

PE1727/C

Crown Office and Procurator Fiscal Service submission of 14 October 2019

The Clerk to the Public Petitions Committee wrote to Crown Office and Procurator Fiscal Service (COPFS) on 5 July 2019, asking for views on a petition calling on the Scottish Parliament to urge the Scottish Government to introduce legislation that would ensure all citizens in Scotland have a legal duty to report a crime they have witnessed.

The Public Petitions Committee has asked if the legal system could cope with criminalising the failure to report a crime and for views on what this would mean in practice.

There are existing examples of statutory duties in specific contexts to report criminal behaviour, for example, the Terrorism Act 2000, creates an offence of failing to report information about acts of terrorism. The Scottish Parliament has previously considered duty to report offences and related defences, notably section 31 of the Criminal Justice and Licensing (Scotland) Act 2010, which makes it an offence to fail, in certain specified circumstances, to report knowledge or suspicion that another person is involved in or directs serious organised crime.

Whether or not a broader offence of failing to report any crime should be legislated for would be a matter for the Scottish Government and the Scottish Parliament. COPFS would consider the terms of any proposed new offence in Bill form. The offence, its viability and possible consequences could only be properly assessed where the scope of the proposed offence was clearly set out.

In line with existing offences, any proposal to create an offence of failing to report a crime would have to consider, inter alia, the scope of the duty to report, to whom it applied, to what potential offences it applied, the processes and the time frames for reporting, what was expected of individuals in terms of knowledge of the criminal law and any potential defences to a failure to report.

Such an offence would also have to be considered within the framework of Scots law which requires corroborated evidence, from at least two separate sources, to establish the essential facts of a case.