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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.



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



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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**  
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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

# Courts Reform (Scotland) Act 2014 (Consequential and Supplemental Provisions) Order 2018

## Introduction

1. At its meeting on 27 February 2018 the Justice Committee considered the following draft instrument:

[Courts Reform \(Scotland\) Act 2014 \(Consequential and Supplemental Provisions\) Order 2018 \[draft\]](#)

2. The instrument was laid before the Parliament on 25 January 2018 and referred to the Justice Committee. The instrument is subject to the affirmative procedure.
3. The Order is made under section 137 of the Courts Reform (Scotland) Act 2014 (“the 2014 Act”).
4. Articles 2 to 4 of the Order transfer responsibility from Scottish Ministers to the Scottish Courts and Tribunals Service (SCTS) for (i) payment of remuneration etc. to members of the Mental Health Tribunal for Scotland, (ii) payment of allowances to Justices of the Peace, and (iii) payments to members of the Scottish Tribunals. This is in consequence of the conferral of administrative support functions to the SCTS by section 130 of the 2014 Act.
5. Article 5 amends section 16(7) of the 2014 Act to add temporary sheriffs principal to the list of judicial officers for which Scottish Ministers may determine different amounts of remuneration. This is to take account of the possibility that a qualifying former sheriff principal might be appointed as a part-time sheriff principal and would need to be paid a daily fee.

## Delegated Powers and Law Reform Committee consideration

6. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 6 February 2018 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

7. At its meeting on 27 February 2018, the Justice Committee took evidence on the instrument from Annabelle Ewing, Minister for Community Safety and Legal Affairs.  
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8. The Minister explained that the Order covers two principal areas. Firstly, the Order will facilitate the transfer of the payroll function, in relation to the payment of remuneration, fees and expenses, from the Scottish Ministers to the SCTS.
9. Secondly, the Order makes provision for remuneration of temporary sheriffs principal by adding them to the list of judicial officers for whom Scottish ministers may determine the amount of remuneration. This would rectify the current anomaly

that results from no provision having previously been made to allow payment of a qualifying former sheriff principal.

10. There being no questions from Members, the Minister moved the motion in her name: S5M-10335-That the Justice Committee recommends that the Courts Reform (Scotland) Act 2014 (Consequential and Supplemental Provisions) Order 2018 [draft] be approved.

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

12. The Justice Committee recommends to the Parliament that it approve the Courts Reform (Scotland) Act 2014 (Consequential and Supplemental Provisions) Order 2018 [draft].

# Proceeds of Crime Act 2002 (Searches under Part 5: Constables in Scotland: Code of Practice) Order 2018

## Introduction

13. At its meeting on 27 February 2018 the Committee considered that following draft instrument:

[Proceeds of Crime Act 2002 \(Searches under Part 5: Constables in Scotland: Code of Practice\) Order 2018 \[draft\]](#)

14. The instrument was laid before the Parliament on 25 January 2018 and referred to the Justice Committee. The instrument is subject to the affirmative procedure.
15. The instrument is made under sections 293(4) and 303H(4) of the Proceeds of Crime Act 2002 (“POCA”).
16. The Order brings into operation, on 16 April 2018, a new code of practice for constables conducting searches under Part 5 of the POCA in relation to the civil recovery of the proceeds of crime. This is in consequence of amendments made to Part 5 of the POCA by sections 14 and 15 of the Criminal Finances Act 2017, which come into force on 16 April 2018.

## Delegated Powers and Law Reform Committee consideration

17. The Delegated Powers and Law Reform Committee considered the instrument at its meeting on 6 February 2018 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

18. At its meeting on 27 February 2018, the Justice Committee took evidence on the instrument from Annabelle Ewing, Minister for Community Safety and Legal Affairs.<sup>2</sup>
19. Ms Ewing told the Committee that sections 14 and 15 of the Criminal Finances Act 2017 expand the civil forfeiture regime under Part 5 of the Proceeds of Crime Act 2002 and that the Scottish Parliament had consented to these provisions being made for Scotland on 2 March and 25 April 2017. The Minister explained that as the powers extend constables' search powers under Part 5, Scottish Ministers are required to make new codes of practice relating to the exercise of those powers in Scotland.
20. The Committee noted that the Law Society of Scotland had provided a copy of its response to the Scottish Government's consultation<sup>3</sup> which had raised concerns on accessibility and on monitoring and review. A Scottish Government official confirmed that the points raised by the Law Society had been considered before finalising the code of practice.



21. In relation to accessibility, the official explained that the Law Society's suggestion that the code should be available in different languages and formats had not been accepted because the code was for use primarily by constables. He further explained that the code was available online, in police stations and at ports so that people who had been searched could access it and seek legal advice if they so wished.
  22. The official then confirmed that the Scottish Government had accepted the Law Society's point about reviewing the code and was liaising with Police Scotland about this matter.
  23. The Minister then moved the motion in the name of Michael Matheson:  
S5M-10337-That the Justice Committee recommends to the Parliament that the Proceeds of Crime Act 2002 (Searches under Part 5: Constables in Scotland: Code of Practice) Order 2018 [draft] be approved.
  24. The motion was agreed to without debate or dissent.
25. The Justice Committee recommends to the Parliament that it approve the Proceeds of Crime Act 2002 (Searches under Part 5: Constables in Scotland: Code of Practice) Order 2018 [draft].

**Justice Committee**

Subordinate Legislation, 5th Report, 2018 (Session 5)

- 1 [Scottish Parliament Justice Committee. \*Official Report 27 February 2018\* Cols 1-2](#)
- 2 [Scottish Parliament Justice Committee. \*Official Report 27 February 2018\* Cols 2-6](#)
- 3 [Written submission from the Law Society of Scotland](#)

