

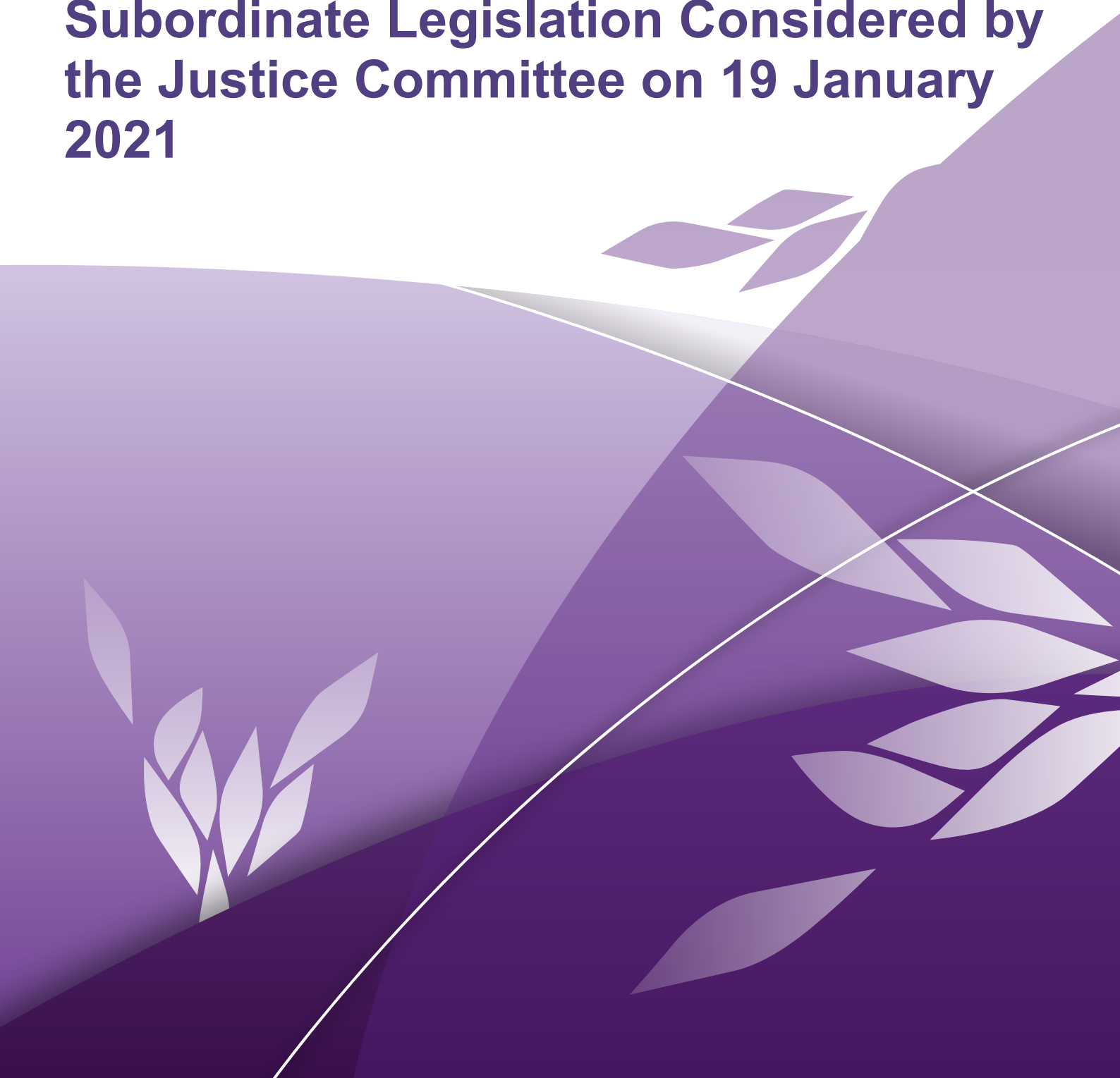


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Justice Committee Comataidh a' Cheartais

Subordinate Legislation Considered by the Justice Committee on 19 January 2021



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Contents

Introduction	1
The Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft]	2
The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 (draft)	3
The Restitution Fund (Scotland) Order 2021 [draft]	4
Consideration by the Delegated Powers and Law Reform Committee	5
Consideration by the Justice Committee	6

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 19 January 2021, the Justice Committee considered the following instruments:
 - [The Criminal Legal Aid and Advice and Assistance \(Counter-Terrorism and Border Security\) \(Scotland\) Regulations 2021 \[draft\]](#)
 - [The Victims and Witnesses \(Scotland\) Act 2014 \(Supplementary Provisions\) Order 2021 \(draft\)](#)
 - [The Restitution Fund \(Scotland\) Order 2021 \[draft\]](#)
2. The instruments are subject to the affirmative procedure.

The Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft]

3. The Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft] were laid before the Scottish Parliament on 30 November 2020 and referred to the Justice Committee.
4. The Regulations are made in exercise of the powers conferred by sections 9, 12(3), 33(2), (3) and (3A), and 36(1), (2)(a) and (g) of the Legal Aid (Scotland) Act 1986.
5. They make provision to extend the existing police station advice scheme and the availability of non means tested advice and assistance for detention under the Counter-Terrorism and Border Security 2019 Act and Terrorism Act 2000.

The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 (draft)

6. The Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 (draft) was laid before the Scottish Parliament on 2 December 2020 and referred to the Justice Committee.
7. The Order is made in exercise of the powers conferred by section 33 of the Victims and Witnesses (Scotland) Act 2014.
8. The Order makes a number of supplementary changes to the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"). Finally, it amends the definition of "fine" to clarify that restitution orders are a completely separate penalty.
9. Firstly, it provides that compensation requirements imposed as part of a CPO are to be preferred to a restitution order when it comes to sentencing and that compensation requirements take precedence over both a restitution order and a victim surcharge when payments are received from an offender.
10. Secondly, it clarifies that restitution orders are a sentence for the purpose of appeal so that an appeal against sentence alone could be taken without requiring an appeal against conviction.
11. Thirdly, it ensures that enforcement of a restitution order and the victim surcharge would be placed on hold pending an appeal.
12. Fourthly, it clarifies that the victim surcharge and a restitution order cannot be imposed for either the same offence or for different offences in the same proceedings.
13. Finally, it amends the definition of "fine" to clarify that restitution orders are a completely separate penalty.

The Restitution Fund (Scotland) Order 2021 [draft]

14. The Restitution Fund (Scotland) Order 2021 [draft] was laid before the Scottish Parliament on 2 December 2020 and referred to the Justice Committee.
15. The Order is made in exercise of the powers conferred by section 253B(5) and (6) of the Criminal Procedure (Scotland) Act 1995.
16. The Order makes provision for the general operation of the Restitution Fund. It provides for the delegation of the Fund to the Scottish Police Benevolent Fund. It also makes provision for the administration of the Fund including the issuing of guidance by Ministers; making payments from the Fund (including the requirement for written applications); record keeping; and reporting back to Ministers.

Consideration by the Delegated Powers and Law Reform Committee

17. The Delegated Powers and Law Reform Committee ("the DPLR Committee") considered the first of the instruments at its meeting on 8 December 2020 and the latter two at its meeting on 15 December 2020.
18. The DPLR Committee agreed that it did not need to draw any of them to the attention of the Parliament on any grounds within its rem

Consideration by the Justice Committee

19. Motions S5M-23568, S5M-23601 and S5M-23602 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 19 January 2021.
20. The Cabinet Secretary outlined the purpose of the Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft] to the Committee, as set out previously.
21. There being no questions from Members, the Cabinet Secretary moved the motion in his name:

S5M-23568—That the Justice Committee recommends that the Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft] be approved.
22. Motion S5M-23568 was agreed to without debate or dissent.
23. The Cabinet Secretary went on to set out the purpose of the Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 (draft) and the Restitution Fund (Scotland) Order 2021 [draft].
24. Following the evidence session, the Cabinet Secretary moved the motions in his name:
 - S5M-23601—That the Justice Committee recommends that the Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 [draft] be approved.
 - S5M-23602—That the Justice Committee recommends that the Restitution Fund (Scotland) Order 2021 [draft] be approved.
25. Motions S5M-23601 and S5M-23602 were agreed to without debate or dissent.

The Justice Committee recommends to the Scottish Parliament that it approve the Criminal Legal Aid and Advice and Assistance (Counter-Terrorism and Border Security) (Scotland) Regulations 2021 [draft], the Victims and Witnesses (Scotland) Act 2014 (Supplementary Provisions) Order 2021 (draft) and the Restitution Fund (Scotland) Order 2021 [draft].

