



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

5th Meeting, 2021 (Session 5)

Tuesday 9 February 2021

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

1. **Hate Crime and Public Order (Scotland) Bill:** The Committee will consider the Bill at Stage 2 (Day 2).
2. **Subordinate legislation:** The Committee will consider the following negative instruments—

The Police Service of Scotland (Miscellaneous Amendments) Regulations 2020 (SSI 2020/453)

The Police Appeals Tribunals (Scotland) (Amendment) Rules 2020 (SSI 2020/454)

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The papers for this meeting are as follows—

Agenda item 2

Note by the Clerk

J/S5/21/5/1

Justice Committee

5th Meeting, 2021 (Session 5), Tuesday 9 February 2021

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - [The Police Service of Scotland \(Miscellaneous Amendments\) Regulations 2020](#) [see page 3];
 - [The Police Appeals Tribunals \(Scotland\) \(Amendment\) Rules 2020](#) [see page 6].
2. If the Committee agrees to report to the Parliament on the instruments, it is required to do so by **15 February 2021**.

Delegated Powers and Law Reform Committee Consideration

3. The Delegated Powers and Law Reform Committee considered the instruments at its meetings on 19 January and 26 January 2021. The DPLR Committee agreed that it did not need to draw either of them to the attention of the Parliament on any grounds within its remit.

Procedure for negative instruments

4. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
5. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
6. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
7. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible

authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.

8. Each negative instrument appears on the Justice Committee's agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not *always* possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
9. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Guidance on subordinate legislation

10. Further guidance on subordinate legislation is available on the Delegated Powers and Law Reform Committee's web page at:

<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/delegated-powers-committee.aspx>

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

POLICY NOTE**THE POLICE SERVICE OF SCOTLAND (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2020****SSI 2020/453**

For constables in the Police Service of Scotland, this instrument introduces the Police Leadership Development Programme, as a qualification for promotion from the rank of constable to the rank of sergeant. It also makes consequential amendments to rectify errors in the named regulations, as highlighted to Scottish Ministers by the Scottish Parliament.

The Police Service of Scotland (Miscellaneous Amendments) Regulations 2020 are made in exercise of the powers conferred under sections 48 and 125(1) of the Police and Fire Reform (Scotland) Act 2012 (“the 2012 Act”) and are subject to negative procedure.

Policy Objectives

1. The Police Service of Scotland (Miscellaneous Amendments) Regulations 2020 amend the Police Service of Scotland (Promotion) Regulations 2013 (“the Promotion Regulations”), the Police Service of Scotland (Senior Officers) (Conduct) Regulations 2013 and the Police Service of Scotland (Senior Officers) (Performance) Regulations 2016.
2. The Police Service of Scotland is modernising the promotion processes for ranks up to and including superintendent, by introducing new Leadership Pathways for each rank. This includes a Leadership Pathway for constables, who wish to be promoted to the rank of sergeant. This particular pathway includes the introduction of the Police Leadership Development Programme (“the PLDP”), as the qualification for promotion from the rank of constable to sergeant. These Regulations introduce the PLDP as a qualification for promotion.
3. The Police Service of Scotland is introducing the PLDP as a vocational qualification with the aim of replacing the current qualification for promotion, the Diploma in Police Service Leadership and Management (“the Diploma”), in due course. The PLDP should bring the following benefits compared to the Diploma: less out of work study time; on-the-job learning that can be immediately put into practice; and a shorter period of study time to gain the qualification.
4. The PLDP will be a Scottish Credit and Qualifications Framework (SCQF) Level 8, the same level as the Diploma, and will take approximately 12 months to complete. The Diploma provides a constable with a ‘qualification for promotion’ but constables currently undergo an 18 month course, before they can then apply for promotion opportunities.
5. Regulations 3 to 9 amend the Promotion Regulations by providing for the new PLDP, with Regulation 4 providing a definition for the PLDP.

6. Regulation 5 substitutes regulation 3 so that a constable can gain a qualification for promotion, by either obtaining the Diploma or the PLDP. It also clarifies that constables undertaking the PLDP can be on temporary promotion to the rank of sergeant, without having obtained a qualification for promotion.

7. Regulation 7 inserts regulation 4A and regulation 4B. Regulation 4A sets out the provisions in relation to the PLDP, including eligibility to participate in the PLDP and the Scottish Ministers' functions in determining certain matters. Regulation 4A(3) allows the temporary promotion of constables to sergeant for the purposes of undertaking the PLDP and specifies the terms of that promotion. This temporary promotion will allow constables to undertake vocational learning at the promoted rank, as they work to gain the PLDP qualification.

8. Regulation 4B sets out that the Chief Constable will hold either of the qualifying diploma or the PLDP at least once in each calendar year. This will provide constables with the assurance that the Police Service of Scotland will have processes in place for constables to gain a qualification for promotion in each calendar year.

9. Regulation 8 makes amendments so that for constables participating in the PLDP, any period of temporary promotion to the rank of sergeant must be taken into account in calculating the period of probation under the regulations.

10. Regulation 9 makes amendments to extend the eligibility to temporary promotion at all ranks up to chief superintendent, to constables who have completed the PLDP.

11. Regulation 10, 11 and 12 make consequential amendments to rectify errors in the named regulations, as highlighted to Scottish Ministers by the Scottish Parliament.

Consultation

12. In accordance with section 54(2) of the 2012 Act, drafts of these instruments were issued for consultation to the range of policing stakeholders listed below, from 26 November 2020 to 10 December 2020.

- Association of Scottish Police Superintendents
- Chief Constable of the Police Service of Scotland
- Scottish Chief Police Officers' Staff Association
- Scottish Police Disability & Carers Association
- Scottish LGBTI Police Association
- Scottish Police Authority
- Scottish Police Federation
- Scottish Police Muslim Association
- Scottish Women's Development Forum
- SEMPER Scotland

13. The Scottish Ministers have taken account of the representations made in preparing these instruments.

Impacts

14. The PLDP will be implemented by the Police Service of Scotland and it has undertaken an Equality and Human Rights Impact Assessment that will continue to monitor the impact of the policy as it is delivered to constables.

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

Scottish Government
Safer Communities Directorate
December 2020

POLICY NOTE

THE POLICE APPEALS TRIBUNALS (SCOTLAND) AMENDMENT RULES 2020

SSI 2020/454

This instrument makes consequential amendments to rectify errors in the named regulations, as highlighted to Scottish Ministers by the Scottish Parliament.

The Police Appeals Tribunals (Scotland) Amendment Rules 2020 are made in exercise of the powers conferred by section 56(3) and 125(1) and paragraph 4 of schedule 3 of the Police and Fire Reform (Scotland) Act 2012 and are subject to negative procedure.

Policy Objectives

1. The Police Appeals Tribunals (Scotland) Amendment Rules 2020 make a consequential amendment to the Police Appeals Tribunals (Scotland) Rules 2013, correcting an omission made to those rules by the Police Service of Scotland (Senior Officers) (Performance) Regulations 2016.

Consultation

2. This instrument was issued for consultation to the range of policing stakeholders listed below, from 26 November 2020 to 10 December 2020.

- Association of Scottish Police Superintendents
- Chief Constable of the Police Service of Scotland
- Scottish Chief Police Officers' Staff Association
- Scottish Police Disability & Carers Association
- Scottish LGBTI Police Association
- Scottish Police Authority
- Scottish Police Federation
- Scottish Police Muslim Association
- Scottish Women's Development Forum
- SEMPER Scotland

3. The Scottish Ministers have taken account of the representations made in preparing this instrument.

Impacts

4. There are no equality impact issues.

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

Scottish Government
Safer Communities Directorate, December 2020