CJ/S7/26/12/8

Criminal Justice Committee
Wednesday 18 November 2026
12th Meeting, 2026 (Session 7)

Note by the Clerk on the Scottish Administration (Offices) Order 2026 (SI 2026/1097 (S. 1))

Overview

1. At this meeting, the Committee will consider the following Statutory Instrument (SI), which is subject to the negative procedure. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.

2. More information about the instrument is summarised below:

   Title of instrument: Scottish Administration (Offices) Order 2026 (SI 2026/1097 (S. 1))

   Laid under: Scotland Act 1998

   Laid on: 16 October 2026

   Procedure: Negative

   Deadline for committee consideration: 30 November 2026

   Deadline for Chamber consideration: 4 December 2026

   Commencement: 5 December 2026

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid. In this instance, the instrument is also subject to annulment by resolution of Senedd Cymru, the Northern Ireland Assembly and either House of the UK Parliament.

4. Once laid, the instrument is referred to:

   - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and

   - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.

5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it needs to be debated at a meeting of the Committee, and the Committee then needs to report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 10 November 2026 and reported on it in its 17th Report, 2026 (Session 7). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

8. The purpose of the instrument is to make the new roles of Clerk and Deputy Clerks of the Sexual Offences Court office-holders in the Scottish Administration, in the same way as other equivalent offices in the Scottish Courts and Tribunals Service.

9. The Policy Note accompanying the instrument is included in the annexe. It includes a summary of consultation undertaken on the instrument and the anticipated financial effects.

Committee consideration

10. So far, no motion recommending annulment has been lodged.

11. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:

    - seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or

    - inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

    It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

12. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

13. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee
November 2026

Annexe A: Accompanying material

Scottish Government Policy Note

THE SCOTTISH ADMINISTRATION (OFFICES) ORDER 2026

SSI 2026/1097 (S. 1)

The above instrument was made in exercise of the powers conferred by section 126(8)(b) of the Scotland Act 1998. The instrument is subject to negative procedure.

Summary Box

This instrument makes the new roles of Clerk and Deputy Clerks of the Sexual Offences Court office-holders in the Scottish Administration, in the same way as other equivalent offices in the Scottish Courts and Tribunals Service.

Policy Objectives

The Victims, Witnesses, and Justice Reform (Scotland) Act 2025 ('the 2025 Act') provides for the establishment of a new Sexual Offences Court (SOC). As part of that, sections 86 and 87 of the Act set out the arrangements for the Scottish Courts and Tribunals Service (SCTS) to appoint a Clerk of the Sexual Offences Court and Deputy Clerks of the Sexual Offences Court, respectively. All other equivalent roles within SCTS are already designated as non-ministerial offices in the Scottish Administration.

The instrument makes the new roles of Clerk and Deputy Clerks of the SOC non-ministerial members of the Scottish Administration. This will ensure that SCTS can operate the appointments of Clerk and Deputy Clerks consistently and effectively. It will also ensure parity between clerks across Scotland's courts: they will all be civil servants, with the attendant obligations and responsibilities.

Under the 2025 Act, SCTS may appoint either existing office-holders or new people to the offices of Clerk and Deputy Clerks of the SOC, and an individual can simultaneously hold office in the SOC and in another court. The intention is to enable SCTS to use office-holders flexibly and allow persons who hold two or more offices to move around, carrying out functions in relation to more than one court. This flexibility supports efficient use of resources, and – importantly - avoids staff being posted permanently in the SOC, with the prolonged exposure to trauma they might experience as a result.

If the Clerk and Deputy Clerks of the SOC were not designated as office-holders in the Scottish Administration, situations could arise in which:

- An individual who held office in both the SOC and another court was a non-ministerial office-holder when working in the other court, but not when working in the SOC. (This would arise if an existing office-holder was also appointed to the SOC.)

- Some Deputy Clerks of the SOC were not employed as non-ministerial office holders in any capacity (if they were new appointees), whilst others in equivalent roles in other courts were employed as non-ministerial office-holders.

This would undermine SCTS's ability to deploy office-holders flexibly, in the way intended by the legislation, and under consistent terms and conditions. Designating the Clerk and Deputy Clerks as office holders in the Scottish Administration will ensure that SCTS can operate their appointments consistently and effectively. Section 126(8) of the Scotland Act 1998 includes a power which is intended specifically for this purpose and, in the circumstances, is considered the most appropriate approach to take in order to change the law.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The Scottish Government has consulted SCTS on whether it is necessary to designate the Clerk and Deputy Clerks of the SOC as non-ministerial offices. SCTS advised that without the Order, it would be unworkable for them to appoint either existing SCTS staff or new staff members to these offices, for the reasons set out above.

Impact Assessments

A full suite of Impact Assessments was prepared to accompany the Act. No further impact assessments have been prepared for this instrument, given the very limited scope of its impact (it affects only SCTS).

Financial Effects

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

Scottish Government
Justice Directorate

October 2026