



The Scottish Parliament  
Pàrlamaid na h-Alba

**JUSTICE COMMITTEE**

**AGENDA**

**9th Meeting, 2010 (Session 3)**

**Wednesday 10 March 2010**

The Committee will meet at 10.00 am in room Q1.04 (Scottish Parliament building).

1. **Legal Services (Scotland) Bill (in private):** The Committee will consider and agree a final draft Stage 1 report.

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The papers for this meeting are as follows—

**Agenda item 1**

Draft report (private paper) J/S3/10/9/1 (P)

Note from the adviser (private paper) J/S3/10/9/2 (P)

Response from the Minister for Community Safety [J/S3/10/9/3](#)

Letter from the Convener to the Presiding Officer [J/S3/10/9/4](#)

**For information**

All [written submissions](#) on Stage 2 amendments to the Criminal Justice and Licensing (Scotland) Bill

**Justice Committee**

**9th Meeting, 2010 (Session 3), Wednesday 10 March 2010**

**Legal Services (Scotland) Bill**

**Response from the Minister for Community Safety**

Thank you for your letter of 23 February [please see the annexe] requesting clarification on what sanctions for an offence or breach by an outside investor are available under the Legal Services (Scotland) Bill.

As you note, section 51 prescribes what is improper behaviour by an outside investor. However, it is necessary to go back to sections 49 and 50 to understand the sanction available.

Section 49(1) provides that an approved regulator must be satisfied that all outside investors are fit to have an interest in the licensed provider at the licensing and renewal stages and must monitor the fitness of all investors at other times. Also, under section 49(2)(a) the approved regulator's licensing rules must explain how an outside investor's fitness for having an interest in a licensed provider is to be determined. The factors that are relevant as to fitness are set out (non-exhaustively) in section 50.

Section 49(2)(b)(ii) provides that the licensing rules must prescribe that, where the approved regulator determines that the investor is unfit, if issued, the licence is to be revoked or suspended. Section 50(2)(b)(iii) makes it clear that a person is unfit if they have contravened section 51 or there is a significant risk that they will do so.

This means that the sanction for breach of the behavioural requirements set out in section 51 is that the approved regulator **must** either revoke or suspend the licensed provider's licence. As a result, the licensed provider would cease to be able to operate. The intention is that a licensed provider will ensure that an outside investor behaves properly or it will face the consequences of this robust sanction.

Should the licence be suspended or revoked, the licensed provider would be able to make representations to the approved regulator, or the investor in question could take steps to rectify matters (for example, by resigning from the entity).

In addition, breach by the licensed provider itself of the sorts of things to which section 51 relates (including where this is caused by the behaviour of the outside investor) would lead to revocation or suspension of the licence: see sections 12(2)(b) and 16(1)(a) (as read with sections 38 and 40(6)).

I hope this clarifies the matter for the Committee.

Fergus Ewing MSP  
Minister for Community Safety  
26 February 2010

**Annexe**

**Letter from the Convener to the Minister for Community Safety**

**Legal Service (Scotland) Bill: outside investors**

As you know, the Committee is presently considering its stage 1 report on the Legal Services (Scotland) Bill.

You will be aware that there have been concerns expressed in the evidence received by the Committee about issues relating to outside investors. At its meeting this morning, the Committee agreed that I should write to you on the particular issue of sanctions. Your recent letter to me outlined the sanctions available against licensed providers and noted that although regulation is essentially at entity level, there was provision as regards individuals within the licensed provider. As detailed in your letter, section 51 forbids an outside investor from acting in a way which is incompatible with the regulatory objectives and professional principles. However it is not clear to the Committee what sanctions for an offence or breach by the outside investor would be available. The Committee would be grateful for your response on setting out the position.

A reply in time for the Committee's next meeting on 9 March would be very much appreciated.

Bill Aitken MSP  
Convener, Justice Committee  
23 February 2010

**Justice Committee**

**9th Meeting, 2010 (Session 3), Tuesday 9 March 2010**

**Legal Services (Scotland) Bill**

**Letter from the Convener to the Presiding Officer**

I am writing to you as chair of the Parliamentary Bureau. As you know, the Justice Committee is presently considering its stage 1 report on the Legal Services (Scotland) Bill.

The deadline for completion of Stage 1, as agreed by the Parliament, is 26 March 2010 and we expect to be in a position to publish our report later next week as planned. The Committee has very recently received notification of a Special General Meeting of the Law Society of Scotland which is to take place at the end of this month. The outcome of that meeting will be of direct relevance to this Bill and, in the view of the Committee, it would be in the interests of all members for the outcome of that meeting to be known before the Stage 1 debate takes place.

I understand that the Minister for Parliamentary Business is seeking an extension to the deadline for completion of Stage 1 for other reasons. I write merely to confirm that the Justice Committee is supportive of an extension which would allow us time to consider the outcome of the Law Society meeting prior to the Stage 1 debate.

Bill Aitken MSP  
Convener, Justice Committee  
3 March 2010