



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

32nd Meeting, 2015 (Session 4)

Tuesday 17 November 2015

The Committee will meet at 9.45 am in the David Livingstone Room (CR6).

1. **Subordinate legislation:** The Committee will take evidence on the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2015 [draft] from—

Michael Matheson, Cabinet Secretary for Justice, Nicola Wisdahl, Civil Law and Legal System Division, and Alastair Smith, Directorate for Legal Services, Scottish Government.

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

S4M-14396—That the Justice Committee recommends that the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2015 [draft] be approved.

3. **Abusive Behaviour and Sexual Harm (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Catherine Dyer, Crown Agent and Chief Executive, and Lisa McCloy, Policy Division, Crown Office and Procurator Fiscal Service;

Michael Meehan, Faculty of Advocates;

Grazia Robertson, Member of the Criminal Law Committee, Law Society of Scotland;

Detective Chief Superintendent Lesley Boal, Police Scotland;

and then from—

James Chalmers, Regius Professor of Law, University of Glasgow;

Gerard Maher, Professor of Criminal Law, University of Edinburgh;

Clare McGlynn, Professor of Law, Durham University;

Vanessa Munro, Professor of Law and Society, University of Leicester.

Peter McGrath
Clerk to the Justice Committee
Room T2.60
The Scottish Parliament
Edinburgh
Tel: 0131 348 5195
Email: peter.mcgrath@scottish.parliament.uk

The papers for this meeting are as follows—

Agenda items 1 and 2

Paper by the clerk

J/S4/15/32/1

[International Organisations \(Immunities and Privileges\)
\(Scotland\) Amendment Order 2015](#)

Agenda item 3

Paper by the clerk

J/S4/15/32/2

Private paper

J/S4/15/32/3 (P)

[Abusive Behaviour and Sexual Harm \(Scotland\) Bill,
accompanying documents and SPICe briefing](#)

[Written submissions received on the Bill](#)

Justice Committee

32nd Meeting, 2015 (Session 4), Tuesday 17 November 2015

Subordinate legislation

Note by the clerk

Purpose

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

**INTERNATIONAL ORGANISATIONS (IMMUNITIES AND PRIVILEGES)
(SCOTLAND) AMENDMENT ORDER 2015 [DRAFT]**

Introduction

2. This instrument is made under the powers conferred by section 1(2) of the International Organisations Act 1968⁽¹⁾ and all other enabling powers.

3. This instrument amends the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to confer legal privileges and immunities on the Asian Infrastructure Investment Bank, and on persons associated with the Bank, so far as this is within the devolved competence of the Scottish Parliament. The equivalent instrument at Westminster was agreed to on 2 November (see further the attached letter from the Cabinet Secretary below). The Policy Note explains that this is being done to help secure compliance by the UK with its international obligations and to enable the Bank to operate effectively.

4. 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/2015/9780111029299/contents>

Consultation

5. According to the policy note, the instrument has been prepared in consultation with the Foreign and Commonwealth Office and other relevant United Kingdom Government Departments.

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 22 September 2015 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

Justice Committee consideration

7. The Justice Committee was required to report to the Parliament on the instrument by 2 November 2015. However, on 29 October 2015, the Parliament agreed by motion S4M-14650 to suspend the second sentence of Rule 10.6.4 of

⁽¹⁾ 1968 c.48. Section 1 was amended by the International Organisations Act 1981 (c.9) and S.I. 2005/3542.

Standing Orders for the purpose of allowing the Committee to complete its consideration of the instrument².

8. The Minister for Community Safety and Legal Affairs has lodged motion S4M-14396 proposing that the Committee recommends approval of the instrument. The Cabinet Secretary for Justice attended the meeting on 27 October, when he answered questions on the instrument³. With the leave of the Committee, the Convener did not that day take the agenda item at which the motion to approve the instrument was to be moved. This was to allow the Cabinet Secretary more time to provide information in relation to questions that had been raised at the meeting.

9. The Cabinet Secretary is due to attend the meeting on 17 November to answer any further questions on the instrument, and then to move the motion for approval. Mr Matheson has written to the Committee in advance of the meeting to address a number of questions raised on 27 October. His letter is attached at the end of this paper.

10. It is for the Committee to decide whether or not to agree to this motion, and then to report to the Parliament. Thereafter, the Parliament will be invited to approve the instrument.

11. The Committee will be asked to delegate to the Convener authority to approve the report on the instrument for publication.

Policy Note: International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2015 [draft]

The instrument is proposed to be made by Her Majesty in Council in exercise of the powers conferred by section 1(2) of the International Organisations Act 1968. The instrument is subject to affirmative resolution procedure.

Policy Objectives

The purpose of the instrument is to confer legal privileges and immunities on the Asian Infrastructure Investment Bank (the Bank), and on persons associated with the Bank, so far as this is within devolved competence of the Scottish Parliament.

The privileges and immunities conferred by the instrument in respect of devolved matters reflect those that have been conferred, or are in the course of being conferred, in relation to the Bank by a related order that is subject to consideration by the UK Parliament as it relates to reserved matters.

This is being done in order to help secure compliance by the United Kingdom with its international obligations and to enable the Bank to operate effectively.

Effect of Order

This Order will confer privileges and immunities on the Bank. The Order will afford the Bank immunity from suit and legal process. Where the Bank operates in the UK, the Bank's property and assets are immune from seizure and judgment. There can be no

² Scottish Parliament. *Official Report, 29 October 2015.*

³ Scottish Parliament Justice Committee. *Official Report, 27 October 2015, Cols 3-12*

search or confiscation (etc.) of the Bank's property. The Bank's premises are inviolable, as that term is understood in the 1961 Convention Articles. These Articles are part of the Vienna Convention on Diplomatic Relations, and have the force of law in the UK by their incorporation in domestic law: Schedule 1 of the Diplomatic Privileges Act 1964.

Section 1 of the International Organisations Act 1968 empowers Her Majesty to make Orders in Council to confer legal personality and/or privileges and immunities on certain international organisations, representatives to those organisations, staff members and experts on missions.

Under the Scotland Act 1998, international relations (including relations with international organisations) is reserved to the Westminster Parliament. However, in terms of paragraph 7(2) of Part I of Schedule 5 to the Scotland Act 1998, observing and implementing international obligations is not reserved. The effect of section 118(4) of the Scotland Act is that a power to make an Order in Council in a pre-commencement enactment (i.e. an Act preceding the Scotland Act) which is exercisable within devolved competence must be approved by a resolution of the Scottish Parliament rather than the UK Parliament.

Consequently, Orders in Council made by Her Majesty under section 1 of the 1968 Act, so far as they are within devolved competence, are subject to approval by the Scottish Parliament.

Consultation

The instrument has been prepared in consultation with the Foreign and Commonwealth Office and other relevant United Kingdom Government Departments.

Impact Assessments

No equality impact assessment has been completed as there is no effect on people other than those to whom the UK Government has afforded privileges and immunities.

Financial Effects

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

Scottish Government
Justice Directorate
September 2015

ATTACHMENT

Letter from the Cabinet Secretary for Justice

During consideration of the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2015 (“the Order”), Committee members had a number of questions. In order to assist the Justice Committee to the fullest extent, I am writing to address those questions and set out more information. Since the Committee considered the Order, the equivalent Westminster Order has concluded its parliamentary progress. I hope that this updated information will assist the Committee.

In short, the UK Government has entered into international agreement to become a member of a new international organisation known as the Asian Infrastructure Investment Bank. The AIIB is a multilateral development bank owned by its 57 shareholders, the countries that are members of it. The AIIB’s aim is to “foster sustainable economic development in Asia”. The Bank will use its large capital base to raise debt on the financial markets at low rates. It will then use that money to lend to large infrastructure projects in Asia. Money is lent at a higher rate than the Bank borrowed it, so that the Bank covers its costs and the risk on its investment. The rate is still lower than the projects would find on the open market. Any profit made by the Bank is then reinvested in future projects. Despite the name, the AIIB is not an ordinary bank. It is countries, as shareholders, who will be involved – not ordinary individuals.

Certain aspects of the international agreement relate to devolved matters and it is for that reason that the Order was laid before the Scottish Parliament. More details are contained in the Annex to this letter. The Committee will reconsider the Order on 17 November when I will of course be happy to provide more information.

Michael Matheson
Cabinet Secretary for Justice
12 November 2015

Annex

Context - Westminster Order

The Order is a draft affirmative Order in Council to give effect in Scotland to international obligations to be entered into by the UK Government, so far as within devolved competence. The remainder of the obligations relate to reserved matters.

I attach a link to the international agreement as it was presented to Westminster. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/457652/AIIB_CM_9126_web_Accessible.pdf. This agreement contains details of contributions to the AIIB and its purpose, functions, structure, and governance.

The equivalent Westminster Order is the Asian Infrastructure Investment Bank (Immunities and Privileges) Order 2015. Committees in both Houses approved the Order, which was formally approved on 2 November 2015. The Privy Council will consider the Westminster Order in Council on 11 November 2015.

Privileges and immunities

Privileges and immunities are granted to international organisations to protect the independent exercise of their functions. Such organisations exist to benefit the international community and individual countries should not derive undue fiscal advantage from them.

The UK Government has determined that there is a functional need for the privileges and immunities to be conferred by this Order. Privileges and immunities create a level playing field for the international organisation. The AIIB and its staff, when exercising official functions, need to be free from undue influence in their affairs. However, the AIIB and its staff would be expected to comply with UK and Scots law while functioning in the UK. The privileges and immunities to be granted can all be waived by the AIIB at any time. Where appropriate, the UK would seek, and expect, such a waiver from the AIIB.

The privileges and immunities in the Order mirror the equivalent provisions in the Westminster Order and may be summarised as follows:

Organisation

- immunity from suit and legal process, subject to exceptions
- inviolability of Archives and premises, in accordance with the Vienna Convention on Diplomatic Relations
- relief from non-domestic rates
- exemption from devolved and local taxes
- exemption from prohibition and restriction on imports and exports

Individuals

- immunity from suit and legal process in respect of official duties
- exemption from devolved and local taxes

Immunities and privileges for other international organisations

The Asian Infrastructure Investment Bank is a new multilateral development bank. Other multilateral development banks which bear most resemblance to the AIIB include: the Caribbean Development Bank (CDB), the Asian Development Bank (ADB); Inter-American Development Bank (IADB); and the European Bank for Reconstruction and Development. These organisations are afforded privileges and immunities across the UK, including in Scotland, similar to those which are currently sought. This pre-dates devolution.

Since devolution, two separate Orders have been made in respect of Scotland: the International Organisations (Immunities and Privileges) (Scotland) Order 2009; and an amending Order of 2010. As amended, the 2009 Order lists 15 organisations and the purpose of this Order is to add a new organisation to that list.

UK Government

Members of the Committee asked what the UK Government will do if the Order is not passed in Scotland. This is a matter for the UK Government.

Justice Committee

32nd Meeting, 2015 (Session 4), Tuesday 17 November 2015

Abusive Behaviour and Sexual Harm (Scotland) Bill

Note by the Clerk

Purpose

1. The Committee will be commencing Stage 1 of the Abusive Behaviour and Sexual Harm (Scotland) Bill on 10 November, hearing from a panel of professionals involved in criminal justice, followed by a panel of legal academics, as outlined on the agenda. This paper provides some background information on the session.

Background to the Bill

2. Following the publication of *Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls* in June 2014, the Scottish Government undertook a consultation exercise in March of this year, aimed at reforming the law to address domestic abuse and sexual harm offences ([Equally Safe – Reforming the criminal law to address domestic abuse and sexual offences](#)).

3. The consultation sought views on the proposal to create specific criminal offences for domestic abuse and for the non-consensual sharing or distribution of private images. In addition, the consultation also sought views on three additional reforms intended to improve how the justice system addresses crimes of domestic abuse and sexual offending, including:

- Introducing statutory jury directions for sexual offence cases
- Allowing cases of sexual offences against children committed elsewhere in the UK to be prosecuted in Scotland, and
- Expanding the disposals available to the court to protect victims from harassment.

The Bill

4. The [Abusive Behaviour and Sexual Harm \(Scotland\) Bill](#) was, along with [accompanying documents](#), introduced in the Parliament on 8 October 2015 by the Cabinet Secretary for Justice, Michael Matheson. According to the Scottish Government, the Bill's overarching objective is to improve how the justice system responds to abusive behaviour, including domestic abuse and sexual harm, which will help to improve public safety by ensuring that perpetrators are appropriately held to account for their conduct.

5. The Bill deals with a number of distinct areas:

- **Section 1** enables offences involving the abuse of a partner, or ex-partner to be treated as aggravated offences, meaning that the convicted person may be liable to a tougher sentence;
- **Section 2** creates a new offence of disclosing, or threatening to disclose, an intimate photograph or film. The Committee would be particularly

interested in hearing views on whether there is a gap in the law that justifies the creation of a new offence and, if so, whether the definition of the offence in section 2 is sufficiently robust;

- **Section 5** amends current law to allow non-harassment orders, in some circumstances, be granted against individuals who have not been convicted of misconduct towards another person;
- **Section 6** would require a judge to give particular directions to the jury in sexual offence cases about whether to draw inferences from particular evidence being led or not led;
- **Sections 7 and 8** would enable the Scottish courts to prosecute sexual offences against children or young people committed elsewhere in the UK;
- **Chapters 3 and 4 of Part 2** would reform the system of civil orders available to protect individuals and communities from individuals considered to be at risk of causing sexual harm.

Next steps

6. The committee issued its [call for written evidence](#) on 13 October 2015, with a closing date of noon on 17 November 2015.

7. Scrutiny at stage 1 involves consideration of the Bill's general principles. In the case of this Bill, this involves hearing views on whether the provisions contained within the Bill would strengthen the law to protect victims of abusive behaviour and sexual harm. The Committee has agreed the following schedule:

- 17 November - Legal professionals, Police Scotland and academics
- 24 November – Children's Commissioner, Scottish Human Rights Commission and third sector organisations
- 8 December - additional evidence session (witnesses to be confirmed)
- 15 December – Scottish Government

8. Following consideration of oral and written evidence the Committee will publish its Stage 1 report early in the New Year.