



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 14 June 2016**

**Session 5**



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Pàrlamaid na h-Alba

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**Tuesday 14 June 2016**

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**JUSTICE COMMITTEE**

**1<sup>st</sup> Meeting 2016, Session 5**

**CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

**COMMITTEE MEMBERS**

\*Mairi Evans (Angus North and Mearns) (SNP)

Mary Fee (West Scotland) (Lab)

\*John Finnie (Highlands and Islands) (Green)

\*Fulton MacGregor (Coatbridge and Chryston) (SNP)

\*Ben Macpherson (Edinburgh Northern and Leith) (SNP)

\*Liam McArthur (Orkney Islands) (LD)

\*Oliver Mundell (Dumfriesshire) (Con)

\*Douglas Ross (Highlands and Islands) (Con)

\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



# Scottish Parliament

## Justice Committee

*Tuesday 14 June 2016*

*[Stewart Stevenson opened the meeting at 10:33]*

### Interests

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** Good morning. As the oldest committee member, it falls to me to chair the meeting for the first two items on today's agenda. I welcome everyone to the first meeting of the Justice Committee in session 5. I remind everyone present to turn off mobile phones as they can interfere with the sound system. If members are using digital devices, which they are encouraged to do, those should be set to silent.

We have received apologies from Mary Fee MSP.

Item 1 on our agenda, declaration of interests, is to allow committee members to declare any interests that they have that are relevant to the committee's work. Members have been provided with background information in a note from the clerk.

I start by declaring my own interests. There is nothing in my entry in the register of members' interests to which I should draw members' attention, but I take the opportunity to report that I have a close family member who is a police constable.

I invite members in turn to make their declaration of interests, starting with Margaret Mitchell.

**Margaret Mitchell (Central Scotland) (Con):** I am a member of JUSTICE Scotland.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** I have no registrable interests.

**Oliver Mundell (Dumfriesshire) (Con):** I have no registrable interests.

**Mairi Evans (Angus North and Mearns) (SNP):** I have no registrable interests.

**Douglas Ross (Highlands and Islands) (Con):** I refer members to my entry in the register of members' interests. I am a Moray councillor, I remain a member of Moray Council's police and fire and rescue services committee, and my wife is a police sergeant in the Buckie local policing team.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** I draw the committee's attention to

the fact that, before my election to Parliament, I was a solicitor practising with Brodies LLP, and I am still a member of the Law Society of Scotland.

**Liam McArthur (Orkney Islands) (LD):** I have no interests to declare.

**John Finnie (Highlands and Islands) (Green):** As a former police officer, I am a member of the Highlands and Islands branch of the Retired Police Officers Association Scotland, and a police pensioner.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** I am registered with the Scottish Social Services Council. I am also currently a councillor on North Lanarkshire Council and am on the community safety partnership.

**Stewart Stevenson:** Mary Fee will make a declaration at the first meeting that she attends.

## Convener

10:35

**Stewart Stevenson:** Agenda item 2 concerns the choice of convener—the procedure is explained in paper 2. The Parliament has agreed that only members of the Scottish Conservative and Unionist Party are eligible for nomination as convener, and I ask Douglas Ross to nominate a member for the role.

**Douglas Ross:** I am delighted to nominate Margaret Mitchell.

**Stewart Stevenson:** There is no other nomination.

*Margaret Mitchell was chosen as convener.*

**Stewart Stevenson:** I now have great pleasure in swapping seats with Margaret Mitchell so that she can chair the remainder of the meeting.

**The Convener (Margaret Mitchell):** I thank you all for your support.

## Deputy Convener

10:36

**The Convener:** The committee's next task is to choose a deputy convener. The Parliament has agreed that members of the Scottish National Party are eligible to be chosen as deputy convener of the committee. I invite a nomination.

**Fulton MacGregor:** I am delighted to nominate Rona Mackay.

**The Convener:** I ask the committee to agree that Rona Mackay be chosen as deputy convener.

*Rona Mackay was chosen as deputy convener.*

**The Convener:** Congratulations, Rona.

## Work Programme

10:37

**The Convener:** The next item of business is our approach to developing our work programme. The clerks have issued members with an approach paper. The main decision before us concerns whether we want to hold a planning day in order to properly work out the way forward with regard to our work programme. We will not discuss specific issues today—that could perhaps be left to our next meeting—but once we get more of an idea of where we want to go, we could use that away day, or business planning day, to put meat on the bones of our plans. I invite comments from members.

**Liam McArthur:** I support the idea of the committee having a planning day, as I have found them helpful in previous sessions. I suggest that we should invite the cabinet secretary to participate in the meeting at a suitable point—that has worked well in the past. I agree that we should decide at a later date what issues to discuss on the planning day.

**The Convener:** It is up to us where we hold the meeting but, if we hold the meeting outwith the Parliament, that would give us an opportunity to meet the cabinet secretary on a more informal basis and inform him of what we are thinking about and what issues we want to raise and give prominence to.

**Stewart Stevenson:** Speaking more generally, I would like us to consider whether it would be appropriate for us to schedule an element of post-legislative scrutiny. In previous sessions, the pretty broad view has been that we should do some of that. I suggest that we do so not to criticise our predecessors—in my case and your case, convener, that would mean that we would find that we were criticising ourselves—but because, if we are going to legislate effectively, we should consider how effectively we have legislated in the past. I have no particular piece of legislation in mind but perhaps the clerks could suggest something from session 1 or 2—something that has been around for a while—and we could decide whether we wanted to examine that. Of course, because I know what the work programme of previous Justice Committees has been, I know that that post-legislative scrutiny will be difficult to schedule.

I thoroughly support the suggestion that we should meet over the recess for planning purposes, and I venture to suggest that we might consider combining that meeting with a visit of some use or relevance to the committee. To set the tone, we could perhaps meet in a town where

there is a prison that we could visit, because that is the sharp end of the criminal justice system. I have a prison in my constituency and I have visited that and other prisons, but the experience may be a new one for other members, who could find it useful. There may be other options, but we could combine a relatively brief and focused visit to a prison, for example, with the more abstract planning of our work programme.

**The Convener:** That is certainly something else to put in the melting pot.

**John Finnie:** I support Stewart Stevenson's suggestion. It would be a golden opportunity to visit Inverness prison, which is a short distance from my dwelling-house in the capital of the Highlands. I am sure that we would be very welcome there.

The challenge facing the previous Justice Committee and, as I understand it, all Justice Committees before that was that the workload militated against not only our addressing the issue that Stewart Stevenson rightly raises about post-legislative scrutiny—I wonder what our relationship with the committee that will have that in its remit might be—but our conducting inquiries. If we are going to conduct an inquiry, we should do that at the outset of the parliamentary session rather than when the legislative programme starts to kick in. I would like us to look at an issue that the previous committee became frustrated with at the tail-end of the previous session: surveillance and the intrusion that the public are increasingly facing at various levels. If we could conduct an inquiry into that, that would be constructive and would open up a range of issues for us to examine.

**The Convener:** Are there any more comments at this point?

**Mairi Evans:** My point follows on from what John Finnie has just said and what Stewart Stevenson talked about. I am new to the committee and, from reading the legacy paper, it seems to me that there are many vital elements to the committee's work. The post-legislative scrutiny and inquiries seem to be important aspects of the committee's work that we will want to ensure that we have the time to do. I would be interested to know what members' views are on that and how we will handle that work if an awful lot of other business comes to the committee.

**The Convener:** I very much welcome those comments.

**Liam McArthur:** The entire Parliament accepts that post-legislative scrutiny has not been carried out well enough up to now. There is always going to be an argument that committees have enough on their plate in dealing with current and future legislation as well as in conducting inquiries—I back John Finnie's suggestion that we ought to

conduct at least one inquiry—but we cannot dodge the fact that we need to find a way of doing post-legislative scrutiny in this parliamentary session. That might mean having a desk-based assessment and inviting written evidence on certain identified pieces of legislation, then deciding whether there is enough meat there to justify more in-depth scrutiny—I do not know—but we need to find a way of better grappling with post-legislative scrutiny than we have managed so far.

**Douglas Ross:** At the end of last week, the committee was made aware of a delayed report on the counter-corruption unit. I believe that the previous Justice Committee was going to get that report in the spring, but we were informed that we will now not get the report until the week commencing 27 June, which is our final sitting week before the summer recess. Would it be in order for the committee to write to Her Majesty's inspector of constabulary in Scotland, Derek Penman, to ask whether it would be possible for us to have sight of the report—or an overview of the report—before 27 June, and to invite him to attend our last meeting before the summer, to allow us to discuss the matter prior to our two-month recess?

10:45

**The Convener:** There are quite a lot of issues there.

First, there is no doubt—John Finnie and I will testify to this—that the previous Justice Committee was really a legislative machine. Our workload of 17 bills was really oppressive, inquiries were squeezed and it was virtually impossible for us to carry out post-legislative scrutiny.

One of the pluses or strong points of the committees was supposed to be their ability to hold the Government to account in order to improve legislation. There really was not any opportunity to do that in the previous session, and there has been no emphasis on that in any session of Parliament. I therefore very much welcome Stewart Stevenson's suggestion that post-legislative scrutiny should feature in our work programme, and I hope that it will.

Rather than just reacting, it would be excellent if the committees could operate as they were intended to and could look at issues that they deem to be important and worthy of being brought to the fore by being the subject of an inquiry.

Another thing that I will put into the melting pot is that, in the whole history of the committee system, only one piece of legislation has been generated by a committee, although I could be wrong about that. *[Interruption.]* Stewart Stevenson, our numerical expert, tells me that

there have been two. However, in 16 or 17 years of the Parliament, that is a pretty poor record. Therefore, another thing that our committee could consider is legislation that the Government does not have in mind but which we think is important and should be brought to the fore.

We have some good ideas for the planning day. I do not want bids from all over the country for which part we should visit—no doubt they would be from the Highlands and Islands down to the Borders and Dumfries. Perhaps we can work that out when we discuss the issue more fully on 28 June. I seek members' agreement to do that, and to have the business planning day.

As regards the issue that Douglas Ross raised, we received correspondence this week from the clerks—we all got it at the same time, so I did not have any prior knowledge of it—indicating that the report into the counter-corruption unit by Derek Penman, which was expected in spring, is delayed and is now expected to be published before the summer recess. I think that Mr Penman has said that it will be published in time to be put before Parliament, but not necessarily in time for the committee to look at the issue. If we want to ensure that it is published in time for us to take evidence on the Tuesday, it would be a good idea if the committee agreed to write to Mr Penman suggesting that he makes the report available on the Monday. If there are good reasons why that is not possible, at least he can give us those reasons.

**Stewart Stevenson:** I am perfectly supportive of the proposal that we bring Mr Penman before the committee on 28 June, but I am mindful of the potential legal risks. If court action or legal action of any kind might arise from the report, we will need to be very circumscribed in interrogating Mr Penman. I want to ensure that committee members have an adequate briefing as to the constraints that there might be on how we deal with Mr Penman. He is a very experienced person and would no doubt be careful to keep us within the legal bounds, so I do not have great concerns, but I would like to be confident that the clerks can give us an adequate briefing in the 24 hours that we expect will elapse between the publication of the report and our perhaps having Mr Penman before us.

In any event, we should certainly write and make sure that Mr Penman is aware that we want to have him before us in early course. I am merely cautious about whether that should be on 28 June, although I am not opposed to that.

**The Convener:** My only comment on that is that I presume that, whether we discuss the issue on 28 June or in September, the same legal considerations will apply and we will have to make sure that there is not a problem.

I ask the clerk, Peter McGrath, to comment on the issue. If we write, we will be asking whether there is a possibility that the report will be published in time for us to look at it. We have almost a fortnight until 28 June to sort out any possible legal problems. If HMICS says that there is a particular reason why we should not look at the report, at least we will have pressed the issue and tried to take evidence. If we do not take evidence, the report will be published that week and will then lie until September. We can write to find out whether there is any reason why we should not take evidence and, if there is, at least we will know the situation.

**Peter McGrath (Clerk):** All of your points are noted. I raise one factual point, which is that Mr Penman's letter says:

"we ... anticipate publishing our report in the week commencing 27 June".

He does not say, "We will publish our report on 27 June."

**The Convener:** We understand that, but our point is that, as Mr Penman is going to publish his report that week anyway, he should be made aware that we will have a meeting on 28 June. The report will be available and will be laid before Parliament for scrutiny, but I envisage that there will be very little opportunity for it to be scrutinised, other than by this committee. The main point of writing to Mr Penman is to make him aware of that.

**John Finnie:** I agree with Stewart Stevenson. We do not know at this stage whether there will be any consequential legal proceedings, be they civil or otherwise—though most likely they will be civil. However, as you and I will appreciate from our experience last session, convener, the benefit of even having this discussion is that Police Scotland, which was at best unhelpful to the previous committee and at worst obstructive, will be made aware that the issue is not going to go away and that we will be revisiting it whenever.

**Douglas Ross:** The point that the clerk made simply makes the argument for the committee. The week commencing 27 June could mean the report being published after Parliament finishes on the Thursday and we have all left—although I know that Mr Penman says that he will try to get it to Parliament before then. The Monday is therefore the crucial date if the committee is to try to take evidence and distil the report. That might not be possible for other reasons, but we need to set out our intention. If we simply accept the week commencing 27 June, we will be accepting that the report could be published after the committee's meeting on 28 June, and we will therefore have no opportunity or recourse until September.



**The Convener:** Do we agree to write to Derek Penman to point out that the committee is sitting on 28 June, to note that it is likely that the report will be published in the week beginning 27 June and to indicate that, if there are no legal barriers to our doing this, our intention is, we hope, to take evidence at the meeting on 28 June? If there are some legal problems, we will take advice from the clerks and legal officials, and we will find out whether Mr Penman has any reasons why what we have suggested should not be the case. If he cannot do it, he will write back and tell us why, but I think that we have set down quite a strong marker that we want to look at and fully scrutinise this issue.

The approach to our business planning day will also be part of our business on Tuesday 28 June. Do we agree to schedule a planning day for the recess?

**Members indicated agreement.**

**The Convener:** Before I close the very first meeting of the Justice Committee in session 5, I should say that, at the next meeting on 28 June, we will, in addition to looking at the work programme, consider two negative statutory instruments relating to air weapons licensing and sexual offences legislation.

*Meeting closed at 10:53.*



This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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