



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

10th Meeting, 2016 (Session 4)

Tuesday 15 March 2016

The Committee will meet at 10.00 am in the David Livingstone Room (CR6).

1. **Decisions on taking business in private:** The Committee will decide whether to take items 5, 6 and 7 in private.
2. **EU priorities:** The Committee will consider correspondence in relation to its EU priorities for 2015-16.
3. **Subordinate legislation:** The Committee will consider the following negative instruments—
 - Act of Sederunt (Fees of Sheriff Officers) 2016 (SSI 2016/100);
 - Act of Sederunt (Fees of Messengers-at-Arms) 2016 (SSI 2016/101);
 - Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2016 (SSI 2016/131).
4. **Annual report:** The Committee will consider a draft annual report for the parliamentary year from 11 May 2015 to 23 March 2016.
5. **Family Law (Scotland) Act 2006:** The Committee will consider a draft report.
6. **Justice Sub-Committee on Policing:** The Committee will consider a legacy paper.
7. **Legacy paper:** The Committee will further consider a draft legacy paper.

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The papers for this meeting are as follows—

Agenda item 2

Paper by the clerk J/S4/16/10/1

Agenda item 3

Paper by the clerk J/S4/16/10/2

[Act of Sederunt \(Fees of Sheriff Officers\) 2016 \(SSI 2016/100\)](#)

[Act of Sederunt \(Fees of Messengers-at-Arms\) 2016 \(SSI 2016/101\)](#)

[Prisons and Young Offenders Institutions \(Scotland\) Amendment Rules 2016 \(SSI 2016/131\)](#)

Agenda item 4

Private paper J/S4/16/10/3 (P)

Agenda item 5

Private paper J/S4/16/10/4 (P)

[Family Law \(Scotland\) Act 2006 and all associated documents](#)

[Written submissions received on the operation of the Act](#)

Agenda item 6

Private paper J/S4/16/10/5 (P)

Agenda item 7

Private paper J/S4/16/10/6 (P)

Justice Committee

10th Meeting, 2016 (Session 4), Tuesday 15 March 2016

EU issues

Note by the Clerk

Background

1. The Committee receives regular written updates from the Minister for Community Safety and Legal Affairs in relation to the five EU issues previously identified by the Committee as particular areas of interest.¹ The Committee considered the Minister's latest full update² on these areas of interest on 2 February 2016 and agreed to seek additional information on three specific issues. A summary of the Minister's response to each is set out below.

2. **The Committee requested further information on the European e-Justice Portal interconnections projects and potential applications that the Scottish Government may submit to the Connecting Europe Facility later in 2016 to support these projects.** In his response of 1 March, the Minister states that the Scottish Government believes there is scope for further involvement in four interconnections projects on Interconnection of Insolvency Registers, Find a lawyer, European Case Law Identifier, and European Court Database. He goes on to state that "calls for funding through the Connecting Europe Facility to take forward these projects are expected later this year and the Scottish Government intends to continue to work with key stakeholders to identify opportunities for Scottish participation".

3. **The Committee requested additional information on the status of negotiations on the European Public Prosecutor's Office (EPPO) proposal and efforts to ensure there is no adverse impact on the Scottish prosecutorial system.** The Minister explains that gradual progress has been made with the negotiations since the proposal was launched in July 2013, and that an "EPPO of some description may emerge from this process, although it is difficult to put a timeframe on it, and indeed to predict what the precise scope and structure might be". He indicates that consideration is being given to how the EPPO might work with non-participating member states and that it appears that participating member states recognise the need to provide some means to enable the EPPO to work with the UK. This, he argues, will help to ensure there is no adverse impact on the Scottish prosecutorial system.

4. **The Committee also sought clarification as to whether any practical difficulties have arisen from the UK Government's EU opt-out decision which came into effect on 1 December 2014³.** The Minister states that the Scottish Government is not aware of any issues arising from the transition at operational level. He also reports that the UK Government has, since the opt out, decided to opt back in to Council Decisions 2008/615 and 2008/616 which will, among other things, speed up exchanges of information in respect of fingerprints and DNA in cross-border cases. The Scottish Government is content with this approach.

Next steps

5. The Committee is invited to consider the latest response from the Minister for Community Safety and Legal Affairs, which is attached in full at Annexe A.

¹ These are: EU-Justice; the impact on Scots law of EU Directives on the presumption of innocence, legal aid in criminal proceedings and procedural safeguards for children in criminal proceedings; the impact on Scottish prosecutors of an European Public Prosecutor's Office; (4) the Commission's European Agenda on Migration, and (5) relevant issues for Scotland arising from the Justice and Home Affairs agenda 2015-20.

² [Justice Committee papers for 2 February 2016 meeting](#) (pages 19-25)

³ The UK Government exercised its right to opt out of 130 police and criminal justice measures adopted prior to the Lisbon Treaty and to re-join 35 individual measures, with effect from 1 December 2014.

ANNEXE A**Letter from the Minister for Community Safety and Legal Affairs of 1 March 2016 in relation to the Justice Committee's EU priorities 2015-16**

Thank you for your letter of 3 February with regard to the Committee's EU priorities for 2015-16 requesting further updates on a number of issues, and with respect to which I would reply as follows.

E-Justice

The Committee has asked for additional information on developments with the EU e-Justice Portal and how these may relate to the Connecting Europe Facility. The [European e-Justice Portal](#) is a key priority for the European Commission. It was launched on 16 July 2010 and has been expanded ever since – today it has approximately 250,000 visitors each month. The Portal's objective is to contribute to the creation of a European judicial area by using information and communication technology to facilitate access to justice and enable electronic cross-border judicial proceedings and judicial cooperation.

The European e-Justice Portal is expanding from being a provider of information to a provider of services in the judicial area, in accordance with the Strategy on European e-Justice 2014-18 and the Multiannual European e-Justice Action Plan 2014-18. The main goal of 2016 and beyond is to encourage the development, deployment, testing and operation of services provided by the Portal to reach a greater audience and thus better fulfil their public function.

We are currently actively involved in updating the e-Justice Portal, working closely with the Scottish Courts and Tribunals Service, to ensure the court database contains all the necessary information on the functions of the Scottish courts. We are also working to update all the static content pages relevant to Scotland on a regular basis.

In addition, there are potential four 'interconnection' projects that the Scottish Government believes there is scope for further involvement with:

- Interconnection of Insolvency Registers
- Find a lawyer
- European Case Law Identifier
- European Court Database

Calls for funding through the Connecting Europe Facility to take forward these projects are expected later this year and the Scottish Government intends to continue to work with key stakeholders to identify opportunities for Scottish participation.

European Public Prosecutor's Office

As you know, the purpose of the EPPO is to investigate and prosecute fraud against EU finances. The Scottish Government is confident that the Crown Office and Prosecutor Fiscal Service can and will continue to deal with such matters as they arise within the Scottish jurisdiction and we are content that the current UK Government has confirmed that they do not intend to opt in.

With regard to your query about the status of the negotiations, as you know, these have been taking place since the Commission launched the proposal in July 2013. Successive Presidencies have invested resources and time into seeking to make progress and there has been regular discussion at Ministerial level at Justice and Home Affairs Councils. For example, at the June 2014 Council the majority of Ministers agreed that they would prefer a more decentralised model based on a 'college' structure, compared to the Commission's model, and

the June 2015 Council built on this by expressing general support for the draft Articles dealing with organisation and structure.

There has therefore been gradual progress and a European Public Prosecutor's Office of some description may emerge from this process, although it is difficult to put a timeframe on it, and indeed to predict what the precise scope and structure might be.

If and when the EPPO finally happens, it is possible that in some cases there will be investigations which involve EPPO and non-EPPO jurisdictions (e.g. within the UK). The Dutch Presidency has devoted some time to considering how the EPPO might work with non-participating Member States. Initial discussions suggest that participating Member States recognise the need to provide some means to enable the EPPO to work with the UK. This will help ensure there is no adverse impact on the Scottish prosecutorial system (including the Lord Advocate) and that there are no safe havens for this type of serious crime.

We have been in close contact with the UK Government about the EPPO negotiations. We will continue to ensure that Scottish interests are fully represented in future discussions on such matters and in particular how the EPPO will work with non-participating Member States such as the UK.

UK Government's 2014 opt-out decision

The Committee has asked for a further update on whether any practical difficulties have arisen from the UK Government decision to opt out of the former 3rd Pillar measures, and then back in to a smaller number, by 1 December 2014. The Scottish Government is not aware of any issues arising from the transition at operational level. It may be useful however to update you on one issue arising from the negotiations which led to the agreement between the EU and the United Kingdom on this matter.

A number of Member States viewed Council Decisions 2008/615 and 2008/616 as important in combating cross border crime. These are the so-called 'Prüm Decisions', which make provision for co-operation between competent authorities in a number of matters, most notably in respect of speeding up exchanges of information in respect of fingerprints and DNA in cross border cases.

The position of the UK Government was that it would not be able to implement these measures by 1 December 2014, and that to opt back in at that time would lead to infraction and fines by the Commission. They agreed however to run a practical pilot in 2015, with a commitment to take a decision by the end of the year as to whether to top in thereafter.

The results of the pilot, which included examples from the Scottish jurisdiction, indicated that participation is likely to lead to progress in solving outstanding criminal cases, some of them in relation to serious matters such as rape. The Scottish Government was consulted by the UK Government during this pilot, and Police Scotland was involved in the practical exercise.

On this basis, the UK Government has decided to apply to opt in to Council Decisions 2008/615 and 616 and will negotiate an implementation timetable with the Commission, with an expected deadline of some point in 2017. The Scottish Government is content with this decision and will seek to ensure that Scottish interests are fully represented during implementation, including through participation in the UK oversight group set up for this purpose.

I hope the foregoing will be of assistance to the Committee as you work towards conclusion of your work on EU matters before dissolution.

Paul Wheelhouse MSP
Minister for Community Safety and Legal Affairs
1 March 2016

Justice Committee

10th Meeting, 2015 (Session 4), Tuesday 15 March 2016

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - Act of Sederunt (Fees of Sheriff Officers) 2016 (SSI 2016/100) *[see page 2]*;
 - Act of Sederunt (Fees of Messengers-at-Arms) 2016 (SSI 2016/101) *[see page 3]*;
 - Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2016 (SSI 2016/131) *[see page 5]*.
2. If the Committee agrees to report to the Parliament on any of the instruments it is required to do so by 21 March 2016. Further details on the procedure for negative instruments are set out in Annexe A attached to this paper.

ACT OF SEDERUNT (FEES OF SHERIFF OFFICERS) 2016 (SSI 2016/100)

Introduction

3. The instrument is made under section 106(1) of the Courts Reform (Scotland) Act 2014(b) and all other enabling powers. It substitutes a new Table of Fees for the Table of Fees in Schedule 1 to the Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002. The fee levels in the new Table of Fees represent an increase of 1.3% on the existing fees.
4. The instrument comes into force on 1 April 2016.
5. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2016/100/contents/made>

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 1 March 2016 and agreed to draw it to the attention of the Parliament because the preamble to the instrument is incorrect and contains wording in square brackets which should have been removed prior to laying. The Lord President's Private Office has indicated that it has requested a correction slip from the Statutory Instrument Registrar to remove these words and the brackets surrounding them from the preamble.
7. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 2 of this paper.

Justice Committee consideration

8. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 21 March 2016.

Extract from the Delegated Powers and Law Reform Committee's 17th Report 2016

Act of Sederunt (Fees of Sheriff Officers) 2016 (SSI 2016/100)

1. This instrument prescribes Sheriff Officers' fees.
2. In considering the instrument, the Committee sought explanation of two matters related to the preamble to the instrument. The correspondence is reproduced below.
3. **The Committee draws the instrument to the Parliament's attention on the general reporting ground. The preamble to the instrument is incorrect and contains wording in square brackets which should have been removed prior to laying. The Committee considers that the inclusion of superfluous wording gives rise to a risk that the preamble may be misinterpreted, as it currently indicates that modifications were made to draft rules submitted to the Court of Session by the Scottish Civil Justice Council, when it appears that no such modifications were in fact made.**

4. **The Committee notes that the Lord President’s Private Office has indicated that it has requested a correction slip from the Statutory Instrument Registrar to remove these words and the brackets surrounding them from the preamble.**

On 18 February 2016, the Lord President’s Private Office was asked:

In the preamble, the words “with such modifications as it thinks appropriate” appear in square brackets. Are these brackets included in error, or is it intended that the words within them should be omitted?

The preamble cites section 106(1) of the 2014 Act as the enabling power under which the instrument is made. Paragraph 3 of the instrument makes a savings provision, which does not appear to be enabled by section 106(1), but rather by section 106(3). Is it considered that the preamble should also cite section 106(3) as an enabling power? If so, what is the effect of omitting to cite that provision considered to be?

The Lord President’s Private Office responded as follows:

Question 1

The square brackets and the words within them should be omitted. This part of the preamble was included in error. The Lord President’s Private Office identified this error shortly after the instrument was laid. As the preamble is an unamendable part of the instrument, we have requested a correction slip from the SI Registrar to resolve the matter.

Question 2

In our view, section 106(3) of the Courts Reform (Scotland) Act 2014 provides that an act of sederunt under subsection (1) may, among other things, make saving provisions. We consider that this is an extension of the power in section 106(1) rather than constituting a separate power. It is not the usual practice of this office to cite provisions which extend principal powers and we do not believe it to be the usual practice of the Scottish Ministers either.

However, if our view is incorrect then we observe that we have referred in the preamble to “all other powers enabling [the Court] to do so”. We consider that this would be sufficient to include section 106(3), particularly under reference to the judgment of the Court of Appeal of England and Wales in *Vibixa Ltd v Komori UK Ltd and others* [2006] EWCA Civ 536. In our view, the operative provisions of the instrument make it clear that the Court must have invoked section 106(3), as paragraph 3 contains a saving provision. Accordingly, we would rely on the inclusion of those words if our principal submission is not accepted.

ACT OF SEDERUNT (FEES OF MESSENGERS-AT-ARMS) 2016 (SSI 2016/101)

Introduction

6. The instrument is made under section 105(1) of the Courts Reform (Scotland) Act 2014(b) and all other enabling powers. It substitutes a new Table of Fees for the Table

of Fees in Schedule 1 to the Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002. The fee levels in the new Table of Fees represent an increase of 1.3% on the existing fees.

7. The instrument comes into force on 1 April 2016.
8. An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2016/101/contents/made>

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 1 March 2016 and because the preamble to the instrument is incorrect and contains wording in square brackets which should have been removed prior to laying. The Lord President's Private Office has indicated that it has requested a correction slip from the Statutory Instrument Registrar to remove these words and the brackets surrounding them from the preamble.
8. The relevant extract from the DPLR Committee's report on the instrument is reproduced on page 4 of this paper.

Justice Committee consideration

8. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 21 March 2016.

Extract from the Delegated Powers and Law Reform Committee's 17th Report 2016

Act of Sederunt (Fees of Messengers-at-Arms) 2016 (SSI 2016/101)

1. This instrument prescribes the fees of Messengers-at-Arms.
2. In considering the instrument, the Committee sought explanation of two matters related to the preamble to the instrument. The correspondence is reproduced below
3. **The Committee draws the instrument to the Parliament's attention under the general reporting ground. The preamble to the instrument is incorrect and contains wording in square brackets which should have been removed prior to laying. The Committee considers that the inclusion of superfluous wording gives rise to a risk that the preamble may be misinterpreted, as it currently indicates that modifications were made to draft rules submitted to the Court of Session by the Scottish Civil Justice Council, when it appears that no such modifications were in fact made.**
4. **The Committee notes that the Lord President's Private Office has indicated that it has requested a correction slip from the Statutory Instrument Registrar to remove these words and the brackets surrounding them from the preamble.**

On 18 February 2016, the Lord President’s Private Office was asked:

In the preamble, the words “with such modifications as it thinks appropriate” appear in square brackets. Are these brackets included in error, or is it intended that the words within them should be omitted?

The preamble cites section 105(1) of the 2014 Act as the enabling power under which the instrument is made. Paragraph 3 of the instrument makes a savings provision, which does not appear to be enabled by section 105(1), but rather by section 105(3). Is it considered that the preamble should also cite section 105(3) as an enabling power? If so, what is the effect of not citing that provision considered to be?

The Lord President’s Private Office responded as follows:Question 1

The square brackets and the words within them should be omitted. This part of the preamble was included in error. The Lord President’s Private Office identified this error shortly after the instrument was laid. As the preamble is an unamendable part of the instrument, we have requested a correction slip from the SI Registrar to resolve the matter.

Question 2

In our view, section 105(3) of the Courts Reform (Scotland) Act 2014 provides that an act of sederunt under subsection (1) may, among other things, make saving provisions. We consider that this is an extension of the power in section 105(1) rather than constituting a separate power. It is not the usual practice of this office to cite provisions which extend principal powers and we do not believe it to be the usual practice of the Scottish Ministers either.

However, if our view is incorrect then we observe that we have referred in the preamble to “all other powers enabling [the Court] to do so”. We consider that this would be sufficient to include section 105(3), particularly under reference to the judgment of the Court of Appeal of England and Wales in *Vibixa Ltd v Komori UK Ltd and others* [2006] EWCA Civ 536. In our view, the operative provisions of the instrument make it clear that the Court must have invoked section 105(3), as paragraph 3 contains a saving provision. Accordingly, we would rely on the inclusion of those words if our principal submission is not accepted.

**PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) AMENDMENT
RULES 2016 (SSI 2016/131)**

Introduction

1. The instrument is made under section 39 of the Prisons (Scotland) Act 1989(a) and all other enabling powers. The majority of the amendments proposed are technical amendments designed to clarify points in the Prison Rules, which set out provisions relating to the regulation and management of Prisons and Young Offenders Institutions and various matters concerning those who are required to be detained in these institutions, such as their classification, treatment, discipline, employment and control.

9. The instrument comes into force on 24 March 2016.

10. Further details on the purpose of the instrument can be found in the policy note (see below). An electronic copy of the instrument is available at:
<http://www.legislation.gov.uk/ssi/2016/131/contents/made>

Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 10 March 2016 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

8. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 21 March 2016.

Policy Note: Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2016 (SSI 2016/131)

2. The Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2016 (“the Amendment Rules”) were made in the exercise of the powers conferred by Section 39 of the Prisons (Scotland) Act 1989. These Rules amend The Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the Prison Rules”) and they are subject to negative procedure.

Policy Objective

3. The Prison Rules set out provisions relating to the regulation and management of Prisons and Young Offenders Institutions and various matters concerning those who are required to be detained in these institutions (such as their classification, treatment, discipline, employment and control).

4. The majority of the amendments proposed are technical amendments designed to clarify points in the Prison Rules. The amendments to Rule 2 clarify the definition of “constable” in light of the Police and Fire Reform (Scotland) Act 2012, adds a definition of “medical facility” as this term is used in Rules 39, 42 and 136 and corrects an incorrect cross reference in Rule 4(1) (d).

5. The majority of Rule 13 is being moved to Part 6 (Religion) of the Prison Rules as it is considered more appropriate to have these provisions in this part. New provisions are being added which clarify that prisoners can declare their religion, belief or non-belief at any time and can change their declaration. Further, that prisoners should be referred to the relevant member of the chaplaincy team when they make a declaration or change it. Prisoners will still have the freedom to change religion and refuse to speak to the relevant chaplaincy team member.

6. Rule 39 is being replaced with a new Rule which will clarify the arrangements which a Governor is required to make on receipt of a recommendation from a healthcare professional that a prisoner requires medical advice or treatment. Under the new Rule 39, the Governor must either grant unescorted temporary release to the prisoner (in accordance with Rules 134 and 135) or arrange for the prisoner to be escorted to the medical practitioner, specialist or medical facility as appropriate.

7. Rules 55 to 59 are being replaced with three new Rules regulating the sending, receiving, opening and reading of prisoners' correspondence. New Rule 55 clarifies the provisions of the existing Rule 55. New Rule 56 merges the provisions of existing Rules 56 to 59 into one Rule covering confidential correspondence – “confidential correspondence” being defined as “court correspondence”, “legal correspondence”, “medical correspondence” and “privileged correspondence”. This ensures that the same restrictions on opening and reading the correspondence apply to every form of confidential correspondence. In addition these restrictions will only apply where the confidential correspondence is clearly marked as such on the outer face of the envelope or packaging. A new Rule is being added, Rule 57, to cater for the situation where correspondence is not clearly marked on the face of the letter or package as confidential correspondence. New Rule 57 ensures that confidential correspondence which is not clearly marked is still treated as confidential from the moment it is identified as such. These three new rules on correspondence are designed to provide greater clarity for prisoners, prison officers and employees on what letters and packages can be sent and received by prisoners and when those letters and packages can be opened and read by officers and employees.

8. The reference to “Chief Constable’ in Rule 68 (2) (a) (b) is being changed to ‘Chief Inspector’. This is to reflect the appropriate level of written authorisation required for a visit by a police constable for the purpose of an interview with a prisoner.

9. The definition of purposeful activity as detailed in Rule 84(2) is being amended to provide flexibility in the definition and a wide discretion over which activities a Governor can provide for prisoners.

10. The Amendments to Rule 92 (Searching of prisoners), Rule 106 (Searching of visitors), Rule 108 (Searching of Specified Persons) and Rule 142 (Searching of officers and employees) are required by the Scottish Prison Service as part of their ongoing programme of improving front line security, which will include the introduction of stationary body scanners.

11. The amendment to Rule 96 (The use of restraints) extends the rule to include a restraint backboard system which may be used for the restraint and subsequent transportation of prisoners to hospital (or relocation within an establishment). The use of a restraint backboard system is to mitigate against the risks associated in dealing with a medical emergency where the individual's behaviour has become violent.

12. Allowing prisoners subject to a deportation order access to temporary release (unescorted access to the community) has proved to be a very difficult and complex area for the Scottish Prison Service. This change means that where the United Kingdom Border Agency has made the decision that a prisoner is to be deported, they will be disqualified from obtaining temporary release unless they have been granted temporary release in the three months prior to the order being made. Prisoners granted temporary release in the 3 month period before the deportation order is made will be able to continue to access temporary release as they have already been tested in the community. However, any future grants of temporary release will still be subject to the Governor's discretion in the normal manner taking into account, amongst other things, the risk of the prisoner absconding. Rule 134 is being amended to reflect the above.

13. The definition and scope of ‘unescorted day release for health reasons’ in Rule 136 is being amended, to provide more flexibility to allow eligible prisoners to be

released for longer than one day to a hospital. The period is being changed to seven days which is consistent with the period such prisoners can currently be released for home leave. A new rule is being added which will allow Scottish Ministers to extend this for an additional period of seven days.

14. Currently a prisoner cannot be reprimanded when they fail to comply with any condition imposed by the Governor in relation to a grant of special escorted leave. Paragraph 30 of Schedule 1 to the Prison Rules is being amended to make it a disciplinary offence to fail to comply with such a condition.

Impact Assessment

15. An Equality and Human Rights Impact Assessment was carried out and no potential for unlawful discrimination or adverse impact or breach of human rights articles has been identified.

Consultation

16. There has been consultation with operational managers and policy colleagues within the Scottish Prison Service, Police Scotland in relation to the proposed change to Rule 68 (2) (a) (b) and NHS colleagues in relation to the amendment to Rule 96.

Financial Effect

17. 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.

ANNEXE A**Negative instruments: procedure**

Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. 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).

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.

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.

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. In other cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

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/64215.aspx>