



JUSTICE AND HOME AFFAIRS COMMITTEE

AGENDA

24th Meeting, 2000 (Session 1)

Tuesday 27 June 2000

The Committee will meet at 9.30 am in Committee Room 1, Committee Chambers, George IV Bridge, Edinburgh.

- 1. Item in private:** The Committee will decide whether to take item 3 in private.
- 2. Bail, Judicial Appointments etc. (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 1).
- 3. Annual Report:** The Committee will consider a draft Committee Annual Report.

Note: If necessary, the Committee will adjourn for lunch and resume at 1.30 pm.

Andrew Mylne
Clerk to the Committee, Tel 85206

The following papers are attached for this meeting:

Note by the Clerk on Committee Annual Report	JH/00/24/6
Draft Committee Annual Report 1999-2000 (private paper)	JH/00/24/3

Papers not circulated:

Members are reminded to bring with them copies of the Bill and Accompanying Documents, together with any papers from the Stage 1 process that are considered relevant (such as the Committee's Stage 1 report). Copies of the Marshalled List will be available from Document Supply first thing in the morning and will also be available in Committee Room 1. A list of groupings will be available in Committee Room 1 at the beginning of the meeting.

JUSTICE AND HOME AFFAIRS COMMITTEE

Papers for information circulated for the 24th meeting

Response of the Justice and Home Affairs Committee to the Stalking and Harassment Consultation	JH/00/24/2
Note by the Clerk on Action Plan on vulnerable and intimidated witnesses	JH/00/24/4
Scottish Executive Action Plan on <i>Towards a Just Conclusion</i> (private paper – embargoed)	JH/00/24/5
Note by the Clerk on cross-examination during sexual crime trials	JH/00/24/1
Written answers on Scottish prisons and land reform	
Minutes of the 23rd meeting	JH/00/23/M

Note: Members should be aware that the Official Report of the Committee's 24th meeting on Tuesday should be available on the website at 8 am on Thursday 29 June. If the meeting continues in the afternoon, the Official Report of the whole day's proceedings should be available on the website at 8 am on Monday 3 July and in hard copy in the Document Supply Centre. If the Committee meets on Wednesday 28 June, the Official Report of that meeting should be available on the website and in hard copy at 8 am on Tuesday 4 July.

SPICe has published a Research Paper (00/12) on the Bail, Judicial Appointments etc. (Scotland) Bill. An amended version, as at 22 June, is available from the Reference Centre and on the Parliament website and intranet.

JUSTICE AND HOME AFFAIRS COMMITTEE

Committee annual report

Note by the Clerk

Under Rule 12.9, each committee is required “as soon as practicable after the end of each Parliamentary year” to submit a report to the Parliament “containing details of its activities during that Parliamentary year, including details of its meetings and the number of times the committee has met in private.

The Parliamentary year runs from the first meeting of the Parliament to the anniversary of that date (Rule 2.1.2). The Parliament first met on 12 May 1999.

Although each Committee normally publishes its own reports to the Parliament, it has been expected that all the Committee annual reports for 1999-2000 will be published together in a single volume. (The Conveners’ Liaison Group has yet to take a final decision on this point.) This volume will be one of four companion volumes recording the Parliament’s first year, the others being a report by the SPCB on the work of the Parliament as a whole, the accounts for the year and a statistical digest. The intention is to publish all four in September.

Within the Committee reports volume, it is expected that each committee will be assigned two facing pages, one to include a photograph of the Committee at work (or otherwise reflecting its work), and the other to include a photograph of the Convener and a textual report of around 400 words in length.

A draft report is circulated separately (private paper – members only). As with any other committee report, it is for the Committee as a whole to agree its terms. It would be possible, if need be, for the Committee to consider a revised draft at its meeting on Tuesday 4 July. Alternatively, the Committee could authorise the Convener to finalise the text on its behalf.

22 June 2000

ANDREW MYLNE

Justice and Home Affairs Committee

Response to the Executive consultation on stalking and harassment

Introduction and Background

1. At its meeting on 29 March, the Committee agreed to appoint Pauline McNeill as Reporter to consider the issues raised by the Executive in the consultation paper on stalking and harassment. The Reporter has since met the Law Society of Scotland, Scottish Women's Aid, and the Scottish Police Federation (SPF). The Committee took evidence from Victim Support Scotland at its 21st meeting 2000 on 7 June. The Law Society of Scotland, Scottish Women's Aid, the Association of Scottish Police Superintendents and the SPF kindly copied their own responses to the consultation to the Committee.

2. The Committee welcomes the consultation paper and, in particular, the Executive's assurance that there is no pre-conceived agenda at this stage.

Research

3. The Committee is concerned about the apparent lack of solid research available on stalking and harassment in the UK. Victim Support Scotland informed the Committee that there are often problems with language and definition in relation to stalking and harassment, and that this can lead to confusion. It is possible, for example, for a victim to be stalked but not harassed (col 1364). Victim Support Scotland told the committee that research conducted in the USA tentatively identified four types of stalkers. It is therefore important to recognise that stalking and harassment does not only occur in situations of domestic abuse. **The Committee would be interested to know whether the Executive has any plans to commission research into stalking and harassment, and in particular, the motivation behind such behaviour.**

Existing law

4. **The prevailing view of the Committee is that the common law offences of breach of the peace and threats adequately cover the wide range of behaviour involved in stalking and harassment. On this basis, we believe it would be premature to create a new statutory offence, although this cannot be ruled out for the future.** There appear to be many advantages in the existing law, including flexibility in sentencing, width of definition and the possibility of prosecuting as a result of a single incident, whereas in England and Wales there has to be at least two related offences. Breach of the peace and the common law of threats are also straightforward for police officers to apply in practice.

5. There are occasions, however, where breach of the peace does not appear to do justice to the seriousness of stalking and harassment. The Committee is concerned that breach of the peace has become trivialised by being prosecuted mainly in the District Court, and believes that it should be prosecuted more seriously than it often is at present. If sentencing is to reflect the seriousness of stalking and harassment, more cases should be prosecuted in higher courts than at present. The Committee would also support the suggestion of the Law Society of Scotland that the

Crown Office could consider issuing guidelines about the appropriate level of prosecution of such cases.

Changes to current practice

6. Whilst supporting reliance on existing law to deal with cases of stalking and harassment, the Committee believes that there is a need to improve current practice.

7. Victim Support Scotland believed that there was a need to develop specialist counselling and advocacy for victims of stalking and harassment. It also argued for the appointment of specialist police officers to deal with victims of stalking and harassment (col 1367). The Law Society of Scotland highlighted the need for the reporting officer to familiarise him or herself with the full facts of the case to establish any pattern of behaviour, and for an accurate report of the facts to be made to the procurator fiscal. The Committee would urge the Executive to consider such measures.

8. It was suggested by the SPF and the Law Society of Scotland that timescales for the preparation of social work reports for the sheriff when considering sentencing for cases of stalking and harassment are too short, and that it would be desirable for these timescales to be extended.

9. The Committee supports consideration of the SPF suggestion that an offenders' register for stalking and harassment be established. This would allow information to be held centrally and give officers across Scotland the opportunity to access it. Such a system could also lead to more effective monitoring of cases, something that was advocated by Victim Support Scotland (col 1367).

10. We are aware of the work of some police forces in setting up schemes, such as the provision of mobile phones to vulnerable women, to improve communication between the police and vulnerable people. Such initiatives are to be commended in our view.

Awareness raising and training

11. We believe there is a definite need to raise awareness on the nature and effects of stalking and harassment and of the remedies available across the criminal justice system, including the judiciary and the general public. According to the Law Society of Scotland the public perception of breach of the peace is that it is restricted to minor offences. It also said there was a lack of awareness of the common law of threats, and of civil remedies available to victims, especially non-harassment orders.

12. The Law Society of Scotland also highlighted the need for the victim always to be aware of the status of the case, especially if the accused has been released on bail. The Committee is aware that communication with the alleged victim on these matters can be patchy and recommends that this be improved by ensuring that the alleged victim is informed of every development in the case.

13. The SPF confirmed that more training is required for the police in stalking and harassment. The Committee understands that police officers do not receive specific training on stalking and harassment after their initial two-year probationary period

and endorses the SPF's comments on the need for specific training of police officers on this issue. The Committee would also recommend specific training on the issue within the judiciary.

14. The Committee believes that if the Executive takes any suggested steps to improve current practice, rather than creating a new statutory offence, it will be important to make people aware that these steps have been taken. There is a need to convince people that improving practice will have a direct and practical effect.

Changes to current law

15. Scottish Women's Aid argues in its submission that harassment is quite distinct from breach of the peace, and that the distinction should be made by the creation of a new statutory offence. The view of the Committee is that it this could be addressed by making clear on the criminal record of the accused that previous breach of the peace offences involved harassment. The availability of such information would allow the sheriff to take such offences into account when sentencing. The Law Society of Scotland suggested that this information could be noted on the print-out provided by Scottish Criminal Records Office in the same way as any other aggravated offences are recorded. The Law Society of Scotland also suggested that the court should be required, in any case where the prosecution seeks a non-harassment order, to take into account any available information on previous convictions for offences involving the same victim.

16. The Committee notes that there was a commitment from Lord James Douglas-Hamilton (then Minister of State in the Scottish Office), in December 1996, to consider including the word 'harassment' in brackets after 'breach of the peace' in a schedule of previous convictions. He said that the then Lord Advocate was 'actively considering that possibility with a view to implementing it' (House of Commons Hansard, 18 December 1996, col 974). The Committee understands that the Lord President has set up a working party to consider this issue and would welcome the swift implementation of this measure.

17. Evidence suggests that the Protection from Harassment Act 1997 is ineffective in many cases. Scottish Women's Aid argues that the current requirement for granting a non-harassment order is difficult to satisfy. However, the Law Society of Scotland is against making it obligatory, in certain circumstances, to issue a non-harassment order. In the Society's view, each case should be viewed on its own merits and such an obligation would also detract from the flexibility of the current system. The Society identified the need to extend the scope of interdicts, and welcomed the Executive's proposal to introduce the concept of the 'domestic interdict'. This is also a proposal supported by the Committee.

A new statutory offence

18. Scottish Women's Aid argues that the creation of a new statutory offence would enable the police to act more swiftly in cases of harassment and would allow for more consistent sentencing. It also claims that a prosecution for breach of the peace trivialises the conduct to which the victim has been subjected. Victim Support Scotland agreed that the way in which the crime is recorded often does not relate to how victims perceive what has happened to them (col 1368). The SPF claimed that

the creation of a new offence could lead to mistakes being made and that stalking and harassment would be difficult to define in statute.

19. The Committee believes that the creation of a new statutory offence would be premature. If a new statutory offence were created, it would be necessary to specify the limitations of the sentence, which would reduce the flexibility available under the common law. **In particular, the Committee does not support the easy presumption that the only way to take a problem seriously is by means of a legislative solution. Often it is more important to make existing law work effectively.**

Conclusion

20. In conclusion, the Committee believes that present legal provisions should be adequate to deal with stalking and harassment without modifying current legislation, but is concerned that these provisions are not being used effectively. Before considering the creation of a new statutory offence, the Committee believes that the Executive should concentrate on improving current practice. In particular, the Committee would welcome:

- measures to ensure that cases of stalking and harassment prosecuted as breach of the peace are prosecuted in a more serious manner than is currently the case;
- measures to ensure that it is clear on the criminal record of an accused when a former conviction for breach of the peace involved harassment;
- a commitment from the Executive to encourage more training of police officers and those who work within the judiciary on stalking and harassment;
- the consideration of the creation of a register of convicted stalkers;
- measures to increase awareness within the police of the existence of non-harassment orders, and
- research on stalking and harassment aimed, in particular, at establishing definitions of each that encompass the full range of relevant offending behaviour and that could be applied in practice by the police and legal system.

JUSTICE AND HOME AFFAIRS COMMITTEE

Action plan on vulnerable and intimidated witnesses

Note by the Clerk

An embargoed copy of the Scottish Executive's Action Plan on the above is included in the present circulation (private paper – members only).

This has been provided by Executive officials to allow members an opportunity to read it in advance of its official publication on Monday. Copies are being made available on a similar basis to members of the Equal Opportunities Committee.

Members should be aware that that Committee is taking evidence from the Acting First Minister, Jim Wallace, on the Action Plan (and on the Macpherson report on the Stephen Lawrence case) at its meeting on Monday 26 June. The Committee meeting begins at 1.30 pm – although the first half hour will be in private. The evidence from Mr Wallace will last for around an hour, from 2 to 3 pm, and it is intended that the first half of that time will be devoted to the Macpherson report and the second half to the Action Plan.

Any member of the Justice and Home Affairs Committee who wishes to attend that meeting should notify the Clerk to that Committee (Martin Verity, G11 CC, tel 85211) in advance, as a courtesy.

22 June 2000

ANDREW MYLNE

JUSTICE AND HOME AFFAIRS COMMITTEE

Debate on cross-examination during sexual crimes trials

Note by the Clerk

Members will recall that, at the Committee's 22nd meeting on Tuesday 13 June, the Convener proposed a committee debate on the issue of vulnerable witnesses in cases of alleged rape (col 1445). It was hoped either to secure time in the Chamber for "committee business" or to find time on a Committee agenda for a debate in the Committee.

Unfortunately, there is no time available for a committee business debate in the Chamber before the recess. Further, the fact that Stage 2 of the Regulation of Investigatory Powers (Scotland) Bill will now require a second day after the completion of Stage 2 of the Bail, Judicial Appointments etc. (Scotland) Bill makes it extremely unlikely that there will be sufficient time for such a debate in the committee before the recess.

However, members may be aware that there is to be a debate on the topic of cross-examination during sexual crimes trials as "Members' Business" after Decision Time on Wednesday 28 June. The debate will take place on the following motion:

S1M-380 Johann Lamont: Cross Examination During Sexual Crimes Trials—That the Parliament recognises the huge distress that can be caused to the victims of rape and other sexual crimes if accused persons are allowed to conduct their own defence and can cross examine victims, and urges the Scottish Executive to bring forward legislation as a matter of urgency which will bring the rights of victims in such cases into line with the new rights of victims in England and Wales.

The Convener would encourage as many members of the Committee as possible to attend and participate in the above debate.

22 June 2000

ANDREW MYLNE

Justice

Linda Fabiani (Central Scotland) (SNP): To ask the Scottish Executive what the maximum number of available spaces in (a) penal establishments directly operated by the Scottish Prison Service, (b) legalised police cells and (c) privately operated penal establishments (i) was in each of the last three financial years and (ii) is anticipated to be in each of the next three financial years.

(S1W-7644)

Angus MacKay: The information is as follows:

	(a)	(b)	(c)
1997-98	5,960	73	0
1998-99	5,995	73	0
1999-2000	6,014	73	500
2000-01	5,600	73f	500
2001-02	6,150	73f	500
2002-03	6,150*	73f	500*

* Subject to the outcome of the fundamental review of the SPS estate currently underway.

f Need for and number of police cells at Ayr and Portree is currently being reviewed.

Land Reform

Karen Gillon (Clydesdale) (Lab): To ask the Scottish Executive what further progress has been made in implementing its Land Reform Action Plan, published in August 1999.

(S1W-8083)

Mr Jim Wallace: I promised that we would publish regular updates on our Land Reform Action Plan to show how we are delivering on our promises. The third of these progress reports is published today. All MSPs are receiving copies.

This shows that there will now be some delay in the publication of the draft Land Reform Bill for consultation – we think it best to take the time now to resolve some of the many complex and technical issues relating to our proposals. However, I am pleased to say that generally we are well on track. Since the last progress report:

The Abolition of Feudal Tenure etc. (Scotland) Bill completed Stage 3 on 3 May 2000 and received Royal Assent on 9 June 2000;

Adam Ingram has introduced the Leasehold Casualties (Scotland) Bill;

Our National Parks Bill has been introduced;

The Agricultural Holdings White Paper has been published for consultation;

The establishment of a research project to establish the possible need for improved information about land ownership has been announced.

JUSTICE AND HOME AFFAIRS COMMITTEE

MINUTES

23rd Meeting, 2000 (Session 1)

Wednesday 21 June 2000

Present:

Scott Barrie	Roseanna Cunningham (Convener)
Phil Gallie	Christine Grahame
Gordon Jackson (Deputy Convener)	Kate MacLean
Maureen Macmillan	Mr Michael Matheson
Mrs Lyndsay McIntosh	Pauline McNeill
Euan Robson	

Also present: Angus MacKay, Deputy Minister for Justice.

The meeting opened at 9.34 am.

- 1. Regulation of Investigatory Powers (Scotland) Bill – Order of consideration:**
The Convener moved (S1M-1014)—That the Justice and Home Affairs Committee consider the Regulation of Investigatory Powers (Scotland) Bill at Stage 2 in the following order: sections 1 to 28, long title. The motion was agreed to.
- 2. Bail, Judicial Appointments etc. (Scotland) Bill – Order of consideration:**
The Convener moved (S1M-1015)—That, if the general principles of the Bail, Judicial Appointments etc. (Scotland) Bill are agreed to at Stage 1 and the Bill is referred to the Justice and Home Affairs Committee for Stage 2, the Committee consider the Bill at Stage 2 in the following order: sections 1 to 11, the schedule, section 12, long title. The motion was agreed to.
- 3. Petition:** The Committee took note of petition PE212 by the District Courts Association, calling for the Scottish Parliament to delete Chapter 2 of Part 2 of the Bail, Judicial Appointments etc. (Scotland) Bill.
- 4. Regulation of Investigatory Powers (Scotland) Bill:** The Committee considered the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 16 and 20.

Amendment 18 was agreed to (by division): For 7, Against 4, Abstentions 0.

The following amendments were disagreed to (by division)—

14 (For 3, Against 8, Abstentions 0)

1 (For 3, Against 7, Abstentions 1)

2 (For 3, Against 8, Abstentions 0)

Amendments 6, 11 and 12 were moved, and with the agreement of the Committee, withdrawn.

Other amendments were not moved.

Sections 1 and 2 were agreed to without amendment.

Section 3 was agreed to as amended.

The meeting was adjourned from 11.02 am to 11.11 am.

5. Regulation of Investigatory Powers (Scotland) Bill: The Committee resumed consideration of the Bill at Stage 2 (Day 1).

The following amendments were agreed to (without division): 25, 29, 30, 31, 32, 33 and 34.

The following amendments were agreed to (by division)—

26 (For 7, Against 4, Abstentions 0)

35 (For 7, Against 4, Abstentions 0)

The following amendments were disagreed to (by division)—

3 (For 3, Against 8, Abstentions 0)

4 (For 3, Against 7, Abstentions 1)

5 (For 3, Against 7, Abstentions 1)

Amendments 23, 27 and 39 were moved, and with the agreement of the Committee, withdrawn.

Other amendments were not moved.

Sections 7, 11 and 12 were agreed to without amendment.

Sections 4, 5, 6, 8, 9 and 10 were agreed to as amended.

The Convener announced that Stage 2 consideration would be resumed after Stage 2 of the Bail, Judicial Appointments etc. (Scotland) Bill had been completed.

The meeting closed at 12.27 pm.

Andrew Mylne
Clerk to the Committee