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Justice Committee Comataidh a' Cheartais

Subordinate Legislation Considered by the Justice Committee on 15 September 2020



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Justice Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Justice, and functions of the Lord Advocate other than as head of the systems of criminal prosecution and investigation of deaths in Scotland.



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Introduction

1. At its meeting on 15 September 2020, the Justice Committee considered the following instruments:
 - [The International Organisations \(Immunities and Privileges\) \(Scotland\) Amendment Order 2020 \[draft\]](#)
 - [The Management of Offenders \(Scotland\) Act 2019 \(Consequential Amendments\) Regulations 2020 \[draft\]](#)
 - [The Equality Act 2010 \(Specification of Public Authorities\) \(Scotland\) Order 2020 \[draft\]](#)
2. The instruments are subject to the affirmative procedure.

International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2020 [draft]

3. The International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2020 [draft] was laid before the Scottish Parliament on 10 August 2020 and referred to the Justice Committee.
4. The Order is made in exercise of the powers conferred by sections 1(2) of the International Organisations Act 1968.
5. The purpose of the Order is to amend the International Organisations (Immunities and Privileges) (Scotland) Order 2009 to confer immunities and privileges, insofar as they are within devolved competence, upon the Square Kilometre Array Observatory (“the Observatory”) and its representatives, experts and members of staff.
6. The Observatory was established by the Convention establishing the Square Kilometre Array Observatory done in Rome on 12 March 2019 (“the Convention”). The United Kingdom will become a member of the Observatory in accordance with Article 6(1) of the Convention when the Convention enters into force for the United Kingdom.
7. The Convention obliges the United Kingdom to abide by the terms of the instruments of the Observatory, including the Protocol on Privileges and Immunities of the Square Kilometre Array Observatory, and to confer legal capacity and privileges and immunities on the Observatory and on specified categories of individuals connected with the Observatory.
8. The draft Order confers such privileges and immunities on the Observatory and its representatives, experts and staff. The privileges and immunities conferred by the Order reflect those that have been agreed by the parties to the Convention.
9. The Order deals only with those matters which are within the legislative competence of the Scottish Parliament. There is a related instrument, which deals with reserved matters as regards Scotland and with other UK jurisdictions, that is subject to consideration by the UK Parliament.
10. This Order and the parallel UK Order are necessary to help secure compliance by the UK with its international obligations.

The Management of Offenders (Scotland) Act 2019 (Consequential Amendments) Regulations 2020 [draft]

11. The Management of Offenders (Scotland) Act 2019 (Consequential Amendments) Regulations 2020 [draft] was laid before the Scottish Parliament on 21 August 2020 and referred to the Justice Committee.
12. The Regulations are made in exercise of the powers conferred by section 62(1) of the Management of Offenders (Scotland) Act 2019.
13. The purpose of the Regulations is amend Part II of schedule 1 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1980 to maintain consistency with the terminology of the Rehabilitation of Offenders Act 1974 following that Act's amendment by the Management of Offenders (Scotland) Act 2019.

The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2020 [draft]

14. The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2020 [draft] was laid before the Scottish Parliament on 24 August 2020 and referred to the Justice Committee.
15. The Order 2020 is made in exercise of the powers conferred by section 151(3) of the Equality Act 2010.
16. The purpose of the Order is to add the Scottish Biometrics Commissioner to the list of Scottish public authorities in Part 3 of schedule 19 of the Equality Act 2010 (“the Act”). The public authorities listed in that Part are subject to the public sector equality duty in section 149 of the Act. The public sector equality duty is to have regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited under the Act, to advance equality of opportunity and to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Consideration by the Delegated Powers and Law Reform Committee

17. The Delegated Powers and Law Reform Committee considered the first of the instruments at its meeting on 18 August 2020 and the latter two at its meeting on 1 September 2020 and agreed that it did not need to draw them to the attention of the Parliament on any grounds within its remit.

Consideration by the Justice Committee

18. Motions S5M-22416, S5M-22518 and S5M-2573 were lodged proposing that the Committee recommends approval of the instruments. The Committee took oral evidence from Cabinet Secretary for Justice ("the Cabinet Secretary"), Humza Yousaf MSP at its meeting on 15 September 2020.
19. The Cabinet Secretary outlined the purpose of the Order to the Committee, as set out previously.
20. In response to questions from Members, the Cabinet Secretary advised that, initially, it is expected that up to 100 individuals working for the Observatory in the UK would benefit from the immunities and privileges conferred by the Order and that once it is up to full capacity it could be up to 200 people.
21. The Cabinet Secretary also stated that the Order prevents premises used by the Observatory, being used for unlawful activity or as a refuge from justice for persons who are avoiding arrest or extradition. Therefore, if Police Scotland had reason or cause to enter premises, in which they suspected unlawful activity was taking place, they could do so.
22. The Cabinet Secretary undertook to provide further information in writing regarding the total number of individuals benefiting from immunities and privileges in Scotland, including those from other organisations. He also agreed to provide further information regarding inviolability of premises.
23. Following the evidence session, the Cabinet Secretary moved the motion in his name: S5M-22416 That the Justice Committee recommends that the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2020 [draft] be approved.
24. After debate, the motion was agreed to (by division: For 7, Against 1, Abstentions 0).
25. The Cabinet Secretary went on to set out the purpose of the Management of Offenders (Scotland) Act 2019 (Consequential Amendments) Regulations 2020 [draft] and the The Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2020 [draft] as set out previously.
26. There being no questions from Members on either of the instruments, the Cabinet Secretary moved the motions in his name:
 - S5M-22518—That the Justice Committee recommends that the Management of Offenders (Scotland) Act 2019 (Consequential Amendments) Regulations 2020 [draft] be approved.
 - S5M-22573—That the Justice Committee recommends that the Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2020 [draft] be approved.
27. Motions S5M-22518 and S5M-2573 were agreed to without debate or dissent.

The Justice Committee recommends to the Scottish Parliament that it approve the International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2020 [draft], the Management of Offenders (Scotland) Act 2019 (Consequential Amendments) Regulations 2020 [draft] and the Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2020 [draft].

