OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 10 February 2026

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

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CONTENTS

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DECISION ON TAKING BUSINESS IN PRIVATE **1**

INSTRUMENTS SUBJECT TO AFFIRMATIVE PROCEDURE **2**

Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 [Draft] 2

Care Leaver Payment (Scotland) Regulations 2026 [Draft] 2

Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2026 [Draft] 2

Legal Aid and Advice and Assistance (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2026 [Draft] 2

National Bus Travel Concession Schemes (Miscellaneous Amendment) (Scotland) Order 2026 [Draft] 2

Private Housing Rent Control (Exempt Property) (Scotland) Regulations 2026 [Draft] 2

Scottish Aggregates Tax (Miscellaneous Amendment) Regulations 2026 [Draft] 2

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Domestic Homicide and Suicide Reviews) (Scotland) Amendment Order 2026 [Draft] 2

Marine Licensing (Exempted Activities) (Scottish Inshore Region) Amendment Order 2026 [Draft] 2

Local Government Finance (Scotland) Order 2026 [Draft] 2

INSTRUMENTS SUBJECT TO NEGATIVE PROCEDURE **5**

National Health Service (Functions of the Common Services Agency) (Miscellaneous Amendments) (Scotland) Order 2026 (SSI 2026/20) 5

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2026 (SSI 2026/30) 5

Upper Tribunal for Scotland (Procedure Rules) (Miscellaneous Amendment) Regulations 2026 (SSI 2026/33) 6

First-tier Tribunal for Scotland (Procedure Rules) (Miscellaneous Amendment) Regulations 2026 (SSI 2026/34) 6

Mental Health Tribunal for Scotland (Practice and Procedure) (No 2) Amendment Rules 2026 (SSI 2026/35) 6

Qualifications Scotland (Strategic Advisory Council) (Establishment) Regulations 2026 (SSI 2026/36) 6

National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Miscellaneous Amendment) (Scotland) Regulations 2026 (SSI 2026/37) 6

Non-Domestic Rate (Scotland) Order 2026 (SSI 2026/39) 6

Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2026 (SSI 2026/44) 6

Police Service of Scotland (Vetting) Regulations 2026 (SSI 2026/46) 6

INSTRUMENT LAID FOR CONSULTATION **7**

Draft Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026 (SG/2026/33) 7

DELEGATED POWERS AND LAW REFORM COMMITTEE
6th Meeting 2026, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Ind)
*Katy Clark (West Scotland) (Lab)
Roz McCall (Mid Scotland and Fife) (Con)

*attended

CLERK TO THE COMMITTEE
Greg Black

LOCATION
The Adam Smith Room (CR5)

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 10 February 2026

[The Convener opened the meeting at 10:02]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the sixth meeting in 2026 of the Delegated Powers and Law Reform Committee. I remind everyone to switch off, or put to silent, their mobile phones and other electronic devices. We have received apologies from Roz McCall MSP, and Oliver Mundell MSP is here as her substitute.

Agenda item 1 is a decision on taking business in private. Does the committee agree to take item 5 in private?

Members *indicated agreement.*

Instruments subject to Affirmative Procedure

10:03

The Convener: Under agenda item 2, we are considering 10 draft instruments, on which no points have been raised.

Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026 [Draft]

Care Leaver Payment (Scotland) Regulations 2026 [Draft]

Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2026 [Draft]

Legal Aid and Advice and Assistance (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2026 [Draft]

National Bus Travel Concession Schemes (Miscellaneous Amendment) (Scotland) Order 2026 [Draft]

Private Housing Rent Control (Exempt Property) (Scotland) Regulations 2026 [Draft]

Scottish Aggregates Tax (Miscellaneous Amendment) Regulations 2026 [Draft]

Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Domestic Homicide and Suicide Reviews) (Scotland) Amendment Order 2026 [Draft]

Marine Licensing (Exempted Activities) (Scottish Inshore Region) Amendment Order 2026 [Draft]

Local Government Finance (Scotland) Order 2026 [Draft]

The Convener: Is the committee content that no reporting grounds are engaged?

Members *indicated agreement.*

The Convener: In relation to the draft Care Home Services (Visits to and by Care Home Residents) (Scotland) Regulations 2026, regulation 8 imposes a statutory requirement on care home service providers to have regard to a code of practice in carrying out the duties imposed by the instrument. Given the importance of allowing time for affected service providers to prepare to comply with this new requirement, does the committee wish to welcome that the Scottish

Government intends to publish the code of practice in advance of the requirement coming into force?

Members *indicated agreement.*

The Convener: Also in relation to that instrument, does the committee wish to highlight its correspondence with the Scottish Government on that point to the lead committee, for its information?

Members *indicated agreement.*

The Convener: In relation to the draft Care Leaver Payment (Scotland) Regulations 2026, does the committee wish to welcome that the Scottish Government will address the typographical error in regulation 11(2)—to change "responsible authority" to "relevant authority"—either by correction slip or at the next suitable legislative opportunity?

Members *indicated agreement.*

The Convener: In relation to the draft Social Security (Up-rating) (Miscellaneous Amendments) (Scotland) Regulations 2026, does the committee wish to welcome that this instrument fulfils a commitment by the Scottish Government to correct an error in the Carer's Assistance (Miscellaneous and Consequential Amendments, Revocation, Transitional and Savings Provisions) (Scotland) Regulations 2025?

Members *indicated agreement.*

The Convener: In relation to the draft Legal Aid and Advice and Assistance (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2026, does the committee wish to welcome that, through this instrument, the Scottish Government has, at the next suitable legislative opportunity, fulfilled a commitment to the committee in relation to the draft Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026, to correct the erroneous references in the Civil Legal Aid (Scotland) Regulations 2002, and the minor drafting point that the instrument introduced in the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003?

Members *indicated agreement.*

The Convener: Finally, in relation to the draft National Bus Travel Concession Schemes (Miscellaneous Amendment) (Scotland) Order 2026, does the committee wish to note that the original draft of this instrument, which was laid on 4 December 2025, was withdrawn and the present version was re-laid to enable a draft code to be provided to the lead committee to aid its scrutiny of the draft instrument?

Members *indicated agreement.*

The Convener: Does the committee also wish to note that context when reporting on that instrument in its next quarterly report?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:06

The Convener: Under agenda item 3, we are considering 10 instruments. Issues have been raised on two of the instruments.

National Health Service (Functions of the Common Services Agency) (Miscellaneous Amendments) (Scotland) Order 2026 (SSI 2026/20)

The Convener: This instrument dissolves NHS Education for Scotland and transfers its functions, property, rights, liabilities and obligations to the Common Services Agency for the Scottish health service. It also makes consequential and transitional provision.

In correspondence with the Scottish Government, published alongside the papers for this meeting, the committee asked about the consequential amendments and repeals that the instrument is making to primary legislation—in part 1 of the schedule to this instrument—and why the Scottish Government considers that the enabling powers permit this.

The Scottish Government advised that it is relying on section 105(7) of the National Health Service (Scotland) Act 1978 to make these consequential amendments and repeals. There is no express power to amend primary legislation in section 105(7) of the 1978 act. The committee's report on subordinate legislation considered at today's meeting will set out a fuller consideration of this response.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (g), on the basis that provisions in part 1 of the schedule have been made by what appears to be an unusual or unexpected use of the powers conferred by the parent statute, in the absence of an express power to amend primary legislation and in the absence of a fuller explanation from the Scottish Government?

Members *indicated agreement.*

Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Amendment Rules 2026 (SSI 2026/30)

The Convener: In correspondence with the Scottish Government, published alongside the papers for this meeting, the committee asked why the amending provisions are not in the usual order, as the instrument inserts a new provision after rule 100, and then inserts a new provision after rule 93. The Scottish Government advised that this was due to a late drafting change.

Does the committee wish to draw this instrument to the attention of the Parliament under the general reporting ground, because the order in which the amending provisions appear in the instrument is not in line with standard drafting practice?

Members *indicated agreement.*

The Convener: Also under this agenda item, no points have been raised on the following instruments.

Upper Tribunal for Scotland (Procedure Rules) (Miscellaneous Amendment) Regulations 2026 (SSI 2026/33)

First-tier Tribunal for Scotland (Procedure Rules) (Miscellaneous Amendment) Regulations 2026 (SSI 2026/34)

Mental Health Tribunal for Scotland (Practice and Procedure) (No 2) Amendment Rules 2026 (SSI 2026/35)

Qualifications Scotland (Strategic Advisory Council) (Establishment) Regulations 2026 (SSI 2026/36)

National Health Service (General Medical Services Contracts and Primary Medical Services Section 17C Agreements) (Miscellaneous Amendment) (Scotland) Regulations 2026 (SSI 2026/37)

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Non-Domestic Rating (Valuation of Utilities) (Scotland) Amendment Order 2026 (SSI 2026/44)

Police Service of Scotland (Vetting) Regulations 2026 (SSI 2026/46)

The Convener: Is the committee content that no reporting grounds are engaged?

Members *indicated agreement.*

Instrument laid for Consultation

10:09

The Convener: Under agenda item 4, we are considering one instrument.

Draft Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026 (SG/2026/33)

The Convener: Does the committee wish to note that the proposed order appears capable of remedying the incompatibility with convention rights identified in X v Mental Health Tribunal for Scotland; that the proposed order goes beyond addressing the specific incompatibility identified by the court, which concerned recorded matters in the context of compulsion orders, by extending the recorded matters framework to other types of forensic orders, but that this is permitted by the scope of the power in section 12 of the Convention Rights (Compliance) (Scotland) Act 2001; that full technical scrutiny of the instrument will be carried out by the committee when the finalised draft order is laid under the affirmative procedure; and that the incompatibility was identified in October 2022, and that the proposed order is not expected to come into force until November 2026, and draw this to the attention of the lead committee?

Members *indicated agreement.*

The Convener: That concludes the public part of the meeting.□

10:10

Meeting continued in private until 10:20.

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