EXPLANATORY MEMORANDUM TO

THE SCOTTISH ADMINISTRATION (OFFICES) ORDER 2026

2026 No. 1097 (S. 1)

Introduction

1.1 This Explanatory Memorandum has been prepared by the Scotland Office and is laid before the House of Commons by Command of His Majesty.

2. Declaration

2.1 Douglas Alexander, Secretary of State for Scotland at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

2.2 Rachel Irvine, Deputy Director for Constitutional Policy, at the Scotland Office confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Ryan McFadden at the Scotland Office can be contacted by email at the following address with any queries regarding the instrument: enquiries@ukgovscotland.gov.uk.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Victims, Witnesses, and Justice Reform (Scotland) Act 2025 ('the 2025 Act') provides for the establishment of a new Sexual Offences Court (SOC). As part of that, sections 86 and 87 of the Act set out the arrangements for the Scottish Courts and Tribunals Service (SCTS) to appoint a Clerk of the Sexual Offences Court and Deputy Clerks of the Sexual Offences Court, respectively. All other equivalent roles within SCTS are already designated as non-ministerial offices in the Scottish Administration. This Order makes the new offices of Clerk and Deputy Clerks of the Sexual Offences Court office-holders in the Scottish Administration in the same way.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is UK-wide.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is Scotland.

5. Policy Context

What is being done and why?

5.1 The Order makes the new roles of Clerk and Deputy Clerks of the SOC non-ministerial members of the Scottish Administration. This will ensure that SCTS can operate the appointments of Clerk and Deputy Clerks consistently and effectively. It will also ensure parity between clerks across Scotland's courts: they will all be civil servants, with the attendant obligations and responsibilities.

5.2 Under the 2025 Act, SCTS may appoint either existing office-holders or new people to the offices of Clerk and Deputy Clerk of the SOC, and an individual can simultaneously hold office in the SOC and in another court. The intention is to enable SCTS to use office-holders flexibly and allow persons who hold two or more offices to move around, carrying out functions in relation to more than one court. This flexibility supports efficient use of resources, and – importantly - avoids staff being posted permanently in the SOC, with the prolonged exposure to trauma they might experience as a result.

5.3 Without the Order, situations would arise in which:

- An individual who held office in both the SOC and another court was a non-ministerial office-holder when working in the other court, but not when working in the SOC. (This would arise if an existing office-holder was also appointed to the SOC.)
- Some Deputy Clerks of the SOC were not employed as non-ministerial office holders in any capacity (if they were new appointees), whilst others in equivalent roles in other courts were employed as non-ministerial office-holders.

This would undermine SCTS's ability to deploy office-holders flexibly, in the way intended by the legislation, and under consistent terms and conditions.

Office-holders in the Scottish Administration are defined in the Scotland Act 1998. This Order is therefore required to modify that definition and to designate the Clerk and Deputy Clerks of the SOC as office-holders in the Scottish Administration.

What was the previous policy, how is this different?

5.4 The Clerk and Deputy Clerks of the SOC are new offices created by the 2025 Act, so this Order does not replace an existing policy. However, all other equivalent roles within SCTS are already designated as non-ministerial offices in the Scottish Administration.

6. Legislative and Legal Context

How has the law changed?

6.1 As noted above, the SOC is created by the 2025 Act, as are the roles of Clerk and Deputy Clerks in the SOC.

Why was this approach taken to change the law?

6.2 Section 126(8)(b) of the Scotland Act 1998 includes a power which is intended specifically for this purpose and in the circumstances, is considered the most appropriate approach to take in order to change the law.

7. Consultation

Summary of consultation outcome and methodology

7.1 The Scottish Government has engaged closely with SCTS on whether it is necessary to designate the Clerk and Deputy Clerks of the SOC as non-ministerial offices. SCTS advised that without the Order, it would be unworkable for them to appoint either existing SCTS staff or new staff members to these offices, for the reasons set out in paragraph 5.3.

8. Applicable Guidance

8.1 Not applicable.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the scope of its impact is very limited: it only affects SCTS, and it does not have a direct cost implication for SCTS.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is that SCTS will be able to operate the appointments of Clerks and Deputy Clerks effectively.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The purpose of the legislation is to designate the Clerk and Deputy Clerks of the Sexual Offences Court as non-ministerial office-holders, treating them in the same way as all existing equivalent SCTS office-holders. Therefore no formal review or monitoring is considered necessary.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Secretary of State for Scotland has made the following statement: "There is no need for review or monitoring as the Order does not regulate businesses."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Secretary of State has made the following statement regarding Human Rights:

12.2 "In my view the provisions of the Scotland Administration (Offices) Order 2026 are compatible with the Convention rights.".

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").