



The Scottish Parliament
Pàrlamaid na h-Alba

Published 5 June 2017
SP Paper 169
14th Report, 2017 (Session 5)

Justice Committee Comataidh a' Cheartais

Subordinate Legislation



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
[http://www.parliament.scot/abouttheparliament/
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Criminal Justice (Scotland) Act 2016 (Consequential and Transitional Provisions) Regulations 2017	1
Human Trafficking and Exploitation (Scotland) Act 2015 (Relevant Trafficking or Exploitation Offences and Relevant UK Orders) Regulations 2017	3
Bibliography	5

Justice Committee

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



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



justicecommittee@parliament.scot



0131 348 5047

Committee Membership



Convener
Margaret Mitchell
Scottish Conservative
and Unionist Party



Deputy Convener
Rona Mackay
Scottish National Party



Mairi Evans
Scottish National Party



Mary Fee
Scottish Labour



John Finnie
Scottish Green Party



Fulton MacGregor
Scottish National Party



Ben Macpherson
Scottish National Party



Liam McArthur
Scottish Liberal
Democrats



Oliver Mundell
Scottish Conservative
and Unionist Party



Douglas Ross
Scottish Conservative
and Unionist Party



Stewart Stevenson
Scottish National Party

Criminal Justice (Scotland) Act 2016 (Consequential and Transitional Provisions) Regulations 2017

Introduction

1. At its meeting on 30 May 2017 the Justice Committee considered the following draft instrument:

[Criminal Justice \(Scotland\) Act 2016 \(Consequential and Transitional Provisions\) Regulations 2017 \[draft\]](#)

2. The instrument was laid before Parliament on the 8 May 2017 and referred to the Justice Committee. The instrument is subject to the affirmative procedure.
3. The instrument is made under section 115(1) of the Criminal Justice (Scotland) Act 2016 ("the 2016 Act").
4. The instrument makes consequential changes to the Criminal Procedure (Scotland) Act 1995 in relation to the reform of solemn procedure in the sheriff court provided for in Part 2 of the 2016 Act. These amendments reflect in particular the change in solemn procedure in the sheriff court which requires the court to appoint trial diets at first diets (when previously the prosecutor would have done so at the stage of indictment).

Delegated Powers and Law Reform Committee consideration

5. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 16 May 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. At its meeting on 30 May 2017, the Justice Committee took evidence on the instrument from Michael Matheson, Cabinet Secretary for Justice.
7. The Cabinet Secretary told the Committee that the instrument made some minor and technical amendments to the provisions of the Criminal Procedure (Scotland) Act 1995. These amendments reflect the fact that, under the reforms in the 2016 Act, the Crown will no longer indict an accused person to a first diet and a trial diet. Instead, the Crown will indict the accused to a first diet only, and the court will appoint a trial diet when it is satisfied that the case has been prepared by both sides and is ready to proceed to trial.
8. The instrument also contains transitional provisions to ensure that the new procedure will function properly for cases which were indicted under the old system, but are still ongoing when the new system comes into force.
9. There being no questions from Members, the Cabinet Secretary moved the motion in his name: S5M-05624 - That the Justice Committee recommends that the

Criminal Justice (Scotland) Act 2016 (Consequential and Transitional Provisions) Regulations 2017 [draft] be approved.

10. The motion was agreed to without debate or dissent.

[Scottish Parliament Justice Committee, Official Report 30 May 2017.](#)

11. The Justice Committee recommends to the Parliament that it approve the Criminal Justice (Scotland) Act 2016 (Consequential and Transitional Provisions) Regulations 2017 [draft].

Human Trafficking and Exploitation (Scotland) Act 2015 (Relevant Trafficking or Exploitation Offences and Relevant UK Orders) Regulations 2017

Introduction

12. At its meeting on 30 May 2017 the Justice Committee considered the following draft instrument:

[Human Trafficking and Exploitation \(Scotland\) Act 2015 \(Relevant Trafficking or Exploitation Offences and Relevant UK Orders\) Regulations 2017 \[draft\]](#)

13. The instrument was laid before Parliament on 4 May 2017 and referred to the Justice Committee. The instrument is subject to the affirmative procedure.
14. The instrument is made under sections 16(2) and 33(1) of the Human Trafficking and Exploitation (Scotland) Act 2015 ("the 2015 Act").
15. Part 4 of the 2015 Act introduces two new court orders, namely Trafficking and Exploitation Prevention Orders (TEPOs) and Trafficking and Exploitation Risk Orders (TEROs). The instrument makes amendments to section 16(1) (relevant trafficking or exploitation offences) and section 32(2) (offences committed by breaching an order) of the 2015 Act. These amendments are aimed at ensuring that Scotland remains a hostile place to traffickers convicted elsewhere in the UK.

Delegated Powers and Law Reform Committee consideration

16. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 16 May 2017 and agreed that it did not need to draw it to the attention of the Parliament on any grounds within its remits.

Justice Committee consideration

17. At its meeting on 30 May 2017 the Justice Committee took evidence on the instrument from Michael Matheson, Cabinet Secretary for Justice.
18. The Cabinet Secretary told the Committee that the instrument would add offences that have been created by trafficking legislation elsewhere in the UK to the list of relevant trafficking and exploitation offences set out in section 16(1) of the 2015 Act. The instrument would also specify court orders that have been created by that legislation, breach of which in Scotland would become a criminal offence. He explained that those UK offences and orders were equivalent to the offences and orders that were created by the 2015 Act.
19. He went on to say that the only exception to this was section 62 of the Sexual Offences Act 2003, which makes it an offence to commit another offence with the intention of committing a trafficking offence. He explained that this had been added to the list of offences "because criminal conduct that is motivated by an intention to

commit a trafficking offence demonstrates a clear risk that an individual might in the future engage in conduct that is related to trafficking".¹

20. In response to questions from the Committee relating to TEROs, the Cabinet Secretary told the Committee that, while there was no requirement for a conviction before a TERO could be made, there were a range of other requirements set out in the 2015 Act. Further, individuals made subject to a TERO would have the opportunity to challenge the order in court and could have the order reviewed. The minimum fixed period for a TERO was two years, compared with five years for a TEPO.
21. The Cabinet Secretary also told the Committee that where Police Scotland apply for a TERO, he expected the Crown Office and Procurator Fiscal Service to be aware of the individual concerned. He went on to state:

” There might be insufficient evidence to justify a conviction at that point, but there could have been a range of activities that would raise concerns about an offence being committed. In those circumstances, a TERO would be appropriate. It provides the police with an additional measure in taking action against an individual who might be involved in activity that could lead to trafficking.

Source: Justice Committee 30 May 2017 [Draft], Michael Matheson, contrib. 16²

22. The Cabinet Secretary said that there were no plans for a formal review process of TEROs or TEPOs. However, he told the Committee that the Scottish Government would be continuing to evaluate the effectiveness of the provisions and that it would consider any issues of concern that were raised.
23. Following the evidence session, the Cabinet Secretary moved the motion in his name: S5M-05625 - That the Justice Committee recommends that the Human Trafficking and Exploitation (Scotland) Act 2015 (Relevant Trafficking or Exploitation Offences and Relevant UK Orders) Regulations 2017 [draft] be approved.
24. The motion was agreed to without debate or dissent.

[Scottish Parliament Justice Committee, Official Report 30 May 2017.](#)

25. The Justice Committee recommends to the Parliament that it approve the Human Trafficking and Exploitation (Scotland) Act 2015 (Relevant Trafficking or Exploitation Offences and Relevant UK Orders) Regulations 2017 [draft].

- [1] Michael Matheson, Cabinet Secretary for Justice. (2017, May 30). Justice Committee, Official Report 30 May 2017, col. 5. Retrieved from <http://www.parliament.scot/parliamentarybusiness/report.aspx?r=10986&mode=pdf>
- [2] Justice Committee 30 May 2017 [Draft], Michael Matheson, contrib. 16, <http://www.scottish.parliament.uk/parliamentarybusiness/report.aspx?r=10986&c=2005586>

