

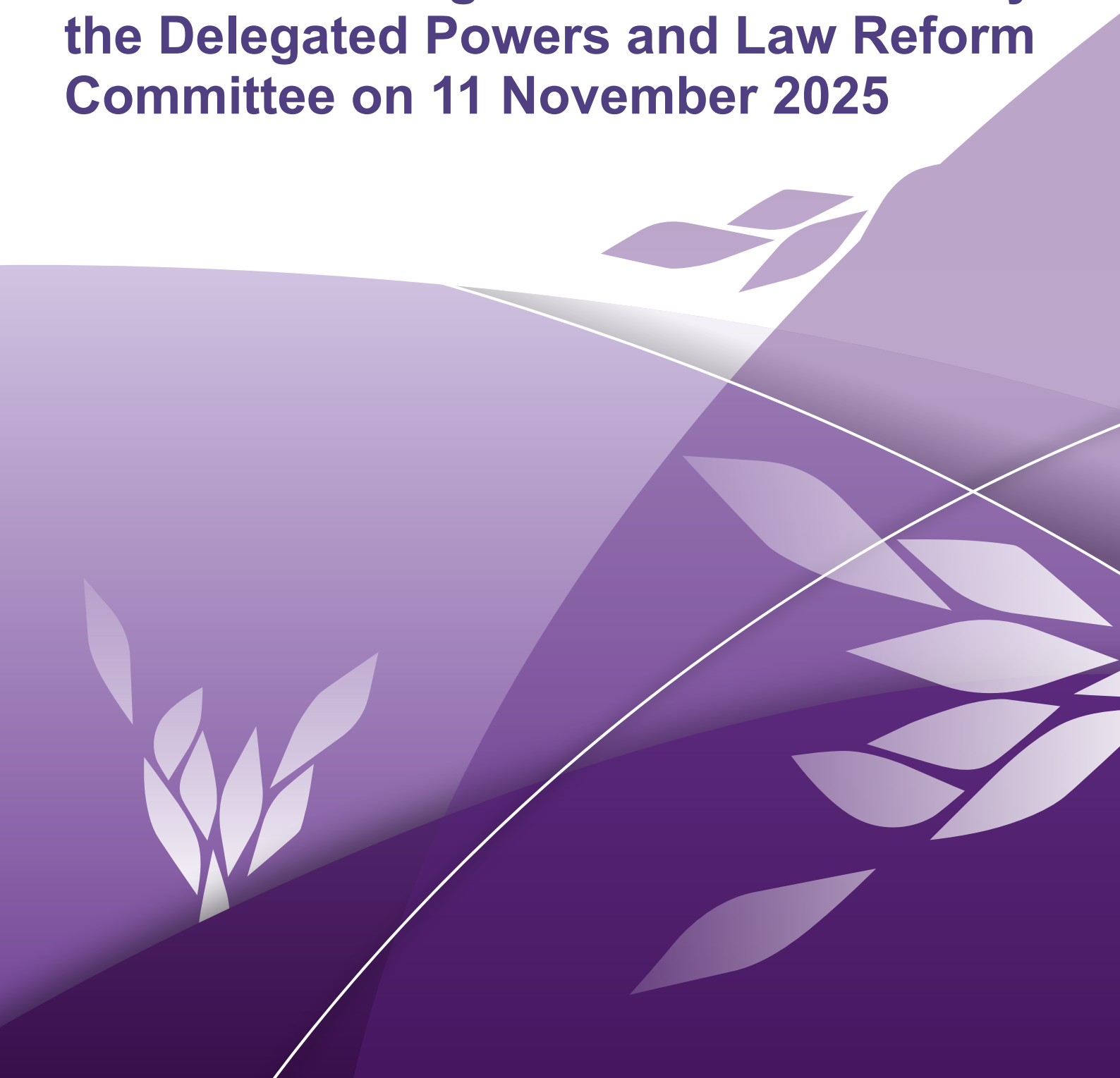


The Scottish Parliament
Pàrlamaid na h-Alba

Published 12 November 2025
SP Paper 910
84th Report, 2025 (Session 6)

Delegated Powers and Law Reform Committee

Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 11 November 2025



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

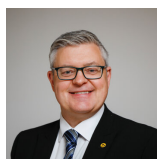


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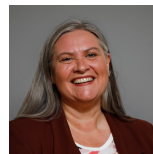
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Scottish Conservative
and Unionist Party



Jeremy Balfour
Independent

Introduction

1. At its meeting on 11 November 2025ⁱ, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
 - Political Parties, Elections and Referendums Act 2000 (Non-Party Campaigner Code of Practice) (Appointed Date) (Scotland) Order 2025 (SSI 2025/288)
2. The Committee's recommendations in relation to this instrument are set out in the next section of this report.
3. The Committee also determined that, in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

ⁱ Stuart McMillan MSP and Jeremy Balfour MSP submitted apologies for this meeting.

Scrutiny of instruments and documents under the Committee's remit: document drawn to the attention of the Parliament

Political Parties, Elections and Referendums Act 2000 (Non-Party Campaigner Code of Practice) (Appointed Date) (Scotland) Order 2025 (SSI 2025/288)

4. This Order is made under section [100BA\(8\)\(b\)](#) of the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”). The purpose of the Order is to bring into force the “Non-Party Campaigner Campaign Expenditure (Scottish Parliament Elections) Code of Practice 2025”, a draft of which was laid before the Parliament on 16 September 2025.
5. The lead committee for this Order is the Standards, Procedures and Public Appointments Committee.
6. The draft Code concerns the operation of the controls in the 2000 Act on non-party campaigner spending, including what spending qualifies as expenses, reporting controlled expenditure and donations, and joint campaigning. It is intended to assist campaigners in complying with their duties during the regulated period in the run-up to the election for the Scottish Parliament.
7. Following the laying of the draft Code, it transpired that one of the statutory preconditions for the making of the draft Code appears not to have been fulfilled: the requirement in section 100BA(1)(a) of the 2020 Act that the Electoral Commission must consult the Scottish Parliament on a draft of the Code before submitting it to the Scottish Ministers for approval.
8. Further information in this regard is contained in the response from the Scottish Government to the Committee’s question of 30 October 2025, both of which can be found in the [reponses paper for the meeting](#).
9. In a [letter from the Minister for Parliamentary Business and Veterans](#) to the Committee dated 5 November 2025, the Scottish Government stated that it intended to withdraw the draft Code that was laid on 16 September 2025, and it was withdrawn later that day.
10. The Committee understands that the Electoral Commission has now conducted a formal consultation with the Parliament on a revised draft Code, in line with section 100BA(1)(a), and that the revised draft Code has been submitted to and approved by the Scottish Ministers. On 10 November 2025, the Scottish Government laid the revised draft Code before the Parliament. The Committee will consider this in due course.
11. Turning to the Order before the Committee considered by the Committee at its meeting and being discussed in this report, the implications are that the Order is due to bring into force a document, the preparation of which appears to have been defective. The Order is not a draft instrument and has already been made. Accordingly, the Order cannot simply be withdrawn. It can be undone by being revoked by a subsequent instrument, and the Scottish Government has stated in its

correspondence that it intends to do this before 17 November 2025 when the current Order is due to come into force.

12. Despite the fact that the current Order is expected to be revoked, the Committee is required, under Standing Orders, to consider it against the reporting grounds and to report on it under the usual timescales.
13. The Committee considers that the current Order engages reporting ground (e) – that there appears to be a doubt whether it is *intra vires* – because of the apparent procedural defect in the preparation of the draft Code which the Order brings into force. While the apparent defect was in the preparation of the Code rather than in the instrument itself, the defect taints the instrument because it is of doubtful *vires* to make an instrument which brings into force a Code which was not prepared in accordance with the statutory preconditions. When considering whether the threshold for doubtful *vires* has been reached, the Committee considers whether a procedural defect is significant enough to cast a real doubt. In this case, the fact that the draft Code has been withdrawn, strongly suggests that this is the case.

14. **Accordingly, the Committee draws the instrument to the attention of the Parliament on reporting ground (e) – that there appears to be a doubt whether it is *intra vires* – because of concerns about the preparation of the draft Code which the instrument brings into force: that the draft Code appears not to have been prepared in accordance with a statutory precondition and as a result has been withdrawn.**
15. **The Committee welcomes the Scottish Government’s intention to revoke this instrument.**
16. **The Committee notes that this report does not arise from a defect in the drafting of the instrument, but from doubts about the consultation process that the Electoral Commission was required to undertake before it submitted the draft Code to the Scottish Government for its consideration. The Committee will therefore reflect, in its periodic reports on the number of reported instruments, the context of its report on this instrument.**

No points raised

17. At its meeting on 11 November 2025, the Committee considered the following instruments under its remit and agreed not to draw them to the attention of the Parliament.

Criminal Justice Committee

Economic Crime and Corporate Transparency Act 2023 (Commencement) (Scotland) Regulations 2025 (SSI 2025/304 (C.23))

Equalities, Human Rights and Civil Justice Committee

Act of Sederunt (Intimation and Service) 2025 (SSI 2025/301)

Act of Sederunt (Electronic Signature and Electronic Transmission of Documents) 2025 (SSI 2025/302)

Health, Social Care and Sport Committee

Food (Promotion and Placement) (Scotland) Regulations 2025 (SSI 2025/303)

Local Government, Housing and Planning Committee

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment Order 2025 (SSI 2025/298)

Building (Scotland) Amendment Regulations 2025 (SSI 2025/312)

Net Zero, Energy and Transport Committee

Motor Vehicles (Competitions and Trials) (Scotland) Amendment Regulations 2025 (SSI 2025/300)

- In relation to this instrument, the Committee welcomes that this instrument fulfils a commitment by the Scottish Government to correct an error made by SSI 2025/245 at the earliest possible opportunity.
- The Committee also welcomes that the Policy Note sets out clearly that the instrument corrects an error, and what that error was, which should assist users of this legislation.

Rural Affairs and Islands Committee

Rural Support (Improvement) (Miscellaneous Amendment) (Scotland) (No. 2) Regulations 2025 (SSI 2025/Draft)

- In relation to this instrument, the Committee welcomes that the draft Policy Note has been reissued, with the statement "remove requirement to submit an EFA map" corrected.

Sheep Carcase (Classification and Price Reporting) (Scotland) Regulations 2025 (SSI 2025/Draft)

Good Food Nation (Specified Functions and Descriptions) (Scottish Ministers) Regulations 2025 (SSI 2025/Draft)

- In relation to this instrument, the Committee notes that it would have been helpful if the accompanying documents had confirmed the intended date for laying the finalised National Good Food Plan before Parliament, as has been set out by [the Scottish Government in response to the Committee's question](#), given that this instrument depends on the plan being in force to operate as intended.

Good Food Nation (Scotland) Act 2022 (Commencement No. 4) Regulations 2025 (SSI 2025/291 (C.22))

