



The Scottish Parliament
Pàrlamaid na h-Alba

Published 27 March 2025
SP Paper 765
22nd Report, 2025 (Session 6)

Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 25 March 2025



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Contents

Introduction	1
Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament	2
Annexe	4

Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is 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; and

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

(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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Introduction

1. At its meeting on 25 March 2025, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
 - Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No. 2) Regulations 2025 (SSI 2025/78)
2. The Committee's recommendations in relation to this instrument are set out in the next section of this report.

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

Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No. 2) Regulations 2025 (SSI 2025/78

3. This instrument revokes and replaces the [Environmental Protection \(Disposal of Polychlorinated Biphenyls and other Dangerous Substances\) \(Scotland\) Amendment Regulations 2025 \(SSI 2025/42\)](#), which the Committee considered at its meeting on [4 March 2025](#).
4. It replaces the previous instrument with broadly similar provision.
5. The purpose of both instruments is to amend the [Environmental Protection \(Disposal of Polychlorinated Biphenyls and other Dangerous Substances\) \(Scotland\) Regulations 2000 \(SSI 2000/95\)](#), which regulate how equipment that is contaminated with polychlorinated biphenyls ("PCBs") is to be disposed of. PCBs are a type of persistent organic pollutant.
6. The amendments made by both instruments are to clarify scientific language, for example to ensure that references to numerical "volumes of PCBs" in fluids in relevant equipment refer to the total volume of fluids in the equipment as opposed to just that part of the fluids that is made up of PCBs.
7. This new instrument is being made because the Scottish Government has become aware of a procedural defect in SSI 2025/42, namely that a statutory requirement for prior consultation was not properly complied with. The [Policy Note](#) for the present instrument states that, in carrying out the consultation before making SSI 2025/42, the Scottish Government erroneously overlooked, and therefore did not consider, one of the responses to the consultation. The response which was overlooked was from a UK company that is a significant holder of equipment across Great Britain, and the company disagreed with the proposal.
8. The Scottish Government advises that it has now fully considered all the consultation responses. It is now revoking the instrument which was made after the defective consultation process and replacing it with the present instrument.
9. The revocation provision in the present instrument comes into force on 30 March 2025, in order to revoke the defective instrument before it enters into force. Other provision in the present instrument comes into force later, on 4 April 2025.
10. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("the 2010 Act"), instruments subject to the negative procedure must be laid at least 28 counting days before they come into force. The instrument breaches this requirement as it was laid on 18 March 2025 and will come into force partially on 30 March 2025.
11. As required by the 2010 Act, the Scottish Government wrote to the Presiding Officer

setting out its reasons for breaching the 28 day rule. This letter is set out in full in the annexe.

12. The lead committee for this instrument is the Net Zero, Energy and Transport Committee.

13. **The Committee draws the instrument to the attention of the Parliament under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**

14. **The Committee is content with the reasons provided for the failure to comply with the laying requirements.**

15. **The Committee notes that this instrument has been made in order to revoke and replace an earlier instrument which was defective due to an error in the statutory consultation process**

Annexe

Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No. 2) Regulations 2025 (SSI 2025/78

On 18 March 2025, the Scottish Government wrote to the Presiding Officer:

The above Regulations, SSI 2025/78, were made by the Scottish Ministers under section 18(1) and schedule 2 of the Regulatory Reform (Scotland) Act 2014 on 18 March 2025. They are being laid before the Scottish Parliament today, 18 March 2025 and come into force partially on 30 March 2025.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) of that Act, this letter explains why.

SSI 2025/78 is required to revoke and replace the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment Regulations 2025 (SSI 2025/42) which were laid before the Scottish Parliament on 20 February 2025. SSI 2025/42 is due to come into force on 31 March 2025.

The regulation-making power in section 18(1) of the RRSA is subject to the requirement in section 19 of the RRSA which provides that before making any regulations under section 18, a consultation be carried out by Scottish Ministers. The Scottish Ministers carried out a targeted consultation prior to making SSI 2025/42, a summary of which was reflected in the Policy Note which accompanied SSI 2025/42. Regrettably, one consultation response was erroneously overlooked during consultation analysis and as such, having failed to consider a third response, Ministers have not properly fulfilled the pre-requisite consultation requirement before making SSI 2025/42. To ensure that all stakeholders' responses are considered in a meaningful way and the statutory consultation requirement is complied with when making regulations, we must revoke SSI 2025/42.

The Scottish Ministers have now fully considered all three consultation responses and the Government response will be shared with stakeholders who were contacted during the consultation imminently. As such, we have laid the Environmental Protection (Disposal of Polychlorinated Biphenyls and other Dangerous Substances) (Scotland) Amendment (No. 2) Regulations 2025 to revoke SSI 2025/42 to correct this procedural error, and to make provision which gives effect to the amendments consulted upon.

It is the Scottish Government's view that SSI 2025/42 should be revoked before it comes into force on 31 March due to the defects in the consultation process in this case, and therefore it is preferable that its provisions do not come into force.

Given that SSI 2025/42 is due to come into force on 31 March 2025, the Scottish Government's view is that it is necessary to breach the 28-day laying requirement.

