



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

3rd Meeting, 2018 (Session 5)

Tuesday 23 January 2018

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

1. **Decision on taking business in private:** The Committee will decide whether to take item 8 in private.

2. **Subordinate legislation:** The Committee will take evidence on the—

Regulation of Investigatory Powers (Covert Human Intelligence Sources - Code of Practice) (Scotland) Order 2018 [draft];

Regulation of Investigatory Powers (Equipment Interference – Code of Practice) (Scotland) Order 2018 [draft];

Regulation of Investigatory Powers (Covert Surveillance and Property Interference – Code of Practice) (Scotland) Order 2018 [draft];

from—

Michael Matheson, Cabinet Secretary for Justice, Graeme Waugh, Defence, Security and Cyber Resilience Division, and Lauri Mitchell, Directorate for Legal Services, Scottish Government.

3. **Subordinate legislation:** Michael Matheson (Cabinet Secretary for Justice) to move—

S5M-09720—That the Justice Committee recommends that the Regulation of Investigatory Powers (Covert Human Intelligence Sources - Code of Practice) (Scotland) Order 2018 [draft] be approved;

S5M-09722—That the Justice Committee recommends that the Regulation of Investigatory Powers (Equipment Interference – Code of Practice) (Scotland) Order 2018 [draft] be approved;

S5M-09725—That the Justice Committee recommends that the Regulation of Investigatory Powers (Covert Surveillance and Property Interference – Code of Practice) (Scotland) Order 2018 [draft] be approved.

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

Firefighters' Pension Scheme (Amendment and Transitional Provision) (Scotland) Regulations 2017 (SSI 2017/435);

Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (Relevant Third Party) Order 2017 (SSI 2017/461).

5. **Defamation:** The Committee will receive a briefing from—

Lord Pentland, Chairman, and Graham McGlashan, Project Manager and Solicitor, Scottish Law Commission.

6. **Policing in Scotland:** The Committee will take evidence from—

Deputy Chief Constable Designate Iain Livingstone QPM, Police Scotland;

Professor Susan Deacon CBE, Chair, Scottish Police Authority.

7. **Justice Sub-Committee on Policing:** The Committee will consider at report back from the Sub-Committee meeting on 18 January 2018.

8. **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 - Affirmative SSIs J/S5/18/3/1

Agenda item 4

Paper by the clerk - Negative SSIs J/S5/18/3/2

Agenda item 5

Paper by the clerk - defamation J/S5/18/3/3

Private paper - defamation J/S5/18/3/4 (P)

[Written submission from the Scottish Law Commission](#)

Agenda item 6

Paper by the clerk - policing in Scotland J/S5/18/3/5

Private paper - policing in Scotland J/S5/18/3/6 (P)

[Written submission from Police Scotland](#)

[Written submission from the Scottish Police Authority](#)

Agenda item 7

Paper by the clerk - Justice Sub-Committee on Policing J/S5/18/3/7

Agenda item 8

Private paper - work programme J/S5/18/3/8 (P)

Justice Committee

3rd Meeting, 2018 (Session 5), Tuesday 23 January 2018

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following affirmative instruments:

- [Regulation of Investigatory Powers \(Covert Human Intelligence Sources - Code of Practice\) \(Scotland\) Order 2018 \[draft\]](#);
- [Regulation of Investigatory Powers \(Equipment Interference – Code of Practice\) \(Scotland\) Order 2018 \[draft\]](#);
- [Regulation of Investigatory Powers \(Covert Surveillance and Property Interference – Code of Practice\) \(Scotland\) Order 2018 \[draft\]](#).

2. These instruments relate to codes of practice made under the Regulation of Investigatory Powers (Scotland) Act 2000. Further detail on each of the instruments can be found below.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

3. The Delegated Powers and Law Reform Committee considered these instruments at its meeting on 19 December and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

4. The Justice Committee is required to report to the Parliament on the instruments by 4 February 2018. The Cabinet Secretary for Justice has lodged motions S5M-09720, S5M-09722, S5M-09725 proposing that the Committee recommends approval of the instruments. The Cabinet Secretary is due to attend the meeting on 23 January to answer any questions on the instruments and to move the motions for approval.

5. It is for the Committee to decide whether or not to agree to the motions, and then to report to the Parliament by 4 February 2018. Thereafter, the Parliament will be invited to approve the instruments.

6. The Committee is asked to delegate to the Convener authority to approve the report on the instruments for publication.

**REGULATION OF INVESTIGATORY POWERS (COVERT HUMAN
INTELLIGENCE SOURCES - CODE OF PRACTICE) (SCOTLAND) ORDER 2018
[DRAFT]**

Introduction

7. This instrument is made under section 24(5) of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). The Order brings into force the [revised code of practice](#) issued under section 24 of Regulation of Investigatory Powers (Scotland) Act 2000 relating to the conduct and use of covert human intelligence sources authorised under that Act. A person carrying out a function to which the code applies must, in doing so, have regard to the provisions of the code to the extent that they are applicable. The revised code of practice replaces the code of practice on covert human intelligence sources issued by the Scottish Ministers on 28 November 2014 and brought into force on 2 February 2015.

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

Policy Note: Regulation of Investigatory Powers (Covert Human Intelligence Sources - Code of Practice) (Scotland) Order 2018 [draft]

Policy Objectives

1. RIP(S)A requires Scottish Ministers to issue one or more codes of practice relating to the exercise and performance of the powers and duties contained in both RIP(S)A and Part III of the Police Act 1997 (authorisation of interference with property or wireless telegraphy).
2. There are two existing codes, one covering covert surveillance, and the other covering covert human intelligence sources. These were issued in 2014.
3. The covert surveillance and property interference code has been updated to reflect the new arrangements for oversight and inspection by the Investigatory Powers Commissioner's Office. The Investigatory Powers Commissioner was established by the Investigatory Powers Act 2016 and replaces the Office of Surveillance Commissioners (and also the Interception of Communications Commissioner and the Intelligence Services Commissioner).
4. A number of other minor changes have been made to bring the code up to date.
5. Section 26 of RIP(S)A requires any person exercising or performing any power under RIP(S)A to have regard to the Codes.

Consultation

6. Section 24(3) of RIP(S)A requires Scottish Ministers to publish and consider representations made on draft codes of practice. A public consultation exercise commenced on 7 July 2017 and finished on 29 September 2017. That consultation involved the publication of two revised codes of practice (one on covert surveillance and property interference and one on covert human intelligence sources) and a new code dealing with equipment interference. Six

responses were received within the consultation period; in addition, a further five late responses were accepted. All of the respondents agreed that their responses could be made public (although one requested that their name not be published):

- Steven Templer (individual)
 - Police Scotland
 - Orkney Islands Council
 - Aberdeen City Council
 - Stirling Council
 - Open Rights Group
 - The Faculty of Advocates
 - Scottish PEN
 - The Law Society of Scotland
 - The Information Commissioner's Office, and
 - An individual.
7. No respondents objected to the requirement for the Codes. Where possible, the comments made in response to this consultation have been taken on board and have resulted in amendments being made to the final codes to be laid with the Scottish Parliament. Additional information has been included where relevant and clarification provided where required.
8. The practice of how the different covert tactics are authorised are well established and the Code does not provide any public body with additional powers.

Impact Assessments

9. There are no equality impact issues and an Equality Impact Assessment (EQIA) has, therefore, not been completed. It is extremely unlikely that any particular group will be impacted by the provisions contained in the code.

Financial Effects

10. A Business and Regulatory Impact Assessment (BRIA) was considered. On the basis, however, that the measures do not impose additional costs or reduce existing costs on business or the third sector, do not impose additional costs on public sector organisations that deliver public services, and do not involve some kind of distribution where there is an exchange of transfer of costs or benefits from one group to another, a BRIA was not considered necessary.
11. The updated code will not impact financially on public authorities or on the Investigatory Powers Commissioner's Office.

REGULATION OF INVESTIGATORY POWERS (EQUIPMENT INTERFERENCE – CODE OF PRACTICE) (SCOTLAND) ORDER 2018 [DRAFT]

Introduction

9. This instrument is made under section 24(5) of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). The Order brings into force the [code of practice](#) issued under section 24 of the Regulation of Investigatory Powers (Scotland) Act 2000 in respect of the use of equipment interference under Part 5 of the Investigatory Powers Act 2016 by the Police Service and the Police Investigations and Review Commissioner. A person carrying out a function to which the code applies must, in doing so, have regard to the provisions of the code to the extent that they are applicable.

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

Policy Note: Regulation of Investigatory Powers (Equipment Interference – Code of Practice) (Scotland) Order 2018 [draft]

Policy Objectives

1. RIP(S)A requires Scottish Ministers to issue one or more codes of practice relating to the exercise and performance of the powers and duties contained in both the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A) and Part 5 of the Investigatory Powers Act 2016.
2. There are two existing codes made under RIP(S)A, one covering covert surveillance, and the other covering covert human intelligence sources. These were issued in 2014 and have been revised at the same time as making this new code. Statutory provisions regulating equipment interference are contained in the Investigatory Powers Act 2016 and this is the first code of practice to be made by the Scottish Ministers in relation to equipment interference.
3. At present, equipment interference can be authorised by named law enforcement bodies under the auspices of the Police Act 1997 as a form of property interference. The UK Government, however, took the decision to make specific provision in the Investigatory Powers Act 2016 in relation to the equipment interference elements in order to provide more detail as to what constitutes equipment interference, and to provide a clear statutory framework. This was supported by the Scottish Government and formed part of a Legislative Consent Motion which was passed by the Scottish Parliament in October 2016.
4. The power for Scottish Ministers to issue codes for the use of equipment interference is limited to only two bodies in Scotland, Police Scotland and the Police Investigations and Review Commissioner, and any use of the powers will be subject to approval, oversight and inspection by the Investigatory Powers Commissioner. The Investigatory Powers Commissioner was established by the Investigatory Powers Act 2016 and replaces the Office of Surveillance Commissioners (and also the Interception of Communications Commissioner and the Intelligence Services Commissioner).

5. Section 26 of RIP(S)A requires any person exercising or performing any power under RIP(S)A to have regard to the Codes.

Consultation

6. Section 24(3) of RIP(S)A requires Scottish Ministers to publish and consider representations made on draft codes of practice. A public consultation exercise commenced on 7 July 2017 and finished on 29 September 2017. That consultation involved the publication of two revised codes of practice (one on covert surveillance and property interference and one on covert human intelligence sources) and a new code dealing with equipment interference. Six responses were received within the consultation period; in addition, a further five late responses were accepted. All of the respondents agreed that their responses could be made public (although one requested that their name not be published):
 - Steven Templer (individual)
 - Police Scotland
 - Orkney Islands Council
 - Aberdeen City Council
 - Stirling Council
 - Open Rights Group
 - The Faculty of Advocates
 - Scottish PEN
 - The Law Society of Scotland
 - The Information Commissioner's Office, and
 - An individual.
7. No respondents objected to the requirement for the Codes. Where possible, the comments made in response to this consultation have been taken on board and have resulted in amendments being made to the final codes to be laid with the Scottish Parliament. Additional information has been included where relevant and clarification provided where required.

Impact Assessments

8. There are no equality impact issues and an EQIA has, therefore, not been completed. It is extremely unlikely that any particular group will be impacted by the provisions contained in the code.

Financial Effects

9. A Business and Regulatory Impact Assessment (BRIA) was considered. On the basis, however, that the measures do not impose additional costs or reduce existing costs on business or the third sector, do not impose additional costs on public sector organisations that deliver public services, and do not involve some kind of distribution where there is an exchange of transfer of costs or benefits from one group to another, a BRIA was not considered necessary.
10. The updated code will not impact financially on public authorities or on the Investigatory Powers Commissioner's Office.

REGULATION OF INVESTIGATORY POWERS (COVERT SURVEILLANCE AND PROPERTY INTERFERENCE – CODE OF PRACTICE) (SCOTLAND) ORDER 2018 [DRAFT]

Introduction

11. This instrument is made under section 24(5) of the Regulation of Investigatory Powers (Scotland) Act 2000 (RIP(S)A). The Order brings into force the [revised code of practice](#) issued under section 24 of the Regulation of Investigatory Powers (Scotland) Act 2000 relating to covert surveillance under that Act and interference with property or wireless telegraphy under Part III of the Police Act 1997. A person carrying out a function to which the code applies must, in doing so, have regard to the provisions of the code to the extent that they are applicable. The revised code of practice replaces the code of practice on covert surveillance and property interference issued by the Scottish Ministers on 28 November 2014 and brought into force on 2 February 2015.

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

Policy Note: Regulation of Investigatory Powers (Covert Surveillance and Property Interference – Code of Practice) (Scotland) Order 2018 [draft]

Policy Objectives

1. RIP(S)A requires Scottish Ministers to issue one or more codes of practice relating to the exercise and performance of the powers and duties contained in both RIP(S)A and Part III of the Police Act 1997 (authorisation of interference with property or wireless telegraphy).
2. There are two existing codes, one covering covert surveillance, and the other covering covert human intelligence sources. These were issued in 2014.
3. The covert surveillance and property interference code has been updated to reflect the new arrangements for oversight and inspection by the Investigatory Powers Commissioner's Office. The Investigatory Powers Commissioner was established by the Investigatory Powers Act 2016 and replaces the Office of Surveillance Commissioners (and also the Interception of Communications Commissioner and the Intelligence Services Commissioner).
4. A number of other minor changes have been made to bring the code up to date.
5. Section 26 of RIP(S)A requires any person exercising or performing any power under RIP(S)A to have regard to the Codes.

Consultation

6. Section 24(3) of RIP(S)A requires Scottish Ministers to publish and consider representations made on draft codes of practice. A public consultation exercise commenced on 7 July 2017 and finished on 29 September 2017. That consultation involved the publication of two revised codes of practice (one on covert surveillance and property interference and one on covert human intelligence sources) and a new code dealing with equipment interference. Six

responses were received within the consultation period; in addition, a further five late responses were accepted. All of the respondents agreed that their responses could be made public (although one requested that their name not be published):

- Steven Templer (individual)
 - Police Scotland
 - Orkney Islands Council
 - Aberdeen City Council
 - Stirling Council
 - Open Rights Group
 - The Faculty of Advocates
 - Scottish PEN
 - The Law Society of Scotland
 - The Information Commissioner's Office, and
 - An individual.
7. No respondents objected to the requirement for the Codes. Where possible, the comments made in response to this consultation have been taken on board and have resulted in amendments being made to the final codes to be laid with the Scottish Parliament. Additional information has been included where relevant and clarification provided where required.
8. The practice of how the different covert tactics are authorised are well established and the Code does not provide any public body with additional powers.

Impact Assessments

9. There are no equality impact issues and an EQIA has, therefore, not been completed. It is extremely unlikely that any particular group will be impacted by the provisions contained in the code.

Financial Effects

10. A Business and Regulatory Impact Assessment (BRIA) was considered. On the basis, however, that the measures do not impose additional costs or reduce existing costs on business or the third sector, do not impose additional costs on public sector organisations that deliver public services, and do not involve some kind of distribution where there is an exchange of transfer of costs or benefits from one group to another, a BRIA was not considered necessary.
11. The updated code will not impact financially on public authorities or on the Investigatory Powers Commissioner's Office.

Justice Committee**3rd Meeting, 2018 (Session 5), Tuesday 23 January 2018****Subordinate legislation****Note by the clerk****Purpose**

1. This paper invites the Committee to consider the following negative instruments:
 - [Firefighters' Pension Scheme \(Amendment and Transitional Provision\) \(Scotland\) Regulations 2017 \(SSI 2017/435\)](#) [see page 3];
 - [Forced Marriage etc. \(Protection and Jurisdiction\) \(Scotland\) Act 2011 \(Relevant Third Party\) Order 2017 \(SSI 2017/461\)](#) [see page 5];
2. If the Committee agrees to report to the Parliament on either of the instruments it is required to do so by 5 February on the first instrument and by 19 February on the second instrument.

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 *a/ways* 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.**

FIREFIGHTERS' PENSION SCHEME (AMENDMENT AND TRANSITIONAL PROVISION) (SCOTLAND) REGULATIONS 2017 (SSI 2017/435)

Introduction

10. The instrument is made under section 26(1) to (5) of the Fire Service Act 1947 and section 12 of the Superannuation Act 1972 and sections 1(1) and 2 (f) of, and paragraph 6 (c) of schedule 2 of, the Public Service Pensions Act 2013. The Regulations make a number of minor amendments to ensure that certain limited aspects of the new scheme work as originally intended, particularly as regards certain scheme members who retire on ill-health grounds.

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 30 January 2018.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

13. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 16 January 2018 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 5 February 2018.

Policy Note: Firefighters' Pension Scheme (Amendment and Transitional Provision) (Scotland) Regulations 2017 (SSI 2017/435)

Policy Objectives

1. In 2015, a major reform of the Firefighters' Pensions Framework was completed when the Firefighters' Pension Scheme 2015 ('the 2015 Scheme') was introduced. A number of minor amendments are now required to ensure that certain limited aspects of the new scheme work as originally intended, particularly as regards certain scheme members who retire on ill-health grounds.
2. Regulation 3 (4) of the instrument amends Regulation 71A of the 2015 Scheme, which provides for a member's entitlement to commute part of a pension into a lump sum. In particular, Regulation 3 (4)(b) amends Regulation 71A to clarify the calculation of commutation of any part of any lower tier ill-health pension that may be awarded as an equivalent amount to the 1992 Scheme. The 2015 Regulations set out certain provisions relating to the commutation of a lump sum for members transitioning from the 2006 Scheme to the 2015 Scheme. This amendment makes comparable provision for members transitioning from the 1992 Scheme.
3. Regulation 7 (3) of the instrument relates to paragraphs 37 and 38 of Schedule 2 to the 2015 Regulations, which include provisions that deal with the position of members who are being considered for ill-health retirement by an

independent qualified medical practitioner at the time of their transition date, and who subsequently continue as active members of the 2015 Scheme. These members join the 2015 Scheme at the time specified under such provisions. The position of members who are being considered for ill-health retirement by an independent qualified medical practitioner at the time of their transition date, who are subsequently granted an ill-health award and consequently retire requires amendment. Under the amendments to paragraphs 37 and 38, such members would remain in their existing pension scheme, avoiding the necessity for a minimal period of membership of the 2015 Scheme.

4. Regulation 8 makes minor amendments to ensure that, following the implementation of that Order, firefighters continue to pay contributions in relation to additional pension benefit as appropriate and that the Scottish Fire and Rescue Service pay the appropriate level of employer contributions.

Consultation

5. A formal consultation was undertaken from 31 October to 28 November 2017. The consultation was issued to representatives of firefighters and employers and relevant Scottish and UK Government departments.

Business and Regulatory Impact Assessment

6. This policy does not impose any additional costs or reduce existing costs for business, third or public sector organisations and on that basis no Business and Regulatory Impact Assessment is required for these Regulations.

**FORCED MARRIAGE ETC. (PROTECTION AND JURISDICTION) (SCOTLAND)
ACT 2011 (RELEVANT THIRD PARTY) ORDER 2017 (SSI 2017/461)**

Introduction

15. The instrument is made under section 3(7)(c) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011. The Regulations specify, using the power in section 3(7)(c) of the Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011, that the chief constable of the Police Service of Scotland is a relevant third party, who may make an application to the court for a forced marriage protection order.

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

17. The instrument comes into force on 19 March 2018.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

18. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 16 January 2018 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

19. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 19 February 2018.

Policy Note: Forced Marriage etc. (Protection and Jurisdiction) (Scotland) Act 2011 (Relevant Third Party) Order 2017 (SSI 2017/461)

Policy Objectives

1. The Forced Marriage etc (Protection and Jurisdiction) (Scotland) Act 2011 came into force in Scotland on 30 November 2011 and provides civil remedies for those at risk of forced marriage and those who have already been forced into marriage. It introduced a civil Forced Marriage Protection Order (FMPO) to protect people who are threatened with or who are already in a forced marriage. Numbers of Forced Marriage Protection Orders in Scotland are not high (approximately six live orders) however like other forms of gender based and so called “Honour Based” Violence this is a hidden practice with potentially devastating consequences and often organisations and agencies have only “one chance” to act decisively. This one chance approach underpins both the statutory and practitioner guidance.

Legislation

2. As it stands, under section 3(1) a court may make a forced marriage protection order on an application to it by (a) the protected person (b) a relevant third party (a relevant third party is defined in section 3(7)).

3. Section 3 (1) does not list Police Scotland and they therefore need to apply for orders in terms of section 3(2) i.e. any other applicant who must first get the permission of the court before they are able to make an application.

Proposal

4. Following discussion with key stakeholders in the Scottish Government facilitated Forced Marriage network, it has been agreed that the application process for a Forced Marriage Protection Order (FMPO) could be made easier for police. The proposal in this SSI will bring Police Scotland within the coverage of section 3(1). Doing this would allow Police Scotland to apply directly to a court as required, without first having to seek permission before making the application. This will remove a step from the application process and may help in securing an order quickly when there may be a need to act promptly to keep a person who is at risk safe.

Statutory Responsibilities

5. Whilst Police Scotland are being included under section 3(1), it should be recognised that the need for others named under that section to act in line with their statutory responsibilities has not been reduced. Therefore should a relevant agency be required to make an application for an FMPO they should do so under their existing arrangements and in line with their statutory responsibilities as set out in published guidance. Guidance will be updated to make this clear. Appropriate case studies illustrating the responsibilities of lead agencies will be provided as part of that update
6. It must be acknowledged that this process for streamlining of the application process is designed to act for those at risk and not to move the financial cost of application to another agency. Should any agency believe that responsibility for progressing an FMPO has defaulted to them and they were not the most appropriate agency to progress it quickly (notwithstanding actual progression) they should be prepared to provide clear rationale for their thinking in a multi-agency discussion with all partners including Scottish Government. Doing so will ensure that all relevant agencies are acting at the appropriate time in line with the requirements of guidance and ensure that the circumstances which led to an order being sought are fully understood by all responsible agencies. It will also provide a forum to discuss and share good practice in order to inform any future orders.
7. To ensure that this desired outcome is achieved, it is proposed to evaluate at 12 months after commencement of this provision which relevant third parties have made applications for orders.

Consultation

8. A targeted stakeholder consultation on the proposal took place between 10 July and 26 August 2017. Responses were received from a range of organisations and agencies, 11 in total, including the third sector support agencies, Police Scotland, the Crown Office & Procurator Fiscal Service, NHS Health Scotland and Social Work. Consultation responses were overwhelmingly in favour of the proposal with 100% expressing support. Crown Office and Procurator Fiscal Service (COPFS) highlighted that almost all of the information required to make

an FMPO is held by Police Scotland and that the information transfer between Police Scotland and COPFS potentially delayed a time critical process designed to protect an individual. COPFS also highlighted that Police Scotland have existing analogous powers to apply for orders from Courts to provide protection for individuals. For example they are specifically named as being able to apply for Orders under the Sexual Offences Act 2003, the Human Trafficking and Exploitation (Scotland) Act 2015, the Police, Public Order and Criminal Justice (Scotland) Act 2006 (in relation to Football Banning Orders) and the Serious Crime Act 2007.

9. As a result of the consultation the following respondents expressed support for the proposed SSI and Scottish Government Officials worked with Scottish Government Legal Division to draft.
10. A full list of those consulted and who agreed to the release of this information is attached to the consultation report published on the Scottish Government website, it includes Scottish Women's Aid, Shakti Women's Aid, Hemat Gryffe Women's Aid, Police Scotland, Crown Office and Procurator Fiscal Service Scotland.

Impact Assessments

11. An [Equality Impact Assessment](#) has been completed on the draft. A Child Rights and Wellbeing Impact Assessment (CRWIA) will be published separately.

Financial Effects

12. A [Business and Regulatory Impact Assessment](#) (BRIA) has been completed. Any impact would fall on the public and voluntary sectors.

Justice Committee

3rd Meeting, 2018 (Session 5), Tuesday 23 January 2018

Defamation

Note by the clerk

Introduction

1. At its meeting on [19 December 2017](#) the Committee agreed to request a briefing from Lord Pentland on the Scottish Law Commission's recently published [report on defamation](#). In that report, the Scottish Law Commission recommends a number of reforms aimed at modernising and simplifying Scots law on defamation. The purpose of the briefing is for the Committee to hear about this work and to investigate the Commission's findings.

Justice Committee consideration

2. At its meeting on 23 January 2018, the Committee will take evidence from Lord Pentland, Chairman, and Graham McGlashan, Project Manager and Solicitor, of the Scottish Law Commission.
3. Following the evidence session the Committee will consider whether it wishes to undertake any further work on this issue.
4. A written submission was received from the Scottish Law Commission and can be accessed on our [web page](#).

Justice Committee

3rd Meeting, 2018 (Session 5), Tuesday 23 January 2018

Policing in Scotland

Note by the clerk

Introduction

1. At its meeting on [19 December 2017](#) the Committee agreed to schedule an evidence session on Policing in Scotland. The purpose of the evidence session is for the Committee to hear about the strategic direction and priorities of Police Scotland and the Scottish Police Authority.

Justice Committee consideration

2. At its meeting on 23 January 2018, the Committee will hear from the new Chair of the Scottish Police Authority, Susan Deacon, and Iain Livingstone, the Deputy Chief Constable Designate, Police Scotland.
3. Following the evidence session the Committee will consider whether it wishes to undertake any further work on this issue.
4. Written submissions were received from [Police Scotland](#) and the [Scottish Police Authority](#).

Justice Committee

3rd Meeting, 2018 (Session 5), Tuesday 23 January 2018

Feedback from the Justice Sub-Committee on Policing

Note by the clerk

1. The Justice Sub-Committee on Policing met on 18 January 2018 when it chose a Convener and discussed its work programme.
2. The Sub-Committee chose John Finnie MSP as its Convener.
3. The Sub-Committee will next meet on 1 February 2018, when it intends to hold an evidence session on HM Inspectorate of Constabulary's report on undercover policing.