



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Delegated Powers and Law Reform Committee

Tuesday 17 February 2026

Session 6



The Scottish Parliament
Pàrlamaid na h-Alba

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DELEGATED POWERS AND LAW REFORM COMMITTEE
7th 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 17 February 2026

[The Convener opened the meeting at 10:11]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the seventh 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.

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

10:12

The Convener: Under agenda item 2, we are considering five instruments. Issues have been raised on the following instrument.

Hate Crime and Public Order (Scotland) Act 2021 (Characteristic of Sex) (Amendment and Transitional Provisions) Regulations 2026 [Draft]

The Convener: The purpose of this instrument is to add the characteristic of “sex” to the list of characteristics currently provided for by the 2021 act. The instrument also inserts interpretative provision for the term “sex”.

In correspondence with the Scottish Government, which was published alongside the papers for this meeting, the committee asked about the transitional provisions in the instrument. The committee notes that the transitional provisions were not included in the proposed draft of the instrument, which was considered by the committee on 16 September 2025.

Transitional provisions can be necessary when one legislative system ends and another begins. They make provision to specifically address those cases that straddle the transition.

Among other questions, the committee asked why the provisions are necessary, given the fact that, through the commencement provision, the instrument already limits the application of the regulations to after 5 April 2027.

The Scottish Government acknowledges in its response that there is no “old law” regarding sex-based prejudice, and states that it is seeking to make it clear that actions or conduct that took place prior to the commencement of the provisions will not fall within the scope of the new offences.

The committee sought further clarification on whether this provision might have an unintended effect on the application of sections 1 and 4 of the 2021 act as they currently apply in respect of all other characteristics. The Scottish Government responded that the instrument cannot have any legal impact on sections 1 and 4 for the purposes of those characteristics. The committee accepts this response, but considers that the provisions as currently drafted are unclear and unnecessary. The committee considers that transitional provisions should be used only where necessary to address genuinely transitional scenarios.

As such, does the committee wish to draw the instrument to the attention of the Parliament on

reporting ground (g), on the basis that it appears to be an unusual or unexpected use of the power conferred by the parent statute to make transitional provision, as it is not clear that the transitional provisions perform a transitional function?

Members *indicated agreement.*

The Convener: Does the committee wish to note that the Scottish Government intends to revise the policy note to correct an erroneous assertion in relation to the transitional provision?

Members *indicated agreement.*

The Convener: Separately, the committee notes the Scottish Government's statements in the explanatory and policy notes that the purpose of the policy behind the interpretive provision added in respect of the characteristic of sex is to achieve equivalence with the meaning of "sex" in the Equality Act 2010, as determined by the Supreme Court.

The committee also notes that the power to make interpretive provision through this instrument is limited to making such provision in respect of the characteristic of sex and does not allow for, more generally, the modification of other definitions in the 2021 act. However, the committee notes that the fact that there now exists a definition for "biological sex" in this location might cause uncertainty as to how the term "sex" is to be interpreted in relation to the other characteristics, in the absence of an equivalent or alternative definition.

Does the committee wish to suggest that the lead committee considers whether further amendment of the parent act is required in consequence of this instrument in respect of other references to the term "sex"?

Members *indicated agreement.*

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

Investigation and Commencement of Repair (Scotland) Regulations 2026 [Draft]

First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland (Composition and Rules of Procedure) (Miscellaneous Amendment) Regulations 2026 [Draft]

Scottish Elections (Representation and Reform) Act 2025 (Consequential Provision) Regulations 2026 [Draft]

First-tier Tribunal for Scotland (Allocation of Functions to the Local Taxation Chamber) Regulations 2026 [Draft]

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

Members *indicated agreement.*

The Convener: In relation to the draft Investigation and Commencement of Repair (Scotland) Regulations 2026, does the committee wish to note that the original draft of this instrument was withdrawn and the present version re-laid following questions raised by the committee with the Scottish Government?

Members *indicated agreement.*

Instruments subject to Negative Procedure

10:16

The Convener: Under agenda item 3, we are considering 13 instruments, on which no points have been raised.

National Assistance (Assessment of Resources) Amendment (Scotland) Regulations 2026 (SSI 2026/42)

National Assistance (Sums for Personal Requirements) (Scotland) Regulations 2026 (SSI 2026/43)

Town and Country Planning (Fees for Appeals) (Scotland) Amendment Regulations 2026 (SSI 2026/47)

Town and Country Planning (Fees for Local Reviews) (Scotland) Amendment Regulations 2026 (SSI 2026/48)

Town and Country Planning (Fees for Applications) (Scotland) Amendment Regulations 2026 (SSI 2026/49)

Scottish Road Works Register (Prescribed Fees) Regulations 2026 (SSI 2026/52)

National Health Service (Common Staffing Method) (Scotland) Amendment Regulations 2026 (SSI 2026/54)

Council Tax Reduction (Miscellaneous Amendment) (Scotland) Regulations 2026 (SSI 2026/56)

Water Environment (Shellfish Water Protected Areas: Designation) (Scotland) Order 2026 (SSI 2026/57)

Police Pension Scheme (Scotland) (Amendment) Regulations 2026 (SSI 2026/58)

Education (Fees and Student Support) (Miscellaneous Amendment) (Scotland) Regulations 2026 (SSI 2026/63)

Social Care and Social Work Improvement Scotland (Cancellation of Registration) Order 2026 (SSI 2026/64)

Official Controls (Location of Border Control Posts) (Scotland) Regulations 2026 (SSI 2026/61)

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

Members indicated agreement.

The Convener: In relation to Scottish statutory instrument 2026/42, does the committee wish to note that it would be helpful if the approach to rounding of the savings credit disregards was set out in the policy note, to explain the difference between the figures and the stated percentage increase?

Members indicated agreement.

Instruments not subject to Parliamentary Procedure

10:17

The Convener: Under agenda item 4, we are considering one instrument, on which no points have been raised.

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Court Sittings) 2026 (SSI 2026/53)

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

Members indicated agreement.

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

10:18

Meeting continued in private until 10:20.

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Official Report
Room T2.20
Scottish Parliament
Edinburgh
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