



The Scottish Parliament
Pàrlamaid na h-Alba

JUSTICE COMMITTEE

AGENDA

23rd Meeting, 2019 (Session 5)

Tuesday 24 September 2019

The Committee will meet at 10.00 am in the Mary Fairfax Somerville Room (CR2).

1. **Scottish Biometrics Commissioner Bill:** The Committee will take evidence on the Bill at Stage 1 from—

Professor Paul Wiles, Commissioner for the Retention and Use of Biometric Material;

Lucy Bradshaw-Murrow, Head of Office, Office of the Commissioner for the Retention and Use of Biometric Material;

and then from—

Dr Christopher Lawless, Associate Professor, Department of Sociology, Durham University;

Dr Hannah Graham, Senior Lecturer in Criminology, Scottish Centre for Crime and Justice Research (SCCJR), University of Stirling;

Dr Karen Richmond, University of Strathclyde.

2. **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 proposal—

The Civil Jurisdiction and Judgments (Civil and Family) (Amendment) (EU Exit) Regulations 2019.

3. **Subordinate legislation:** The Committee will consider the following negative instruments—

Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 2019 (SSI 2019/230), and

The Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Regulations 2019 (SSI 2019/231).

4. **Scottish Biometrics Commissioner Bill (in private):** The Committee will review the evidence heard at today's meeting.

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The papers for this meeting are as follows—

Agenda item 1

Paper from the Clerk

J/S5/19/23/1

PRIVATE PAPER

J/S5/19/23/2

Agenda item 2

SI notification

J/S5/19/23/3

Agenda item 3

Paper by the clerk - Negative SSIs

J/S5/19/23/4

Justice Committee

23rd Meeting, 2019 (Session 5) Tuesday 24 September 2019

Scottish Biometrics Commissioner Bill

Background

1. The [Scottish Biometrics Commissioner Bill](#) (“the Bill”) was introduced in the Scottish Parliament, by the Cabinet Secretary for Justice, Humza Yousaf MSP, on 30 May 2019. The Bill, and its [accompanying documents are available online](#). The Bill has been referred to the Justice Committee for stage 1 scrutiny and the Parliament has set an end date of 20 December 2019 for the Stage 1 process.

Purpose of the Bill

2. The purpose of the Bill is to address a range of ethical and human rights considerations in Scotland in terms of the approach to the collection, use, retention and disposal of biometric data in the context of policing and criminal justice. The Bill aims to ensure this is done in a lawful, effective and ethical manner.

3. The Bill seeks to achieve this by establishing the post of the Scottish Biometrics Commissioner (“the Commissioner”). The primary role of the Commissioner will be to draw up and promote the use of a Code of Practice for the collection, use, retention and disposal of biometric data by Police Scotland and the Scottish Police Authority¹, who provide the forensic service to police in Scotland. The Bill also provides for other functions in relation to the Commissioner.

Evidence taking

4. The Committee undertook a call for written evidence on the Bill from 2 July to 30 August 2019. The [responses received by the Committee](#) are now available online. Based on these responses the Committee has invited various witnesses to provide oral evidence on the Bill.

5. At this meeting on 24 September the Committee will hear from two panels of witnesses. The first panel of witnesses consists of-

- **Professor Paul Wiles**, Commissioner for the Retention and Use of Biometric Material, and
- **Lucy Bradshaw-Murrow**, Head of Office for the Commissioner for the Retention and Use of Biometric Material.

6. Professor Wiles has provided a [written submission to the Committee](#), in advance of his oral evidence on the Bill. In June 2019, Professor Wiles published an [addendum to his 2018 Annual Report](#) which specifically focusses on the Scottish Biometrics Commissioner Bill. This addendum supplements the reference² made to the Bill by Professor Wiles in his [Annual Report for 2018](#), which was published in March 2019.

¹ Under Section 2(1) of the Bill, the Code of Practice will apply to Police Scotland and the SPA.

² 2018 Annual Report of the Commissioner for the Retention and Use of Biometric Material, paragraph 41.

7. The second panel of witnesses the Committee will take evidence from on 24 September are-

- **Dr Christopher Lawless**, Associate Professor Department of Sociology at Durham University;
- **Dr Hannah Graham**, Senior Lecturer in Criminology at the Scottish Centre for Crime and Justice Research, University of Stirling, and
- **Dr Karen M Richmond**, University of Strathclyde.

8. The Committee has also received [a written submission from Dr Lawless](#), [a written submission from Dr Graham](#) and a [written submission from Dr Richmond](#) in advance of their oral evidence to the Committee on the Bill.

9. The Scottish Parliament Information Centre (SPICe) has also produced a [parliamentary Bill Briefing](#) on the provisions of the Bill.

Justice Committee clerks
19 September 2019

Justice Committee

23rd Meeting, 2019 (Session 5), Tuesday 24 September 2019

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

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 in relation to the following SI:
 - Civil Jurisdiction and Judgments (Civil and Family) (Amendment) (EU Exit) Regulations 2019
5. The draft SI has not yet been laid in the UK Parliament. According to the SI notification, the SI will correct errors in an earlier SI which made provision in relation to the EU Maintenance Regulation. The EU Maintenance Regulation provides rules on jurisdiction and for the recognition and enforcement of family maintenance decisions between EU Member States. Further information can be found in the SI notification attached at Annex A.

Views from officials and external bodies

6. The clerks approached other parliamentary officials to seek their views, if any, on the proposals. In addition, the notification has been placed on the Committee's website for public awareness. No issues have been raised.

Action

- 7. 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

Civil Jurisdiction and Judgments (Civil and Family) (Amendment) (EU Exit) Regulations 2019

A brief explanation of law that the proposals amend

The civil judicial cooperation framework within the EU includes the following Regulation in the area of family law:

- Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations including as applied in relation to Denmark by virtue of the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark. (This is known as the “Maintenance Regulation”).

The Maintenance Regulation provides rules on jurisdiction and for the recognition and enforcement of family maintenance decisions between EU Member States.

On Exit Day, the Maintenance Regulation (and related domestic legislation) will become ‘retained EU law’ in UK domestic law. However, in the absence of an agreement between the EU and the UK, the retained EU law will cease to operate reciprocally between the EU Member States and the UK.

The UK Government brought forward The Jurisdiction and Judgments (Family) (Amendment etc.) (EU Exit) Regulations 2019/519 (“the Family Regulations”) to address the deficiencies arising through revocation of the Maintenance Regulation and amendments to associated domestic legislation. The Family Regulations included provision relating to devolved Scottish matters and was made with the consent of the Scottish Ministers. The proposal to consent was notified to the Scottish Parliament on 26 November 2018 and approved on 4 December 2018.

Some errors were made in the Family Regulations. These errors are to be addressed in the Civil Jurisdiction and Judgments (Civil and Family) (Amendment) (EU Exit) Regulations 2019 (“the 2019 Regulations”). This includes some amendment to the Scottish devolved material as set out in this notification.

Summary of the proposals and how these correct deficiencies

The Family Regulations revoke the Maintenance Regulation. In their place the UK will fall back (principally) onto the 2007 Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (for the crossborder recognition and enforcement of maintenance involving parties from EU Member States). Where there are no Hague Convention rules to fall back on, the

Family Regulations make provision for the rules which will apply. In the case of maintenance jurisdiction, these are primarily the rules as they existed prior to the relevant EU rules taking effect (the pre-EU rules).

An error has been identified in the amendments the Family Regulations make to domestic legislation to re-instate the pre-EU jurisdiction rules in Scotland. This has the unintended effect that, post exit, an applicant, domiciled or habitually resident in Scotland seeking aliment (on a standalone basis – i.e. where that is not connected to divorce or other proceedings) will be limited to pursuing the paying party in their courts. This was not the intention which was rather to revert to the pre-EU jurisdiction rules which also provided for jurisdiction in the courts of the person pursuing the claim

The proposal is to amend paragraph 12 of the schedule of the Family Regulations which amends paragraph 2 of schedule 8 of the Civil Jurisdiction and Judgments Act 1982 to insert provision which will re-instate this jurisdiction. It is also proposed to adjust the amendment to section 4 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 in paragraph 5 of the schedule to the Family Regulations to remove a reference to actions for adherence and aliment. This reference is obsolete since such actions no longer exist.

Additionally, some of the provisions of the Family Regulations are potentially open to argument about their precise effect, family law stakeholders having expressed uncertainty as to whether the saving and transitional provisions in the Family Regulations (which ensure that cases started under the Maintenance Regulation rules before exit, continue under those rules after exit) apply to cases begun under the intra-UK maintenance jurisdiction rules (which was the intention) and as to the relationship between domestic jurisdiction rules in maintenance matters and the Hague Convention rules post exit. Minor and technical amendments are proposed to regulation 8 of the Family Regulations to clarify the saving and transitional provisions. To clarify the position on the relationship with the Hague Convention technical amendments are proposed to paragraph 13 of the Schedule of the Family Regulations (amending section 28 of the Matrimonial Proceedings Act 1984); and paragraph 25 of that schedule (amending sections 227 and schedule 7 of the Civil Partnership Act 2004).

An explanation of why the change is considered necessary

Schedule 8 to the Civil Jurisdiction and Judgments Act 1982 (the CJJA) makes provision for jurisdiction rules for Scotland. Prior to the commencement of the Maintenance Regulation, paragraph 2(e) of Schedule 8 made provision for crossborder cases involving standalone aliment claims only (i.e. where that is not connected to divorce or other proceedings), involving countries other than EU Member States and allowed a person who is domiciled or habitually resident in Scotland to sue a party who is domiciled or habitually resident in another country for standalone aliment in the Scottish courts. Paragraph 2(e) was revoked when the Maintenance Regulation came into effect in the UK.

To properly restore the Scottish pre-Maintenance Regulation jurisdiction rules in line with the Government's 'no deal' EU Exit policy, the Family Regulations should have reinstated paragraph 2(e) of Schedule 8. However, they do not do so. This was an oversight. The result if not corrected would be that post exit, an applicant seeking standalone aliment from a person domiciled or habitually resident in another country would not be able to bring proceedings in the Scottish Courts and would have to pursue their claim in the courts of the other person's domicile or residence. While the number of cases affected is not likely to be many, the impact on the parties involved in those cases could be significant.

The Civil Jurisdiction and Judgments (Civil and Family) (Amendment) (EU Exit) Regulations 2019 address this error by amending the Family Regulations to ensure that paragraph 2(e) of Schedule 8 of the CJA is re-instated to its pre-Maintenance Regulation form, with a further minor update to remove the obsolete reference to actions for adherence and aliment.

The second issue with the Family Regulations relates to the saving and transitional provisions in regulation 8. These provisions ensure that matters commenced under the Maintenance Regulation prior to EU exit will continue to be governed by these EU rules post exit. This includes the Maintenance Regulation's rules about choice of court agreements which will continue to apply post-exit to proceedings that are before a court designated in a choice of court agreement.

When the EU Maintenance Regulation came into effect in the UK, new maintenance jurisdiction rules for intra-UK matters (that is maintenance disputes where the parties live in different parts of the UK), based on the Maintenance Regulation's jurisdiction rules, were introduced. These intra-UK rules include a rule on intra-UK choice of court agreements.

The saving and transitional provisions of the Family Regulations do not expressly apply to matters commenced under the intra-UK maintenance jurisdiction rules. Family law stakeholders have advised the UK Government that this creates uncertainty as to the application of the saving and transitional provisions of the Family Regulations to intra-UK maintenance cases commenced under the intra-UK rules prior to exit, in particular about cases where a matter is before a court in one part of the UK as at exit pursuant to an intra-UK choice of court agreement in maintenance.

The Civil Jurisdiction and Judgments (Civil and Family) (Amendment) (EU Exit) Regulations 2019 address this issue by amending the Family Regulations to make clear that the relevant saving and transitional provisions (those applying to maintenance) apply to intra-UK maintenance matters commenced under the intra-UK maintenance jurisdiction rules before exit and to make clear that choice of court agreements made under the intra-UK rules prior to exit can continue to be relied upon post exit .

In addition to addressing the issues discussed above, family law stakeholders have asked the UK Government to make clear that, post-EU exit, the relevant Hague Convention rules (the jurisdiction rules of the 1996 Hague Convention and Article 18 of the 2007 Hague Convention, which limits a court's jurisdiction to vary a maintenance decision that has been made by a court in another country where the creditor remains habitually resident in that other country) take precedence over the

domestic jurisdiction rules in cases that properly fall under the two Hague Conventions. Family law stakeholders have advised that failing to make this clear in the relevant provisions creates uncertainty as to which rules take precedence which would, in the absence of clarification, be likely to require the matter to be tested before a court, with unnecessary cost for the parties. The Government agrees.

The Civil Jurisdiction and Judgments (Civil and Family) (Amendment) (EU Exit) Regulations 2019 amends the Family Regulations to provide for amendment of relevant existing legislation to clarify that the 1996 Hague Convention jurisdiction rules and Article 18 of 2007 Hague Convention take precedent over relevant domestic jurisdiction rules.

Scottish Government categorisation of significance of proposals

Category A, with the following characteristics:

- Minor and technical in detail;
- Ensuring continuity of law;
- Clear there is no significant policy decision for Ministers to make; and
- Proposals necessary for continuity where there may be a minor policy change, but limited policy choice and an “obvious” policy answer.

Impact on devolved areas

The Scottish Government has responsibility for family law and procedure which relates to devolved matters. In the absence of these EU frameworks, the legal rules need to be certain which this SI ensures for international and intra-UK maintenance.

The proposals in relation to the amendments to paragraph 2 of schedule 8 of the Civil Jurisdiction and Judgments Act 1982 and to section 4 of the Maintenance Orders (Reciprocal Enforcement) Act 1972 relating to standalone actions for aliment relate only to Scotland. The other amendments, described in the notification, are not specific to Scotland.

Summary of stakeholder engagement/consultation

A formal consultation on this SI has not been carried out. UK Government Ministry of Justice officials met with representatives of Resolution, the Family Law Bar Association and the International Association of Family Lawyers to discuss the concerns that family lawyers had about the Family Regulations. A draft of the instrument was provided to those organisations who were invited to comment on it. Those comments were taken into consideration before the instrument was finalised,

A note of other impact assessments, (if available)

The UK Government has informed the Scottish Government that an Impact Assessment has not been prepared for this instrument because an impact assessment was prepared and published for the [Family Regulations](#). This instrument amends the Family Regulations to ensure that those Regulations will have the impact as described in the impact assessment published in respect of them.

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

As the UK Government brought forward the Family Regulations to which this SI is making technical corrections the majority of which are to UK wide provisions, the Scottish Government considers for reasons of efficiency that consent should be given to Scotland's inclusion in this correcting SI.

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

These Regulations will be subject to the affirmative procedure. The intended laying date is to be confirmed but it is intended to respect the 28 day protocol.

The Prime Minister's announcement on 28 August that he has approached the Queen to request an end to the current parliamentary session may impact on those EU Exit SIs that are still to be laid or are still to complete their parliamentary passage. The Cabinet Office are considering this at the moment and we will provide an update when it becomes clear if this will impact the legislative timetable or procedure that relate to this SI.

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

There is 28 days for scrutiny. The SI will not be debated in the UK Parliament until after the Scottish Parliament has considered.

Information about any time dependency associated with the proposal

No associated time dependency.

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

There are no broader governance issues in relation to this proposal.

Any significant financial implications?

None identified.

Justice Committee

23rd Meeting, 2019 (Session 5), Tuesday 24 September 2019

Subordinate legislation

Note by the clerk

Purpose

1. This paper invites the Committee to consider the following negative instruments:
 - [The Removal, Storage and Disposal of Vehicles \(Prescribed Sums and Charges etc.\) \(Scotland\) Regulations 2019 \[see page 3\]](#)
 - [The Police \(Retention and Disposal of Motor Vehicles\) \(Scotland\) Amendment Regulations 2019 \[see page 8\]](#)
2. If the Committee agrees to report to the Parliament on the instruments it is required to do so by 30 September 2019.

Procedure for negative instruments

3. 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).
4. 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.
5. 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.
6. 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.

7. 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

8. 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>

Recommendation

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

THE REMOVAL, STORAGE AND DISPOSAL OF VEHICLES (PRESCRIBED SUMS AND CHARGES ETC.) (SCOTLAND) REGULATIONS 2019 (SSI 2019/230)

Introduction

10. The above instrument was made in exercise of the powers conferred by sections 4(5) and (6), 5(1) and 10(1) of the Refuse Disposal (Amenity) Act 1978 and sections 101(4), (4A)(b)(ii), (5), and (5A)(b)(ii), 102(2) and 103(3) of the Road Traffic Regulation Act 1984 and of all other powers enabling them to do so. The instrument is subject to negative procedure.

11. These Regulations will provide for new charging arrangements for the removal, storage and disposal of vehicles, which currently are set out in the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Regulations 1989, as amended by The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Amendment (Scotland) Regulations 2005.

12. Further details on the purpose of the instrument can be found in the policy note (see below).

13. The instrument comes into force on 10 October 2019.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

14. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 3 September 2019 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

15. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 30 September.

Policy Note: The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges Etc.) (Scotland) Regulations 2019 (SSI 2019/230)

Policy Objective

These Regulations allow 'matrix charging' to be applied when operators uplift vehicles. Matrix charging moves away from the current single removal, storage and disposal rates that are in place, to a system that allows for different levels of charges that more readily reflect the expenditure outlay faced by operators when uplifting larger vehicles, or where the circumstances require more specialist equipment and longer operator involvement.

These Regulations also bring charging arrangements into line with those proposed for The Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment

Regulations 2019, those in place in England and Wales¹ and The Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) (Amendment) Regulations 2008², albeit with the new charges reflecting inflationary and increased costs of this type of work.

The existing charging arrangements have been in place since 2005 and are considered inadequate. The existing charge of £150 for removal of any vehicle in any position on or off a road does not reflect the actual costs of recovery when there are complexities in relation to the size and/or position of vehicles.

These Regulations prescribe the amounts payable in respect of removal, retention and disposal of vehicles as set out in Parts 1 to 3 of Schedule 1. The amount payable in respect of those matters is now determined by the type and MAM of a vehicle, and by the circumstances under which it is removed. In terms of removal of a vehicle, the Regulations also make provision for additional charges in certain circumstances: a mileage charge of £1.10 per mile is applied where the operator is required to travel in excess of 40 miles in order to remove and retain a vehicle; and a ferry charge of £125 is applied for every single journey by ferry the operator is required to make to remove and retain a vehicle.

These Regulations revoke the instruments listed in Schedule 2 which provided for charges of £150 for removal of a vehicle, £20 a day (or part of a day) for storage of a vehicle and £150 for disposal of a vehicle.

The following interpretations are inserted,

“the authority”—

- (a) in relation to a vehicle removed by a constable or other operator acting in aid of Police Scotland means the Chief Constable of Police Scotland;
- (b) in relation to a vehicle removed by a local authority or other operator acting in aid of a local authority means that local authority;

“laden” means that the vehicle is carrying a load;

“load” means anything which in the reasonable opinion of the authority complicates or impedes the removal of the vehicle other than—

- (a) the body and all parts of the vehicle which are necessary to or ordinarily used with the vehicle when working on a road;
- (b) any water, fuel or accumulators used for the purpose of the supply of power for the propulsion of the vehicle;

¹ The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008 as amended by the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) (Amendment)(England) Regulations 2008 and the Police (Retention and Disposal of Motor Vehicles) Regulations 2002 as amended by the Police (Retention and Disposal of Motor Vehicles) (Amendment) Regulations 2008.

² Which extend to England, Wales and Scotland.

- (c) the driver, any passengers and their personal effects;
 - (d) a crane, works truck as defined in regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986, or other special appliance or apparatus which is a permanent or essentially permanent fixture of the vehicle; and
 - (e) any containers or other equipment intended or adapted for the purpose of holding or carrying a load by the vehicle;
- In relation to a load, it is the intention that if a vehicle is to be considered laden there must be a substantial load which in some way complicates or impedes the recovery. The consultation highlighted occasions where a vehicle had been classed as laden by the presence of a small box or load which in fairness to a vehicle owner should not justify a higher matrix charge.

“MAM” means maximum authorised mass as defined in regulation 3(1) of the Motor Vehicles (Driving Licences) Regulations 1999 and, for the purposes of Regulation 3, includes the MAM of any trailer attached to a vehicle;

“off road” means that no part of the vehicle is in contact with the road, or that, in the reasonable opinion of the authority, the vehicle’s location is such that removal of the vehicle is of comparable complexity to a vehicle that is not in contact with the road;

- The consultation process highlighted that on occasion, although a part of a vehicle may have contact with a road, there could be physical structures or features off of the road that complicate or impede the recovery and may justify a higher charge on the matrix.

“on road” means that any part of the vehicle is in contact with the road and that, in the reasonable opinion of the authority, the vehicle’s location is not such that removal of the vehicle is of comparable complexity to a vehicle that is not in contact with the road;

“operator” means any person lawfully removing the vehicle;

“road” has the same meaning as in section 151 of the Roads (Scotland) Act 1984;

“significantly damaged” means that, in the reasonable opinion of the authority, there is significant damage to the vehicle such that it renders the removal of it complex or there is some other impediment which complicates the removal of the vehicle.;

- It is the intention that to qualify for significantly damaged a vehicle must be so damaged as to require additional specialist equipment other than is routinely carried on a recovery vehicle, such as requiring a hiab crane or additional resources to complete its removal. The additional charge for significant damage will likely be challenged and scrutinised by vehicle owners and insurers, therefore, must in the opinion of the authority be justified.

“two wheeled vehicle” means a mechanically propelled vehicle constructed or adapted to have two wheels or fewer and the MAM of which does not exceed 3.5 tonnes;

“unladen” means that the vehicle is not carrying a load;

“upright” means that, in the reasonable opinion of the authority, the vehicle is upright to such an extent that its removal is not complicated or impeded;

- For the purposes of the table in Part 1 of the schedule, a vehicle will be considered upright if, in the reasonable opinion of the authority, the vehicle is upright to such an extent that its removal is not complicated or impeded. The guiding principle will be difficulty likely to be encountered in removing a vehicle.

“vehicle” means any motor vehicle and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle and anything attached to, such a vehicle.

Consultation

Under section 134(8) of the Road Traffic Regulation Act 1984 there is a statutory requirement for Scottish Ministers to consult with such representative organisations as they think fit.

Several pre-consultation meetings were held with stakeholders, which included representatives from the Freight Trade Associations, Vehicle Recovery Operators Associations, Recovery Management Services, individual recovery operators and the Association of British Insurers.

A formal consultation³ was conducted by the Scottish Government, which ran from 14 May until 6 August 2018 to establish the most appropriate charges for the removal, storage and disposal of vehicles.

As a result of that consultation, it is widely agreed by all stakeholders that revised charges are necessary to provide a sustainable Vehicle Recovery Scheme to enable Police Scotland and local authorities to fulfil their statutory duties to remove vehicles or to enforce the law and remove obstructions or potential dangers.

There were a wide variety of opinions received regarding the matrix charges and whilst there was not always consensus within stakeholder groups as to what the charges should be, it was clear that from the respondents who addressed this question that many agreed with the proposed level of charges.

³ Available on the Scottish Government website at:

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/03/consultation-on-removal-storage-and-disposal-of-vehicles-regulations-analysis-of-consultation-responses/documents/consultation-removal-storage-disposal-vehicles-regulations-analysis-responses/consultation-removal-storage-disposal-vehicles-regulations-analysis-responses/govscot%3Adocument/consultation-removal-storage-disposal-vehicles-regulations-analysis-responses.pdf>

The consultation also highlighted some scenarios where a recovery may require a longer journey by road or a journey by ferry. As a consequence of this refinements were made to the charging structure to reflect these different scenarios.

There is widespread support for the proposals contained in the consultation document and there is an overwhelming consensus that the charging structure for the removal, storage and disposal of vehicles requires updating.

Impact Assessments

There are no significant equality impact issues, the Scottish Government decided that no equality impact assessment was required.

Financial effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and can be accessed [here](#).

THE POLICE (RETENTION AND DISPOSAL OF MOTOR VEHICLES) (SCOTLAND) AMENDMENT REGULATIONS 2019 (SSI 2019/231)

Introduction

16. The above instrument was made in exercise of the powers conferred by sections 127 and 141 of the Antisocial Behaviour etc. (Scotland) Act 2004 and all other powers enabling them to do so. The instrument is subject to negative procedure.

17. These Regulations will amend the charging arrangements for the removal and retention of vehicles as set out in the Police (Retention and Disposal of Motor Vehicles) (Scotland) Regulations 2005 (“the 2005 Regulations”).

18. Further details on the purpose of the instrument can be found in the policy note (see below).

19. The instrument comes into force on 10 October 2019.

DELEGATED POWERS AND LAW REFORM COMMITTEE CONSIDERATION

20. The Delegated Powers and Law Reform (DPLR) Committee considered this instrument at its meeting on 3 September 2019 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remit.

JUSTICE COMMITTEE CONSIDERATION

21. If the Committee agrees to report to the Parliament on this instrument, it is required to do so by 30 September 2019.

Policy Note: The Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Regulations 2019 (SSI 2019/231)

Policy Objective

These Regulations allow 'matrix charging' to be applied when vehicles are removed. Matrix charging moves away from the current single rates that are in place, to a system that allows for different levels of charges that more readily reflect the expenditure outlay faced when uplifting larger vehicles, or where the circumstances require more specialist equipment and longer operator involvement.

These Regulations also bring charging arrangements into line with those proposed for The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Amendment (Scotland) Regulations 2019, those in place in England and Wales⁴ and

⁴ The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008 as amended by the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) (Amendment)(England) Regulations 2008 and the Police (Retention and Disposal of Motor Vehicles)

The Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) (Amendment) Regulations 2008⁵, albeit with the new charges reflecting inflationary and increased costs of this type of work.

The existing charging arrangements have been in place since 2005 and are considered inadequate. The existing charge of £105 for removal of any vehicle in any position on or off a road does not reflect the actual costs of recovery when there are complexities in relation to the size and/or position of vehicles.

The Regulations amend regulation 6 of the 2005 Regulations which previously provided for charges of £105 for removal of a vehicle and £12 a day for retention of a vehicle.

These Regulations provide for the amounts payable in respect of removal and retention of vehicles as set out in Parts 1 and 2 of the Schedule. The amount of the charge payable in respect of those matters is now determined by the type and MAM of a vehicle, and by the circumstances under which it is removed. In terms of removal of a vehicle, the Regulations also make provision for additional charges in certain circumstances: a mileage charge of £1.10 per mile is applied where the operator is required to travel in excess of 40 miles to remove and retain a vehicle; and a ferry charge of £125 if applied for every single journey by ferry the operator is required to make to remove and retain a vehicle.

The following interpretations are inserted into regulation 2 of the 2005 Regulations,

“laden” means that the vehicle is carrying a load;

“load” means anything which in the reasonable opinion of a constable complicates or impedes the removal of the vehicle other than—

- a) the body and all parts of the vehicle which are necessary to or ordinarily used with the vehicle when working on a road;
- b) any water, fuel or accumulators used for the purpose of the supply of power for the propulsion of the vehicle;
- c) the driver, any passengers and their personal effects;
- d) a crane, works truck as defined in regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986, or other special appliance or apparatus which is a permanent or essentially permanent fixture of the vehicle; and
- e) any containers or other equipment intended or adapted for the purpose of holding or carrying a load by the vehicle;

Regulations 2002 as amended by the Police (Retention and Disposal of Motor Vehicles)(Amendment) Regulations 2008.

⁵ Which extend to England, Wales and Scotland.

- In relation to a load, it is the intention that if a vehicle is to be considered laden there must be a substantial load which in some way complicates or impedes the recovery. The consultation highlighted occasions that a vehicle has been classed as laden by the presence of a small box or load which in fairness to a vehicle owner should not justify a higher matrix charge.

“MAM” means maximum authorised mass as defined in regulation 3(1) of the Motor Vehicles (Driving Licences) Regulations 1999 and for the purposes of Regulation 6, includes the MAM of any trailer attached to a vehicle;

“off road” means that no part of the vehicle is in contact with the road, or that, in the reasonable opinion of a constable, the vehicle’s location is such that removal of the vehicle is of comparable complexity to a vehicle that is not in contact with the road;

- The consultation process highlighted that on occasion, although a part of a vehicle may have contact with a road, there could be physical structures or features off of the road that complicate or impede the recovery and may justify a higher charge on the matrix.

“on road” means that any part of the vehicle is in contact with the road, and that, in the reasonable opinion of a constable, the vehicle’s location is not such that removal of the vehicle is of comparable complexity to a vehicle that is not in contact with the road;

“operator” means any person lawfully removing the vehicle;

“road” has the same meaning as in section 151 of the Roads (Scotland) Act 1984;

“significantly damaged” means that, in the reasonable opinion of a constable, there is significant damage to the vehicle such that it renders the removal of it complex or there is some other impediment which complicates the removal of the vehicle;

- It is the intention that to qualify for significantly damaged a vehicle must be so damaged as to require additional specialist equipment other than is routinely carried on a recovery vehicle, such as requiring a hiab crane or additional resources to complete its removal. The additional charge for significant damage will likely be challenged and scrutinised by vehicle owners and insurers, therefore, must in the opinion of a constable be justified.

“two wheeled vehicle” means a mechanically propelled vehicle constructed or adapted to have two wheels or fewer and the MAM of which does not exceed 3.5 tonnes;

“unladen” means that the vehicle is not carrying a load;

“upright” means that, in the reasonable opinion of a constable, the vehicle is upright to such an extent that its removal is not complicated or impeded;

- For the purposes of the table in Part 1 of the Schedule a vehicle will be considered upright if in the reasonable opinion of a constable the vehicle is upright to such an extent that its removal is not complicated or impeded. The guiding principle will be the difficulty encountered in removing a vehicle.

“vehicle” means any motor vehicle and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle, and anything attached to, such a vehicle.

Consultation

Several pre consultation meetings were held with stakeholders, which included representatives from the Freight Trade Associations, Vehicle Recovery Operators Associations, Recovery Management Services, individual recovery operators and the Association of British Insurers.

A formal consultation⁶ was conducted by the Scottish Government which ran from 14 May until 6 August 2018 to establish the most appropriate charges for the retention, storage and disposal of vehicles.

As a result of that consultation, it is widely agreed by all stakeholders that revised charges are necessary to provide a sustainable Vehicle Recovery Scheme to enable Police Scotland to fulfil its statutory duties to remove vehicles and enforce the law. There were a wide variety of opinions received regarding the matrix charges and whilst there was not always consensus within stakeholder groups as to what the charges should be, it was clear that from the respondents who addressed this question that many agreed with the proposed level of charges.

The consultation also highlighted some scenarios where a recovery may require a longer journey by road or a journey by ferry. As a consequence of this refinements were made to the charging structure to reflect these different scenarios.

There is widespread support for the proposals contained in the consultation document and there is an overwhelming consensus that the charging structure for the retention and storage of vehicles requires updating.

Impact Assessments

There are no significant equality impact issues, the Scottish Government also decided that no equality impact assessment was required.

Financial effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and can be accessed [here](#).

⁶ Available on the Scottish Government website at:

<https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/03/consultation-on-removal-storage-and-disposal-of-vehicles-regulations-analysis-of-consultation-responses/documents/consultation-removal-storage-disposal-vehicles-regulations-analysis-responses/consultation-removal-storage-disposal-vehicles-regulations-analysis-responses/govscot%3Adocument/consultation-removal-storage-disposal-vehicles-regulations-analysis-responses.pdf>