

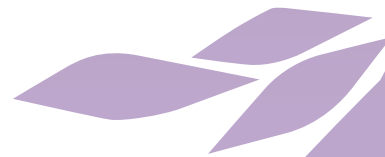


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Justice Committee Comataidh a' Cheartais

Advice and Assistance (Proceedings for Recovery of Documents) (Scotland) Regulations 2017



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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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Deputy Convener
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Scottish National Party



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and Unionist Party



Stewart Stevenson
Scottish National Party

Advice and Assistance (Proceedings for Recovery of Documents) (Scotland) Regulations 2017

Introduction

1. At its meeting on 27 June 2017 the Committee considered the following draft instrument:

[Advice and Assistance \(Proceedings for Recovery of Documents\) \(Scotland\) Regulations 2017](#)

2. The instrument was referred to the Justice Committee as lead committee and was subject to affirmative resolution. The Cabinet Secretary for Justice attended the meeting to give evidence on the instrument and also to move the relevant motion recommending approval of the instrument.
3. The instrument is made under sections 9, 33(2)(b) and (3) and 41A of the Legal Aid (Scotland) Act 1986.
4. The regulations make provision for the availability of publicly funded legal assistance for proceedings relating to an application for an order for recovery of medical or sensitive documents in connection with criminal proceedings. The availability of legal assistance for such proceedings will be non-means tested. The regulations put on a statutory footing interim legal aid arrangements, which have been in place since 1 March 2016.

Scrutiny by the Delegated Powers and Law Reform Committee

5. The Delegated Powers and Law Reform Committee considered the draft instrument at its meeting on 20 June 2017 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

6. The Justice Committee considered the draft instrument at its meeting on 27 June 2017 when Michael Matheson, Cabinet Secretary for Justice, attended to give evidence on the instrument.
7. The Cabinet Secretary stated that the regulations amend the relevant statutory legal aid provision to make equivalent provision to the interim arrangements that have been in place since 1 March 2016, following the decision of the Court of Session in *WF v Scottish Ministers*.¹ Specifically, the regulations provide for assistance by way of representation to be available, without a means test, to a client who seeks to oppose recovery of their medical records or other sensitive documents in connection with criminal proceedings.

8. Mr Matheson stated that since the interim arrangements had been in place, seven applications for legal aid had been received in connection with the potential use of sensitive records in criminal proceedings. Of those seven, five had received legal aid and the two other applications had been given in-principle agreement by the Scottish Legal Aid Board, with the checking of actual expenditure still to be undertaken.
9. Mr Matheson told the Committee that Annabelle Ewing, the Minister for Community Safety and Legal Affairs, will write to the Law Society of Scotland and other interested parties to make them aware of the new regulations.
10. Mr Matheson also undertook to provide to the Committee a copy of the letter that was sent to Rape Crisis Scotland in relation to its concerns about the reference to Article 8 of the European Convention of Human Rights (ECHR), the use of the effective participation test and provision for appeals. A copy of that letter can be found [here](#).
11. The Cabinet Secretary then moved the motion in the name of Annabelle Ewing: S5M-06068 That the Justice Committee recommends that the Advice and Assistance (Proceedings for Recovery of Documents) (Scotland) Regulations 2017 [draft] be approved.
12. The motion was agreed to without debate or dissent.

[Scottish Parliament Justice Committee. Official Report 27 June 2017](#)

13. The Justice Committee recommends to the Parliament that it approve the Advice and Assistance (Proceedings for Recovery of Documents) (Scotland) Regulations 2017 [draft].

