POLICY NOTE

THE SCOTTISH ADMINISTRATION (OFFICES) ORDER 2026

SSI 2026/1097

The above instrument was made in exercise of the powers conferred by section 126(8)(b) of the Scotland Act 1998. The instrument is subject to negative procedure.

Summary Box

This instrument makes the new roles of Clerk and Deputy Clerks of the Sexual Offences Court office-holders in the Scottish Administration, in the same way as other equivalent offices in the Scottish Courts and Tribunals Service.

Policy Objectives

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.

The instrument 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.

Under the 2025 Act, SCTS may appoint either existing office-holders or new people to the offices of Clerk and Deputy Clerks 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.

If the Clerk and Deputy Clerks of the SOC were not designated as office-holders in the Scottish Administration, situations could 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. Designating the Clerk and Deputy Clerks as office holders in the Scottish Administration will ensure that SCTS can operate their appointments consistently and effectively. Section 126(8) 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.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

The Scottish Government has consulted 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 above.

Impact Assessments

A full suite of Impact Assessments was prepared to accompany the Act. No further impact assessments have been prepared for this instrument, given the very limited scope of its impact (it affects only SCTS).

Financial Effects

The Cabinet Secretary for Justice confirms that no BRIA is necessary as the instrument has no financial effects on the Scottish Government, local government or on business.

Scottish Government
Justice Directorate

October 2026