



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

15th Meeting, 2015 (Session 4)

Tuesday 12 May 2015

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

1. **Subordinate legislation:** The Committee will take evidence on the Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2015 [draft] from—

Michael Matheson, Cabinet Secretary for Justice, Lee-Anne Barclay, Policy Officer, Organised Crime and Police Powers Unit, and Carla McCloy-Stevens, Solicitor, Legal Directorate, Scottish Government.

2. **Subordinate legislation:** Michael Matheson (Cabinet Secretary for Justice) to move—

S4M-13076—That the Justice Committee recommends that the Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2015 [draft] be approved.

3. **Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Jake Molloy, Regional Organiser, National Union of Rail, Maritime and Transport Workers;

Ian Tasker, Assistant Secretary, Scottish Trades Union Congress;

and then from—

Alistair McNab, Head of Operations in Scotland, Health and Safety Executive;

Dr Gary Morrison, Executive Director (Medical), Mental Welfare Commission for Scotland;

Cathy Asante, Legal Officer - Human Rights Based Approach, Scottish Human Rights Commission;

and then from—

Iain Miller, Executive Legal Manager, Glasgow City Council;

Detective Chief Superintendent Robbie Allan, Police Scotland.

4. **Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill - witness expenses:** The Committee will be invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses on the Bill.

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The papers for this meeting are as follows—

Agenda items 1 and 2

Paper by the clerk

J/S4/15/15/1

[Proceeds of Crime Act 2002 \(Cash Searches: Constables in Scotland: Code of Practice\) Order 2015](#)

Agenda item 3

Paper by the clerk

J/S4/15/15/2

Private paper

J/S4/15/15/3 (P)

[Inquiries into Fatal Accidents and Sudden Deaths etc. \(Scotland\) Bill, accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Justice Committee

15th Meeting, 2015 (Session 4), Tuesday 12 May 2015

Subordinate legislation

Note by the clerk

Purpose

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

Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2015 [draft]

Introduction

The purpose of the instrument is to bring into force a revised code of practice for constables conducting cash searches under section 289 of the Proceeds of Crime Act 2002.

2. Further details on the purpose of the instrument can be found in the policy note (see below) to this paper and an electronic copy of the instrument is available at: <http://www.legislation.gov.uk/sdsi/2015/9780111027578/contents>

Consultation

3. The policy note states that the Scottish Ministers published a draft of the revised code of practice and launched a public consultation paper in July 2013. The Police Service of Scotland, the Scottish Police Federation, the Association of Scottish Police Superintendents, the Crown Office and Procurator Fiscal Service, the Civil Recovery Unit, the Law Society of Scotland, the Faculty of Advocates and the Social Equality and Human Rights Commission were consulted. Following the consultation, the Scottish Ministers considered the few representations that were made to them (which were generally very positive) and modified the draft where appropriate.

Delegated Powers and Law Reform Committee consideration

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

Justice Committee consideration

5. The Justice Committee is required to report to the Parliament on the instrument by 29 May 2015.

6. The instrument is subject to affirmative procedure (Rule 10.6 of Standing Orders). The Cabinet Secretary for Justice has lodged motion S4M-13076 proposing that the Committee recommends approval of the instrument. The Cabinet Secretary will attend the meeting on 12 May to answer any questions on the instrument, and then, under a separate agenda item, to speak to and move the motion for approval. It

is for the Committee to decide whether or not to agree to this motion, and then to report to the Parliament by 29 May 2015. Thereafter, the Parliament will be invited to take a decision on the instrument.

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

Policy Note: Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2015 [draft]

Introduction

1. The above instrument was made in exercise of the powers conferred by section 293(4) of the Proceeds of Crime Act 2002 (“POCA”). The instrument is subject to the affirmative procedure.

Policy Objectives

2. The purpose of this instrument is to bring into force a revised code of practice for constables conducting cash searches under section 289 of POCA. Section 289 allows constables to search individuals and premises for cash which is recoverable property (obtained through unlawful conduct), or is intended by any person for use in unlawful conduct, and which is not less than the minimum amount (currently £1000). These search powers are necessary to enable constables to fully exercise their power to seize cash which is the proceeds of unlawful conduct, or is intended for use in such conduct, under section 294 of POCA. However, they are subject to certain limits and conditions. Accordingly, section 293 of POCA requires the Scottish Ministers to make a code of practice in connection with the exercise of these powers by constables in Scotland.

3. The code of practice is intended to ensure that the responsibilities of constables undertaking searches for cash under section 289 of POCA are clearly set out and accessible. It defines the scope of the search powers and emphasises the need for reasonable grounds of suspicion. It also sets out (a) the requirements for constables to obtain appropriate authority for a search and to make a report to the “Appointed Person” where it was not practicable to obtain prior judicial or senior officer authority, (b) the steps a constable must take prior to a search and the scope of the powers to search individuals, premises and vehicles, and (c) the requirements for recording information relating to any search that has taken place.

4. This is the second revision of the code of practice. It replaces the code which was brought into operation in June 2009 (“the 2009 code”). The 2009 code requires updating to take account of certain changes being made to section 289 of POCA by section 63 of the Policing and Crime Act 2009. These changes come into force on 1 June 2015 (article 2 of SI 2015/983).

5. Section 63 of the Policing and Crime Act 2009 inserts new provisions into section 289 of POCA. In effect, these confer on constables a power to search vehicles for cash in certain circumstances. Section 289 currently permits constables to search for cash on premises, including any vehicle located on the premises, provided they have lawful authority to be there (e.g. by virtue of a search warrant, a statutory or common law power of entry, or the owner’s consent). The new power, on the other hand, is

exercisable where a vehicle appears to be under the control of a person (the suspect) who is in or in the vicinity of the vehicle, and the vehicle is in a public place. It allows a constable to require the suspect to permit entry to, and a search of, the vehicle (provided, of course, that the constable has reasonable grounds for suspecting that there is cash (as defined in section 289) in the vehicle). The new power is also exercisable where a vehicle is within the environs of a dwelling, but only if the constable has reasonable grounds for believing that the suspect does not reside in the dwelling and that the vehicle is there without the permission of a person who resides there.

6. Copies of the revised code will be available at all police stations for consultation by the police and by members of the public if they so wish.

7. This instrument also revokes the Proceeds of Crime Act 2002 (Cash Searches: Constables in Scotland: Code of Practice) Order 2009 (SSI 2009/246) which brought the 2009 code into operation.

Consultation

8. To comply with the requirements of section 293 of POCA, the Scottish Ministers published a draft of the revised code of practice and launched a public consultation paper in July 2013, entitled "Proceeds of Crime Act 2002: Revised Draft of Code of Practice for Constables". The consultation list included, in particular, the Police Service of Scotland, the Scottish Police Federation, the Association of Scottish Police Superintendents, the Crown Office and Procurator Fiscal Service, the Civil Recovery Unit, the Law Society of Scotland, the Faculty of Advocates and the Social Equality and Human Rights Commission. Following the consultation, the Scottish Ministers considered the few representations that were made to them (which were generally very positive) and modified the draft where appropriate.

Impact Assessment

9. There are no equality impact issues.

Financial Effects

10. The Cabinet Secretary for Justice confirms that no BRIA is necessary, as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Directorate for Safer Communities
April 2015

Justice Committee

15th Meeting, 2015 (Session 4), Tuesday 12 May 2015

Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill

Note by the clerk

Introduction

1. This cover note provides some background information in relation to the Committee's scrutiny of the Scottish Government's Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill and outlines the next steps in the Committee's scrutiny.
2. This is the second evidence session on the Bill, further evidence sessions are scheduled for 19 and 26 May. It is expected that the Committee will encompass scrutiny of Patricia Ferguson MSP's forthcoming Member's Bill on reforming FAI legislation as part of its scrutiny of this Bill.

Background

The Bill

3. The Scottish Government introduced the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill¹ on 19 March 2015 and the Parliamentary Bureau designated the Justice Committee as lead committee in consideration of the Bill at Stage 1 on 31 March 2015.
4. The Bill seeks to reform and modernise the law governing the holding of fatal accident inquiries (FAIs) in Scotland and largely implements the recommendations made in the 2009 Review of Fatal Accident Inquiry Legislation² led by Lord Cullen of Whitekirk KT, former Lord President of the Court of Session.
5. From the Policy Memorandum, the objectives of the Bill are to—
 - build on the recommendations implemented by the Crown Office and Procurator Fiscal Service (COPFS) to make the system more efficient;
 - extend the categories of death in which it is mandatory to hold a fatal accident inquiry;
 - place a requirement on those to whom sheriffs direct recommendations at the conclusion of the inquiry to respond;
 - permit discretionary FAIs into deaths of Scots abroad where the body is repatriated to Scotland;

¹ The Bill and accompanying documents can be viewed on the Parliament's website <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/87332.aspx> [accessed April 2015]

² The Review report can be viewed on the Scottish Government's website <http://www.gov.scot/Publications/2009/11/02113726/0> [accessed April 2015]

- permit FAls to be re-opened if new evidence arises or, if the evidence is so substantial, to permit a completely new inquiry to be held; and
- provide flexibility for the locations and accommodation for FAls.

Briefing on the Bill

6. On 29 April, the Scottish Parliament Information Centre (SPICe) produced a briefing paper on the Bill which can be found at the following link—

- <http://www.scottish.parliament.uk/parliamentarybusiness/88981.aspx> [accessed April 2015]

7. The briefing paper also covers Patricia Ferguson MSP's proposals for a Member's Bill on this area.

Evidence to the Committee

Written evidence

8. On 24 March, the Committee issued a call for views on the provisions contained in the Bill and invited comments on whether—

- the circumstances for mandatory FAls provided for in the Bill are sufficient;
- the circumstances provided for in the Bill in respect of discretionary inquiries are appropriate;
- there are alternative approaches that should be considered;
- the provisions in relation to FAls into deaths abroad are appropriate;
- the provisions in relation to the pre-inquiry procedure are appropriate; and
- what are the practical implications of the provisions of the Bill.

9. The call for views closed on 28 April and the Committee received 34 responses. The Committee then received a further four submissions taking the total to 38. Written submissions³ received from the witnesses attending on 12 May meeting, and others, can be found at the following link—

- <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/88530.aspx> [accessed May 2015]

Informal briefing

10. The Committee received an informal briefing on the Bill from Scottish Government officials on 24 March 2015. Following this, the Scottish Government provided further clarification on issues raised during discussion, namely: repatriation of bodies; information for families; and civil litigation. This was reproduced and published with the papers for the meeting on 5 May 2015.

³ A pack of written submissions has been circulated to each member with their meeting papers.

Oral evidence

11. At its meeting on 31 March, the Committee agreed its scrutiny approach to the Bill which included a series of evidence sessions from witnesses with a specific interest in some, or all, aspects of the Bill, culminating in a final evidence session with the Minister for Community Safety and Legal Affairs. The evidence sessions will also include hearing from Patricia Ferguson MSP on her proposals

12. It was agreed that, in order to set the scene and to understand more fully the impact of this legislation on how FAIs would work in practice under these proposals, that the Committee would begin by take evidence from Lord Cullen and then from FAI campaigners at its first session on 5 May, when they heard from Lord Cullen then from Julie Love [Deaths Abroad – You Are Not Alone \(DAYNA\)](#), Louise Taggart, [Families Against Corporate Killers \(FACK\)](#) and Ft Lft James Jones.

13. The transcripts and videos from all of the oral evidence sessions can all be found on the Committee’s webpages at the following links—

- <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/29847.aspx> [accessed May 2015]
- <http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/80470.aspx> [accessed May 2015]

Next steps

14. At its meeting on 12 May, the Committee will hear from Jake Molloy, Regional Organiser, National Union of Rail, Maritime and Transport Workers and Ian Tasker, Assistant Secretary, Scottish Trades Union Congress; and then from Alistair McNab, Head of Operations in Scotland, Health and Safety Executive; Dr Gary Morrison, Executive Director (Medical), Mental Welfare Commission for Scotland; and Cathy Asante, Legal Officer - Human Rights Based Approach, Scottish Human Rights Commission; and then from Stephen McGowan, Procurator Fiscal, Major Crime and Fatalities Investigation, Crown Office and Procurator Fiscal Service; Iain Miller, Executive Legal Manager, Glasgow City Council; and Detective Chief Superintendent Robbie Allan, Police Scotland.