



The Scottish Parliament
Pàrlamaid na h-Alba

Published 29 January 2018

SP Paper 268

3rd Report, 2018 (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

Introduction	1
Regulation of Investigatory Powers (Covert Human Intelligence Sources - Code of Practice) (Scotland) Order 2018	2
Regulation of Investigatory Powers (Equipment Interference – Code of Practice) (Scotland) Order 2018	3
Regulation of Investigatory Powers (Covert Surveillance and Property Interference – Code of Practice) (Scotland) Order 2018	4
Delegated Powers and Law Reform Committee consideration	5
Justice Committee consideration	6

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



George Adam
Scottish National Party



Maurice Corry
Scottish Conservative
and Unionist Party



John Finnie
Scottish Green Party



Mairi Gougeon
Scottish National Party



Daniel Johnson
Scottish Labour



Liam Kerr
Scottish Conservative
and Unionist Party



Fulton MacGregor
Scottish National Party



Ben Macpherson
Scottish National Party



Liam McArthur
Scottish Liberal
Democrats

Introduction

1. At its meeting on 23 January 2018 the Justice Committee considered the following draft instruments:
 - [Regulation of Investigatory Powers \(Covert Human Intelligence Sources - Code of Practice\) \(Scotland\) Order 2018;](#)
 - [Regulation of Investigatory Powers \(Equipment Interference – Code of Practice\) \(Scotland\) Order 2018;](#)
 - [Regulation of Investigatory Powers \(Covert Surveillance and Property Interference – Code of Practice\) \(Scotland\) Order 2018.](#)
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.

Regulation of Investigatory Powers (Covert Human Intelligence Sources - Code of Practice) (Scotland) Order 2018

3. This instrument is made under section 24(5) of the [Regulation of Investigatory Powers \(Scotland\) Act 2000](#) (RIP(S)A).
4. The instrument brings into force a [revised code of practice](#) relating to the conduct and use of covert human intelligence sources authorised under RIP(S)A.
5. The revised code of practice replaces the code of practice on covert human intelligence sources issued by the Scottish Ministers on 28 November 2014 and brought into force on 2 February 2015.

Regulation of Investigatory Powers (Equipment Interference – Code of Practice) (Scotland) Order 2018

6. This instrument is made under section 24(5) of the [Regulation of Investigatory Powers \(Scotland\) Act 2000](#) (RIP(S)A). This is the first [code of practice](#) to be made by the Scottish Ministers in relation to equipment interference.
7. At present, under the [Police Act 1997](#), equipment interference can be authorised by named law enforcement bodies. In the [Investigatory Powers Act 2016](#), the UK Government made specific provision to provide more detail as to what constitutes equipment interference, and to provide a clear statutory framework. Support for this was given by the Scottish Government in the form of a [Legislative Consent Motion passed by the Scottish Parliament in October 2016](#).
8. The power for Scottish Ministers to issue codes for the use of equipment interference is limited to two bodies in Scotland, Police Scotland and the Police Investigations and Review Commissioner. Any use of the powers is subject to approval, oversight and inspection by the Investigatory Powers Commissioner.

Regulation of Investigatory Powers (Covert Surveillance and Property Interference – Code of Practice) (Scotland) Order 2018

9. This instrument is made under section 24(5) of the [Regulation of Investigatory Powers \(Scotland\) Act 2000](#) (RIP(S)A). As with the first instrument, the instrument brings into force a [revised code of practice](#) issued under the Regulation of Investigatory Powers (Scotland) Act 2000 and the [Police Act 1997](#), replacing a code issued by Scottish Ministers in 2014.
10. The covert surveillance and property interference code has been updated to reflect the new arrangements for oversight and inspection by the Investigatory Powers Commissioner's Office. Other minor changes have been made to update the code.

Delegated Powers and Law Reform Committee consideration

11. The Delegated Powers and Law Reform Committee considered these instruments at its meeting on [19 December 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

12. At its [meeting on 23 January 2018](#) the Justice Committee took evidence on the instruments from Michael Matheson, Cabinet Secretary for Justice.
13. The Cabinet Secretary advised that the purpose of two of the orders (Regulation of Investigatory Powers (Covert Human Intelligence Sources - Code of Practice) (Scotland) Order 2018 and Regulation of Investigatory Powers (Covert Surveillance and Property Interference – Code of Practice) (Scotland) Order 2018) is to bring into force the revised codes for covert surveillance and property interference and covert human intelligence sources, and to revoke the existing codes.
14. The third order (Regulation of Investigatory Powers (Equipment Interference – Code of Practice) (Scotland) Order 2018) brings into force the first code of practice for equipment interference, which is the power to obtain a variety of electronic data from equipment, including computers and tablets.
15. A new oversight regime for all investigatory powers has been created. The Investigatory Powers Commissioner amalgamates three former commissioners: the chief surveillance commissioner, the interception of communications commissioner and the intelligence services commissioner.
16. The Cabinet Secretary advised that a small number of responses were received to their consultation and where possible, comments have been incorporated into the codes. However, the Scottish Government was unable to make requested provisions in the codes that would be inconsistent with the parent Acts.
17.
 - There being no questions from Members, the Cabinet Secretary moved the motions in his name:
 - S5M-09720—That the Justice Committee recommends that the Regulation of Investigatory Powers (Covert Human Intelligence Sources - Code of Practice) (Scotland) Order 2018 [draft] be approved;
 - S5M-09722—That the Justice Committee recommends that the Regulation of Investigatory Powers (Equipment Interference – Code of Practice) (Scotland) Order 2018 [draft] be approved;
 - S5M-09725—That the Justice Committee recommends that the Regulation of Investigatory Powers (Covert Surveillance and Property Interference – Code of Practice) (Scotland) Order 2018 [draft] be approved.
18. The motions were agreed to without debate or dissent.
19. The Justice Committee recommends to the Parliament that it approve the following draft instruments:
 - Regulation of Investigatory Powers (Covert Human Intelligence Sources - Code of Practice) (Scotland) Order 2018;

- Regulation of Investigatory Powers (Equipment Interference – Code of Practice) (Scotland) Order 2018;
- Regulation of Investigatory Powers (Covert Surveillance and Property Interference – Code of Practice) (Scotland) Order 2018.

