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## **Justice Committee Comataidh a' Cheartais**

# **Subordinate Legislation**



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# Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice.



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# Committee Membership



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**George Adam**  
Scottish National Party



**Maurice Corry**  
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Scottish Green Party



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Scottish National Party



**Liam Kerr**  
Scottish Conservative  
and Unionist Party



**Fulton MacGregor**  
Scottish National Party



**Ben Macpherson**  
Scottish National Party



**Liam McArthur**  
Scottish Liberal  
Democrats

# Subordinate legislation

## Introduction

1. At its meeting on 21 November 2017 the Justice Committee considered the following draft instruments:

[Criminal Justice \(Scotland\) Act 2016 \(Consequential and Supplementary Modifications\) Regulations 2017 \[draft\]](#);

[Criminal Justice \(Scotland\) Act 2016 \(Modification of Part 1 and Ancillary Provision\) Regulations 2017 \[draft\]](#).

2. The instruments were referred to the Justice Committee as lead committee and were subject to the affirmative procedure. The Cabinet Secretary for Justice, Michael Matheson, attended the meeting to give evidence on the instruments and also to move the relevant motions recommending approval of the instruments.

## **Criminal Justice (Scotland) Act 2016 (Consequential and Supplementary Modifications) Regulations 2017 [draft]**

3. The instrument is made under section 115(1) of the Criminal Justice (Scotland) Act 2016(a) and all other enabling powers. The Regulations make provision consequential on the Criminal Justice (Scotland) Act 2016 (“the 2016 Act”). Paragraph 12(3) of the schedule makes provision supplemental to that Act. The instrument modifies primary and secondary legislation to remove references to powers of arrest abolished by section 54 of the 2016 Act and to remove references to detention under section 14 of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”) (which is repealed by schedule 2 paragraph 27 of the 2016 Act). Other modifications replace references to provisions of the 1995 Act with references to replacement provisions in the 2016 Act.

## **Criminal Justice (Scotland) Act 2016 (Modification of Part 1 and Ancillary Provision) Regulations 2017 [draft]**

4. The instrument is made under section 60(1)(b) and (2) and section 115(1) of the Criminal Justice (Scotland) Act 2016(a) and all other enabling powers. The Regulations modify Part 1 of the Criminal Justice (Scotland) Act 2016 in relation to its application to people who have been arrested by the police on a legal basis other than section 1 of the Act (arrests without warrant). Part 1 sets out the processes and procedures that are to be followed when the police arrest someone. Various amendments to other legislation which are consequential on the Part 1 modifications or on the Act itself are contained in the schedule.

## **Delegated Powers and Law Reform Committee consideration**

5. The Delegated Powers and Law Reform Committee considered the instruments at its meeting on 8 November 2017 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

## **Justice Committee consideration**

6. At its meeting on 21 November 2017, the Justice Committee took evidence on the instrument from Michael Matheson, Cabinet Secretary for Justice. <sup>1</sup>
7. The Cabinet Secretary told the Committee that not all the new arrest and custody provisions contained in Part 1 of the Criminal Justice (Scotland) Act 2016 are appropriate where a person is arrested for reasons not related to a criminal offence. Mr Matheson explained that the modifications to Part 1 will require individuals to be told the reason for their arrest rather than the offence of which they are suspected as this would not be appropriate in non-offence-based arrests.
8. The Cabinet Secretary confirmed that the consequential and supplementary modifications were mainly technical amendments which, for example, repealed old powers of arrest or removed statutory references that no longer applied. Mr Matheson also confirmed that these Regulations added the Sheriff Appeal Court to the list of criminal courts to which the Lord Justice General may make directions enabling an accused to appear by live television link in certain circumstances.
9. There being no questions from Members, the Cabinet Secretary moved the motions in his name:  
  
S5M-08837 - That the Justice Committee recommends that the Criminal Justice (Scotland) Act 2016 (Consequential and Supplementary Modifications) Regulations 2017 [draft] be approved.  
  
S5M-08838 That the Justice Committee recommends that the Criminal Justice (Scotland) Act 2016 (Modification of Part 1 and Ancillary Provision) Regulations 2017 [draft] be approved.
10. The motions were agreed to without debate or dissent.

11. The Justice Committee recommends to the Parliament that it approve the  
  
Criminal Justice (Scotland) Act 2016 (Consequential and Supplementary Modifications) Regulations 2017 [draft];  
  
Criminal Justice (Scotland) Act 2016 (Modification of Part 1 and Ancillary Provision) Regulations 2017 [draft].

**Justice Committee**

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- 1 Scottish Parliament Justice Committee. *Official Report 21 November 2017* Cols 2-4.  
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