



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

6th Meeting, 2019 (Session 5)

Tuesday 19 February 2019

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 6 in private.
2. **Subordinate legislation:** The Committee will take evidence on the Sheriff Court Simple Procedure (Limits on Award of Expenses) Amendment Order 2019 [draft] from—

Ash Denham, Minister for Community Safety, Walter Drummond-Murray, Courts and Tribunals Policy Officer, and Samantha Rore, Directorate for Legal Services, Scottish Government.

3. **Subordinate legislation:** Ash Denham (Minister for Community Safety) to move—

S5M-15526—That the Justice Committee recommends that the Sheriff Court Simple Procedure (Limits on Award of Expenses) Amendment Order 2019 [draft] be approved.

4. **Subordinate legislation:** The Committee will take evidence on the Drug Driving (Specified Limits) (Scotland) Regulations 2019 [draft] from—

Ash Denham, Minister for Community Safety, Philip Lamont, Criminal Justice Division, and Louise Miller, Directorate for Legal Services, Scottish Government.

5. **Subordinate legislation:** Ash Denham (Minister for Community Safety) to move—

S5M-15527—That the Justice Committee recommends that the Drug Driving (Specified Limits) (Scotland) Regulations 2019 [draft] be approved.

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

7. **Post-legislative scrutiny of the Police and Fire Reform (Scotland) Act 2012 (in private):** The Committee will consider a draft report.

Stephen Imrie  
Clerk to the Justice Committee  
Room T2.60  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5195  
Email: justicecommittee@parliament.scot

The papers for this meeting are as follows—

**Agenda items 2 and 3**

Paper by the clerk - Sheriff Court Simple Procedure (Limits on Award of Expenses) Amendment Order 2019 [draft] J/S5/19/6/1

**Agenda items 4 and 5**

Paper by the clerk - Drug Driving (Specified Limits) (Scotland) Regulations 2019 [draft] J/S5/19/6/2

Private paper - Drug Driving (Specified Limits) (Scotland) Regulations 2019 [draft] J/S5/19/6/3 (P)

**Agenda item 6**

Private paper - Work Programme J/S5/19/6/4 (P)

**Agenda item 7**

Private paper - Police and Fire Reform (Scotland) Act 2012 J/S5/19/6/5 (P)

**Justice Committee**

**6<sup>th</sup> Meeting, 2019 (Session 5), Tuesday 19 February 2019**

**Subordinate legislation**

**Note by the clerk**

**Purpose**

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

- [Sheriff Court Simple Procedure \(Limits on Award of Expenses\) Amendment Order 2019 \[draft\]](#)

**Introduction**

2. This instrument is made under section 81 of the Courts Reform (Scotland) Act 2014.

3. The Order amends the Sheriff Court [Simple Procedure \(Limits on Award of Expenses\) Order 2016 \(SSI 2016/388\)](#) that set the arrangements that currently pertain for awards of expenses. These mirrored those that applied previously for comparable cases under the previous Small Claims and Summary Cause Procedures that Simple Procedure replaced.

4. Further details on the purpose of the Order can be found in the policy note attached at **Annexe A**.

**DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION**

5. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 22 January 2019 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**

6. The Justice Committee is required to report to the Parliament on the instrument by 4 March 2019. The Minister for Community Safety has lodged motion S5M-15526 proposing that the Committee recommends approval of the instrument. The Minister is due to attend the meeting on 19 February to answer any questions on the instrument and to move the motion for approval.

7. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 4 March 2019. Thereafter, the Parliament will be invited to approve the instrument.

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

## Policy Note

### Sheriff Court Simple Procedure (Limits on Award of Expenses) Amendment Order 2019 [draft]

#### Background

The 2014 Act delivered an enabling framework to reform the civil courts both structurally and functionally in line with many of the recommendations of the Scottish Civil Courts Review. Reform of the civil courts forms part of the Scottish Government and multi-agency programme, 'Making Justice Work'.

The policy objectives relating to the Act are fully described in the Policy Memorandum which accompanied the Bill for the Act ("the Bill"). The link below shows the passage of the Bill through Parliament and includes the Policy Memorandum.  
<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/72771.aspx>

#### Policy Objectives

The instrument supports the new Simple Procedure that was introduced on 28 November 2016. Simple procedure is a new form of sheriff court procedure established by Chapter 1 of Part 3 of 2014 Act and replaced the existing Small Claims and Summary Cause Procedures. Simple procedure is designed to be a speedy, inexpensive and informal procedure, usable by people who do not have legal representation to sort out problems about matters of lower monetary value.

This Order prescribes categories of simple procedure cases in which the award of legal expenses is limited. The rationale for this is that it is unreasonable to expose litigants to the possibility of expenses that may be out of all proportion to the value of the claim.

The Order amends The Sheriff Court Simple Procedure (Limits on Award of Expenses) Order 2016 2016/388 ("the 2016 Order") that set the arrangements that currently pertain for awards of expenses. These mirrored those that applied previously for comparable cases under the previous Small Claims and Summary Cause Procedures that Simple Procedure replaced.

Article 2 of the 2016 Order provides that no expenses are awardable where the value of a claim does not exceed £200. Article 2(2) of this Order raises this to £300.

Article 3 of the 2016 Order provides that, where the value of a claim is between £200 and £1,500, the maximum sum awardable as expenses is £150. Article 2(3) of this Order raises the lower value of the claim from £200 to £300. The effect of the Order is therefore to make a small adjustment so that claims valued at between £200 and £300 will no longer be susceptible to an award of expenses, whereas prior to this Order an award of up to £150 could be made.

Where the value of a claim is between £1,500 and £3,000, the maximum sum awardable as expenses continues to be 10% of the value of the claim.

The rationale for bringing this Order forward now is that The Sheriff Court Fees Order 2018 (2018/81) amended the level of claim that attracts the minimal court fee of £19 from £200 to £300 with effect from 1 April 2019. The Sheriff Court Simple Procedure (Limits On Award Of Expenses) Amendment Order 2019 is intended to continue the alignment between the court fee and the limit on expenses so that low value litigation is not rendered prohibitive either by the court fee or the possibility of an award of expenses.

It is worth noting that, by virtue of section 81(4) of the Courts Reform (Scotland) Act 2014 this Order does not apply to the cases and appeals referenced in that subsection. These cases are where the defender has not stated a defence, or having stated a defence not proceeded with it, or having proceeded with a defence not acted in good faith as to its merits or where a party to the case has behaved unreasonably. A sheriff or summary sheriff may also disapply this Order by direction under section 81(7) on the application of any party to a simple procedure case. An application might be made if it was considered that a difficult question of law, or a question of fact of exceptional complexity, is involved.

### **Consultation**

Technical engagement on the drafting of the order has been had with the Lord President's Private Office. No formal consultation has taken place on the Order as it is being made as a consequence of the 2014 Act which has already been the subject of separate consultation exercises.

### **Financial effects**

The Order will not have any financial effects on the Scottish Government, local government or on business. In a very narrow band of litigation, where the value of the claim is between £200 and £300, successful litigants will not be able to seek an award of expenses whereas hitherto they could have claimed up to £150. The cost of this is neutrally borne by both defenders and claimants depending upon who is successful in the action.

## Justice Committee

6<sup>th</sup> Meeting, 2019 (Session 5), Tuesday 19 February 2019

### Subordinate legislation

#### Note by the clerk

#### Purpose

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

- [Drug Driving \(Specified Limits\) \(Scotland\) Regulations 2019 \[draft\]](#)

#### Introduction

2. This instrument is made under section 5A of the Road Traffic Act 1988.
3. The Regulations provide for the controlled drugs and associated limits that apply for the offence of driving, or attempting to drive or be in charge of a motor vehicle on a road or other public place with a specified controlled drug in his or her body, if the proportion of the drug in blood exceeds the specified limit for the drug.
4. Further details on the purpose of the Order can be found in the policy note attached at **Annexe A**.

#### DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

5. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 22 January 2019 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

6. The Justice Committee has received [written submissions](#) from nine organisations: Brake; the Crown Office and Procurator Fiscal Service; the Law Society of Scotland; the National Police Chiefs' Council; Police Scotland; the Royal Pharmaceutical Service; Scotland's Campaign Against Irresponsible Drivers; the Scottish Courts and Tribunals Service and the Scottish Legal Aid Board.

7. The Justice Committee is required to report to the Parliament on the instrument by 4 March 2019. The Minister for Community Safety has lodged motion S5M-15527 proposing that the Committee recommends approval of the instrument. The Minister is due to attend the meeting on 19 February to answer any questions on the instrument and to move the motion for approval.

8. It is for the Committee to decide whether or not to agree to the motion, and then to report to the Parliament by 4 March 2019. Thereafter, the Parliament will be invited to approve the instrument.

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

## Policy Note

### Drug Driving (Specified Limits) (Scotland) Regulations 2019 [draft]

#### Policy Objectives

1. These regulations provide for the controlled drugs and associated limits that apply for the offence of driving, or attempting to drive or be in charge of a motor vehicle on a road or other public place with a specified controlled drug in his or her body, if the proportion of the drug in blood exceeds the specified limit for the drug. This offence is contained in section 5A of the 1988 Act. Prior to these regulations coming into force, this offence does not operate in Scotland.
2. The Scottish Government believes that introduction of the new drug driving offence and associated limits will help make Scotland's roads safer. Along with the continuing operation of the driving while impaired through alcohol or drugs offence (in section 4 of the 1988 Act), this new offence will better empower Scotland's law enforcement agencies in holding to account those who take drugs and drive. This should help deter such irresponsible driving behaviour and make Scotland's roads safer for all users.

#### Background

3. In 2012, the UK Government announced proposals for a new offence in regard to driving with a specific controlled drug in the body above that drug's accepted limit.
4. The Crime and Courts Act 2013 inserted provision into the 1988 Act creating such a new offence of drug driving. This 2013 Act devolved to the Scottish Government powers to bring forward regulations specifying what controlled drugs and associated limits would be included in the operation of this new offence.
5. Following the lowering of the drink-drive limit in 2014, [the Scottish Government announced](#) in April 2017 that a new offence of drug driving would be introduced in 2019.

#### Consultation

6. A [joint UK Government and Scottish Government consultation](#) was published in 2013 seeking views as to what controlled drugs should be included within the new offence and what the associated limits should be.
7. An [analysis of Scottish responses](#) to the consultation was published in 2015.
8. The Scottish Government policy proposed in the 2013 consultation was that there should be:
  - a zero tolerance approach to 8 drugs most associated with illegal use, with limits set at a level where any claims of accidental exposure can be ruled out, and
  - a road safety risk based approach to 8 drugs most associated with medical uses.

9. Two-thirds of Scottish respondents to the 2013 consultation supported this policy approach. The content of the regulations is based on this policy approach.
10. In addition, the policy approach on amphetamines has been determined so as not to identify this drug type within either the zero tolerance approach or the road safety risk based approach as amphetamines are both capable of illegal use and being used for medical purposes.
11. As part of consideration of what drug types should be included within the new offence, the Scottish Police Authority have undertaken an analysis of what drug types have been identified amongst drivers caught over a recent 6 month period (July-Dec 2017) under the existing 'driving while impaired through drugs' offence.
12. That analysis reveals that of the 261 drug driving impairment cases included in the analysis:
  - just over half (51%) involved Cannabis,
  - just less than half (49%) involved Diazepam,
  - just over a quarter (28%) involved Cocaine/Benzoyllecgonine.
13. These drug types are included in the drug types covered by the new offence.
14. Overall, 95% of the 261 impairment cases revealed the presence of at least one of the drug types included within the new offence. This either represented where a drug type included within the new offence was the only drug type identified or it was identified in combination with other drug types including drug types not included within the new offence.
15. This analysis suggests that the list of 17 drug types provided for in the new offence provides good coverage of the drug types most commonly in use in Scotland by those currently being caught driving while impaired through drugs.
16. Although 95% of all cases (blood and urine) tested contain at least one drug type included within the new offence, it should be noted that only 43% of samples had one or more drug type included within the new offence that was over limit associated with each drug type. This indicates that there will be a continuing need to consider prosecution for drivers who have drugs within their system under the 'driving while impaired through drugs' offence in certain cases.
17. What this analysis also revealed is the extent of polydrug use with approximately 45% all impairment offences showing 4 or more drug types in a person's system. What this suggests is that where a drug type has been taken that is not on the list of 17, it has very often been taken in combination with a drug that is on the list and so would be caught by the new offence (if the drug type limit has been exceeded for the drug type in question).
18. On this basis and following consideration of the Scottish views offered to the 2013 consultation, the Scottish Government considers it appropriate to proceed with the introduction of the limits in Scotland based on the 17 drug types used in England and Wales.

19. With the power to add new drugs to the list covered by the offence and making changes to the limits both capable of being made through the secondary legislative power, the Scottish Government will keep the operation of the new offence under review with the ability to respond as necessary if evidence suggests a need to reconsider the list of drug types and/or the associated limits.

### **Impact Assessments**

20. The Scottish Government has considered the impact of the regulations on particular groups of people (whatever their age, race, gender, sexual orientation, religion or whether they are disabled or not). There is no evidence to suggest that any of the equality strands will be affected by the introduction of the drug driving offence.

### **Financial Effects**

21. A [Financial Note](#) has been published, setting out the financial implications of the new drug driving offence for the Scottish Administration and for other bodies, individuals and businesses.