



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

10th Meeting, 2016 (Session 5)

Tuesday 22 November 2016

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

1. **Decisions on taking business in private:** The Committee will decide whether to take items 8 and 9 in private.

2. **Subordinate legislation:** The Committee will take evidence on the Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft] from—

Annabelle Ewing, Minister for Community Safety and Legal Affairs, Linda Pollock, Deputy Director, Community Justice Division, Quentin Fisher, Community Justice Division, and Craig McGuffie, Directorate for Legal Services, Scottish Government.

3. **Subordinate legislation:** Annabelle Ewing (Minister for Community Safety and Legal Affairs) to move—

S5M-02127—That the Justice Committee recommends that the Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft] be approved.

4. **Subordinate legislation:** The Committee will take evidence on the Air Weapons Licensing (Exemptions) (Scotland) Regulations 2016 [draft] from—

Annabelle Ewing, Minister for Community Safety and Legal Affairs, Keith Main, Safer Communities Division, and Carla McCloy-Stevens, Directorate for Legal Services, Scottish Government.

5. **Subordinate legislation:** Annabelle Ewing (Minister for Community Safety and Legal Affairs) to move—

S5M-02262—That the Justice Committee recommends that the Air Weapons Licensing (Exemptions) (Scotland) Regulations 2016 [draft] be approved.

6. **Subordinate legislation:** The Committee will consider the following negative instruments—

Justices of the Peace (Training and Appraisal) (Scotland) Order 2016 (SSI 2016/329);

Court Fees (Miscellaneous Amendments) (Scotland) Order 2016 (SSI 2016/332);

Upper Tribunal for Scotland (Rules of Procedure) Amendment Regulations 2016 (SSI 2016/333);

Tenant Information Packs (Assured Tenancies) (Scotland) Amendment Order 2016 (SSI 2016/334);

First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 (SSI 2016/339).

7. **Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service:** The Committee will take evidence from—

John Little JP, Justice of the Peace, and Sam McEwan JP, Justice of the Peace, Sheriffdom of North Strathclyde;

and then from—

Assistant Chief Constable Bernard Higgins, Operations and Justice, and Chief Superintendent Garry McEwan, Divisional Commander, Criminal Justice Services Division, Police Scotland;

Eric McQueen, Chief Executive, and Tim Barraclough, Chief Development and Innovation Officer, Scottish Courts and Tribunals Service.

8. **Policing and Crime Bill (UK Parliament legislation):** The Committee will consider a draft report on legislative consent memorandum LCM-S5-3.

9. **Work programme:** The Committee will consider its work programme.

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The papers for this meeting are as follows—

Agenda items 2 and 3

Paper by the clerk - Home Detention SSI J/S5/16/10/1

Agenda items 4 and 5

Paper by the clerk - Air Weapons SSI J/S5/16/10/2

Agenda item 6

Paper by the clerk - Negative SSIs J/S5/16/10/3

[Written submission from the Law Society of Scotland on SSI 2016/332](#)

Agenda item 7

Paper by the clerk - Inquiry into COPFS J/S5/16/10/4

Private paper - Inquiry into COPFS J/S5/16/10/5 (P)

[Written submission from Sam McEwan JP](#)

[Written submission from Police Scotland](#)

[Written submission from the Scottish Courts and Tribunals Service](#)

[Written submission from the Scottish Justices Association](#)

Agenda item 8

Private paper - LCM J/S5/16/10/6 (P)

Agenda item 9

Private paper - Work programme J/S5/16/10/7 (P)

Justice Committee**10th Meeting, 2016 (Session 5), Tuesday 22 November 2016****Subordinate legislation****Note by the clerk****Purpose**

1. This paper invites the Committee to consider the following affirmative instrument:
 - [Home Detention Curfew Licence \(Amendment\) \(Scotland\) Order 2016 \[draft\]](#).

**HOME DETENTION CURFEW LICENCE (AMENDMENT) (SCOTLAND) ORDER
2016 [DRAFT]****Introduction**

2. This instrument is made under section 3AA(6) of the Prisoners and Criminal Proceedings (Scotland) Act 1993. The Order amends section 3AA(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 by repealing paragraphs (f) and (g), which create statutory exclusions from Home Detention Curfew (HDC) for those prisoners who have been recalled or convicted while serving a sentence in the community. Currently, prisoners who are released on licence and recalled for non-compliance with their licence conditions (section 17) or for committing a new crime while serving a sentence of imprisonment in the community (section 16) are permanently excluded from applying for HDC again in the future. The Scottish Ministers will have discretion to release those prisoners from prison on HDC.
3. Further details on the purpose of the instrument can be found in the policy note (see below).

Policy Note: Home Detention Curfew Licence (Amendment) (Scotland) Order 2016 [draft]**Policy objectives**

1. The Scottish Ministers established an Electronic Monitoring in Scotland Expert Working Group in October 2014 to consider the effectiveness and possible uses of different forms of Electronic Monitoring. The final report contains eight recommendations. These recommendations have been informed by international evidence, partner and stakeholder engagement at a national and local level and the knowledge and expertise of the Group members.
2. The SSI has been drafted in response to one of these recommendations. The recommendation in question was to amend section 3AA(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”) by removing paragraphs (f) and (g) which create statutory exclusions from Home Detention Curfew (HDC) for those prisoners who have been recalled or convicted while serving a sentence in the community. Currently, prisoners who are released on

licence and recalled for non-compliance with their licence conditions (section 17) or for committing a new crime while serving a sentence of imprisonment in the community (section 16) are permanently excluded from applying for HDC again in the future. The Working Group concluded that permanently excluding prisoners from applying in the future does not recognise an individual's progress over time in terms of rehabilitation and improvements in compliance and motivation to desist.

3. These regulations amend Section 3AA(5) by repealing paragraphs (f) and (g) so as to remove those prohibitions from obtaining HDC. The Scottish Ministers will have discretion to release those prisoners from prison on home detention curfew.

Consultation

4. A consultation was held in 2013 and sought views on the operation of the current electronic monitoring service and examined whether anything could be done to improve the existing service. Following this consultation the Expert Working Group was established. In addition to the work of the Working Group, partner and stakeholder engagement has been, and will continue to be, an important strand of this work. While we have already benefited greatly from having key partners and stakeholders represented on the Working Group, a number of other engagement activities have also been undertaken as part of the Group's research.
5. A national conference was held in August 2015 and was attended by around 150 justice partners. The conference was the beginning of a deeper stakeholder engagement process, which continued with 12 local events and 2 GPS technology test events (attended by around 300 stakeholders). These events were held between January and June 2016 and provided an opportunity for practitioners, including the judiciary, criminal justice social work, third sector and others to engage in dialogue, share ideas and issues around the current service and identify opportunities for improving the end-to-end process for those involved in the management of those with convictions.

Impact Assessments and Financial Effects

6. This is a technical instrument and as such has no significant financial, equality or privacy effects on the Scottish Government, local authorities or on business.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 25 October 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

5. The Justice Committee is required to report to the Parliament on the instrument by 1 December 2016. The Cabinet Secretary for Justice has lodged motion S5M-02127 proposing that the Committee recommends approval of the instrument. The Minister for Community Safety and Legal Affairs attended the meeting on 15 November 2016 when she and her officials answered a number of questions on the

instrument. The Minister agreed to a request from the Convener not to move the motion, pending the provision of further information relevant to the instrument by the Scottish Government. The Minister is due to attend the meeting again on 22 November to answer any further questions on the instrument and to move the motion for approval.

6. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 1 December 2016. Thereafter, the Parliament will be invited to approve the instrument.

7. The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.

Justice Committee

10th Meeting, 2016 (Session 5), Tuesday 22 November 2016

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instrument:
 - [Air Weapons Licensing \(Exemptions\) \(Scotland\) Regulations 2016 \[draft\]](#).

**AIR WEAPONS LICENSING (EXEMPTIONS) (SCOTLAND) REGULATIONS 2016
[DRAFT]**

Introduction

2. This instrument is made under section 2(4)(a) of the Air Weapons and Licensing (Scotland) Act 2015. The Regulations create two further, related, exemptions from the requirements of section 2 of the Act. The intention is to ensure that (a) individuals who use or possess air weapons on service premises in Scotland while under the supervision of a person in Her Majesty's armed forces, and (b) individuals who use or possess air weapons on Ministry of Defence Police (MDP) premises in Scotland while being trained or assessed in their use under the supervision of a member of the MDP, are exempt from the requirement to hold an Air Weapon Certificate.
3. Further details on the purpose of the instrument can be found in the policy note (see below).

**Policy Note: Air Weapons Licensing (Exemptions) (Scotland) Regulations 2016
[draft]**

Background

1. Part 1 of the 2015 Act introduces new controls on the use, possession, purchase and acquisition of air weapons, and also on transactions involving air weapons. Under section 2, anyone wishing to use, possess, purchase or acquire an air weapon in Scotland will, from 31 December 2016, be required to hold a valid Air Weapon Certificate (AWC) unless otherwise exempt under schedule 1 of the 2015 Act. Those exempted currently include members of an approved cadet corps or the instructor of such a member (schedule 1, paragraph 6), as well as members of the Ministry of Defence Police (MDP) and persons in Her Majesty's armed forces who require to deal with air weapons in the course of their duties (schedule 1, paragraph 17(3)(e) and (j) respectively).

Policy Objectives

2. The purpose of the Regulations is to create two further, related, exemptions from the requirements of section 2 of the 2015 Act. The intention is to ensure that (a) individuals who use or possess air weapons on service premises in Scotland

while under the supervision of a person in Her Majesty's armed forces, and (b) individuals who use or possess air weapons on MDP premises in Scotland while being trained or assessed in their use under the supervision of a member of the MDP, are exempt from the requirement to hold an AWC.

3. The proposed additions to schedule 1 of the 2015 Act essentially mirror equivalent firearms licensing exemptions under sections 16A and 16B of the Firearms (Amendment) Act 1988 ("the 1988 Act"). The first is aimed at permitting people to use an air weapon, without holding an AWC, whilst at a supervised open day (or similar event) on service premises. The second allows potential recruits to the MDP to use an air weapon, without holding an AWC, when undergoing firearms training and assessment under MDP supervision.
4. As the exemptions for cadets, members of the MDP and members of Her Majesty's armed forces under schedule 1 of the 2015 Act reflect equivalent exemptions under the Firearms Act 1968, it is only right that the exemptions under sections 16A and 16B of the 1988 Act should likewise be replicated to ensure consistency.

Consultation

5. There is no statutory requirement to consult before making Regulations under section 2(4)(a) of the 2015 Act. Although no public consultation was carried out in relation to these Regulations, the Scottish Government has consulted with the Ministry of Defence and the Home Office who are both generally supportive of the Regulations.

Impact Assessments and Financial Effects

6. Both an Equality Impact Assessment (EIA) and a Business and Regulatory Impact Assessment (BRIA) were carried out in relation to the Bill for the 2015 Act. The links below show the relevant documentation:

EIA: <http://www.gov.scot/Publications/2014/05/3617>

BRIA: <http://www.gov.scot/Publications/2014/05/7168>

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

4. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 1 November 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

5. The Justice Committee is required to report to the Parliament on the instrument by 2 December 2016. The Cabinet Secretary for Justice has lodged motion S5M-02262 proposing that the Committee recommends approval of the instrument. The Minister for Community Safety and Legal Affairs is due to attend the meeting on 22 November to answer any questions on the instrument and to move the motion for approval.

6. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 2 December 2016. Thereafter, the Parliament will be invited to approve the instrument.

7. The Committee is asked to delegate to the Convener authority to approve the report on the instrument for publication.

Justice Committee**10th Meeting, 2016 (Session 5), Tuesday 22 November 2016****Subordinate legislation****Note by the clerk****Purpose**

1. This paper invites the Committee to consider the following negative instruments:
 - [Justices of the Peace \(Training and Appraisal\) \(Scotland\) Order 2016 \(SSI 2016/329\)](#) *[see page 3]*;
 - [Court Fees \(Miscellaneous Amendments\) \(Scotland\) Order 2016 \(SSI 2016/332\)](#) *[see page 4]*;
 - [Upper Tribunal for Scotland \(Rules of Procedure\) Amendment Regulations 2016 \(SSI 2016/333\)](#) *[see page 9]*;
 - [Tenant Information Packs \(Assured Tenancies\) \(Scotland\) Amendment Order 2016 \(SSI 2016/334\)](#) *[see page 11]*;
 - [First-tier Tribunal for Scotland Housing and Property Chamber \(Procedure\) Regulations 2016 \(SSI 2016/339\)](#) *[see page 12]*.
2. If the Committee agrees to report to the Parliament on the instruments it is required to do so by 5 December 2016.

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 instruments.**

**JUSTICES OF THE PEACE (TRAINING AND APPRAISAL) (SCOTLAND) ORDER
2016 (SSI 2016/329)**

Introduction

10. The instrument is made under section 69 and 81(2) of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007. The Order revokes articles 8 to 17 of the Justices of the Peace (Scotland) Order 2007 and introduces a new framework for the training of justices of the peace.

11. The instrument comes into force on 28 November 2016.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

12. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 8 November 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

13. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 5 December 2016.

COURT FEES (MISCELLANEOUS AMENDMENTS) (SCOTLAND) ORDER 2016 (SSI 2016/332)

Introduction

14. The instrument is made under section 107(1) and (2) of the Courts Reform (Scotland) Act 2014. The Order raises certain fees in the sheriff court and Court of Session to ensure that the income raised meets the costs incurred by the Scottish Courts and Tribunals Service in providing the civil court system.

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

16. The instrument comes into force on 28 November 2016.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

17. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 15 November 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

18. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 5 December 2016.

Policy Note: Court Fees (Miscellaneous Amendments) (Scotland) Order 2016 (SSI 2016/332)

Policy

Court fees and fees for services offered by the High Court of Justiciary, the Court of Session, Sheriff Appeal Court, sheriff courts including the Sheriff Personal Injury Court, justice of the peace courts and the Office of the Public Guardian ensure that those who make use of the courts or the Office of the Public Guardian meet or contribute towards the associated costs to the public purse where they can afford so to do.

The Scottish Government has long had a policy to move toward fees which reflect the full cost of the processes involved, with a well-targeted system of fee exemptions to protect access to justice. This Order puts into effect that policy by raising certain fees in the sheriff court and Court of Session (only) to ensure that the income raised meets the costs incurred by the Scottish Courts and Tribunals Service (SCTS) in providing the civil court system.

In each of the current Court Fees Orders¹, the existing Tables of Fees in schedule 3 are replaced by substituted Tables of Fees from the schedules of this Order. Some fees are to be increased beyond the figures in existing schedule 3 whereas in other

¹ The Court of Session etc. Fees Order 2015, the High Court of Justiciary Fees Order 2015, the Sheriff Appeal Court Fees Order 2015, the Sheriff Court Fees Order 2015 and the Justice of the Peace Court Fees (Scotland) Order 2015. No change is made to the Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2015.

cases the fees are to remain as they have been from 1st April 2016. The table below identified those fees that are being increased. In relation to the sheriff court the increased fees relate to the initial lodging of claims. These increases do not affect the fees in the Sheriff Appeal Court or the Sheriff Personal Injury Court where the fees are staying at the same level as introduced in April 2016.

The amendment order also introduces a tiering of fees for commissary cases. Currently estates valued under £10,000 are not charged a fee with all other estates charged £225 (which was due to increase to £230 in April 2017). This new fee structure ensures any estate valued at less than £50,000 will not incur a fee; estates valued between £50,000 and £250,000 will be charged a fee of £250; and estates valued over £250,000 will be charged £500.

In the Court of Session the fees relate to more stages of the case and there has also been a larger increase to the hearing fee for cases in the Court of Session. This ensures that those who require more of the court's time are charged accordingly.

The Scottish Government is committed to ensuring a well-targeted system of fee exemptions exist. This means that those who require support, in general this means those in receipt of legal aid, will not incur any courts fees. It is also important to note that fees will be recovered from the losing side in any action.

In addition to increasing some fees the Order also updates some of the fee narratives in light of simple procedure which is introduced on 28 November 2016.

Other updates to narratives have been made to ensure that they are as clear and consistent as possible. This is the case particularly in relation to the Sheriff Appeal Court (Civil), which was established in January 2016, where changes have been agreed with the Lord President's Private Office and the SCTS so that there is greater clarity on when fees are applicable and greater consistency with fees narratives for the other courts. For full details of changes to narratives see Annex B.

Consultation

A public consultation on these proposals was launched on 12 July and ended on 12 October 2016. The consultation offered two options to achieve the Scottish Government's policy of full-cost recovery: Option 1 – Flat rise; and Option 2 – Targeted increase.

36 responses were received and almost all stated their opposition to increasing court fees or the charging of court fees at all. Of those that identified a preferred option the clear preference was for a targeted increase as set out in option 2. Non-confidential responses are available at:

https://consult.scotland.gov.uk/courts-judicial-appointments-policy-unit/court-fees/consultation/published_select_respondent

A consultation analysis will be published shortly.

Financial effects

The fees identified to be increased are expected to result in an increase in real terms in fee revenue to the SCTS of approximately £6m per annum. This will cover the

shortfall in the cost of the system that has averaged £6.2m per annum across the last three years (2013/14 = £6.7m; 2014/15 = £5.4m; 2015/16 = £6.6m).

It is expected that the fees will be introduced on 28 November 2016 and will remain at that level until a further review of court fees is undertaken in 2017/18. The current expectation is that any change to fees as a result of that subsequent review would take effect from April 2018.

Business and Regulatory Impact Assessment

A business and regulatory impact assessment was undertaken in 2015 as a result of the previous increases and this has been updated to reflect the further increases made by this Order and is available at:

http://www.legislation.gov.uk/ssi/2016/332/pdfs/ssifia_20160332_en.pdf

Equalities Impact Assessment & Child Rights and Wellbeing Impact Assessment

An equalities impact assessment was undertaken in 2015 as a result of the previous increases and this has been updated to reflect the further increases made by this Order and will be published shortly. Screening for a Child Rights and Wellbeing Impact Assessment in 2015 resulted in the decision not to undertake such an assessment and this is still relevant in relation to this Order, however impacts on children were considered within the equalities impact assessment.

Annex A

Court Fees 2016 - Proposals

	2016/17 Fee	Proposed Fees
Lodging a claim		
small claims or simple procedure (<£200)	£18	£18
small claims or simple procedure (>£200)	£78	£100
summary cause or simple procedure (>£3,000)	£78	£100
summary applications	£96	£120
Ordinary cause		
lodging a claim	£96	£120
hearing fee	£227	£227
Divorce cases		
lodging case	£150	£150
lodging simple case	£113	£120
hearing fee	£227	£227
Sheriff Appeal Court		
lodging appeal (summary)	£59	£59
lodging appeal (ordinary)	£113	£113
hearing fee (per day) bench of 1	£227	£227
hearing fee (per day) bench of 3	£568	£568

Sheriff Personal Injury Court		
lodging action	£214	£214
hearing fee (per half hour)	£77	£77
Court of Session		
lodging action	£214	£300
lodging motion	£54	£100
lodging record	£107	£200
lodging defences	£214	£300
hearing fee (per half hour) bench of 1	£96	£200
hearing fee (per half hour) bench of 3	£239	£500
Commissary proceedings (value of estate)		
less than £10k	£0	£0
between £10k and £50k	£225	£0
between £50k and £250k	£225	£250
above £250k	£225	£500

Annex B**Updates to fees narratives**

Court of Session	
Item B.1	“leave to appeal” updated to “leave or permission to appeal” in line with e.g. section 31A of the Court of Session Act 1988
Item H.7	Clarification of fees narratives (b) and (d)
Item J.3	Narrative aligned with item 36 for Sheriff Court
High Court of Justiciary	
Item 3	Narrative for copying fees aligned with item 36 for Sheriff Court
Sheriff Appeal Court	
Item 1	Narrative aligned with item 29 for Sheriff Court and item 1 for Sheriff Personal Injury Court
Item 2	Narrative expanded to reference relevant rules of court
Item 3	Narrative updated to reference simple procedure and expanded to clarify position of cross-appeals

Item 4	Narrative updated as per item 1 with NOTES expanded to clarify position of cross-appeals
Item 5	Narrative updated as per items 1 and 4 with NOTES expanded to clarify position of cross-appeals
Item 6	Narrative aligned with item 36 for Sheriff Court
Sheriff Court	
Item 3	Fee structure revised
Item 12	Reference added to Bankruptcy (Scotland) Act 2016 which commences 30 November 2016. It is necessary to maintain reference to Bankruptcy (Scotland) Act 1985 for transitional cases
Item 16	Narrative updated for simple procedure cases. It is necessary to maintain reference to summary causes since simple procedure has not been fully implemented
Item 29	NOTE has been added clarifying position of minutes and motions. The same NOTE has been added to all equivalent fees narratives
Item 36	Narrative has been slightly updated to align with other narratives
Sheriff Personal Injury Court	
Item 1	Clarifying NOTE added as per item 29 for Sheriff Court
Justice of the Peace Court	
Item 2	Narrative aligned with item 36 for Sheriff Court

UPPER TRIBUNAL FOR SCOTLAND (RULES OF PROCEDURE) AMENDMENT REGULATIONS 2016 (SSI 2016/333)

Introduction

19. The instrument is made under paragraph 4(1)(b) and (2) of Schedule 9 of the Tribunals (Scotland) Act 2014. The Regulations amend rule 29 of the Upper Tribunal for Scotland Rules of Procedure 2016 contained in the schedule of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 to provide that a request by a party for written reasons for an oral decision must be in writing.

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

21. The instrument comes into force on 1 December 2016.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

22. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 8 November 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

23. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 5 December 2016.

Policy Note: Upper Tribunal for Scotland (Rules of Procedure) Amendment Regulations 2016 (SSI 2016/333)

Policy Objectives

The 2014 Act allows rules to be made to regulate the practice and procedure of both the First-tier and Upper Tribunals. Paragraph 4(2) of Schedule 9 of the 2014 Act allows rules to be made by the Scottish Ministers until such time as responsibility for rule making passes to the Court of Session.

Regulation 2(4) of the Scottish Tribunals (Time Limits) regulations 2016 refers to written reasons being requested in writing and regulation 29(3) of the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 does not specify that written reasons must be requested in writing. This instrument corrects this anomaly.

Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

Impact Assessments

As the Order is technical amendment to make an amendment to the Upper Tribunal Rules of Procedure regulations we do not consider there is a requirement for any Impact Assessments on this occasion.

An Equality Impact Assessment was completed for the Upper Tribunal for Scotland (Rules of Procedure) Regulations 2016 – see link below:

<http://www.gov.scot/Publications/2016/08/9309>

An Equality Impact Assessment was also completed for the Tribunals (Scotland) Bill – see link below: <http://www.scotland.gov.uk/Resource/0042/00421637.pdf>

**TENANT INFORMATION PACKS (ASSURED TENANCIES) (SCOTLAND)
AMENDMENT ORDER 2016 (SSI 2016/334)**

Introduction

24. The instrument is made under section 30B(1) of the Housing (Scotland) Act 1988. The Order substitutes a new schedule in the Tenant Information Packs (Assured Tenancies) (Scotland) Order 2013, which replaces references to the Private Rented Housing Committee with references to First-tier Tribunal for Scotland Housing and Property Chamber.

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

26. The instrument comes into force on 1 December 2016.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

27. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 8 November 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

28. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 5 December 2016.

Policy Note: Tenant Information Packs (Assured Tenancies) (Scotland) Amendment Order 2016 (SSI 2016/334)

Policy Objectives

1. Regulation 2016/337 transfers the functions of the private rented housing committee (prhc) to the Scottish Tribunals. Upon transfer the prhp will be abolished and cases will be heard in the First-tier Tribunal for Scotland Housing and Property Chamber.
2. The main objective of this Order is to replace references to the prhc with references to First-tier Tribunal for Scotland Housing and Property Chamber.

Impact Assessments

3. As the Order is a technical amendment to replace references to prhc with references to the First-tier Tribunal for Scotland Housing and Property Chamber we do not consider there is a requirement for any Impact Assessments on this occasion.
4. An Equality Impact Assessment was completed for the Tribunals (Scotland) Bill – see link: <http://www.scotland.gov.uk/Resource/0042/00421637.pdf>

**FIRST-TIER TRIBUNAL FOR SCOTLAND HOUSING AND PROPERTY CHAMBER
(PROCEDURE) REGULATIONS 2016 (SSI 2016/339)**

Introduction

29. The instrument is made under section 55(1) and paragraph 4(2) of Schedule 9 to the Tribunals (Scotland) Act 2014 (the 2014 Act). The Regulations establish rules of procedure for the First-tier Tribunal Housing and Property Chamber containing new provisions for the First-tier Tribunal to award expenses if a party has through unreasonable behaviour put another party to unnecessary expense; and a new review procedure for the correction of errors in decisions of the First-tier Tribunal.

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

31. The instrument comes into force on 1 December 2016.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

32. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 15 November 2016 and agreed to draw it to the attention of the Parliament because it fails to follow normal drafting practice, as several provisions are not drafted in gender neutral terms. The DPLR Committee noted that the Scottish Government intends to replace the rules in the instrument and the forms in schedule 2 by means of a further instrument to be laid in 2017. That instrument would be drafted in gender neutral terms.

Extract from the Delegated Powers and Law Reform Committee's 12th Report 2016

First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 (SSI 2016/339) (Justice)

1. The Tribunals (Scotland) Act 2014 enables rules to be made to regulate the practice and procedure of both the First-tier and Upper Tribunals for Scotland. Provision in schedule 9 of the Act allows rules to be made by the Scottish Ministers, until such time as responsibility for rule making passes to the Court of Session.
2. These Regulations therefore establish rules of procedure for the First-tier Tribunal Housing and Property Chamber. The rules so far as possible have been drawn from existing rules of procedure for the Private Rented Housing Panel and the Homeowner Housing Panel, the functions of which have been transferred to the First-tier Tribunal in Regulations which the Committee has previously considered (SSIs 2016/336 and 338).
3. The rules of procedure contain new provisions for the First-tier Tribunal to award expenses, if a party has through unreasonable behaviour put another party to unnecessary expense. There is also a new review procedure for the correction of errors in decisions of the First-tier Tribunal.
4. The Regulations are subject to the negative procedure. They come into force on 1 December 2016.

5. In considering the instrument, the Committee wrote to the Scottish Government suggesting that certain provisions in the Regulations could have been drafted in gender neutral terms. The correspondence is reproduced at Annexe A below.
6. The Scottish Government has acknowledged that several provisions have not followed the normal, modern drafting practice of not using gender-specific nouns. There are several references to “he”, “him” or “his”. With one exception, the various provisions which do not follow the normal drafting practice are within the forms contained in schedule 2. By way of the example in schedule 1, rule 60(4)(a) states—

“At a hearing a party may be heard either in person or by a person authorised by him in that behalf...”
7. The Committee considers that there is no proper reason why the various provisions should not have been drafted in gender neutral terms. The principal exception to gender-neutrality is when amending an instrument that is drafted gender specifically. If that is the case, then insertions into the original instrument may be gender specific, if necessary to avoid inconsistency or confusion.
8. While the vast majority of the provisions which breach the normal practice are contained in the forms in Schedule 2, several of these forms are commonly used by tenants and landlords throughout Scotland, as part of the assured and short assured tenancy regimes. An example is the Form AT5, which is the notice to be served by a landlord on a prospective tenant of a short assured tenancy.
9. The Scottish Government has explained in the correspondence that the various forms in schedule 2 replicate, with very minor adaptations, those set out in the Assured Tenancies (Forms) (Scotland) Regulations 1988, and a Form 6 of the Rent Regulation (Forms and Information etc.) (Scotland) Regulations 1991. The approach taken in this instrument was therefore taken because the instrument is intended to be an interim measure. The rules and forms are intended to be replaced in 2017.
10. The Committee draws the Regulations to the attention of the Parliament on the general reporting ground. The instrument fails to follow normal drafting practice, as several provisions are not drafted in gender neutral terms. There are several references to “he”, “his” or “him”.
11. The relevant provisions are:
 - In schedule 1, rule 60(4)(a).
 - In schedule 2, in Form AT1(L) at Part 6(b) and in the notes to that Form in paragraphs 2, 3(b), 7 (three references), 9(2) in the bold type; in the Notes to Form AT1(T) at paragraphs 7 (three references) and 9(2) in the bold type; in Form AT2 in the 8th line of the first paragraph in bold type, in the notes to that Form at paragraph 2 in the bold type, paragraph 7 (three references) and paragraph 9(b) in the bold type; in Form AT3(L) in the ninth line of text on page 51 and in Part 7(improvements)(two references); in Form AT3(T) in the ninth line of text on page 57 and in Part 7 (improvements)(two references) and in the notes to that Form at paragraph 4; in Form AT5 in the box on page 74 (three references); in

the notes to Form AT6 at paragraphs 4.2, 6.6, 6.7, 6.8, 6.9, 9 (five references), 11 (three references); in Form AT7 in the box on page 86 at note 2, in paragraph 4 on page 87 (three references) and in paragraph 5a on page 88.

12. The Committee notes that the Scottish Government intends to replace the rules in the instrument and the forms in schedule 2, by means of a further instrument to be laid in 2017. That instrument would be drafted in gender neutral terms.
13. The Committee contends, however, that the opportunity should have been taken in this instrument to have drafted the provisions in accordance with the normal practice.

ANNEXE A

On 4 November 2016, the Scottish Government was asked:

It appears that the following provisions, which include references to “he”, “his” or “him”, could have been drafted in gender neutral terms:

In schedule 1, rule 60(4)(a).

In schedule 2, in Form AT1(L) at Part 6(b) and in the notes to that Form in paragraphs 2, 3(b), 7 (three references), 9(2) in the bold type; in the Notes to Form AT1(T) at paragraphs 7 (three references) and 9(2) in the bold type; in Form AT2 in the 8th line of the first paragraph in bold type, in the notes to that Form at paragraph 2 in the bold type, paragraph 7 (three references) and paragraph 9(b) in the bold type; in Form AT3(L) in the ninth line of text on page 51 and in Part 7(improvements)(two references); in Form AT3(T) in the ninth line of text on page 57 and in Part 7 (improvements)(two references) and in the notes to that Form at paragraph 4; in Form AT5 in the box on page 74 (three references); in the notes to Form AT6 at paragraphs 4.2, 6.6, 6.7, 6.8, 6.9, 9 (five references), 11 (three references); in Form AT7 in the box on page 86 at note 2, in paragraph 4 on page 87 (three references) and in paragraph 5a on page 88.

Please therefore explain why this non-gender neutral approach has been taken. Is any corrective action proposed?

The Scottish Government responded as follows:

The forms set out in schedule 2 replicate with very minor adaptations those set out in the Assured Tenancies (Forms) (Scotland) Regulations 1988 (S.I. 1988/2109) and Form 6 of the Rent Regulation (Forms and Information etc.) (Scotland) Regulations 1991 (S.I. 1991/1521). The previous forms are not gender neutral. The approach taken was an interim and transitional measure. The rules and forms are being repealed in 2017. Replacement and expanded rules will take their place with the rules and any forms gender neutral. In the light of this, it is not proposed to amend the regulations to make them gender neutral.

JUSTICE COMMITTEE CONSIDERATION

33. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 5 December 2016.

Policy Note: First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2016 (SSI 2016/339)

Policy Objectives

The 2014 Act allows rules to be made to regulate the practice and procedure of both the First-tier and Upper Tribunals. Paragraph 4(2) of Schedule 9 to the 2014 Act allows rules to be made by the Scottish Ministers until such time as responsibility for rule making passes to the Court of Session.

These regulations establish rules of procedure for the First-tier Tribunal Housing and Property Chamber, which insofar as possible have been drawn from existing rules of procedure for the private rented housing panel and the homeowner housing panel, the functions of which have been transferred to the First-tier Tribunal in regulations (SSI 2016/336 and SSI 2016/338).

The rules of procedure in these regulations contain new provisions for the First-tier Tribunal to award expenses if a party has through unreasonable behaviour put another party to unnecessary expense; and a new review procedure for the correction of errors in decisions of the First-tier Tribunal.

Fuller details of the policy objectives relating to the 2014 Act are described in the Policy Memorandum which accompanied the Tribunals Bill. The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/62938.aspx>

Consultation

A consultation with interested parties took place between September and December 2015. There were 24 responses to this consultation. The responses are available on the Scottish Government website:

<https://consult.scotland.gov.uk/tribunals-administrative-justice-policy/second-consultation-tribunals-scotland-act-2014>

Impact Assessments

An equality impact assessment was completed for these regulations and showed that the regulations are intended to apply equally and appear to have no differential effect on the basis of the protected characteristics.

The Equality Impact Assessment is available at the link below:

<http://www.gov.scot/Publications/2016/08/7768>

An Equality Impact Assessment was also completed for the Tribunals (Scotland) Bill – see link below:

<http://www.scotland.gov.uk/Resource/0042/00421637.pdf>

A Business and Regulatory Impact Assessment is not required as the instrument has no financial effects on the Scottish Government, local government or on business.

Justice Committee

10th Meeting, 2016 (Session 5), Tuesday 22 November 2016

Inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service

Note by the clerk

Introduction

1. The Committee agreed to hold an inquiry into the role and purpose of the Crown Office and Procurator Fiscal Service (COPFS) at its Business Planning Event in August. At its 6 September meeting, it agreed to this remit—

“The COPFS is Scotland’s independent prosecution service, acting in the public interest to help bring offenders to justice. The core role of the COPFS is to consider reports about crime from the police and other agencies, to decide whether it is in the public interest to prosecute them, and, if so, to deploy the resources that are necessary to help ensure that justice is done.

“The Committee’s inquiry will focus on this core role, examining in particular—

- The effectiveness and efficiency of the COPFS, and how well it works with other stakeholders in the criminal justice system;
- Whether the COPFS has the resources and skillsets it needs to carry out its core role;
- The COPFS’s responsiveness to new challenges and opportunities including the evolving nature of crime in 21st century Scotland, advances in technology, and changes in the delivery of court services that may affect access to justice;
- How the COPFS protects and supports witnesses and victims of crime.

“The Committee will also take evidence on the role and function of the Inspectorate of Prosecution in Scotland. (The IPS is the independent inspectorate for the COPFS.)

“The inquiry will not consider the COPFS’s two other roles of establishing the cause of sudden, unexplained or suspicious deaths or investigating allegations of criminal conduct against police officers, except in relation to the general issue of whether the COPFS has the resources it needs to carry out its purpose.”

2. The Committee issued a [call for evidence](#), with a closing date of 19 October 2016. All [written responses](#) accepted as evidence can be found on the Committee’s [inquiry page](#).

Committee consideration

3. As part of its inquiry the Committee visited the Lord Advocate in Chambers Street on 20 September 2016 and met with the Lord Advocate, the Solicitor General, the Crown Agent and various staff from the COPFS.

4. On 4 October 2016 the Committee met with individuals who had experience of the criminal justice system as victims and witnesses and heard of the difficulties they faced during the process. Notes of the meetings are available [here](#).

5. The Committee's first formal evidence session was on [25 October 2016](#), when it heard first from SACRO, Scottish Women's Aid, Rape Crisis Scotland and Victim Support Scotland. It then heard from a panel of legal representatives, comprising the Law Society of Scotland, and members of the Glasgow, Edinburgh and Aberdeen Bar Associations.

6. At its meeting on [1 November 2016](#) the Committee heard from a single panel consisting of representatives from the Community union, representing G4S staff, Circle Families Outside and Social Work Scotland.

7. At its meeting on 15 November 2016, the Committee heard from two panels of witnesses. The first was made up from unions representing COPFS workers and police representative bodies. The second panel consisted of two representatives of the Faculty of Advocates (both former Advocates Depute at the COPFS).

8. At its meeting on 22 November the Committee will hear from two panels of witnesses. The first panel is made up of Justices of the Peace—

- Tom Finnigan JP; representing the Scottish Justices Association, and
- Sam McEwan JP, a JP in the sheriffdom of North Strathclyde.

9. The Committee will then hear from a panel comprising representatives from Police Scotland and the Scottish Court Service (both of these organisations being members of the [Justice Board for Scotland](#), which has overall responsibility for delivering the Scottish Justice Strategy)—

- Assistant Chief Constable Bernard Higgins, and Chief Superintendent Garry McEwan, Police Scotland; and
- Eric McQueen, Chief Executive, and Tim Barraclough, Chief Development and Innovation Officer, Scottish Courts and Tribunals Service.