



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

2nd Meeting, 2021 (Session 5)

Tuesday 19 January 2021

The Committee will meet at 10.00 am in a virtual meeting and be broadcast on www.scottishparliament.tv.

1. **Subordinate legislation:** The Committee will take evidence on the Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft] from—

Humza Yousaf, Cabinet Secretary for Justice, Kieran Burke, Policy Officer, Civil Law, and Martin Brown, Solicitor, Scottish Government Legal Directorate, Scottish Government.

2. **Subordinate legislation:** Humza Yousaf (Cabinet Secretary for Justice) to move—

S5M-23568—That the Justice Committee recommends that the Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft] be approved.

3. **Subordinate legislation:** The Committee will take evidence on the Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 (draft) and the Restitution Fund (Scotland) Order 2021 [draft] from—

Humza Yousaf, Cabinet Secretary for Justice, and Marie Swinney, Police Workforce Team Leader, Scottish Government.

4. **Subordinate legislation:** Humza Yousaf (Cabinet Secretary for Justice) to move—

S5M-23601—That the Justice Committee recommends that the Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 [draft] be approved.

S5M-23602—That the Justice Committee recommends that the Restitution Fund (Scotland) Order 2021 [draft] be approved.

5. **Subordinate legislation:** The Committee will consider the following negative instrument—

The Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020 (SSI 2020/406)

6. **European Union (Withdrawal) Act 2018:** The Committee will consider a proposal by the Scottish Government to consent to the UK Government legislating using the powers under the Act in relation to the following UK statutory instrument proposals-

The Civil Jurisdiction and Judgments (Lugano Convention 2007) Regulations 2021

7. **Domestic Abuse (Protection) (Scotland) Bill (in private):** The Committee will consider a draft Stage 1 report.

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Edinburgh
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The papers for this meeting are as follows—

Agenda items 1,2,3 and 4

Note by the Clerk

J/S5/21/2/1

Agenda item 5

Note by the Clerk

J/S5/21/2/2

Agenda item 6

Note by the Clerk

J/S5/21/2/3

Agenda item 7

PRIVATE PAPER - TO FOLLOW

J/S5/21/2/4 (P)

Justice Committee

2nd Meeting, 2020 (Session 5), Tuesday 19 January 2021

Subordinate legislation

Note by the clerk

Purpose

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

- [The Criminal Legal Aid and Advice and Assistance \(Counter-Terrorism and Border Security\) \(Scotland\) Regulations 2021 \[draft\]](#)
- [The Victims and Witnesses \(Scotland\) Act 2014 \(Supplementary Provisions\) Order 2021 \(draft\)](#)
- [The Restitution Fund \(Scotland\) Order 2021 \[draft\]](#)

The Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft]

2. The Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft] is made in exercise of the powers conferred by sections 9, 12(3), 33(2), (3) and (3A), and 36(1), (2)(a) and (g) of the Legal Aid (Scotland) Act 1986. T

3. The Regulations make provision to extend the existing police station advice scheme and the availability of non means tested advice and assistance for detention under the Counter-Terrorism and Border Security 2019 Act and Terrorism Act 2000.

The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 (draft)

4. The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 (draft) is made in exercise of the powers conferred by section 33 of the Victims and Witnesses (Scotland) Act 2014.

5. The Order makes a number of supplementary changes to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). Firstly, it provides that compensation requirements imposed as part of a CPO are to be preferred to a restitution order when it comes to sentencing and that compensation requirements take precedence over both a restitution order and a victim surcharge when payments are received from an offender. Secondly, it clarifies that restitution orders are a sentence for the purpose of appeal so that an appeal against sentence alone could be taken without requiring an appeal against conviction. Thirdly, it ensures that enforcement of a restitution order and the victim surcharge would be placed on hold pending an appeal. Fourthly, it clarifies that the victim surcharge and a restitution

order cannot be imposed for either the same offence or for different offences in the same proceedings. Finally, it amends the definition of "fine" to clarify that restitution orders are a completely separate penalty.

The Restitution Fund (Scotland) Order 2021 [draft]

6. The Restitution Fund (Scotland) Order 2021 is made in exercise of the powers conferred by section 253B(5) and (6) of the Criminal Procedure (Scotland) Act 1995.

7. The Order makes provision for the general operation of the Restitution Fund. Firstly, it provides for the delegation of the Fund to the Scottish Police Benevolent Fund. Secondly, it makes provision for the administration of the Fund including the issuing of guidance by Ministers; making payments from the Fund (including the requirement for written applications); record keeping; and reporting back to Ministers.

8. Further details on the purpose of each of the instruments can be found in the policy notes attached in the Annex.

Delegated Powers and Law Reform Committee Consideration

9. The Delegated Powers and Law Reform Committee considered the first of the instruments at its meeting on 8 December 2020 and the latter two at its meeting on 15 December 2020. The DPLR Committee agreed that it did not need to draw any of them to the attention of the Parliament on any grounds within its remit.

Justice Committee Consideration

10. The Committee is required to report to the Parliament on the Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft] by **24 January 2021**.

11. The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 (draft) and the Restitution Fund (Scotland) Order 2021 (draft) require to be reported on by **26 January 2021**.

11. Motions S5M-23568, S5M-23601 and S5M-23602 have been lodged proposing that the Committee recommends approval of the instruments. The Cabinet Secretary for Justice is due to attend the meeting on 19 January to answer any questions on the instruments and to move the motions for approval.

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

15. The Committee is asked to delegate to the Convener authority to approve the reports on the instruments for publication.

POLICY NOTE**THE CRIMINAL LEGAL AID AND ADVICE AND ASSISTANCE (COUNTER-TERRORISM AND BORDER SECURITY) (SCOTLAND) REGULATIONS 2021****SSI 2020/XXX**

The above instrument was made in exercise of the powers conferred by sections 9, 12(3), 33(2), (3) and (3A), and 36(1), (2)(a) and (g) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Purpose of the instrument.

This instrument makes provision to extend the existing police station advice scheme and the availability of non means tested advice and assistance for detention under the Counter-Terrorism and Border Security 2019 Act and Terrorism Act 2000.

Policy Objectives

The Counter-Terrorism and Border Security Act 2019 introduces powers to stop, question and detain individuals at a port or border area in order to determine whether they are, or have been, involved in hostile activity on behalf of, or in the interests of, a State other than the UK.

Under current legislative arrangements non means-tested criminal advice and assistance is available for any person who has a right under section 32 of the Criminal Justice (Scotland) Act 2016 to have a solicitor present at interview. However, this Part of the Act is disapplied for terrorism offences under the Terrorism Act 2000.

The instrument will provide for non means-tested advice and assistance to be available when a person is detained under certain provisions of the Counter-Terrorism Border Security Act 2019 or the Terrorism Act 2000, as is currently available for other criminal detentions in custody in Scotland.

Consultation

The instrument was prepared in consultation with the Scottish Legal Aid Board. Draft regulations have been shared with the main representative bodies of the legal profession: the Law Society of Scotland and the Faculty of Advocates. There were no comments made. No public consultation has taken place.

Impact Assessments

Consideration was given to the need to complete an Equality Impact Assessment and a Children's Rights and Wellbeing Impact Assessment. It was determined that there are no negative impacts from an equality or children's right and wellbeing perspective so declarations were signed to that effect.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and [is attached](#). The impact of this policy on business is that it will facilitate access to payment for work carried out.

Scottish Government
Justice Directorate

November 2020

POLICY NOTE

THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 7 AND TRANSITIONAL PROVISIONS) ORDER 2020

SSI 2020/405 (C. 34)

THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (SUPPLEMENTARY PROVISIONS) ORDER 2021

SSI 2021/XXX

THE ENFORCEMENT OF FINES (RELEVANT PENALTY) (SCOTLAND) ORDER 2020

SSI 2020/406

THE RESTITUTION FUND (SCOTLAND) ORDER 2021

SSI 2021/XXX

THE SERIOUS CRIME ACT 2015 (COMMENCEMENT NO. 3) (SCOTLAND) REGULATIONS 2020

SSI 2020/407 (C. 35)

The purpose of these instruments is to implement section 25 of the Victims and Witnesses (Scotland) Act 2014. This will introduce a new financial penalty of a restitution order to be used for the offence of assault on police or police staff. Monies received from restitution orders will be paid into the Restitution Fund, which will then be used to provide support services for victims of such assault.

The Victims and Witnesses (Scotland) Act 2014 (Commencement No. 7 and Transitional Provisions) Order 2020 is made in exercise of the powers conferred by section 34(2) and (3) of the Victims and Witnesses (Scotland) Act 2014.

The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 is made in exercise of the powers conferred by section 33 of the Victims and Witnesses (Scotland) Act 2014 and is subject to affirmative procedure.

The Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020 is made in exercise of the powers conferred by section 226l(1) of the Criminal Procedure (Scotland) Act 1995 and is subject to negative procedure.

The Restitution Fund (Scotland) Order 2021 is made in exercise of the powers conferred by section 253B(5) and (6) of the Criminal Procedure (Scotland) Act 1995 and is subject to affirmative procedure.

The Serious Crime Act 2015 (Commencement No. 3) (Scotland) Regulations 2020 are made in exercise of the powers conferred by section 88(2) of the Serious Crime Act 2015.

Purpose of Each Instrument

The Victims and Witnesses (Scotland) Act 2014 (Commencement No. 7 and Transitional Provisions) Order 2020 – This Commencement Order brings the section 25 of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”) fully into force and provides that restitution orders only apply to offences committed on or after the commencement date.

The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 - This Order makes a number of supplementary changes to the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). Firstly, it provides that compensation requirements imposed as part of a CPO are to be preferred to a restitution order when it comes to sentencing and that compensation requirements take precedence over both a restitution order and a victim surcharge when payments are received from an offender. Secondly, it clarifies that restitution orders are a sentence for the purpose of appeal so that an appeal against sentence alone could be taken without requiring an appeal against conviction. Thirdly, it ensures that enforcement of a restitution order and the victim surcharge would be placed on hold pending an appeal. Fourthly, it clarifies that the victim surcharge and a restitution order cannot be imposed for either the same offence or for different offences in the same proceedings. Finally, it amends the definition of "fine" to clarify that restitution orders are a completely separate penalty.

The Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020 – This Order specifies that restitution orders are a “relevant penalty” for the purposes of the fine enforcement rules in section 226A to 226I of the 1995 Act. This enables the appointment of fine enforcement officers and an application by the court to the DWP for a deduction from benefits order.

The Restitution Fund (Scotland) Order 2021 -This Order makes provision for the general operation of the Restitution Fund. Firstly, it provides for the delegation of the Fund to the Scottish Police Benevolent Fund. Secondly, it makes provision for the administration of the Fund including the issuing of guidance by Ministers; making payments from the Fund (including the requirement for written applications); record keeping; and reporting back to Ministers.

The Serious Crime Act 2015 (Commencement No. 3) (Scotland) Regulations 2020 – These Regulations commence the parts of the 2015 Act which ensure that the court can give restitution orders priority over a confiscation order when an individual subject to both orders makes a payment. In accordance with section 88(2) of Serious Crime Act 2015, the Scottish Ministers have consulted with the Secretary of State.

Policy Objectives

The Victims and Witnesses (Scotland) Act 2014 ('the 2014 Act') introduced various measures to improve the support and information available to victims and witnesses of crime. This included provisions to introduce a new financial penalty of a restitution order to be available to the courts for those convicted of assault on police or police staff (under section 90(1) of the Police and Fire Reform (Scotland) Act 2012 ("the 2012 Act")). These five instruments enable the implementation of restitution orders as provided for in section 25 of the 2014 Act.

Monies received from restitution orders will be paid into the Restitution Fund, which will then be used to provide support services for victims of such assault. The Fund will be used to support both physical and mental health and wellbeing. It should be noted that, the monies paid in respect of a restitution order imposed on an offender are not for the sole benefit of the victim of the individual offence, they will be paid into the restitution fund for the benefit of all victims of this offence in general.

The policy aim is that those who are convicted of the section 90(1) offence, will make a contribution towards support services for victims of this offence in general. In addition there is an intention to give a clear message that assault on police officers and staff is unacceptable.

Police officers and staff who are victims of assault can currently access support services, for example through the Police Treatment Centres, or through Police Scotland's occupational health and employee assistance. The creation of the Restitution Fund will make additional funds available for support services, to be used for police officers and staff, and other persons (as identified under section 90(1) of the 2012 Act) who are victims of the offence.

Those who are eligible will be able to apply to the fund and request support that meets their individual physical or mental health and wellbeing needs. This support may be provided through traditional routes such as the Police Treatment Centres, or it may be secured from another provider. This will benefit police officers and staff as individuals, and will be providing a greater overall resource for support services to the benefit of officers and staff.

If the introduction of restitution orders has a positive impact on the behaviour of those who potentially would assault police officers and staff, such that they did not commit that offence, that would be a positive benefit for those in the police service, and for the wider community.

Estimated Value of Restitution Orders

Whether to impose a restitution order for the section 90(1) offence, and the level of that financial penalty, will be a matter for the courts to decide. It is therefore not certain what the value of restitution orders will be. That said, we anticipate that once established, the use of restitution orders will follow a similar pattern to the current use of fines for the same offence.

On the basis of information on fines where section 90(1) is the main offence we can estimate potential restitution orders. We estimate that there could be in the region of 250 to 500 restitution orders a year, with an average value of around £350, giving a total of £87,500 to £175,000.

(The lower figure is based on the value of fines where fines are the main disposal. The upper figure also includes the value of fines where fines are not the main disposal. However where the section 90(1) offence was the main offence, and a fine was not the main disposal, it is possible that a higher disposal (imprisonment, community sentence) will relate to the section 90(1) offence and that the fine may relate to other charges within the overall case.)

Restitution orders will take some time to become routinely used, and therefore to reach this potential estimated value. There is also a time-lag from imposition to collection of restitution orders, therefore we expect the Restitution Fund to build slowly.

The maximum sum that can be imposed for a restitution order is “the prescribed sum” which is fixed in section 225(8) of the Criminal Procedure (Scotland) Act 1995. That sum is currently fixed at £10,000. It is worth emphasising that this is the maximum sum that can be imposed, and on the basis of information in relation to the use of fines for the same offence, it is likely that the average sum will be significantly lower than this.

Collection of Restitution Orders

Restitution orders will be collected, like fines, by the Scottish Courts and Tribunals Service (SCTS) and similarly enforced. This is underpinned by the **Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020**, which specifies that restitution orders are a “relevant penalty” for the purposes of the fine enforcement rules.

SCTS will regularly make the transfer of the amount of restitution orders to the Scottish Ministers for payment into the Restitution Fund. These monies will then be transferred by the Scottish Government to the Scottish Police Benevolent Fund, the police charity organisation that will operate the fund on behalf of Scottish Ministers. **The Restitution Fund (Scotland) Order 2021** provides for the delegation of the Fund to the Scottish Police Benevolent Fund.

The Restitution Fund will take time to build, and funds will be dependent on the penalty being imposed and monies collected. No payment will be made from the Restitution Fund for period of six months from the date of restitution orders coming into force to let funds accrue – this is the same approach that was adopted in relation to the Victim Surcharge Fund.

Operation of the Restitution Fund

The Scottish Police Benevolent Fund (SPBF), a Scottish charitable incorporated organisation with registered number SC043489, will administer the Restitution Fund on behalf of the Scottish Government. The Scottish Ministers, via the Restitution

Fund Order, delegate the establishment, maintenance and administration of the Fund to the Scottish Police Benevolent Fund.

SPBF will incorporate decision making on the Restitution Fund into existing decision making structures. It will follow a similar, but parallel process to the assessment of applications to the Benevolent Fund.

The Restitution Fund will be 'ring-fenced' for the intended purpose as set out in legislation.

Annex A provides a flow chart on the overall process for restitution orders and the Restitution Fund. Annexes B and C provide a narrative and a flow chart from SPBF, on the arrangements for the operation of the fund.

As a charity, the SPBF is already subject to scrutiny and governance mechanisms. SPBF will be required by **the Restitution Fund (Scotland) Order 2021** to keep records and provide reports to Scottish Ministers on an annual basis.

Beneficiaries of Restitution Fund

Eligible beneficiaries are persons who have been assaulted as mentioned in section 90(1) of 2012 Act ("victims"). This includes those acting in the capacity of a constable, member of police staff, member of other relevant police force acting in Scotland, member of joint investigation team, or other persons who were assisting those noted above whilst acting in that capacity.

Police officers (or any other persons) who are not a victim of assault as mentioned in section 90(1), are not eligible for support services funded by the Restitution Fund. For example, a restitution order cannot be imposed for the offence of resisting, obstructing or hindering a person acting in a capacity of constable etc, and the Restitution Fund cannot be used to secure support services for victims of that offence.

Retired police officers, or police staff, who were a victim of assault as mentioned in section 90(1) of the Police and Fire Reform (Scotland) Act 2012 are eligible for support

Provision of Support Services

The Fund will be used to support both physical and mental health and wellbeing. Support services can be any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim. This can extend to the purchase of equipment or adjustments if appropriate. The main limitation is that the Restitution Fund cannot be used to provide a direct payment to victims.

Police officers and custody officers are those most likely to be victims of assault under section 90(1). For most, support such as offered by the Police Treatment Centres is expected to be appropriate. However to ensure appropriate support is available for all those eligible, it will be possible to apply for support services to meet individual needs (e.g. a different type of support, setting or location.)

Consultation

A public consultation paper, 'Making Justice Work for Victims and Witnesses' was published in July 2012 prior to the introduction of the Victims and Witnesses Bill, which led to the 2014 Act. This included consultation on the introduction of restitution orders.

In 2019, the Scottish Government established a working group to consult with stakeholders on the operation of the Restitution Fund, including Police Scotland, police officer staff associations, police staff unions, Police Treatment Centres and SPBF. In particular, the group focused on ensuring that support from the Restitution Fund could be accessed by all those eligible, and that administration was not a large burden in relation to the scale of the Restitution Fund.

Police officers and custody officers are those most likely to be victims of assault under section 90(1), however other persons (as defined in the legislation) should have access to the fund as appropriate.

A number of options were discussed, and there was a shared view that the Scottish Police Benevolent Fund should administer the Restitution Fund. SPBF has experience in assessing and meeting support needs, and is in a position to administer the fund within its existing structures, with the ability to purchase support services from either the Police Treatment Centres or from other service providers as necessary to meet a victim's needs.

Impact Assessments

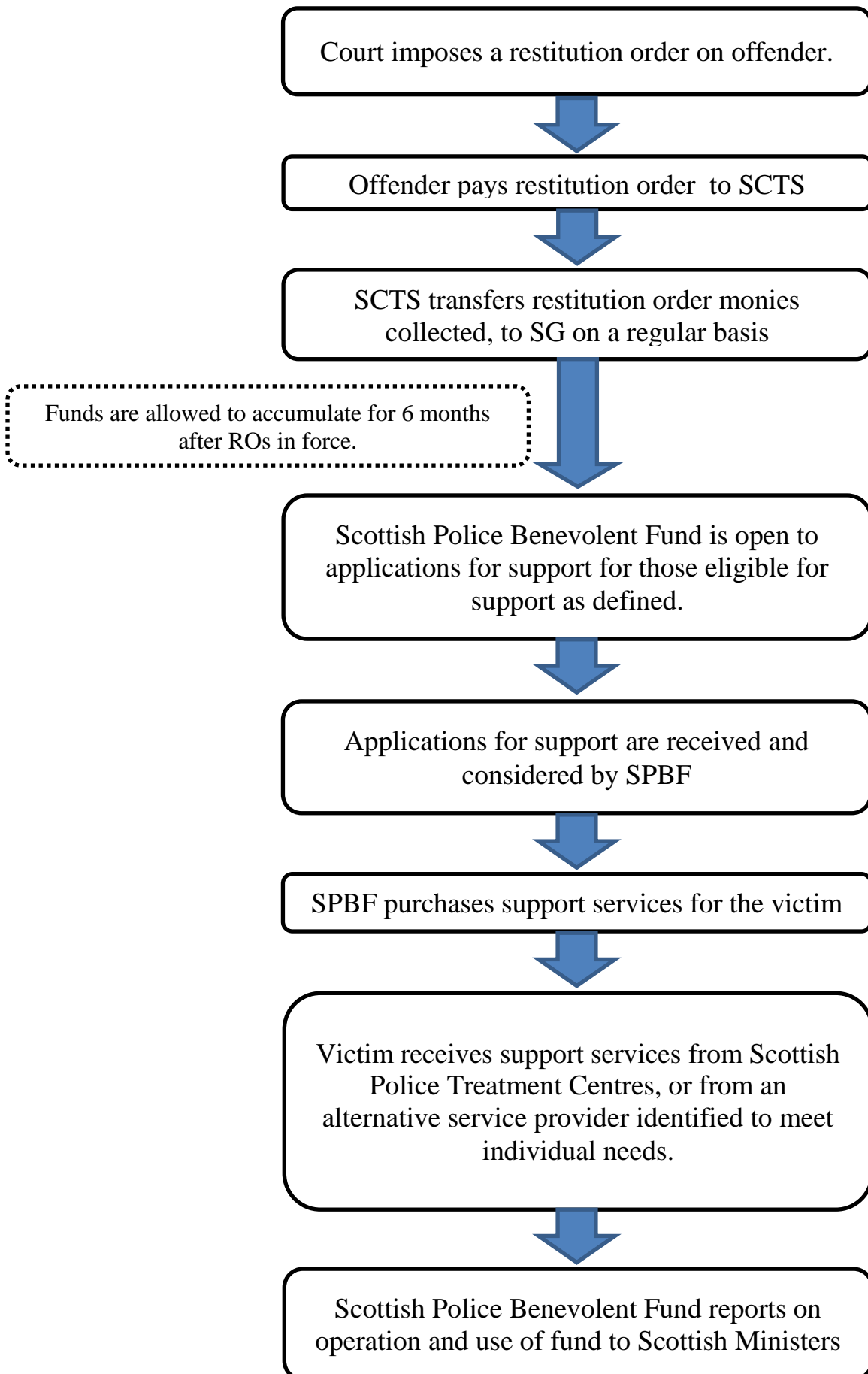
An Equality Impact Assessment has been completed. This concluded that the provisions in these instruments do not discriminate in any significant way on the basis of age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief.

Beneficiaries of support from the Restitution Fund will be eligible on the basis that they are victims of assault on police and police staff (under section 90(1) of the 2012 Act). Access to support from the Fund is not impacted on by any protected characteristic. The Restitution Fund Working group recognised the need to ensure that all those eligible for support from the Restitution Fund should have the opportunity to access support that meet their needs (within the limits of the funds available). Therefore the operation of the Fund allows for applications to the Fund to meet an individual's needs, rather than offering only a limited range of services. This will mitigate against any unforeseen impacts on protected characteristics.

For offenders, courts will have the option of imposing a restitution order by virtue of the offence, and this is not impacted on by the protected characteristics. We anticipate that in a given situation the level of financial penalty imposed by the courts

is likely to be the same regardless of whether it is a restitution order or another financial penalty such as a fine. The financial impact on the offender and their family, and any resulting impacts, are therefore anticipated to be unchanged as a result of the implementation of restitution orders.

A Business and Regulatory Impact Assessment (BRIA) has not been undertaken. There is no impact on business. The impact on the charity of Scottish Police Benevolent Fund is not significant. SPBF expects to operate the Restitution Fund within existing structures, and there is scope within the Restitution Fund (Scotland) Order 2021 for SPBF to retain outlays for administering the fund, should that be necessary.

Flowchart of Proposed Model for Restitution Orders

Scottish Police Benevolent Fund – Restitution Orders

Application Process

The flow chart in Annex C reflects the application process envisaged for restitution order funding through the Scottish Police Benevolent Fund.

It is a simple process and reflects the existing application and governance structures that currently exist within the Scottish Police benevolent funding and should support the accountability for the spending of public monies.

The process reflects the two most likely routes for any application although it is considered that the majority of the applications will come from the Police Treatment Centres at the point of application for attendance.

The opportunity for an individual to apply is reflected in the process where they are not a donator to the Police Treatment Centres or require support out with the remit of the treatment centres.

The applications will be received and assessed by the fund Treasurer, in the same way as existing applications and then forwarded to the Board of Trustees for consideration of the application and the allocation of funds. The application will identify that it is a Restitution Order application.

Consideration by the Board of trustees applies the correct level of scrutiny for the allocation of funds.

If required, a trustee from the charity can arrange to visit an individual applicant to confirm the details of the application. This is not considered necessary for Police Treatment Centre applications.

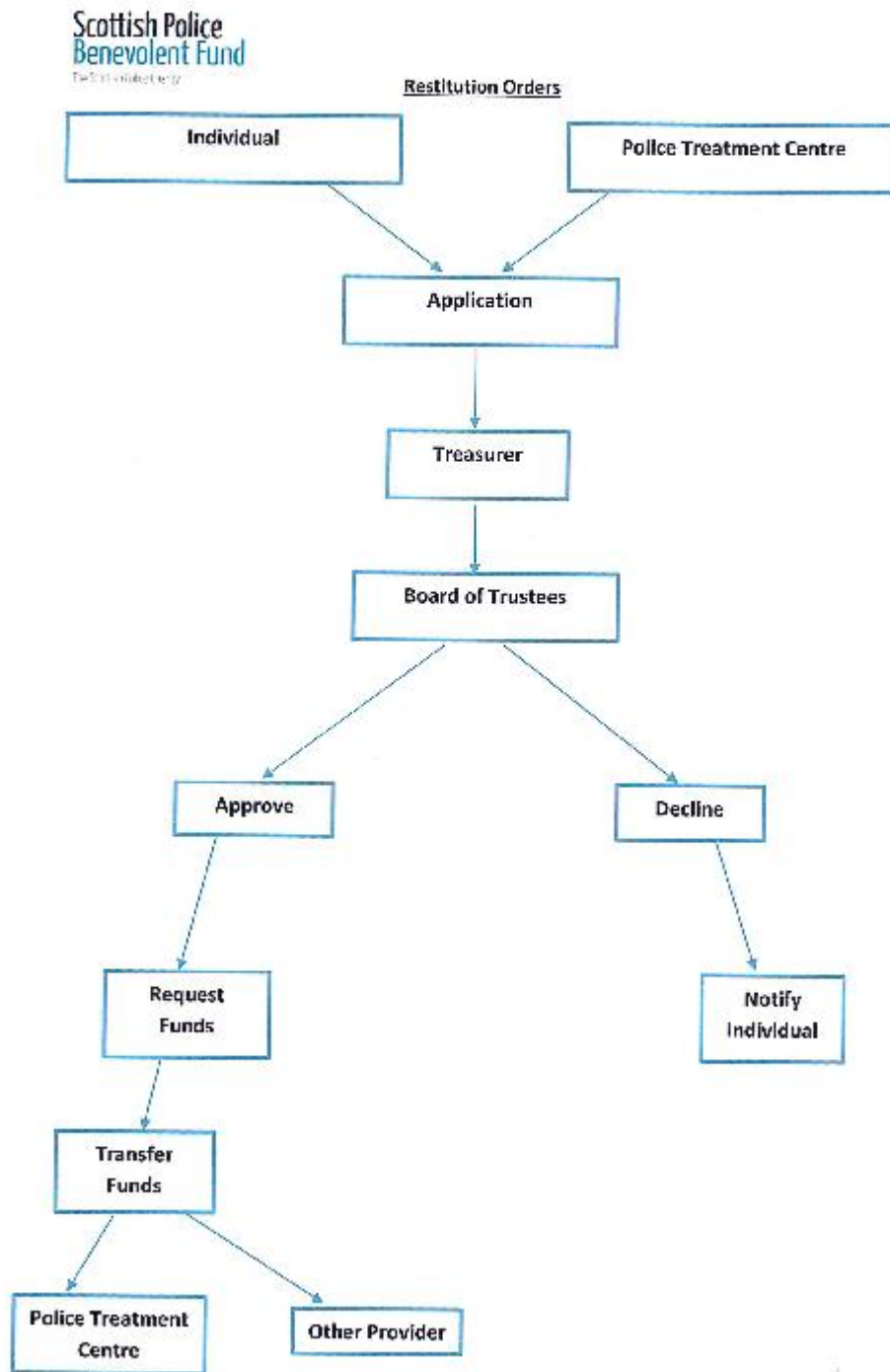
The remainder of the process reflects the request and allocation of funds.

A record of all applications will be retained by the charity for audit purposes as well as the amount expended annually, or whatever time period is deemed appropriate.

The flow chart is attached and will be included in the charities Manual of Guidance.

Restitution Order consideration would become a standing item on the Board of Trustee meeting agenda.

Appendix C



Revised 20/08/18

Justice Committee

2nd Meeting, 2021 (Session 5), Tuesday 19 January 2021

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instrument:
 - [The Enforcement of Fines \(Relevant Penalty\) \(Scotland\) Order 2020](#) [see page 3];
2. If the Committee agrees to report to the Parliament on the instrument, it is required to do so by **25 January 2020**.

Delegated Powers and Law Reform Committee Consideration

3. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 15 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 *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.
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 VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (COMMENCEMENT NO. 7 AND TRANSITIONAL PROVISIONS) ORDER 2020

SSI 2020/405 (C. 34)

THE VICTIMS AND WITNESSES (SCOTLAND) ACT 2014 (SUPPLEMENTARY PROVISIONS) ORDER 2021

SSI 2021/XXX

THE ENFORCEMENT OF FINES (RELEVANT PENALTY) (SCOTLAND) ORDER 2020

SSI 2020/406

THE RESTITUTION FUND (SCOTLAND) ORDER 2021

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THE SERIOUS CRIME ACT 2015 (COMMENCEMENT NO. 3) (SCOTLAND) REGULATIONS 2020

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The purpose of these instruments is to implement section 25 of the Victims and Witnesses (Scotland) Act 2014. This will introduce a new financial penalty of a restitution order to be used for the offence of assault on police or police staff. Monies received from restitution orders will be paid into the Restitution Fund, which will then be used to provide support services for victims of such assault.

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The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 is made in exercise of the powers conferred by section 33 of the Victims and Witnesses (Scotland) Act 2014 and is subject to affirmative procedure.

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Purpose of Each Instrument

The Victims and Witnesses (Scotland) Act 2014 (Commencement No. 7 and Transitional Provisions) Order 2020 – This Commencement Order brings the section 25 of the Victims and Witnesses (Scotland) Act 2014 (“the 2014 Act”) fully into force and provides that restitution orders only apply to offences committed on or after the commencement date.

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The Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020 – This Order specifies that restitution orders are a “relevant penalty” for the purposes of the fine enforcement rules in section 226A to 226I of the 1995 Act. This enables the appointment of fine enforcement officers and an application by the court to the DWP for a deduction from benefits order.

The Restitution Fund (Scotland) Order 2021 -This Order makes provision for the general operation of the Restitution Fund. Firstly, it provides for the delegation of the Fund to the Scottish Police Benevolent Fund. Secondly, it makes provision for the administration of the Fund including the issuing of guidance by Ministers; making payments from the Fund (including the requirement for written applications); record keeping; and reporting back to Ministers.

The Serious Crime Act 2015 (Commencement No. 3) (Scotland) Regulations 2020 – These Regulations commence the parts of the 2015 Act which ensure that the court can give restitution orders priority over a confiscation order when an individual subject to both orders makes a payment. In accordance with section 88(2) of Serious Crime Act 2015, the Scottish Ministers have consulted with the Secretary of State.

Policy Objectives

The Victims and Witnesses (Scotland) Act 2014 ('the 2014 Act') introduced various measures to improve the support and information available to victims and witnesses of crime. This included provisions to introduce a new financial penalty of a restitution order to be available to the courts for those convicted of assault on police or police staff (under section 90(1) of the Police and Fire Reform (Scotland) Act 2012 ("the 2012 Act")). These five instruments enable the implementation of restitution orders as provided for in section 25 of the 2014 Act.

Monies received from restitution orders will be paid into the Restitution Fund, which will then be used to provide support services for victims of such assault. The Fund will be used to support both physical and mental health and wellbeing. It should be noted that, the monies paid in respect of a restitution order imposed on an offender are not for the sole benefit of the victim of the individual offence, they will be paid into the restitution fund for the benefit of all victims of this offence in general.

The policy aim is that those who are convicted of the section 90(1) offence, will make a contribution towards support services for victims of this offence in general. In addition there is an intention to give a clear message that assault on police officers and staff is unacceptable.

Police officers and staff who are victims of assault can currently access support services, for example through the Police Treatment Centres, or through Police Scotland's occupational health and employee assistance. The creation of the Restitution Fund will make additional funds available for support services, to be used for police officers and staff, and other persons (as identified under section 90(1) of the 2012 Act) who are victims of the offence.

Those who are eligible will be able to apply to the fund and request support that meets their individual physical or mental health and wellbeing needs. This support may be provided through traditional routes such as the Police Treatment Centres, or it may be secured from another provider. This will benefit police officers and staff as individuals, and will be providing a greater overall resource for support services to the benefit of officers and staff.

If the introduction of restitution orders has a positive impact on the behaviour of those who potentially would assault police officers and staff, such that they did not commit that offence, that would be a positive benefit for those in the police service, and for the wider community.

Estimated Value of Restitution Orders

Whether to impose a restitution order for the section 90(1) offence, and the level of that financial penalty, will be a matter for the courts to decide. It is therefore not certain what the value of restitution orders will be. That said, we anticipate that once established, the use of restitution orders will follow a similar pattern to the current use of fines for the same offence.

On the basis of information on fines where section 90(1) is the main offence we can estimate potential restitution orders. We estimate that there could be in the region of 250 to 500 restitution orders a year, with an average value of around £350, giving a total of £87,500 to £175,000.

(The lower figure is based on the value of fines where fines are the main disposal. The upper figure also includes the value of fines where fines are not the main disposal. However where the section 90(1) offence was the main offence, and a fine was not the main disposal, it is possible that a higher disposal (imprisonment, community sentence) will relate to the section 90(1) offence and that the fine may relate to other charges within the overall case.)

Restitution orders will take some time to become routinely used, and therefore to reach this potential estimated value. There is also a time-lag from imposition to collection of restitution orders, therefore we expect the Restitution Fund to build slowly.

The maximum sum that can be imposed for a restitution order is “the prescribed sum” which is fixed in section 225(8) of the Criminal Procedure (Scotland) Act 1995. That sum is currently fixed at £10,000. It is worth emphasising that this is the maximum sum that can be imposed, and on the basis of information in relation to the use of fines for the same offence, it is likely that the average sum will be significantly lower than this.

Collection of Restitution Orders

Restitution orders will be collected, like fines, by the Scottish Courts and Tribunals Service (SCTS) and similarly enforced. This is underpinned by the **Enforcement of Fines (Relevant Penalty) (Scotland) Order 2020**, which specifies that restitution orders are a “relevant penalty” for the purposes of the fine enforcement rules.

SCTS will regularly make the transfer of the amount of restitution orders to the Scottish Ministers for payment into the Restitution Fund. These monies will then be transferred by the Scottish Government to the Scottish Police Benevolent Fund, the police charity organisation that will operate the fund on behalf of Scottish Ministers. **The Restitution Fund (Scotland) Order 2021** provides for the delegation of the Fund to the Scottish Police Benevolent Fund.

The Restitution Fund will take time to build, and funds will be dependent on the penalty being imposed and monies collected. No payment will be made from the Restitution Fund for period of six months from the date of restitution orders coming into force to let funds accrue – this is the same approach that was adopted in relation to the Victim Surcharge Fund.

Operation of the Restitution Fund

The Scottish Police Benevolent Fund (SPBF), a Scottish charitable incorporated organisation with registered number SC043489, will administer the Restitution Fund on behalf of the Scottish Government. The Scottish Ministers, via the Restitution

Fund Order, delegate the establishment, maintenance and administration of the Fund to the Scottish Police Benevolent Fund.

SPBF will incorporate decision making on the Restitution Fund into existing decision making structures. It will follow a similar, but parallel process to the assessment of applications to the Benevolent Fund.

The Restitution Fund will be 'ring-fenced' for the intended purpose as set out in legislation.

Annex A provides a flow chart on the overall process for restitution orders and the Restitution Fund. Annexes B and C provide a narrative and a flow chart from SPBF, on the arrangements for the operation of the fund.

As a charity, the SPBF is already subject to scrutiny and governance mechanisms. SPBF will be required by **the Restitution Fund (Scotland) Order 2021** to keep records and provide reports to Scottish Ministers on an annual basis.

Beneficiaries of Restitution Fund

Eligible beneficiaries are persons who have been assaulted as mentioned in section 90(1) of 2012 Act ("victims"). This includes those acting in the capacity of a constable, member of police staff, member of other relevant police force acting in Scotland, member of joint investigation team, or other persons who were assisting those noted above whilst acting in that capacity.

Police officers (or any other persons) who are not a victim of assault as mentioned in section 90(1), are not eligible for support services funded by the Restitution Fund. For example, a restitution order cannot be imposed for the offence of resisting, obstructing or hindering a person acting in a capacity of constable etc, and the Restitution Fund cannot be used to secure support services for victims of that offence.

Retired police officers, or police staff, who were a victim of assault as mentioned in section 90(1) of the Police and Fire Reform (Scotland) Act 2012 are eligible for support

Provision of Support Services

The Fund will be used to support both physical and mental health and wellbeing. Support services can be any type of service or treatment which is intended to benefit the physical or mental health or wellbeing of the victim. This can extend to the purchase of equipment or adjustments if appropriate. The main limitation is that the Restitution Fund cannot be used to provide a direct payment to victims.

Police officers and custody officers are those most likely to be victims of assault under section 90(1). For most, support such as offered by the Police Treatment Centres is expected to be appropriate. However to ensure appropriate support is

available for all those eligible, it will be possible to apply for support services to meet individual needs (e.g. a different type of support, setting or location.)

Consultation

A public consultation paper, 'Making Justice Work for Victims and Witnesses' was published in July 2012 prior to the introduction of the Victims and Witnesses Bill, which led to the 2014 Act. This included consultation on the introduction of restitution orders.

In 2019, the Scottish Government established a working group to consult with stakeholders on the operation of the Restitution Fund, including Police Scotland, police officer staff associations, police staff unions, Police Treatment Centres and SPBF. In particular, the group focused on ensuring that support from the Restitution Fund could be accessed by all those eligible, and that administration was not a large burden in relation to the scale of the Restitution Fund.

Police officers and custody officers are those most likely to be victims of assault under section 90(1), however other persons (as defined in the legislation) should have access to the fund as appropriate.

A number of options were discussed, and there was a shared view that the Scottish Police Benevolent Fund should administer the Restitution Fund. SPBF has experience in assessing and meeting support needs, and is in a position to administer the fund within its existing structures, with the ability to purchase support services from either the Police Treatment Centres or from other service providers as necessary to meet a victim's needs.

Impact Assessments

An Equality Impact Assessment has been completed. This concluded that the provisions in these instruments do not discriminate in any significant way on the basis of age, disability, sex, pregnancy and maternity, gender reassignment, sexual orientation, race, religion or belief.

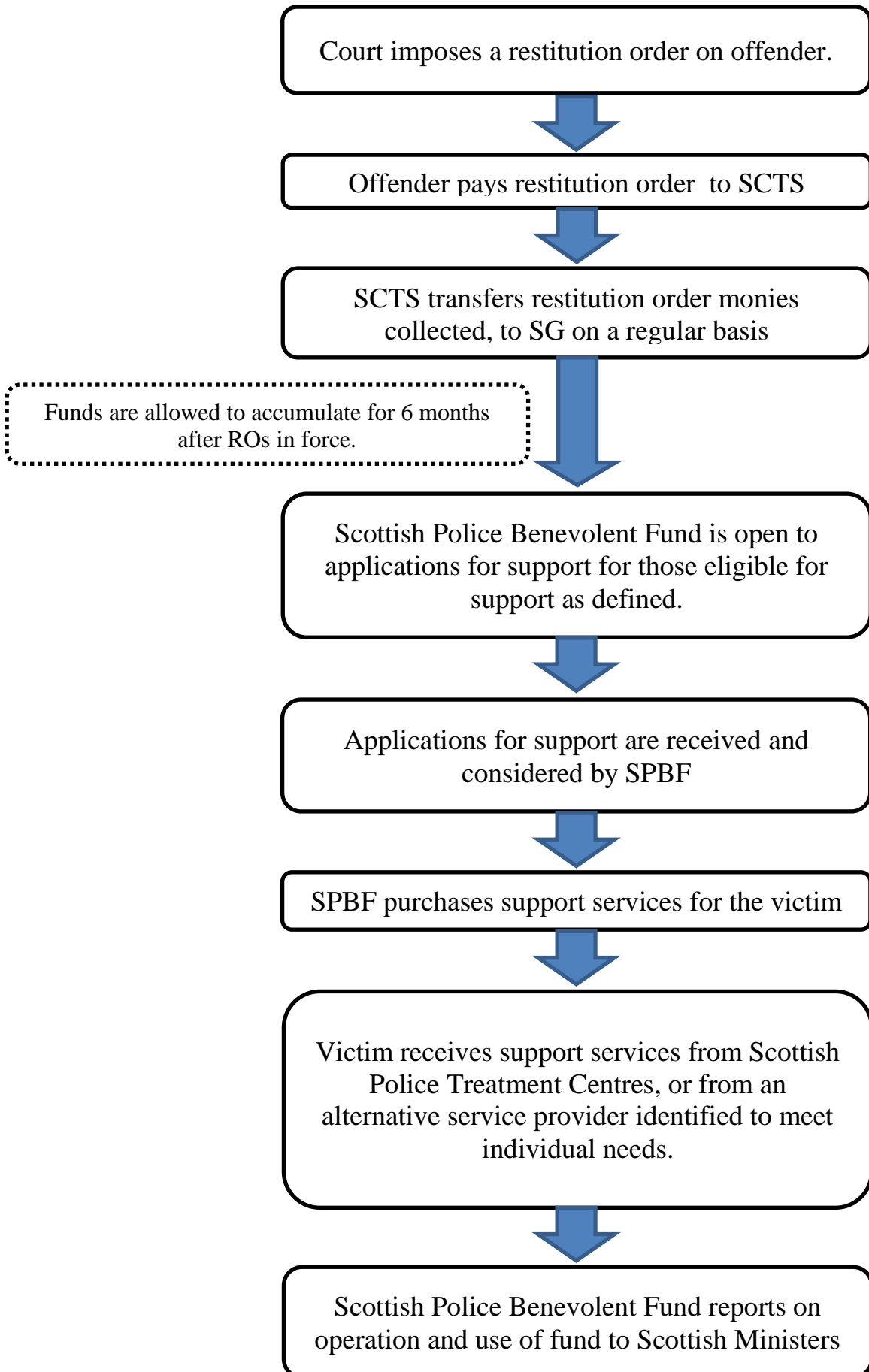
Beneficiaries of support from the Restitution Fund will be eligible on the basis that they are victims of assault on police and police staff (under section 90(1) of the 2012 Act). Access to support from the Fund is not impacted on by any protected characteristic. The Restitution Fund Working group recognised the need to ensure that all those eligible for support from the Restitution Fund should have the opportunity to access support that meet their needs (within the limits of the funds available). Therefore the operation of the Fund allows for applications to the Fund to meet an individual's needs, rather than offering only a limited range of services. This will mitigate against any unforeseen impacts on protected characteristics.

For offenders, courts will have the option of imposing a restitution order by virtue of the offence, and this is not impacted on by the protected characteristics. We anticipate that in a given situation the level of financial penalty imposed by the courts

is likely to be the same regardless of whether it is a restitution order or another financial penalty such as a fine. The financial impact on the offender and their family, and any resulting impacts, are therefore anticipated to be unchanged as a result of the implementation of restitution orders.

A Business and Regulatory Impact Assessment (BRIA) has not been undertaken. There is no impact on business. The impact on the charity of Scottish Police Benevolent Fund is not significant. SPBF expects to operate the Restitution Fund within existing structures, and there is scope within the Restitution Fund (Scotland) Order 2021 for SPBF to retain outlays for administering the fund, should that be necessary.

Flowchart of Proposed Model for Restitution Orders



Scottish Police Benevolent Fund – Restitution Orders

Application Process

The flow chart in Annex C reflects the application process envisaged for restitution order funding through the Scottish Police Benevolent Fund.

It is a simple process and reflects the existing application and governance structures that currently exist within the Scottish Police benevolent funding and should support the accountability for the spending of public monies.

The process reflects the two most likely routes for any application although it is considered that the majority of the applications will come from the Police Treatment Centres at the point of application for attendance.

The opportunity for an individual to apply is reflected in the process where they are not a donator to the Police Treatment Centres or require support out with the remit of the treatment centres.

The applications will be received and assessed by the fund Treasurer, in the same way as existing applications and then forwarded to the Board of Trustees for consideration of the application and the allocation of funds. The application will identify that it is a Restitution Order application.

Consideration by the Board of trustees applies the correct level of scrutiny for the allocation of funds.

If required, a trustee from the charity can arrange to visit an individual applicant to confirm the details of the application. This is not considered necessary for Police Treatment Centre applications.

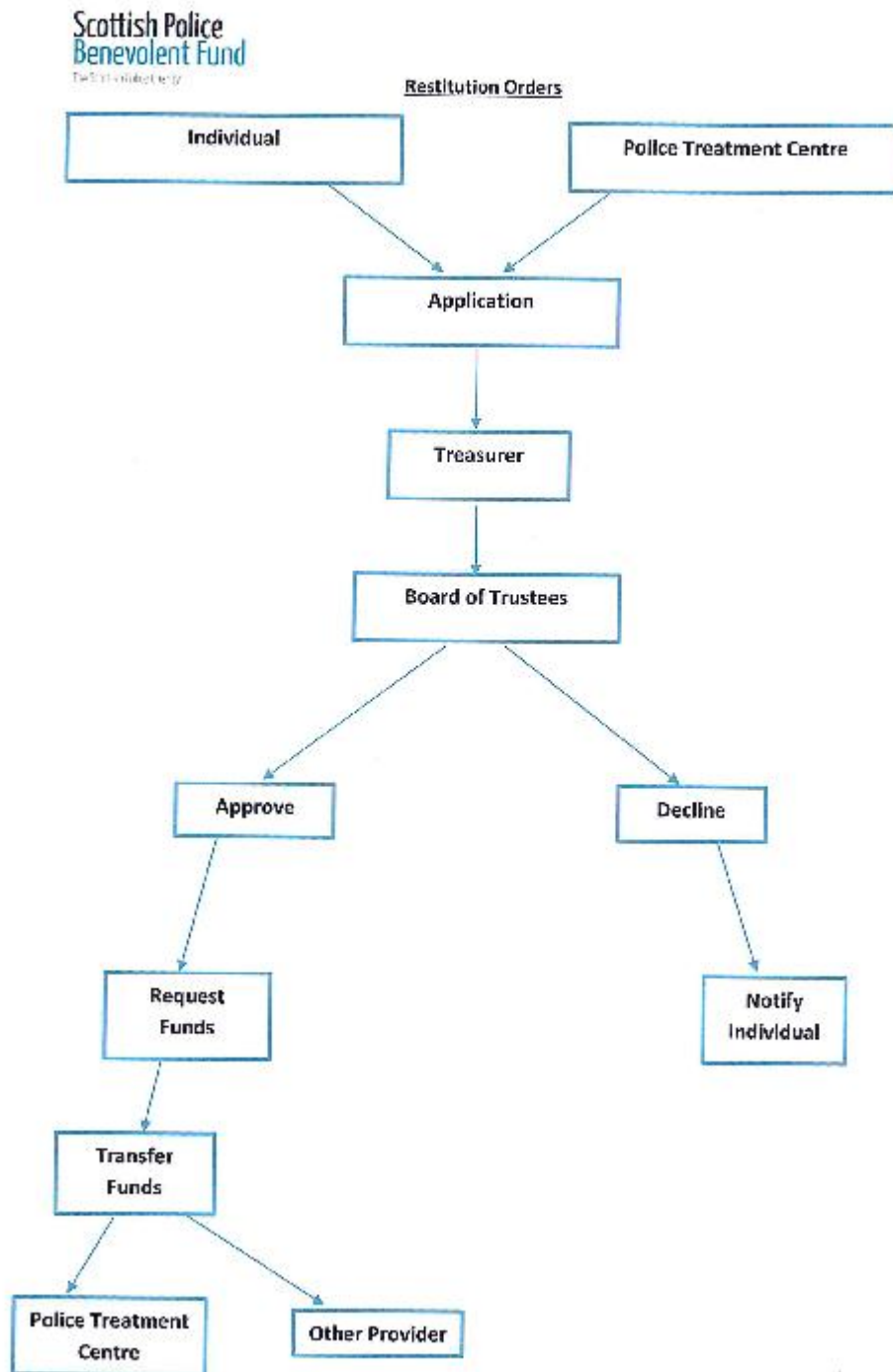
The remainder of the process reflects the request and allocation of funds.

A record of all applications will be retained by the charity for audit purposes as well as the amount expended annually, or whatever time period is deemed appropriate.

The flow chart is attached and will be included in the charities Manual of Guidance.

Restitution Order consideration would become a standing item on the Board of Trustee meeting agenda.

Appendix C



Revised 20/08/18

Justice Committee

2nd Meeting, 2020 (Session 5), Tuesday 19 January 2021

European Union (Withdrawal) Act 2018 – Consent to UK Statutory Instruments

Note by the clerk

Introduction

1. The European Union (Withdrawal) Act 2018 (the 2018 Act) sets out the process for the UK and Scottish parliaments to consider regulations to convert non-domestic EU law into UK law.
2. Members will recall that the process by which the UK leaves the EU requires consideration to be given as to whether the current body of law within the UK needs to be amended to reflect the fact that the UK will no longer be a member of the EU after exit day. At present, there are many references in regulations, for example, to EU bodies and the EU itself that will no longer be applicable after the UK has left the EU.
3. Some of the necessary changes to the statute book will be done through Scottish Statutory Instruments (SSIs) in the usual way. However, a number will be done through Statutory Instruments (SIs) passed in the UK Parliament with the consent of the Scottish Parliament based on the recommendation of the Scottish Government (SI notifications). Consent will be sought as these SIs will make changes to devolved powers and/or executive competences. Such changes should be broadly technical in nature. [Protocols](#) governing arrangements for both of these processes have been agreed to with the Scottish Government.

SI Notification

4. At today's meeting, Members will consider a SI notification (**see Annex A**) from the Scottish Government on the following SI:
 - **The Civil Jurisdiction and Judgments (Lugano Convention 2007) Regulations 2020**
5. As Annex A notes, the Scottish Ministers believe the changes in the Regulations are necessary to implement the Lugano Convention in the UK. The measures are technical in nature and are necessary to give full effect to the Lugano Convention.

SI summary

Title of Instrument
The Civil Jurisdiction and Judgments (Lugano Convention 2007) Regulations 2020
Proposed laying date at Westminster
18 January 2021
Date by which Committee has been asked to respond
The committee will have the 28 days provided for in the protocol to consider the notification.
Power(s) under which SI is to be made
These Regulations are being made under the power conferred by section 2 of the Private International Law (Implementation of Agreements) Act 2020 (“the 2020 Act”). The 2020 Act provides for the implementation in domestic law of international agreements on Private International Law (PIL).
Categorisation under SI Protocol
Category A
Purpose
The Regulations will implement the Lugano Convention in the UK if the United Kingdom’s application to join the Lugano Convention as an independent contracting party is accepted. The Lugano Convention will enter into force for the United Kingdom on the first day of the third month following the deposit of its instrument of accession. The instrument of accession can, however, only be deposited after the implementing legislation has been put in place. To ensure the Lugano Convention can enter back into force in the UK as quickly as possible after the UK has been notified that its application to re-join the Convention has been accepted, these Regulations have been prepared in advance so that they can be laid in draft and complete the scrutiny procedures of the UK Parliament as soon as possible, enabling the instrument of accession to then be deposited. This will minimise the gap between the UK leaving the Lugano Convention on 31 December 2020 and once again becoming bound by it.

Action

10. **Members are asked to consider the SI notification covered by this note and consider whether to agree with the view of the Scottish Government that it should consent to the relevant changes being made by the UK Government.**

NOTIFICATION TO THE SCOTTISH PARLIAMENT**THE CIVIL JURISDICTION AND JUDGMENTS (LUGANO CONVENTION 2007) REGULATIONS 2020****A brief explanation of law that the proposals amend**

These Regulations are being made under the power conferred by section 2 of the Private International Law (Implementation of Agreements) Act 2020 (“the 2020 Act”). The 2020 Act provides for the implementation in domestic law of international agreements on Private International Law (PIL). PIL agreements consist of the principles and rules for dealing with certain cross-border legal disputes to ensure reciprocal treatment, avoid parallel legal proceedings in different countries and to streamline cross-border cooperation. The UK has entered into PIL agreements in its own right in the past but recently has done so through its membership of the EU. Section 2 of the 2020 Act provides a delegated power for the implementation through secondary legislation of future international agreements on PIL to which the UK will be a party in its own right. This can be used to implement any future international agreements in the area of PIL which the UK enters into, both with the EU and other international partners. The 2020 Act received Royal Assent on 14th December and section 2 came into force on that date. Sections 1 and 3(1) and Schedules 1 to 5 come into force on IP completion day. The 2020 Act can be found [here](#). PIL is a devolved matter and under section 2 of the 2020 Act, the Secretary of State, acting with the consent of the Scottish Ministers can exercise the power to implement international agreements on PIL in relation to Scotland in domestic law via secondary legislation.

The Regulations provide for the domestic implementation of the 2007 Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, (the “Lugano Convention”) in the United Kingdom (for example, money judgments, including costs orders, the enforcement of non-money judgments such as injunctions and interim orders made by a court of a contracting party) The Regulations do so by amending various pieces of primary and secondary legislation, in particular the [Civil Jurisdiction and Judgments Act 1982](#), and including giving the Convention provisions the force of law in the UK.

The Lugano Convention originally had effect in the United Kingdom by reason of the United Kingdom’s membership of the European Union, and will continue to do so under the terms of the EU withdrawal agreement until 31 December 2020. The UK will cease to be a party to the Lugano Convention from 11pm on 31 December 2020.

The UK has applied to accede to the Lugano Convention in its own right as an independent contracting party and is awaiting the outcome of that application which must be unanimously approved by all the existing contracting parties to the Lugano Convention - the EU (including Denmark), Switzerland, Norway and Iceland. The EU has indicated that it is not willing to consider the application until the future relationship negotiations have concluded.

Summary of the proposals

The Regulations will implement the Lugano Convention in the UK if the United Kingdom's application to join the Lugano Convention as an independent contracting party is accepted. The Lugano Convention will enter into force for the United Kingdom on the first day of the third month following the deposit of its instrument of accession. The instrument of accession can, however, only be deposited after the implementing legislation has been put in place. To ensure the Lugano Convention can enter back into force in the UK as quickly as possible after the UK has been notified that its application to re-join the Convention has been accepted, these Regulations have been prepared in advance so that they can be laid in draft and complete the scrutiny procedures of the UK Parliament as soon as possible, enabling the instrument of accession to then be deposited. This will minimise the gap between the UK leaving the Lugano Convention on 31 December 2020 and once again becoming bound by it.

The Lugano Convention

The Lugano Convention applies to all civil and commercial matters (including family maintenance) whatever the nature of the court or tribunal. It does not extend to revenue, customs or administrative matters nor does it apply to personal status, matrimonial matters, wills and succession, insolvency and arbitration.

It provides rules on jurisdiction for legal proceedings within the scope of the Convention. This means that between contracting states the rules can be relied on to determine in which country's court a legal action should be raised. The basic principle in the Lugano Convention is that a defendant should be sued in their country of domicile, although there are certain exceptions and alternative grounds on which the court can take jurisdiction in prescribed cases. The Convention also provides that the resulting judgment can then be recognised and enforcement across all contracting states. This provides legal certainty and predictability and helps prevent multiple court cases taking place on the same subject matter in different countries and reduces the costs and expenses for the parties involved.

The Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 ("the CJJ Regulations")

The CJJ Regulations address deficiencies in retained EU law relating to private international law, specifically the rules on jurisdiction and recognition and enforcement of judgments in civil and commercial matters. The CJJ Regulations do this by revoking retained EU law subject to savings and transitional provisions including the principal EU instrument in this regime, Regulation (EU) 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (known as "Brussels IA"), and the other regulations and conventions which form part of the "Brussels regime", which includes the Lugano Convention. Specifically, in relation to the Lugano convention, the CJJ Regulations:

- Extinguish the rights, powers, liabilities, obligations, restrictions, remedies and procedures that are derived from the Lugano Convention. These are retained in domestic law by section 4 of the European Union (Withdrawal) Act 2018 and so any such retentions are removed by the SI for the avoidance of doubt;
- Amend domestic legislation to remove references to the Brussels regime and, where appropriate, replace these with references to domestic legislation so that legislation will work effectively post transition period (31 December 2020);
- Preserves aspects of the Brussels regime and the domestic implementing legislation for transitional purposes so they continue to apply to determine jurisdiction for proceedings instituted in the UK before exit day and in relation to the recognition or enforcement of a judgment given, court settlement concluded or authentic instrument registered in a EU or EFTA State before the end of the transition period;

Broadly, the effect of the CJJ Regulations is to remove the Lugano Convention from domestic law since the UK will cease to be a party to the Lugano Convention from 11pm on 31 December 2020 by virtue of no longer being a member of the EU – the contracting party to the Lugano Convention.

The CJJ Regulations were made with the consent of the Scottish Ministers. The proposal to consent was notified to the Scottish Parliament. The CJJ Regulations will come into force at the end of the transition period. The notification relating to that SI provides further detail on the law in this area. The Justice Committee published its [report](#) recommending approval 17 December 2018.

The Regulations

The amendments contained in these Regulations are required in order to give effect to the Lugano Convention (again) in domestic law subject to the UK's application to accede to the Convention in its own right as an independent contracting party being approved. They include providing that the provisions of the Lugano Convention have the force of law in the United Kingdom. Broadly, the amendments these regulations will make to domestic legislation is to reinstate provisions which will be revoked by the CJJ Regulations from 31 December 2020.

The Regulations will amend various pieces of primary and secondary legislation that apply to Scotland including, in particular:

- The Civil Jurisdiction and Judgments Act 1982
- Social Security Administration Act 1992
- Civil Partnership Act 2004
- The Civil Jurisdiction and Judgments Act 1982 (Provisional and Protective Measures)(Scotland) Order 1997 (SI 1997/2780)

- The Employment Tribunals (Enforcement of Orders in Other Jurisdictions) (Scotland) Regulations 2002 (SI 2002/2972)
- The Armed Forces (Service of Process in Maintenance Proceedings) Regulations (2009/1093)
- The Armed Forces (Forfeitures and Deductions) Regulations 2009 (2009/1109)
- The International Recovery of Maintenance (Hague Convention 2007 etc.) Regulations 2012 (SI 2012/2814)

The amendments are made by Parts 2 and 3 of the Regulations and generally re-instate provisions which existed in the instruments being amended during the previous period in which the Lugano Convention applied in the United Kingdom, but which were repealed or revoked, by the CJJ Regulations. They also amend domestic legislation dealing with family maintenance in order to ensure the Lugano Convention provisions on jurisdiction and recognition and enforce of judgments in cross-border maintenance cases are given full effect (where previously the EU Maintenance Regulation applied).

An explanation of why the change is considered necessary

The Regulations are required in order to implement the Lugano Convention in domestic law which will enable the UK to accede to the Convention as an independent contracting party (rather than as a member of the EU contracting party).

Scottish Government categorisation of significance of proposals

Category 'A' - requiring the lowest level of scrutiny. This category is considered appropriate because the amendments are intended to re-instate provisions which previously existed. They will ensure the continued smooth running of the law in this area and there has been no significant policy decision for Scottish Ministers to make.

Impact on devolved areas

Domestic implementation of private international law conventions is within the devolved competence of the Scottish Parliament.

The Regulations will not change the current policy position and there is no change in relation to the powers which are currently devolved.

There are no impacts specific to Scotland.

Summary of stakeholder engagement/consultation

The Scottish Government has not undertaken any formal consultation on the draft SI. However, the legal profession has been vocal in its advocacy for the UK's accession to the Lugano Convention. Under schedule 6 of the 2020 Act the

Secretary of State is required to consult such persons as thought appropriate before exercising the power under section 2 to implement international agreements. The UK Government has consulted with the International Law Committee (a body consisting of senior judiciary, other legal practitioners, academics and business representatives) about the merits of rejoining Lugano and with the Lord Chancellor's Advisory Committee on Private International Law (which includes retired and serving senior judiciary from all the jurisdictions of the UK, plus legal practitioners and academics with specialist knowledge and expertise in private international law) about the detailed drafting. The UK Government has also very recently written to the Heads of the Judiciary throughout the UK to seek their views. This includes the Lord President in Scotland.

A note of other impact assessments, (if available)

The Scottish Government has considered and decided that an impact assessment is not necessary as these Regulations will reinstate a private international law convention which is in force in Scotland until 31 December 2020. On implementation under the Regulations the Lugano Convention will apply between the UK and EU member states where previously Brussels IA took precedence. The Lugano Convention can also apply to maintenance cases where previously the EU Maintenance Regulation applied. As the provisions in the Lugano Convention are similar to Brussels IA and the EU Maintenance Regulation the Scottish Government did not consider this change meant an impact assessment was necessary.

There is no change to policy or the underlying applicable rules.

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

The Regulations relate to the devolved matter of aspects of private international law. The Scottish Ministers believe the changes in the Regulations are necessary to implement the Lugano Convention in the UK. The measures are technical in nature and are necessary to give full effect to the Lugano Convention. There is little, if any, policy choice since the Regulations are a necessary consequence of the UK's accession to the Convention. The UK Government has consulted the Scottish Government about the proposed Regulations and officials have worked with UKG to ensure the drafting delivers for Scotland's interests and respects the devolution settlement.

It is a pragmatic and consistent approach to continue to legislate in this area by implementing the Lugano Convention on a UK wide basis. It is a continuation of the approach taken in relation to the CJJ Regulations which were brought forward in the UK Parliament for the UK with the consent of the Scottish Ministers.

Intended laying date (if known) of instruments likely to arise

The Regulations are subject to affirmative procedure. The UK Government

intend to lay the Regulations in the UK Parliament by 18 January, in the event that the other contracting parties to the Lugano Convention approve the UK's accession by then. We would welcome a view from the committee as soon as possible, however the Scottish Parliament will have 28 days for consideration if needed under the agreed protocol to consider the proposal to consent to the SI.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

The Regulations may be laid in the UK Parliament before the 28 days period for Scottish Parliament scrutiny has passed. However, the UK Government has informed the Scottish Government that the SI will not be debated in the UK Parliament until the Scottish Parliament has scrutinised the Scottish Ministers' proposal to consent.

Information about any time dependency associated with the proposal

The Regulations will need to be in force on the first day of the third month following the deposit of the Lugano Convention instrument of ratification to enable continued certainty in civil and commercial disputes which have a cross-border dimension.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

None

Any significant financial implications?

The reinstatement of the Lugano convention into domestic law will have no significant financial implications.