



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

1st Meeting, 2021 (Session 5)

Tuesday 12 January 2021

The Committee will meet at 10.00 am in a virtual meeting and be broadcast on [www.scottishparliament.tv](http://www.scottishparliament.tv).

1. **Domestic Abuse (Protection) (Scotland) Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Humza Yousaf, Cabinet Secretary for Justice, Patrick Down, Criminal Law & Practice Team Leader, Anne Cook, Head of Social Housing Services, Katherine McGarvey, Solicitor, Scottish Government Legal Directorate, and Rachel Nicholson, Solicitor, Scottish Government Legal Directorate, Scottish Government.

2. **Subordinate legislation:** The Committee will consider the Criminal Justice & Data Protection (Protocol No.36) Order (Amendment) (Scotland) Regulations 2020 (SSI 2020/386).
3. **Domestic Abuse (Protection) (Scotland) Bill (in private):** The Committee will consider the evidence received earlier in the meeting.

Stephen Imrie  
Clerk to the Justice Committee  
Room T2.60  
The Scottish Parliament  
Edinburgh  
Tel: 0131 348 5195  
Email: [justiceCommittee@parliament.scot](mailto:justiceCommittee@parliament.scot)

The papers for this meeting are as follows—

**Agenda item 1**

Note by the Clerk

J/S5/21/1/1

PRIVATE PAPER

J/S5/21/1/2 (P)

**Agenda item 2**

Note by the Clerk

J/S5/21/1/3

**Agenda item 3**

PRIVATE PAPER - TO FOLLOW

J/S5/21/1/4 (P)

**Justice Committee**

**1st Meeting, 2021 (Session 5), Tuesday, 12 January 2021**

**Domestic Abuse (Protection) (Scotland) Bill**

**Paper from the Clerk**

**Introduction**

1. The Domestic Abuse (Protection) (Scotland) Bill (“the Bill”) was introduced by the Cabinet Secretary for Justice on 2 October 2020. The Bill and accompanying documents can be found [here](#).
2. According to the Scottish Government the provisions of the Bill are intended to improve the protections available for people who are at risk of domestic abuse, particularly where they are living with the perpetrator of the abuse.
3. The [Policy Memorandum](#) states that the Bill will do this by providing courts with a new power to make a Domestic Abuse Protection Order (“DAPO”) which can impose requirements and prohibitions on a suspected perpetrator of domestic abuse, including removing them from a home they share with a person at risk and prohibiting them from contacting or otherwise abusing the person at risk while the order is in effect.
4. The Bill will also provide a power for the police, where necessary, to impose a very short-term Domestic Abuse Protection Notice (“DAPN”) ahead of applying to the court for a full order.
5. The Bill is also intended to help improve the immediate and longer-term housing outcomes of domestic abuse victims who live in social housing, including by helping to avoid homelessness.
6. The Bill will do this by creating a new ground on which a social landlord can apply to the court to end the tenancy of the perpetrator with a view to transferring it to the victim of domestic abuse or end the perpetrator’s interest in the tenancy where the perpetrator and victim are joint tenants, and enable the victim to remain in the family home.

**Approach to Stage 1 consideration**

7. The Committee agreed to begin taking Stage 1 oral evidence on the Bill on Tuesday 15 December by hearing from the officials of the Scottish Government Bill team. Stage 1 scrutiny of the Bill will to continue during December and January 2021.

**Oral evidence**

8. To date, the Committee has taken oral evidence on the Bill on 15 December from the Scottish Government Bill Team and on 22 December from Child Protection Committees Scotland, Scottish Women's Aid, Scottish Women's Rights Centre, The Law Society of Scotland, Police Scotland, Social Work Scotland, Professor Mandy Burton, Fife Council, Chartered Institute of Housing, Homeless Action Scotland and the Scottish Federation of Housing Associations.

9. At its meeting on 12 January the Committee will conclude taking oral evidence on the Bill by hearing from the Cabinet Secretary for Justice, Humza Yousaf MSP and officials from the Scottish Government Bill Team.

10. Following this evidence session, the Committee will consider the evidence received as part of the Stage 1 scrutiny of the Bill.

11. This evidence session will be a virtual session with Members and witnesses participating via live video conferencing. Members of the public can watch the evidence session live on [Scottish Parliament TV](#) from 10:00 am on Tuesday 12 January.

12. Following the evidence session, the Committee will consider the evidence received as part of the Stage 1 scrutiny of the Bill.

### **Written evidence**

13. Written submissions received by the Committee in response to its call for views on the Bill are available [here](#).

14. A SPICe briefing setting out the key issues in the Bill is also available [here](#).

15. Supplementary evidence received from CPCScotland following the evidence session on 22 December is available [here](#). Any further supplementary evidence received will be published in the same place on our website.

**Justice Clerks  
7 January 2021**

## Justice Committee

1st Meeting, 2021 (Session 5), Tuesday 12 January 2020

### Subordinate legislation

#### Note by the clerk

#### Purpose

1. This paper invites the Committee to consider the following negative instrument:
  - [The Criminal Justice and Data Protection \(Protocol No. 36\) Amendment \(Scotland\) Regulations 2020](#) [see page 3];
2. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by **14 January 2020**.

#### Delegated Powers and Law Reform Committee Consideration

3. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 1 December 2020. The Committee agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

#### Procedure for negative instruments

4. 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).
5. 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.
6. 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.
7. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.

8. 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.
9. 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**

10. 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>

11. **The Committee is invited to consider the instrument.**

**POLICY NOTE****THE CRIMINAL JUSTICE AND DATA PROTECTION (PROTOCOL NO. 36)  
AMENDMENT (SCOTLAND) REGULATIONS 2020****SSI 2020/386**

The above instrument is made in exercise of the powers conferred by section 2(2) of the European Communities Act 1972. The instrument is subject to the negative procedure.

**Purpose of the instrument.**

The purpose of this instrument is to make necessary amendments to the Criminal Justice & Data Protection (Protocol No. 36) Order 2014 (the CJDP) to facilitate the proper functioning of the 2018 Regulation in Scotland.

**Policy Objectives**

Regulation EU 2018/1805 (the 2018 Regulation) on the mutual recognition of freezing orders and confiscation orders in criminal cases between EU Member States will come into force on the 19<sup>th</sup> December 2020.

**Background and Existing Law**

Council Framework Decision 2003/557/JHA (“the 2003 Framework Decision”) establishes rules under which a Member State recognises and executes in its territory a freezing order for property or evidence issued by the judicial authority of another Member State in criminal proceedings.

Council Framework Decision 2006/783/JHA (“the 2006 Framework Decision”) ensures all Member States have effective rules governing the confiscation of proceeds from crime, and that they can confiscate not only property that is or which represents the proceeds of the crime for which the individual has been convicted, but also other property that is or represents the proceeds of other criminal activity by that individual.

The CJDP fully transposes the 2003 Framework Decision and the 2006 Framework Decision into UK Law. Schedule 1 to the CJDP makes provision for Scotland in relation to the freezing and confiscation of criminal assets, including the instrumentalities of crime (instrumentalities are assets used for criminal conduct).

Schedule 1 to the CJDP makes provision to enable restraint and confiscation orders made by Scottish courts against property in other Member States, to be enforced by the authorities in those States. It also makes provision to allow Scottish courts to recognise and enforce restraint and confiscation orders made against property in the UK, or persons normally resident in the UK, made by the authorities in other Member States.

## **Regulation EU 2018/1805**

The European Commission is of the view that the existing regime for the mutual recognition of freezing orders and confiscation orders is not fully effective. The Commission has concluded that the 2003 and 2006 Framework Decisions have not been implemented and applied uniformly in the Member States, which has led to insufficient mutual recognition and inadequate cross-border cooperation.

The 2018 Regulation therefore seeks to ensure the effective mutual recognition of freezing orders and confiscation orders by setting out legally binding rules on the recognition and execution of such orders.

With specific relevance to this instrument, Article 3 of the 2018 Regulation provides a list of criminal offences applicable to the execution of freezing and confiscation orders in Member States. In addition, Annexes 1 and 2 of the 2018 Regulation prescribe the form by which freezing and confiscation certificates must be transmitted to the executing state.

Article 3, and Annexes 1 and 2 constitute changes to what is currently legislated for in the CJD. Whilst the CJD sets out a framework for the mutual recognition of overseas freezing and confiscation orders from other Member States, this has been made in consequence of the 2003 and 2006 Framework Decisions. As a result, there are a number of references to the form of certificates which relate to certification of domestic orders to be sent to other Member States and to the definition of criminal conduct that have now been rendered obsolete by the 2018 Regulation.

In order to avoid gaps in terms of the certification for domestic orders and the definition of criminal conduct in the recognition of orders from other Member States, it is necessary to make amendments to the CJD to replace references to the 2003 and 2006 Framework Decisions with reference to the 2018 Regulation in order to facilitate its proper functioning in Scotland.

### **Consultation**

The Scottish Government has sought the views of the Crown Office & Procurator Fiscal Service on the compatibility of the EU Regulation with Scots Law and its practical implementation.

### **Impact Assessments**

There are no equality impact issues.

### **Financial Effects**

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

Scottish Government

*Scottish Government  
DSCR: Organised Crime Unit  
November 2020*