said to be impartial. Mrs Dyer's correspondence with Mr Ashton was stage 3 of the then COPFS complaints process and related to Mr Ashton's complaint about what he alleged was a misleading statement issued by COPFS media relations in March 2012 about the Lockerbie investigation. The media release followed the publication of Mr Ashton's book "Megrahi: You are my Jury". Mrs Dyer considered the correspondence from Mr Ashton in that context, and in particular Mr Ashton's interpretation of the COPFS media release, and did not uphold the complaint.

I reject wholeheartedly the suggestion that because she failed to uphold a complaint in this context, she cannot exercise impartiality and independence regarding Operation Sandwood.

I do not agree that the process in place in COPFS requires to be amended to address this sweeping and unfounded assertion that Scotland's Prosecution Service cannot act independently in the public interest in a criminal investigation.

FRANK MULHOLLAND QC

ANNEXE I

Justice for Megrahi submission for the consideration of PE 1370 by the Justice Committee of the Scottish Parliament on 1st March 2016

We refer to the Justice Committee meeting of 23rd February 2016 and specifically to the related Lord Advocate's letter of the same date.

We are extremely concerned that the Lord Advocate appears to be treating JfM and the Justice Committee with disrespect in suggesting that it is our insistence on an independent assessment of the Operation Sandwood report that is the issue and not his complete failure to provide a coherent response to our legitimate concerns.

As you will be aware the above petition was originally lodged with the Petitions Committee in 2010 and passed to the Justice Committee in 2011. We now find ourselves in 2016 and despite a steady flow of correspondence between the Justice Committee, JfM and the Lord Advocate we are no nearer resolving these concerns.

The Lord Advocate's latest letter is disingenuous and confusing, adds little clarity to matters and raises a number of important issues.

He opens by stating: *'The allegations made by JfM are being considered by Police Scotland in accordance with due process.'*

Given that due process is the legal requirement that the state must respect all legal rights that are owed to a person and balance the power of law of the land and protect the individual person from it we would argue that due process is most certainly not being followed.

The Lord Advocate continues: *'An independent senior counsel at the Scottish Bar , with no prior involvement in the Lockerbie investigation and associated prosecution, has been appointed to undertake prosecutorial functions in relation to the police investigation. This role includes providing an independent legal overview of the evidence, conclusions and recommendations and directing the enquiry when required.'*

We find this paragraph extremely confusing.

By implication the Lord Advocate appears to be stating that the Crown has already established this system of independence within the ongoing police investigation. If this is the case then, at the police investigation stage at least, the Lord Advocate would appear to have acceded to our independent prosecutor request.

It is our understanding however that the 'independent senior counsel' presently assisting the police was appointed by Police Scotland without reference to the Crown Office to aid the police investigators during their enquiries and not to in any way perform functions normally carried out by the Crown. It is also our understanding that his/her identity is not known to the Crown Office and while that person might be performing some of the scrutiny functions normally carried out by the Crown Office they can in no way be defined as undertaking, 'prosecutorial functions'.

If this 'independent senior counsel' is not the one presently working with the police as part of their investigation then whom is the Lord Advocate referring?

It could be of course that this is the independent counsel he states he has appointed to consider the police report when it is submitted to the Crown Office. While we would welcome this move one absolutely critical question remains.

'When this independent prosecutor considers the police report and makes his recommendations will the Lord Advocate and/or Crown Office have the power to ignore or change these recommendations or are they totally committed to implement the independently recommended action in full?'

If the Lord Advocate/Crown Office enjoys the power to overrule the 'independent senior counsel' then any claim to independent prosecution is a fiction.

The Lord advocate continues: *'I note that JfM suggest that because Mrs Dyer considered, and did not uphold, a complaint by Mr Ashton in her correspondence to him in February 2013 that she cannot be said to be impartial.'*

Our position remains as indicated in our Justice Committee submission of 4th January 2016 that, for the several reasons stated in that submission, Mrs Dyer as Crown Agent and the Lord Advocate's principal legal adviser on prosecution matters cannot be described as independent and impartial.

In rejecting this argument the Lord Advocate states: *'I do not agree that the process in place in COPFS requires to be amended to address this sweeping and unfounded assertion that Scotland's Prosecution Service cannot act independently in the public interest in a criminal investigation.'*

Yet again he brushes over the detailed case made for the appointment of an independent prosecutor, fails to address any of the many concerns raised over the years and seeks to generalise and turn the criticism back on those who have

the temerity to logically challenge his views.

We share John Finnie MSP's belief that this debate should be one of process and not personality but it is becoming increasingly difficult to hold to that position as Mr Mulholland continues to ignore the genuine concerns of JfM and the MSP's on the Justice Committee.

At the last Justice Committee meeting Mr Finnie requested that the 8 questions we had previously submitted to the committee be put to the Lord Advocate. We agree with this recommendation.

Whatever action the committee decides upon however it seems constitutionally relevant that the Lord Advocate should detail the process by which he intends to proceed and to indicate if in the final analysis he and/or Crown Office officials will have the final say over what Crown action results from the Operation Sandwood report.

We believe it would be a total denial of justice if Parliament was dissolved for the May election without these important matters being resolved.

Robert Forrester, on behalf of the Committee of Justice for Megrahi

Justice Committee

8th Meeting, 2015 (Session 4), Tuesday 1 March 2016

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51) *[see page 2]*;
 - Civic Government (Scotland) Act 1982 (Metal Dealers and Itinerant Metal Dealers) (Verification of Name and Address) Regulations 2016 (SSI 2016/73) *[see page 7]*;
 - Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2016 (SSI 2016/89) *[see page 9]*;
2. If the Committee agrees to report to the Parliament on any of the instruments it is required to do so by 14 March 2016 on SSI 2016/51 and by 21 March 2016 on SSI 2016/73 and SSI 2016/89. Further details on the procedure for negative instruments are set out in Annexe A attached to this paper.

POLICE SERVICE OF SCOTLAND (SENIOR OFFICERS) (PERFORMANCE) REGULATIONS 2016 (SSI 2016/51)

Introduction

3. The instrument is made under sections 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012. The Regulations create a process for managing the performance of senior officers (those of the rank of assistant chief constable and above) where their performance is found to be unsatisfactory. The Scottish Police Authority and the reporting officer (line manager) will have responsibility for managing performance through informal action, before invoking the formal procedures set out in these Regulations.

4. The instrument comes into force on 1 April 2016.

5. 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/2016/51/contents/made>

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 23 February 2016 and agreed to draw it to the attention of the Parliament as it contained the following drafting errors:

- an error in regulation 17, in that the references to “the chief constable” in paragraph (8)(a) and (b) should instead be references to “the senior officer”;
- an omission in that the reference to the “Conduct Regulations” in the definition of “misconduct hearing” in rule 2 of the Police Appeals Tribunals (Scotland) Rules 2013 requires to be updated to refer instead to the “2014 Conduct Regulations”.

7. The Scottish Government has acknowledged these errors, and has undertaken to lay an amending instrument to deal with these points as soon as is reasonably practicable.

8. The relevant extract from the DPLR Committee’s report on the instrument is reproduced on page 5 of this paper.

Justice Committee consideration

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

Policy Note: Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51)

1. The above instrument was made in exercise of the powers conferred under sections 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”). This instrument is subject to the negative procedure.

Policy Objectives

2. The Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (“the 2016 Regulations”) create a process for managing the performance of senior officers (those of the rank of assistant chief constable and above) where their performance is found to be unsatisfactory. The underlying principle of the regulations is that they will provide a fair, open and proportionate process for dealing with performance and attendance issues and to encourage a culture of learning and development.
3. In introducing these procedures, the Scottish Police Authority (SPA) and the reporting officer (line manager) will have responsibility for managing performance through informal action, before invoking the formal procedures set out in the regulations. These procedures should help the senior officer to reach the standards of performance required in the senior ranks. A separate guidance document will be produced by the SPA that will set out the principles behind the regulatory processes and the detail regarding the procedures to be followed. The SPA guidance will be prepared in consultation with the main policing stakeholders.
4. The 2016 Regulations define unsatisfactory performance as: “an inability or failure of the senior officer to perform the duties of the senior officer’s role or rank (or both) to a satisfactory standard.”
5. While the basic procedures and disposals set out in the 2016 Regulations mirror the performance regulations for those in the ranks below assistant chief constable (the Police Service of Scotland (Performance) Regulations 2014), there are some differences in the performance and appeal procedures to reflect the small number of officers in the senior ranks within the Police Service of Scotland and the overall management of the performance process by the SPA.
6. The SPA is responsible for the appointment and dismissal of senior officers, therefore the procedures set out in these regulations will be managed by them.
7. The key procedures established by these regulations are described in the following paragraphs.
8. Part 1 sets out the general provisions and interpretations for the regulations. As with the regulations for other ranks, these regulations give a senior officer the opportunity to choose a police representative who can advise the senior officer throughout the proceedings and can make representations on the senior officer’s behalf at any meeting or hearing.
9. Part 2 sets out the initial procedures to be followed when a senior officer has displayed unsatisfactory performance. This includes the arrangements for a performance meeting to be conducted by the senior officer’s reporting officer. If there is evidence of unsatisfactory performance, the reporting officer must set out the specific action required to achieve an improvement in performance. An improvement period must be specified within which the senior officer’s performance is to improve and a validity period must be set, giving a period in which improved performance must be maintained.

10. The senior officer has a right to appeal against the finding and outcome of a performance meeting. The person or panel hearing the appeal can reverse or vary the reporting officer's finding of unsatisfactory performance.

11. Part 3 sets out that the reporting officer must consider the senior officers performance at the end of the improvement period and during the validity period. If the senior officer has failed to make the required improvement the senior officer will be informed that a progress meeting, conducted by the reporting officer, will be held.

12. If there is evidence of unsatisfactory performance at the progress meeting the reporting officer must set a final improvement period, within which the senior officer's performance is to improve, and a final validity period must be set giving a period in which improved performance must be maintained.

13. Part 4 establishes the process for a performance hearing. The reporting officer must consider the senior officer's performance at the end of the final improvement period and during the final validity period. If the senior officer has failed to make the required improvement the reporting officer must refer the senior officer to a performance hearing.

14. At a performance hearing a panel considers whether the senior officer's performance has improved. If the panel find that the senior officer's performance has not improved satisfactorily, they can decide whether the senior officer should be dismissed or demoted in rank. In exceptional circumstances, the panel can also extend a final improvement period. This would give the senior officer another opportunity to show improved performance before the matter is heard at a further performance hearing.

15. The membership of the hearing panel differs for each rank of officer. This allows the SPA to manage the appeal process in a fair and open manner. Each panel will include a member who provides independent scrutiny of the evidence and process and the regulations provide for a list of excluded persons, preventing members of the SPA, their staff, or constables from the Police Service of Scotland from undertaking this role.

16. Following the performance hearing the panel will give notice to the SPA of their decision regarding the performance of the senior officer. If the panel are of the view that the senior officer's performance remains unsatisfactory, they must provide a disposal to either dismiss or demote the senior officer. Under these circumstances, the senior officer can then choose to appeal to the Police Appeals Tribunal.

Consultation

17. Key policing stakeholders have been part of a working group to discuss and agree the main policy within the regulations.

18. In accordance with section 54(2) of the 2012 Act, a draft of the Regulations was issued for consultation to the range of policing stakeholders listed below, from 28 October 2015 to 27 November 2015.

- Association of Scottish Police Superintendents
- Chief Constable of the Police Service of Scotland
- Gay Police Association

- National Transgender Policing Association
- Scottish Chief Police Officers' Staff Association
- Scottish Police Authority
- Scottish Police Federation
- Scottish Police Muslim Association
- Scottish Women's Development Forum
- SEMPER Scotland

19. The Scottish Ministers have taken account of the representations made in preparing these regulations.

Impacts

20. No financial or equality issues were raised during the consultation, or the process of policy development, which required an impact assessment to be prepared for these regulations.

Scottish Government
Safer Communities Directorate
January 2016

Extract from the Delegated Powers and Law Reform Committee 15th Report 2016

Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51)

1. This instrument provides for the procedures for dealing with cases where the performance of a constable of the Police Service of Scotland at or above the rank of assistant chief constable is considered to be unsatisfactory.
2. The instrument is subject to the negative procedure and comes into force on 1 April 2016.
3. The Committee sought explanation in relation to two drafting errors in the instrument, as set out in paragraphs 23 and 24 below. The correspondence is reproduced below.
4. **The Committee draws the Regulations to the attention of the Parliament on the general reporting ground, as they contain two separate drafting errors, as follows:**
5. **Firstly, there is an error in regulation 17, in that the references to “the chief constable” in paragraph (8)(a) and (b) should instead be references to “the senior officer”.**
6. **Secondly, there is an omission in that the reference to the “Conduct Regulations” in the definition of “misconduct hearing” in rule 2 of the Police Appeals Tribunals (Scotland) Rules 2013 (“the Rules”) requires to be updated to refer instead to the “2014 Conduct Regulations”. This is required in consequence of other changes to the Rules made by the Regulations.**

7. **The Scottish Government has acknowledged these errors, and has undertaken to lay an amending instrument to deal with these points as soon as is reasonably practicable.**
8. **Correspondence between the DPLR Committee and the Scottish Government: Police Service of Scotland (Senior Officers) (Performance) Regulations 2016 (SSI 2016/51).**

On 5 February 2016, the Scottish Government was asked:

1. Regulation 17(6) provides that the chief constable must seek to agree a date and time for the performance appeal meeting with the senior officer, and regulation 17(7) provides that, if no date and time are so agreed, the chief constable must specify a date and time for the meeting.
2. Regulation 17(8) provides that, if a date and time are so specified, and (a) the *chief constable* or the senior officer's police representative will not be available at that date and time; and (b) the *chief constable* proposes an alternative date and time which satisfy the relevant requirements, then the meeting must be postponed to the date and time proposed.
3. It appears that the references to the "chief constable" in regulation 17(8)(a) and (b) should be references to the "senior officer". Is this an error, and if so is any corrective action proposed?
4. Regulation 23(1) provides that, if the reporting officer refers the senior officer to a progress meeting, the reporting officer must send a notice in writing requiring the senior officer to attend such a meeting. Regulation 23(2) sets out the details which the notice must provide, which includes (at (e)) "any proposed attendance at the meeting of the reporting officer".
5. Regulation 24 sets out the procedure at a progress meeting. Regulation 24(2) provides that the meeting must be conducted by the reporting officer.
6. What is the purpose of the requirement at regulation 23(2)(e) to notify the senior officer of the proposed attendance of the reporting officer at the progress meeting, given that the reporting officer is required by regulation 24(2) to conduct the progress meeting. Does the Scottish Government consider that the provisions are sufficiently clear as to their intention, or is some corrective action proposed?
7. Regulation 35(2) provides that, no later than 3 working days from the conclusion of the performance hearing, the chairing member of the panel conducting the hearing must give both the senior officer and the Scottish Police Authority written notice of the panel's decision, the reason for the decision and any disposal ordered.
8. Regulation 35(3) provides that the Authority must deliver the notice given under paragraph (2) to the senior officer as soon as is practicable.
9. These provisions appear to require the notice to be given to the senior officer twice, once by the chairing member of the panel and once by the Authority. Is there some error, and if so is any corrective action proposed?

10. Regulation 40(2) makes consequential amendment to rule 2 (interpretation) of the Police Appeals Tribunals (Scotland) Rules 2013, including the removal of the definition of the “Conduct Regulations” and the introduction of new definitions of the “2013 Conduct Regulations” and the “2014 Conduct Regulations”. Various references in the Rules to the “Conduct Regulations” are also updated.

11. It appears that the definition of “misconduct hearing” in rule 2 includes a reference to the “Conduct Regulations” which is not being updated by the Regulations. Does the Scottish Government intend to update this reference also?

The Scottish Government responded as follows:

1. The references in regulation 17(8)(a) and (b) to the “chief constable” should indeed be references to the “senior officer”. The Scottish Government regrets this error and intends to make an amending instrument as soon as is reasonably practicable.

2. Regulation 23(2) specifies the detail which must be contained in a notice under regulation 23(1), including specification of who will attend a progress meeting. Since the reporting officer is required to conduct such a meeting that officer will also be required to attend that meeting. Accordingly, the requirement in regulation 23(2)(e) is compatible with the requirement in regulation 24(2).

3. The policy intention is that the regulation 35(2) notice should always be delivered to the senior officer in the Authority’s name under regulation 35(3), having been given to the Authority and the senior officer under regulation 35(2). This is necessary because the Authority is, in effect, the senior officer’s employer. The parties operating the arrangement (namely the panel and the Authority) will know what is expected of them in these circumstances and so it is envisaged that the regulation will operate without difficulty in practice. However, the Scottish Government will consider whether any further clarification of this arrangement may be beneficial at the next available opportunity.

4. The Scottish Government agrees that there is a reference to “misconduct hearing” in rule 2 of the Police Appeals Tribunal (Scotland) Rules 2013 and intends to update that reference as soon as is reasonably practicable.

**CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (METAL DEALERS AND
ITINERANT METAL DEALERS) (VERIFICATION OF NAME AND ADDRESS)
REGULATIONS 2016 (SSI 2016/73)**

Introduction

10. The instrument is made under powers conferred by section 33C(6) of the Civic Government (Scotland) Act 1982. The Regulations stipulate particular means that can be used by a metal dealer or itinerant metal dealer for the purpose of verifying a person’s name and address in relation to any metal acquired or disposed of by sale or exchange.

11. The instrument comes into force on 1 September 2016.

12. 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/2016/73/contents/made>

Delegated Powers and Law Reform Committee consideration

13. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 23 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

14. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 21 March 2016.

Policy Note: Civic Government (Scotland) Act 1982 (Metal Dealers and Itinerant Metal Dealers) (Verification of Name and Address) Regulations 2016 (SSI 2016/73)

1. The above instrument is made in exercise of the powers conferred by section 33C(6) of the Civic Government (Scotland) Act 1982 ("the 1982 Act"). The instrument is subject to negative procedure.

Policy Objectives

2. Section 33C was added to the 1982 Act by section 70 of the Air Weapons and Licensing (Scotland) Act 2015 ("the 2015 Act"). This section changes the record keeping requirements for metal dealers and itinerant metal dealers currently set out in the 1982 Act. It specifically provides the details that must be recorded by a dealer when metal is acquired or disposed of and supports the separate provisions stipulating acceptable forms of payment by requiring dealers to keep copies of documentation evidencing the form of payment used. This section will come into force on 1 September 2016.

3. These Regulations stipulate particular means that can be used by a metal dealer or itinerant metal dealer for the purpose of verifying a person's name and address in relation to any metal acquired or disposed of by sale or exchange.

Consultation

4. No formal consultation was carried out in relation to these Regulations. However, formal consultation took place in respect of proposals for changes to metal dealer licensing before the Bill for the 2015 Act was introduced. This is a link to that consultation paper <http://www.scotland.gov.uk/Publications/2013/04/5185>.

5. Informal consultation with stakeholders took place during the Bill's parliamentary passage and will continue during the implementation of the 2015 Act.

Impact Assessments and Financial Effects

6. Both an Equality Impact Assessment and a Business and Regulatory Impact Assessment were carried out in relation to the Bill as a whole including specific

consideration of the metal dealer provisions. The links below will take you to the relevant documentation:

Equality Impact Assessment:
<http://www.gov.scot/Publications/2014/05/3617>

Business and Regulatory Impact Assessment:
<http://www.gov.scot/Publications/2014/05/7168>

Scottish Government
Justice Directorate
2 February 2016

RESTRICTION OF LIBERTY ORDER ETC. (SCOTLAND) AMENDMENT REGULATIONS 2016 (SSI 2016/89)

Introduction

15. The instrument is made under powers conferred by section 245C(3) of the Criminal Procedure (Scotland) Act 1995(a) (as applied by section 40 of the Criminal Justice (Scotland) Act 2003(b)) and all other enabling powers. The Regulations provide that the devices listed in Schedule 2 to the Restriction of Liberty Order etc. (Scotland) Regulations 2013 are specified devices which may be used for the purposes of remotely monitoring a prisoner's compliance with a condition specified by virtue of section 40(2) of the Criminal Justice (Scotland) Act 2003.

16. The instrument comes into force on 13 March 2016.

17. 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/2016/89/contents/made>

Delegated Powers and Law Reform Committee consideration

18. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 23 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

19. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 21 March 2016.

Policy Note: Restriction of Liberty Order etc. (Scotland) Amendment Regulations 2016 (SSI 2016/89)

1. Section 245C(3) of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") (as applied by section 40(7) of the 2003 Act) requires Scottish Ministers to specify devices for the purposes of remote monitoring imposed under section 40(2) of the Criminal Justice (Scotland) Act 2003 ("the 2003 Act").

2. The Restriction of Liberty Order etc. (Scotland) Regulations 2013 (“the 2013 Regulations”) specify devices for the purposes of remotely monitoring an offender’s compliance with—

- a restriction of liberty order imposed under section 245A of the 1995 Act;
- a restricted movement requirement imposed under section 227E of the 1995 Act as a sanction for breaching a community payback order;
- a curfew condition imposed as part of a drug treatment and testing order under section 234CA of the 19095 Act; and
- a curfew requirement imposed under section 12AB of the Prisoners and Criminal Proceedings (Scotland) Act 1993 for the purposes of home detention curfew.

3. These regulations amend the 2013 Regulations so as to provide that the devices specified for the purposes mentioned above are also specified for the purpose of remotely monitoring an offender’s compliance with a condition specified by virtue of section 40(2) of the 2003 Act.

4. The devices already specified in the 2013 Regulations for the purposes mentioned above have been shown to be effective in securing the remote monitoring of offenders for those purposes. These devices are therefore considered suitable for the purposes of remote monitoring imposed under section 40 of the 2003 Act.

Impact Assessments and Financial Effects

5. This is a technical instrument and as such has no significant financial, equality or privacy effects on the Scottish Government, local authorities or on business.

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>