

Justice Committee

Petition PE1633: Private Criminal Prosecution in Scotland

Written submission

It has been drawn to my attention that the Justice Committee is considering the above public petition, which seeks to "remov[e] the requirement that the Lord Advocate must first give permission before a private criminal prosecution can be commenced in Scotland".

I am writing to express my view that implementing this proposal would arguably be outside the legislative competence of the Scottish Parliament. This is because removing the requirement for concurrence would give every person the same right to initiate proceedings as the Lord Advocate, and its effect would therefore be to "remove the Lord Advocate from his position as head of the systems of criminal prosecution and investigation of deaths in Scotland", which is expressly outside legislative competence in terms of the Scotland Act 1998, section 29(2)(e).

James Macfarlane
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