



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

2nd Meeting, 2018 (Session 5)

Tuesday 16 January 2018

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Declaration of interests:** Daniel Johnson will be invited to declare any relevant interests.
2. **Decision on taking business in private:** The Committee will decide whether to take item 6 in private.
3. **Subordinate legislation:** The Committee will consider the following negative instrument—

Notice to Local Authorities (Scotland) Amendment (No. 2) Regulations 2017 (SSI 2017/421).
4. **Remand:** The Committee will take evidence, in round-table format, from—

Anthony McGeehan, Procurator Fiscal, Policy and Engagement, Crown Office and Procurator Fiscal Service;

David Strang, HM Chief Inspector of Prisons for Scotland;

Teresa Medhurst, Director of Strategy and Innovation, Scottish Prison Service;

Anne Pinkman, Convenor, Scottish Working Group on Women's Offending.
5. **Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill (in private):** The Committee will continue consideration of a draft Stage 1 report.
6. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

Agenda item 3

Paper by the clerk - SSI 2017-421 J/S5/18/2/1

Agenda item 4

Paper by the clerk - Remand J/S5/18/2/2

Private paper - Remand J/S5/18/2/3 (P)

[Written submission from HM Inspector of Prisons Scotland](#)

[Written submission from the Prison Reform Trust and the Scottish Working Group on Women's Offending](#)

[All written submissions received](#)

Agenda item 5

Private paper - Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill J/S5/18/2/4 (P)

[Offensive Behaviour at Football and Threatening Communications \(Repeal\) \(Scotland\) Bill and accompanying documents](#)

[Written submissions received on the Bill](#)

Agenda item 6

Private paper - Work Programme J/S5/18/2/5 (P)

Justice Committee**2nd Meeting, 2017 (Session 5), Tuesday 16 January 2018****Subordinate legislation****Note by the clerk****Purpose**

1. This paper invites the Committee to consider the following negative instrument:
 - [Notice to Local Authorities \(Scotland\) Amendment \(No. 2\) Regulations 2017 \(SSI 2017/421\)](#) [see page 3].
2. If the Committee agrees to report to the Parliament on the instrument it is required to do so by 22 January 2018.

Procedure for negative instruments

3. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
4. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
5. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
6. Each negative instrument appears on the Justice Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
7. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

8. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

Recommendation

9. **The Committee is invited to consider the instrument.**

**NOTICE TO LOCAL AUTHORITIES (SCOTLAND) AMENDMENT (NO. 2)
REGULATIONS 2017 (SSI 2017/421)**

Introduction

10. The instrument is made under section 11(3) and (4) of the Homelessness etc. (Scotland) Act 2003. The Notice to Local Authorities (Scotland) Regulations 2008 (“the 2008 Regulations”) prescribe the form and manner in which notice is to be given under section 11(1) of the Homelessness etc. (Scotland) Act 2003 and various other enactments listed in section 11(5) of that Act. The instrument amends the 2008 Regulations to prescribe the form and manner in which notice is to be given under section 245ZA(2) of the Proceeds of Crime Act 2002, as inserted by section 29(2) of the Criminal Finances Act 2017.

11. Further details on the purpose of the instrument can be found in the policy note (see below).

12. The instrument comes into force on 31 January 2018.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

13. The Delegated Powers and Law Reform Committee considered this instrument at its meeting on 12 December 2017 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

14. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 22 January 2018.

Policy Note: Notice to Local Authorities (Scotland) Amendment (No. 2) Regulations 2017 (SSI 2017/421)

Policy Objectives

1. The purpose of these Regulations is to amend the Notice to Local Authorities (Scotland) Regulations 2008 (“the 2008 Regulations”) in consequence of section 29 of the Criminal Finances Act 2017 (“the 2017 Act”).
2. Section 29 of the 2017 Act amends Part 5 of the Proceeds of Crime Act 2002 (“POCA”), regarding the civil recovery of property obtained through unlawful conduct. The amendments provide a more efficient and effective means for the trustee for civil recovery to recover possession of heritable property in Scotland where the Court of Session makes a recovery order in respect of that property under section 266 of POCA. Firstly, they require the Court of Session, on the application of the Scottish Ministers (as the relevant enforcement authority), to grant decree of removing and warrant for ejection in relation to any persons occupying heritable property in respect of which it makes a recovery order. Secondly, they provide for the trustee for civil recovery (in whom the property vests by virtue of the recovery order) to enforce the decree and warrant.
3. Section 29 inserts a new section 245ZA into Part 5 of POCA in consequence of these amendments. As part of the regime to safeguard against homelessness,

new section 245ZA requires the Scottish Ministers to notify the relevant local authority where they apply for decree of removing and warrant for ejection in relation to heritable property which consists of or includes a dwellinghouse. Such notice must be given in the form and manner prescribed under section 11(3) of the Homelessness etc. (Scotland) Act 2003 (“the 2003 Act”).

4. The 2008 Regulations prescribe the form and manner in which notice of certain proceedings for possession is to be given for the purposes of section 11 of the 2003 Act. These Regulations therefore amend the 2008 Regulations, to prescribe the form and manner in which the Scottish Ministers must give notice under new section 245ZA of POCA. This will ensure that the relevant local authority receives proper notice of an application under POCA for decree of removing and warrant for ejection in respect of a dwellinghouse (or dwellinghouses) within its area.

Consultation

5. There is no statutory requirement to consult on these Regulations. The Scottish Government did not consider that any formal public consultation was necessary, given that the Regulations simply adapt an existing form of notice under the 2008 Regulations for the purpose of new section 245ZA of POCA. It did, however, consult with (and take into account the views of) the Civil Recovery Unit which exercises the Scottish Ministers’ functions under Part 5 of POCA on their behalf.

Impact Assessments

6. There are no equality, children’s, privacy or environmental impact issues arising from these Regulations.

Financial Effects

7. The Cabinet Secretary for Justice confirms that no Business and Regulatory Impact Assessment is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Justice Committee

2nd Meeting, 2018 (Session 5), Tuesday 16 January 2018

Remand

Note by the clerk

Introduction

1. At its meeting on [19 December 2017](#), the Committee agreed to hold a round-table evidence session on remand. The purpose of the round-table is to explore issues around the use of remand in Scotland as well as the experience of prisoners held on remand.

Justice Committee consideration

2. At its meeting on 16 January 2018, the Committee will take evidence, in round-table format, from the Crown Office and Procurator Fiscal Service, HM Chief Inspector of Prisons for Scotland, the Scottish Prison Service, and the Scottish Working Group on Women's Offending.
3. A written submission was received from HM Chief Inspector of Prisons for Scotland. A joint written submission was received from the Prison Reform Trust and the Scottish Working Group on Women's Offending.
4. Written submissions were also sought from others not giving oral evidence. Families Outside, the Law Society of Scotland, Police Scotland, and Victim Support Scotland provided written submissions.
5. All written submissions received can be accessed on our [webpage](#).