The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

27th Meeting, 2015 (Session 4)

Tuesday 29 September 2015

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

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

2. **Criminal Justice (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 3).

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

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

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

   PE1479 by Andrew Muir on complaints about solicitors;

   PE1510 by Jody Curtis on the closure of police, fire and non-emergency service centres north of Dundee;

   PE1511 by Laura Ross on the decision made by the Scottish Fire and Rescue Service to close Inverness control room.

4. **Subordinate legislation:** The Committee will consider the following instruments which are not subject to any parliamentary procedure—

   Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 3) (Miscellaneous) 2015 (SSI 2015/283);

   Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Child Welfare Reporters) (SSI 2015/312).

5. **Draft Budget Scrutiny 2016-17:** The Committee will consider its approach to the scrutiny of the Scottish Government's Draft Budget 2016-17.

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

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The papers for this meeting are as follows—

Agenda item 2

Criminal Justice (Scotland) Bill, and all other associated documents

Agenda item 3

Paper by the clerk	J/S4/15/27/1

Agenda item 4

Paper by the clerk	J/S4/15/27/2

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 3) (Miscellaneous) 2015 (SSI 2015/283)

Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Child Welfare Reporters) (SSI 2015/312)

Agenda item 5

Private paper	J/S4/15/27/3 (P)

Agenda item 6

Private paper	J/S4/15/27/4 (P)

Justice Committee

27th Meeting, 2015 (Session 4), Tuesday 29 September 2015

Petitions

Note by the clerk

Introduction

This paper invites the Committee to consider its ongoing petitions:

PE1501 and **PE1567**: Investigating unascertained deaths, suicides and fatal accidents

PE1479: Legal profession and the legal aid time bar

PE1510 and **PE1511**: Police and Fire Control Rooms

PE1501 and PE1567: Investigating unascertained deaths, suicides and fatal accidents

Terms of petitions

PE1501 (lodged 13 December 2013): The Petition calls on the Scottish Parliament to urge the Scottish Government to introduce the right to a mandatory public inquiry with full evidence released in deaths determined to be self-inflicted or accidental, following suspicious death investigations.

The Petitioner provides the following background information in relation to their petition:

> "In our own case a death was immediately treated as self-infliction and not investigated despite being re-opened after inputs from the family. The police and Fiscal's service were found to be negligent and of misleading the family. The investigation had many issues and an FAI was instructed. The FAI validated much of the families concerns and served as the basis of a request for an independent investigation. […] The police investigated the death but were unable to pursue a number of avenues owing to previous failings, actions and the passage of time. Today this death is now open and suspicious. This case would not have been treated as self-infliction with such haste if subject to scrutiny. Likewise, loss of pertinent evidence would have been restricted by prompt challenging of available evidence.
>
> The current system in Scotland, only requires that a death deemed to be self-inflicted or accidental is based upon probability rather than beyond reasonable doubt as in criminal cases. This has the effect that families are presented with information that supports the conclusion but have no access to anything that may contradict this. This prohibits families from effectively defending loved ones if they do not believe the findings. In essence they must carry out their own investigations if they are to raise questions to challenge findings. Also, the current system, appears to lack the effective independence required under Article 2 as the decision makers, police and the Fiscal, are both responsible for the investigation and thus cannot be deemed to independent when reviewing the findings.
>
> It is envisaged that the inquiry will be ran on similar lines to a Coroner's inquest in England. In this it is led by someone completely independent from the investigation process, QC or Sheriff, with the family having full disclosure with the right to legal representation if requested."

In a 22 August 2014 letter to the Public Petitions Committee, the Scottish Government stated that "it would be inappropriate and unnecessary to introduce a form of inquiry akin to a coroner's inquest." The letter is attached in Annexe A.

PE1567 (lodged 28 April 2015): The Petition calls for the Scottish Parliament to urge the Scottish Government to change the law and procedures in regard to investigating unascertained deaths, suicides and fatal accidents in Scotland. As with PE1501, the petitioner's key concerns appear to be:

- That there should be a mechanism for challenging or reviewing Crown Office and Procurator Fiscal Service (COPFS) conclusions in relation to death

investigations particularly where this follows a police investigation into the death that family members consider cursory or defective, and

- That families should generally be included more in the decisions reached in such investigations

It is not currently possible to appeal the Lord Advocate's decision not to hold an FAI but certain official decisions can be the subject of a judicial review. Judicial review usually looks only at the procedural aspects of an official decision, rather than its strengths or weaknesses. It is also likely to be expensive.

New rules introduced following the Victims and Witnesses (Scotland) Act 2014 came into effect on 1 July 2015. They allow a victim of a crime reported to the COPFS by the police to apply for a review of a decision not to prosecute.[1] However, the review mechanism does not appear to apply in instances where criminality surrounding a death has not been proven and would not therefore appear to apply in instances where the police investigation was called into question.

As noted, the PE1501 petitioners referred to Article 2 of the European Convention on Human Rights: the right to life. The courts have interpreted this to include a duty on governments to investigate loss of life in certain circumstances. The purpose of such investigations is to ensure that laws protecting life can be enforced and that the state can be held to account where it is responsible. The Scottish Government argues that an FAI is not required in all circumstances to which Article 2 applies. Instead, the death investigation carried out by COPFS may meet the required standards.

Developments

During consideration of petition PE1501 on 21 April 2015, the committee discussed how supplementary evidence provided by the petitioner regarding unexplained or self-inflicted death investigations in different parts of the country might relate to the FAI Bill.

The committee agreed to keep the petition open as the issues raised by the petitioner did not fit with the ambit of the bill and made no specific recommendations in its stage one report that would be likely to address the concerns raised. Much of the petitioners' concerns appear to relate to the initial police investigation into a death, which effectively precedes the process covered in the Bill.

Several of the Cullen Review's recommendations to improve communication between the COPFS and bereaved families are being brought forward in, or in parallel with, the Scottish Government's current FAI Bill. These include:

- The introduction of a "milestone charter", setting out timescales for investigations and decisions in relation to a death being investigated by the COPFS, and the information families can expect to receive during the process;

- Provision in the Bill (section 8) requiring the Lord Advocate to give written reasons (on request) for a decision not to hold an FAI. However, it does not

[1] COPF - Review of a decision not to prosecute: http://www.crownoffice.gov.uk/images/Documents/Victims_and_Witnesses/Lord%20Avocates%20Rules%20-%20June%2015%20v2.pdf

require the procurator fiscal to give reasons for upholding a police investigation, which concludes that a death is not suspicious.

Options

The committee can:

- Close the petitions (noting, in the case of petition 1501, that the Scottish Government appears to have made clear that it has no intention of introducing a form of public inquiry occurring at a preliminary stage to the point where an FAI would be held, along similar lines to a Coroner's Inquiry in England and Wales);

- Write to any or all of the Lord Advocate, the Cabinet Secretary for Justice, and the petitioners to seek views on whether the revised inquiry regime under the new FAI Bill and the milestone charter would adequately address both the petitioners concerns and/or;

- Seek information from the COPFS as to how they evaluate suspicious death investigations by the police and what opportunity, if any, is afforded to families to consider and challenge police findings under the new COPFS review system.

- Take any other action that the Committee considers appropriate (for instance, seek further information or take evidence on the issues raised).

PE1479: Legal profession and the legal aid time bar – Lodged 10 May 2013

Terms of the Petition

The Petition calls on the Scottish Parliament to urge the Scottish Government to amend the Legal Profession and Legal Aid (Scotland) Act 2007 by removing any references to complaints being made timeously.

Section 4(1) of the Legal Profession and Legal Aid (Scotland) Act 2007 provides that the Scottish Legal Complaints Commission is not under an obligation to investigate complaints which are not made "timeously". Section 4(3)(a) of the Act allows the SLCC to set time limits defining what "timeously" means. On this basis, the SLCC has adopted rules which explain that: "A complaint will not be accepted (unless the Commission considers that the circumstances are exceptional) if it is made more than 1 year after the professional misconduct, unsatisfactory professional conduct or conviction suggested by it appears to have occurred.

Developments

During its consideration of the petition on 21 April 2015 the committee agreed to keep this petition open until after the Scottish Legal Complaints Commission's rules changed. These changes were due to take effect in July 2015 but have been delayed. Once introduced they will increase the time from one to three years and will coincide with an alternative dispute directive resolution procedure. (NB: in his appearance before the Public Petitions Committee, the petitioner's preference was for there to be no time bar.)

Options

The committee can:

- Close the petition on the basis that the Scottish Legal Complaints Commission rules will be changing to allow more time in which to make a complaint; but in so doing, the Committee may wish to write to the SLCC seeking clarification on when the rule will change).

- Write to the SLCC along the lines set out in the previous bullet point, but keep the petition open until a reply is received

- Take any other action in relation to the petition that the Committee considers appropriate (for instance, take evidence or seek further information from relevant stakeholders).

PE1510 and PE1511: Police and Fire Control Rooms

Terms of the petitions

PE1510 (lodged 23 March 2014) calls on the Scottish Parliament to undertake a committee inquiry into the closure of Police, Fire, and Non-Emergency Service Centres north of Dundee. In particular, the major concerns raised have been the loss of public knowledge; public safety; officers being off the street and overwhelmed in managing the increased workload this would create.

PE1511 (27 March 2014) calls on the Scottish Parliament to urge the Scottish Government to review the decision made by the Scottish Fire and Rescue Service to close the Inverness Control Room.

Developments

In his recent statement on Policing, Michael Matheson, Cabinet Secretary for Justice agreed to implement HMICS recommendations concerning the control centre reform programme, stating:

"it should take place only when the current control rooms in Govan and Bilston Glen have a full complement of trained staff, and when the systems and processes are capable of taking additional call demand from the north, when the new area control room in Dundee is fully operational, and after a detailed and independently assured transition plan is developed and delivered. HMICS recommends that centres in Dundee, Aberdeen and Inverness should remain open while that takes place. That is what will now happen. The remaining phase will proceed only once the Scottish Police Authority and HMICS are completely reassured that all the issues have been addressed."

With specific regard to the Scottish Fire and Rescue services, Audit Scotland published its review in May of this year, following the merger of the eight fire and rescue services in 2013. The review notes the comments made by Her Majesty's Fire Service Inspectorate (HMFSI) and in particular, the attention that must be paid to staff retention and engagement with regard to the pending finalisation of control room structures to avoid any reduction in operational response.

The committee also took evidence from Chief Fire Officer, the chair of SFRS, HM Chief inspector of SFRS and FBU Scotland on 28 April. The matter of control room resilience was discussed, and the panel were unaware of a substantial loss of cover. The transcript from that meeting can be viewed here:

http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=9921&i=90842

Options

The committee may wish to:

- Close petition PE1510 on the basis that control room closures will be considered in the course of the Sub-Committee on Policing's ongoing work on local policing (including call handling arrangements);

- Keep petition 1510 open pending the HMICS full report on call handling which is expected to be published in October;

- Close petition PE1511 on the basis that the issues it raises will be taken into account in the Committee's forthcoming evidence-taking and report on Fire Services reform, which the Committee must report on before the end of the session;[2]

- Take any other action in relation to the petitions that the Committee considers appropriate (for instance, take additional evidence to that set out in the preceding bullet points or request further information from relevant stakeholders).

[2] By virtue of the Police and Fire Reform (Scotland) Act 2012, section 124

Annexe A

PE1501/I

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In 2014 Scotland Welcomes the World

22 August 2014

Thank you for your letter regarding Petition PE1501.

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

The Committee has specifically asked the Scottish Government for its views on the discussions that took place at the Public Petitions Committee meeting on 3 June 2014 when taking evidence on Petition PE1501.

The Government's views in relation to the issues raised by Petition PE1501 were provided in the letter from the Cabinet Secretary for Justice on 6 February 2014 and the position largely remains the same, except as further explained below.

Family involvement in death investigations

The Cabinet Secretary's letter of 6 February provided information on how families are now supported during death investigations by Crown Office and Procurator Fiscal Service (COPFS) and in particular by the COPFS Victim Support and Advice Service (VIA).

Victim Support Scotland currently provides support for families who have been bereaved through murder. The Government has noted that COPFS will consider a referral mechanism for bereaved relatives in other cases, including FAIs, to Victim Support Scotland.

The Government has noted the suggestion by the Law Society of Scotland that there should be a right to request a preliminary hearing before the sheriff in whose jurisdiction the death occurred. The purpose of the hearing would be to determine whether there should be a further inquiry in the small number of cases where the bereaved family is dissatisfied with the death investigation or the decision of the Lord Advocate to exercise his discretion not to hold a fatal accident inquiry (FAI).

Lord Cullen has recommended that where the Lord Advocate decides not to apply to the sheriff for an FAI, written reasons for the decision should be provided to relatives of the deceased: in many cases COPFS already provide very detailed written reasons to families concerning these decisions. COPFS' practice does also reflect, however, that in other cases the families involved may wish decisions to be communicated through other appropriate means.

There is already a remedy available to bereaved relatives if they not agree with the decision of the Lord Advocate regarding the holding of an FAI: this is judicial review.

The creation of a statutory right to request a hearing to determine whether an FAI is held is not, however, appropriate. FAIs are judicial inquiries held in the public interest specifically to determine the time, place and cause of death and any reasonable precautions which might be taken to prevent deaths in similar circumstances in the future.

FAIs are therefore not specifically held on behalf of the bereaved family. Indeed some families do not want FAIs to be held into the deaths of their loved ones as they do not want the details of the death to be aired in public.

Patricia Ferguson's Inquiries into Deaths (Scotland) Bill

The Scottish Government will consider the content and detail of Patricia Ferguson's final proposals when they emerge after consultation. The Government believes, however, that the efforts made by COPFS in recent years to keep families informed as to progress in death investigations and to give them an opportunity to express concerns provides bereaved families with the kind of involvement envisaged in Ms Ferguson's Bill.

Government Bill to modernise the law on fatal accident inquiries

As the Committee is aware, the Government is committed to bringing forward legislation within the lifetime of this Parliament to implement the recommendations of Lord Cullen's Review of Fatal Accident Inquiry legislation.

A public consultation, seeking views on the Government's policy proposals for a prospective Bill on fatal accident inquiries in Scotland, has been published and closes on 9 September 2014. The consultation may be found at:

http://www.scotland.gov.uk/Publications/2014/07/6772

The proposals, arising from the recommendations made by Lord Cullen, intend to modernise the way in which FAIs are handled in Scotland. The consultation also seeks views on:

- building on the recommendations implemented by the Crown Office to make the system more efficient;
- extending the categories of death in which it is mandatory to hold a fatal accident inquiry;
- obliging those to whom sheriffs direct recommendations at the conclusion of the inquiry to respond to the sheriff about compliance;
- permitting discretionary FAIs into deaths of Scots abroad where the body is repatriated to Scotland; and
- options for holding FAIs in alternative accommodation.

A different system more closely related to the system of coroners' inquests

The Scottish Government remains of the view expressed in the Cabinet Secretary's letter of 6 February that it would be inappropriate and unnecessary to introduce a form of inquiry akin to a coroner's inquest.

HAMISH GOODALL

Justice Committee

27th Meeting, 2015 (Session 4), Tuesday 29 September 2015

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following instruments which are not subject to any parliamentary procedure:

- Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 3) (Miscellaneous) 2015 (SSI 2015/283);

- Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Child Welfare Reporters) (SSI 2015/312).

ACT OF SEDERUNT (RULES OF THE COURT OF SESSION 1994 AND SHERIFF COURT RULES AMENDMENT) (NO. 3) (MISCELLANEOUS) 2015 (SSI 2015/283)

Introduction

2. The instrument was made under the powers conferred by section 225 of the Revenue Scotland and Tax Powers Act 2014(b), sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(c), and all other enabling powers.

3. The purpose of the instrument is amend the Rules of the Court of Session 1994, the Ordinary Cause Rules 1993, the Summary Cause Rules 2002, the Small Claim Rules 2002, the Act of Sederunt (Child Care and Maintenance Rules) 1997, the Summary Application Rules and the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002 so that references to a child witness are to a person under the age of eighteen at the date of the commencement of the proceedings. These amendments are made in consequence of section 22 of the Victims and Witnesses (Scotland) Act 2014, which amends the definition of a "child witness" in section 11 of the Vulnerable Witnesses (Scotland) Act 2004.

4. The instrument also amends the Summary Application Rules by inserting Part XLVI (Counter-Terrorism and Security Act 2015) and new Forms 69 and 70. Part XLVI provides for the procedure when an application is made to the sheriff to extend the period of detention of travel documents and for the procedure to make further applications.

5. The instrument came into force on 7 August 2015.

6. An electronic copy of the instrument is available at:
http://www.legislation.gov.uk/ssi/2015/283/contents/made

Delegated Powers and Law Reform Committee consideration

7. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 8 September 2015 and agreed to draw it to the attention

of the Parliament as provision on the signing of the form has been omitted from Form 70, which is inserted by Schedule 1.

8. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 2 of this paper.

Justice Committee consideration

9. The instrument was laid on 9 July 2015 and the Justice Committee has been designated as lead committee.

Procedure

10. This instrument is not subject to any parliamentary procedure. It has been referred to the Committee under Rule 10.1.3 of Standing Orders. However, there is no formal requirement for the Committee to consider it.

11. The Committee has agreed that these types of instruments will not normally be placed on a Committee agenda unless—

- the DPLR Committee has drawn the instrument to the lead committee's attention on technical grounds; or
- a member of the Justice Committee has proposed to the Convener that the instrument goes on the agenda, and the Convener agrees.

12. In addition, where the clerks are aware of particular issues with an instrument not subject to parliamentary procedure, they will draw this to the Convener's attention, for consideration of whether to put it on the agenda.

Recommendation

13. The Committee is invited to note the instrument and make any comment on it. In particular, in light of the concerns raised by the DPLR Committee, the Committee is invited to endorse the conclusions reached in the DPLR Committee's report.

Extract from the Delegated Powers and Law Reform Committee 48th Report 2015

ACT OF SEDERUNT (RULES OF THE COURT OF SESSION 1994 AND SHERIFF COURT RULES AMENDMENT) (NO. 3) (MISCELLANEOUS) 2015 (SSI 2015/283) (Justice Committee)

1. Paragraphs 2 to 6 of this Act of Sederunt modify the prescribed form of child witness notice set out in the Rules of the Court of Session 1994, the Ordinary Cause Rules 1993, the Act of Sederunt (Child Care and Maintenance Rules) 1997, the Summary Cause Rules 2002, and Small Claim Rules 2002. This is in consequence of amendments in section 22 of the Victims and Witnesses (Scotland) Act 2014 to the definition of a "child witness" in section 11 of the Vulnerable Witnesses (Scotland) Act 2004.

2. Paragraph 7 inserts a new part into the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 providing for the procedure and relevant forms in respect of applications, further to Schedule 1 to the Counter-Terrorism and Security Act 2015, for an extension of the retention period for travel

documents, where they have been seized from an individual suspected of intending to travel abroad in connection with terrorism-related activity.

3. Paragraph 8 amends the Act of Sederunt (Debt Arrangement and Attachment (Scotland) Act 2002) 2002 to insert a new Form C, prescribing the form of a summary warrant (that is granted under section 225(5) of the Revenue Scotland and Tax Powers Act 2014) to recover sums payable to Revenue Scotland.

4. In considering the instrument, the Committee asked whether Form 70, inserted by Schedule 1, had omitted to include provision for signing of the form. The correspondence is reproduced at Annexe A. The Lord President's Private Office has acknowledged this omission and has undertaken to lay an amending instrument in due course.

5. The Committee therefore draws this instrument to the attention of the Parliament under the general reporting ground as it contains a minor drafting error. In Form 70, which is inserted by Schedule 1, provision on the signing of the form has been omitted.

ACT OF SEDERUNT (RULES OF THE COURT OF SESSION 1994 AND ORDINARY CAUSE RULES 1993 AMENDMENT) (CHILD WELFARE REPORTERS) (SSI 2015/312)

Introduction

14. The instrument was made under powers conferred by sections 103(1) and 104(1) of the Courts Reform (Scotland) Act 2014(b).

15. The purpose of the instrument is to amend the Rules of the Court of Session 1994, and the Ordinary Cause Rules 1993, to make provision concerning the appointment of reporters and local authorities to assist the court in relation to child welfare issues in family actions in the Court of Session and Sheriff Court.

16. The instrument comes into force on 26 October 2015.

17. An electronic copy of the instrument is available at:
http://www.legislation.gov.uk/ssi/2015/312/contents/made

Delegated Powers and Law Reform Committee consideration

18. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 15 September 2015 and agreed to draw the it to the attention of the Parliament as the meaning of Articles 2 and 4 could be clearer.

19. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 4 of this paper.

Justice Committee consideration

20. The instrument was laid on 28 August 2015 and the Justice Committee has been designated as lead committee.

Procedure

21. This instrument is not subject to any parliamentary procedure. It has been referred to the Committee under Rule 10.1.3 of Standing Orders. However, there is no formal requirement for the Committee to consider it.

22. The Committee has agreed that these types of instruments will not normally be placed on a Committee agenda unless—

- the DPLR Committee has drawn the instrument to the lead committee's attention on technical grounds; or
- a member of the Justice Committee has proposed to the Convener that the instrument goes on the agenda, and the Convener agrees.

23. In addition, where the clerks are aware of particular issues with an instrument not subject to parliamentary procedure, they will draw this to the Convener's attention, for consideration of whether to put it on the agenda.

Recommendation

24. The Committee is invited to note the instrument and make any comment on it. In particular, in light of the concerns raised by the DPLR Committee, the Committee is invited to endorse the conclusions reached in the DPLR Committee's report.

Extract from the Delegated Powers and Law Reform Committee 49th Report 2015

ACT OF SEDERUNT (RULES OF THE COURT OF SESSION 1994 AND ORDINARY CAUSE RULES 1993 AMENDMENT) (CHILD WELFARE REPORTERS) (SSI 2015/312) (Justice Committee)

1. This instrument amends the procedural rules of both the Court of Session and the Sheriff Court in order to make provision regarding child welfare reporters.

2. Article 2 inserts a new rule 49.22 into the Rules of the Court of Session 1994. Article 4 inserts a new rule 33.21 into the Ordinary Cause Rules 1993. Paragraph (11) of each new rule provides that where a child welfare reporter "acts as referred to in paragraph (10)" the court or sheriff may, having heard the parties, make any order or direction that could competently have been made under paragraph (6).

3. "Paragraph (10)" in each rule is composed of sub-paragraphs (10)(a) and (10)(b). The policy intention is that the phrase "acts as referred to in paragraph (10)" means that the child welfare reporter may act as referred to in *either* sub-paragraph (10)(a) or (10)(b) before the court or the sheriff may make a further order. The Committee considers that the drafting of paragraph (11) does not make this policy intention clear, and that the rule is capable of being interpreted so as to mean that the child welfare reporter must, in order to act "as referred to in paragraph (10)" do the things mentioned in *both* sub-paragraphs (10)(a) and (10)(b).

4. The Committee accordingly draws this instrument to the Parliament's attention under reporting ground (h) as the meaning of Articles 2 and 4 could be clearer.

5. The Committee calls on the Lord President's Private Office to amend paragraph (11) in both new rules in order to make clear the intended effect of those paragraphs.

ANNEXE A

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No. 3) (Miscellaneous) 2015 (SSI 2015/283)

On 28 August 2015, the Lord President's Private Office was asked:

New Form 70, in Schedule 1 to the instrument, is a form of intimation of an application to extend the 14 day period (for retention of travel documents) under paragraph 8(1) of Schedule 1 to the Counter-Terrorism and Security Act 2015. We note that there is no provision at the end of Form 70 for it to be signed by the applicant or the applicant's representatives. Please explain why such provision on signing is not required for this particular form. If there is an omission, is corrective action proposed?

The Lord President's Private Office responded as follows:

The absence of a signing provision at the end of Form 70 has been an omission. We are grateful to the Committee and its legal advisers for drawing this to our attention. We would note, however, that the purpose of the Form is to bring certain practical matters to the attention of the person to whom the application relates: that an application has been made to extend the period, that the affected person may make representations, and the time, date and place of the hearing. The absence of a signing provision does not affect the efficacy of that intimation. We would also observe that the Form must be accompanied by a copy of the application (which will have been signed) and it must be given in accordance with an order of the sheriff specifying the timescale and method of intimation.

Separately, we would observe that the requirement for signature on court documents is not universal throughout the rules of court. For example, Court of Session motions in Form 23.2 are not signed (to say nothing of motions enrolled by email), and neither a small claim nor a summary cause summons (the initiating documents in those procedures) are signed. In this instance, however, it might have been desirable for the sake of consistency had Form 70 included a provision for signature at its end. Accordingly, we propose to amend Form 70 to insert one when the Summary Application Rules are next amended.

ANNEXE B

Act of Sederunt (Rules of the Court of Session 1994 and Ordinary Cause Rules 1993 Amendment) (Child Welfare Reporters) 2015 (SSI 2015/312)

On 3 September 2015, the Lord President's Private Office was asked:

Article 2 inserts new rule 49.22 into the Rules of the Court of Session 1994 ("RCS"). Rule 49.22(10) provides:-

"A child welfare reporter may:
(a) apply to the Deputy Principal Clerk to be given further directions by the court; and
(b) bring to the attention of the Deputy Principal Clerk any impediment to the performance of any function arising under this rule."

Article 4 inserts new rule 33.21 into the Ordinary Cause Rules ("OCR"). New rule 33.21(10) provides:-

"A child welfare reporter may-
(a) apply to the sheriff clerk to be given further directions by the sheriff;
(b) bring to the attention of the sheriff clerk any impediment to the performance of any function arising under this rule."

1. In each new rule, are sub-paragraphs (a) and (b) intended to be cumulatives or alternatives?

2. Is the inclusion of the word 'and' between sub-paragraphs (a) and (b) in new rule 49.22(10) RCS intended to have a different effect to that of new rule 33.21(10) OCR, where the word 'and' is omitted?

3. In each new rule, paragraph (11) provides that where a child welfare reporter "acts as referred to in paragraph (10)", the court or, as the case may be, the sheriff may make any order or direction that could competently have been made under paragraph (6). Given that "paragraph (10)" is the sum of sub-paragraphs 10(a) and 10(b), in order to act as referred to in paragraph (10), it appears that the child welfare reporter must have done both of the things referred to in sub-paragraphs (a) and (b) before the court or, as the case may be, sheriff, may make a further order or direction. Does this represent the policy intention? If not, is any corrective action proposed?

The Lord President's Private Office responded as follows:

1. In respect of each rule the policy intention is that a child welfare reporter should be able to act as specified in paragraph (10)(a), to act as specified in paragraph (10)(b), or to do both.

2. The inclusion of the word 'and' in new rule 49.22(10) RCS is not intended to have a different effect to that of new rule 33.21(10) OCR. The difference in wording is acknowledged to be the consequence of a drafting error. It is nevertheless considered that, despite the insertion of the word 'and', rule 49.22(10) does not readily admit of an alternative construction.

3. It is not the policy intention that the court may only make a further order or direction under paragraph (11) of each rule when the child welfare reporter has acted as specified in both subparagraph (a) and subparagraph (b) of paragraph (10). For the reason given in the previous paragraph, LPPO do not consider that that is the effect of the drafting. Despite the difference in drafting that has been identified, it is considered that the effect of both rules is that the court can make such an order or direction when the child welfare reporter has acted as specified in either subparagraph. In the circumstances it is not considered that immediate corrective action is required. LPPO nevertheless expects that an early opportunity will present to amend rule 49.22(10) in order to rectify the drafting error.