



The Scottish Parliament  
Pàrlamaid na h-Alba

## JUSTICE COMMITTEE

### AGENDA

3rd Meeting, 2021 (Session 5)

Tuesday 26 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. **Defamation and Malicious Publication (Scotland) Bill:** The Committee will consider the Bill at Stage 2.
2. **Subordinate legislation:** The Committee will consider the following negative instruments—
  - Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Hague Service Convention) (Amendment) 2020 (SSI 2020/423)
  - Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/424)
3. **Justice Sub-Committee on Policing:** The Committee will consider a report back from the Sub-Committee meeting held on 18 January 2021.

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The papers for this meeting are as follows—

**Agenda item 2**

Note by the Clerk

J/S5/21/3/1

**Agenda item 3**

Note by the Clerk

J/S5/21/3/2

**Justice Committee**

**3rd Meeting, 2021 (Session 5), Tuesday 26 January 2021**

**Subordinate legislation**

**Note by the clerk**

**Purpose**

1. This paper invites the Committee to consider the following negative instruments:
  - [Act of Sederunt \(Fees of Messengers-at-Arms and Sheriff Officers\) \(Hague Service Convention\) \(Amendment\) 2020](#) [see page 3].
  - [The Legal Aid and Advice and Assistance \(Miscellaneous Amendments\) \(Scotland\) Regulations 2020](#) [see page 4];
2. If the Committee agrees to report to the Parliament on the instruments, it is required to do so by **1 February 2021**.

**Delegated Powers and Law Reform Committee Consideration**

3. The Delegated Powers and Law Reform Committee considered the Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Hague Service Convention) (Amendment) 2020 at its meeting on 22 December 2020.
4. The DPLR Committee agreed to draw this instrument to the attention of the Parliament on reporting ground (j) on the basis that it has breached the 28-day rule.
5. The relevant extract from the [Delegated Powers and Law Reform Committee's report](#) is attached in Annexe A
6. The DPLR Committee considered the Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2020 at its meeting on 12 January 2021.
7. The Committee agreed to draw the instrument to the attention of the Parliament on the general reporting ground on the basis that the Advice and Assistance (Scotland) Regulations 1996 have been incorrectly cited in both the title of regulation 2, and regulation 2(1), as the "Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996".
8. The Committee noted the Scottish Government's commitment to take corrective action to amend this error at the next available legislative opportunity.
9. The relevant extract from the [Delegated Powers and Law Reform Committee's report](#) is attached in Annexe B.

## **Procedure for negative instruments**

10. 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).
11. 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.
12. 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.
13. 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.
14. 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.
15. 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**

16. 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>

17. **The Committee is invited to consider the instruments.**

## LETTER FROM THE LORD PRESIDENT'S OFFICE

11th December 2020

Dear Sir

### **Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Hague Service Convention) (Amendment) 2020 (S.S.I. 2020/423)**

I enclose one copy of the above SSI for laying before the Scottish Parliament on 11th December 2020.

The SSI is being laid before the Scottish Parliament under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. It is subject to negative procedure.

It amends the tables of fees for messengers-at-arms and sheriff officers in the Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002 and the Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002 to add fees for the service of documents under the Convention of 15th November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. The new fees being provided by this instrument are the same as the current fees which are in place for messengers-at-arms for this work under the EC Service Regulation.

In certain limited specified circumstances service continues in accordance with the Service Regulation under provision set out in the Withdrawal Agreement between the United Kingdom and the European Union. In all other cases, following the end of the implementation period for the United Kingdom's exit from the European Union, the service of documents to and from EU Member States will be carried out under the Hague Service Convention rather than the Service Regulation. Accordingly, the SSI comes into force at 11pm on 31st December 2020.

The Lord President has written to the Presiding Officer to explain the reasons why the laying requirements under section 31(3) of the 2010 Act have not been complied with by the Court of Session. A copy of that letter is attached for your information<sup>1</sup>.

Yours faithfully

Deputy Legal Secretary to the Lord President

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<sup>1</sup> [Correspondence from Lord President to the Presiding Officer, 10 December 2020](#)

## POLICY NOTE

### THE LEGAL AID AND ADVICE AND ASSISTANCE (MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2020

#### SSI 2020/424

The above instrument is made in exercise of the powers conferred by sections 12(3), 17(2B), 36(2)(a) and 42 of the Legal Aid (Scotland) Act 1986 and by all others powers enabling them to do so. The instrument is subject to the negative procedure.

**This instrument will allow for payments from or in connection with the Windrush Compensation Scheme and the Scottish Child Payment to be disregarded from financial assessments for legal aid eligibility.**

#### Background

##### Windrush Compensation Scheme

The Windrush Compensation Scheme was published by the Home Office in 2019 in order to compensate certain categories of individuals who have suffered loss in connection with being unable to demonstrate their lawful immigration status in the United Kingdom.

Those most affected are often referred to as the 'Windrush generation'. This refers to the "Empire Windrush", one of the first ships that brought workers from Caribbean islands to the United Kingdom in 1948 in response to labour shortages in the UK following the Second World War.

The Home Office committed to ensuring that individuals do not lose access to justice as a result of making a successful claim to the Windrush Compensation Scheme. As a result, the Home Office introduced the Legal Aid (Financial Resources and Contributions Orders) (Amendment) Regulations 2019 in England and Wales. This statutory instrument amends legal aid regulations in England and Wales to disregard compensation payments made by, or in connection with, the Scheme for legal aid applications where eligibility is means-tested.

##### Scottish Child Payments

The Scottish Child Payment is a new benefit to be delivered by Social Security Scotland and which is designed to tackle and alleviate child poverty.

The Scottish Child Payment will be available to families on low income benefits with children under 16, paying the equivalent of £10 a week for each eligible child by 2022. The first payments are likely to be made by the end of February 2021 and will initially be available only to those eligible families with responsibility for a child aged under 6.

## **Policy Objectives**

The Scottish Government is committed to ensuring that individuals living in Scotland do not lose access to justice as a result of (i) making a successful claim to, or in connection with, the Windrush Compensation Scheme, or (ii) receiving Scottish Child Payments. The Scottish Government considers that it would not be appropriate for low income families in receipt of Scottish Child

Payments or those who have suffered loss and are in receipt of a payment from, or in connection to, the Windrush Compensation Scheme to be put in a position which could threaten their access to justice.

Both these payments would usually automatically be considered as part of an applicant's financial resources when being assessed to determine their eligibility for publically funded legal assistance. As a result, an applicant might find that they require to make a contribution to legal fees or costs, or may even become ineligible for any publically funded legal assistance by virtue of receiving such payments.

The Scottish Government does not consider it would be appropriate to disadvantage these groups by taking account of these payments. It is critical that a payment specifically being made to families in the most financially precarious positions to bring children out of poverty, or a payment to compensate for loss suffered, does not impact on the ability of those families to access justice in the future. The Scottish Government therefore consider it correct to disregard these payments in this way.

The main purpose of this instrument is to give effect to these disregards by amending legal assistance legislation so that Scottish Child Payments and payments from, or in connection with, the Windrush Compensation Scheme will be disregarded by the Scottish Legal Aid Board (SLAB) when assessing the disposable income or disposable capital of a person who wishes to receive advice and assistance, civil legal aid or children's legal aid.

The instrument will also disregard Scottish Child Payments and payments from, or in connection with, the Windrush Compensation Scheme from calculations of any amount of fees and outlays to be taken from any property recovered or preserved for an individual in the course of proceedings.

## **Consultation**

The representative body for solicitors in Scotland is the Law Society of Scotland (the LSS) and the representative body for advocates in Scotland is the Faculty of Advocates (the FoA). The LSS, the FoA and SLAB have been informally consulted in the course of drafting these regulations.

## **Impact Assessments**

The following impact assessments were considered:

Child Rights & Wellbeing Impact Assessment – no CRWIA required.

A Child Rights and Wellbeing Impact Assessment Declaration is attached.

Equality Impact Assessment – an EQIA has been completed and is attached. No negative impacts on groups with protected characteristics were identified.

Business & Regulatory Impact Assessment – a BRIA has been completed and is attached. No negative impacts were identified.

Fairer Scotland Duty – not required.

Strategic Environmental Assessment – not required.

Data Protection Impact assessment – not required.

### **Financial Effects**

A Business and Regulatory Impact Assessment has been completed on these Regulations and is attached. The impact of this policy on business that it may offer legal aid providers some relief in administrative time and cost when processing cases which include the Scottish Child Payment. It may also have the effect of making more applicants eligible for publically funded legal assistance and therefore support further business continuity for legal aid providers.

Scottish Government  
Justice Directorate  
December 2020  
Certified copy from legislation.gov.uk

**EXTRACT FROM DPLR COMMITTEE REPORT****Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the lead committee****Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Hague Service Convention) (Amendment) 2020 (SSI 2020/423)**

This instrument amends the tables of fees in schedule 1 of the Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002 and schedule 1 of the Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002.

The amendments provide fees for messengers-at-arms and sheriff officers for the service of documents in Scotland under the Convention on the service abroad of judicial and extrajudicial documents in civil or commercial matters which was concluded on 15 November 1965 (commonly referred to as the "Hague Service Convention").

The instrument is subject to the negative procedure and is required to come into force before the end of the implementation period under the Withdrawal Agreement between the UK and the EU at 11pm on 31 December 2020 (i.e. "IP completion day").

The Committee noted there had been a failure to lay the instrument in accordance with section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2020. This section requires that instruments subject to the negative procedure are laid at least 28 days before they come into force. As the instrument was laid on 11 December, even without the Parliament being in recess from 24 December, the instrument would not meet the 28-day period given that it comes into force on IP completion day.

On 10 December 2020, the Lord President wrote to the Presiding Officer explaining why the 28-day rule was not complied with<sup>2</sup>. The Lord President explained that the Scottish Government advised the Scottish Civil Justice Council of the need for the instrument in November 2020. However, finalised policy instructions seeking the legislative amendments were not received by the Council from the Government until early December.

**The Committee agrees to draw this instrument to the attention of the Parliament on reporting ground (j) on the basis that it has breached the 28-day rule.**

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<sup>2</sup> [Correspondence from Lord President to the Presiding Officer, 10 December 2020](#)

Annexe B

**EXTRACT FROM DPLR COMMITTEE REPORT**

**Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the lead committee**

**Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2020 (2020/424)**

The instrument amends the Advice and Assistance (Scotland) Regulations 1996, the Civil Legal Aid (Scotland) Regulations 2002 and the Children's Legal Assistance (Scotland) Regulations 2013. The purpose of the amendments is to allow for payments from, or in connection with, the Windrush Compensation Scheme and the Scottish Child Payment to be disregarded from financial assessments for legal aid eligibility.

This instrument is subject to the negative procedure.

The Committee wrote to the Scottish Government on 18 December 2020 with questions about the references in the instrument to the "Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996".

In its response, the Scottish Government accepted that the Advice and Assistance (Scotland) Regulations 1996 had been incorrectly cited in both the title of regulation 2, and regulation 2(1), as the "Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996".

The Scottish Government confirmed it intends to lay an amending instrument to correct these errors at the next available legislative opportunity.

A copy of the correspondence can be found in the **Annex**.

**The Committee agrees to draw the instrument to the attention of the Parliament on the general reporting ground on the basis that the Advice and Assistance (Scotland) Regulations 1996 have been incorrectly cited in both the title of regulation 2, and regulation 2(1), as the "Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996".**

**The Committee notes the Scottish Government's commitment to take corrective action to amend this error at the next available legislative opportunity.**

**Annex**

**Legal Aid and Advice and Assistance (Miscellaneous Amendments) (Scotland) Regulations 2020 (SSI 2020/424)**

**On 18 December 2020, the Scottish Government was asked:**

1. Regulation 2(1) makes amendments to “the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996”. The title of regulation 2 is “Amendment of the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996”. That instrument (SI 1996/2447) was amended to “the Advice and Assistance (Scotland) Regulations 1996” by regulation 3 of the Advice and Assistance (Scotland) Amendments Regulations 1997 (1997/726).

Should the references to “the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996” in both the title of regulation 2 and regulation 2(1) of the instrument be to “the Advice and Assistance (Scotland) Regulations 1996”?

2. Is any corrective action proposed, and if so, what action and when?

**On 5 January 2021, the Scottish Government responded as follows:**

The Scottish Government accepts that the references should be to “the Advice and Assistance (Scotland) Regulations 1996”. As the reference to the original title of the Advice and Assistance (Scotland) (Consolidation and Amendment) Regulations 1996 as correctly footnoted can refer to no other instrument, the Scottish Government intends to take corrective action to amend at the next available legislative opportunity.

**Justice Sub-Committee on Policing**

**3<sup>rd</sup> Meeting, 2020 (Session 5), Tuesday 26 January 2021**

**Note by the Clerk**

**Feedback paper**

**Introduction**

1. On 18 January 2021, the Justice Sub-Committee on Policing held an evidence session on Police Scotland's use, and planned extended use, of remote piloted aircraft systems (commonly referred to as drones). The Sub-Committee also took evidence on Police Scotland's current use and the proposal to roll-out body worn video cameras to all police officers.
2. The Sub-Committee heard from Assistant Chief Constable Mark Williams, Operational Support, and Chief Superintendent Matthew Richards, Digitally Enabled Policing Project, Police Scotland, and Barry Sillers, Deputy Chief Executive (Strategy and Performance), Scottish Police Authority.

*Body worn video cameras*

3. The Sub-Committee heard that the use of body worn cameras is not new to policing in Scotland, and have been used by police officers, in a limited way, in the North East of Scotland since 2010. This was evaluated in 2011, prior to the establishment of Police Scotland. The Scottish Police Authority have recommended that an updated evaluation, which includes external stakeholders, is to be carried out to inform future policy.
4. Cameras have also been used by the now disbanded football co-ordination unit within Police Scotland. Police Scotland indicated that data is available on its systems to enable an evaluation and sound evidence base to continue to use body worn cameras at football matches.
5. Police Scotland outlined two proposals to the Sub-Committee for increasing the number of body worn cameras available to police officers. The first proposal is to provide them to armed police officers only. Police Scotland stated that they are the only police force in the United Kingdom that has armed officers being deployed daily without body worn cameras. To mitigate that risk, the intention is to introduce such cameras for armed policing as soon as possible over the next six to nine months. Police Scotland's second option would be to provide body worn cameras to all police officers and staff in front-line roles. This would be completed within 24 to 27 months.
6. Police Scotland estimate the costs for providing body worn cameras to all armed police officers, in the first year, would be £500,000, plus any associated revenue costs. The cost of providing such cameras to all police officers across the force was not provided but the witnesses stated that it cost be significantly more. Police Scotland confirmed that currently funding is not in place for either of these options.

7. Issues raised in written evidence included concerns about a lack of academic research, whether there is public acceptance of the use of body worn video cameras by all police officers and not just specialist divisions, concerns about officers using their judgement to decide when to turn the body worn camera on and off, data security, and the use of cameras having the potential to impact negatively on the relationship between the public and the police.

*Remote piloted aircraft systems*

8. Police Scotland commenced the use of remote piloted aircraft systems, more commonly referred to as drones, in May 2019. Police Scotland has three drones, based in Aberdeen, Inverness and Glasgow. Police Scotland [confirmed](#) to the Sub-Committee on 7 May 2019, that the drones in Aberdeen and Inverness were to be used for operational policing, primarily to search for missing and vulnerable people in remote and rural areas, and the drone based in Glasgow would be used for training, research and development purposes only.
9. On 22 May 2019, Police Scotland gave a commitment to the Scottish Police Authority that the drones would not be used for operational tasking other than searching for missing persons without further authority, and that they would evaluate best value, privacy, human rights and ethical assessments, for the SPA to consider.
10. The [Remotely Piloted Aircraft System \(RPAS\) Evaluation Report](#) indicated that the drones had been deployed to a wide range of policing incidents, without the agreed authority being requested. Following the SPA Board's consideration of the report, Police Scotland confirmed that drones would continue to be deployed for missing person searches but will be subject to additional governance and scrutiny for their use in any other public safety or threat to life incidents. Police Scotland also agreed to provide a second evaluation report on best value, privacy, human rights and ethical assessments, as these were not included in the first evaluation report.
11. The Sub-Committee heard that the three drones were purchased prior to human rights data protection impact assessments being completed. Assistant Chief Constable Williams indicated that the reason for this was that Police Scotland wanted to see, understand and utilise the equipment first, to inform these assessments.
12. ACC Williams also confirmed that Police Scotland had not consulted with external stakeholders prior to delivery of the drones, beyond consideration of technical requirements and how Police Scotland would use the drones.
13. Concerns were raised by the Scottish Police Federation in their evidence that Scottish Police Federation, says that "a properly evidenced position for the purchase of RPAS was never made", and that the purchase was rushed to spend reform funding. ACC Williams stated that the drones had enabled an enhanced policing service to be provided, in particular in the search for missing people.
14. The evaluation report indicated that the drones were not "weatherproof", and Police Scotland had made a decision to "cease all operational deployments

during wet weather”. In response to a question on this limitation to deployment, ACC Williams confirmed that the issue has been resolved, as the manufacturer has made a number of improvements to the device to enable it to fly in more inclement weather.

15. Concerns were also raised in written evidence about the use of drones for surveillance purposes, beyond the scope of their intended use. In particular, Police Scotland’s recent decision to utilise a drone to film a group of teenagers gathered on Troon beach. Inverclyde Council indicated in its written evidence that they were not informed beforehand of this surveillance, and sought clarity on any future use of drones. Barry Sillers of the SPA told the Sub-Committee that a learning point is to ensure that there is formal communication with local authorities as part of local engagement.
16. ACC Williams confirmed that the drones had not been used for covert purposes and that Police Scotland may purchase more in due course or seek to use drones more than we do currently, but has no immediate plans to do so.
17. ACC Williams also confirmed that Police Scotland would seek early engagement with the incoming Scottish Biometrics Commissioners, once they are in post, on the development of guidance for the use of drones by the police.
18. The Sub-Committee agreed to draft a short report on the evidence it has received on Police Scotland’s plans for the use of both technologies.

**Next meeting**

19. At its next meeting on 15 February, the Sub-Committee will hear from the Cabinet Secretary for Justice on the Scottish Government’s response to Dame Elish’s final report on police complaints handling.

**Justice Sub-Committee clerks  
21 January 2021**