

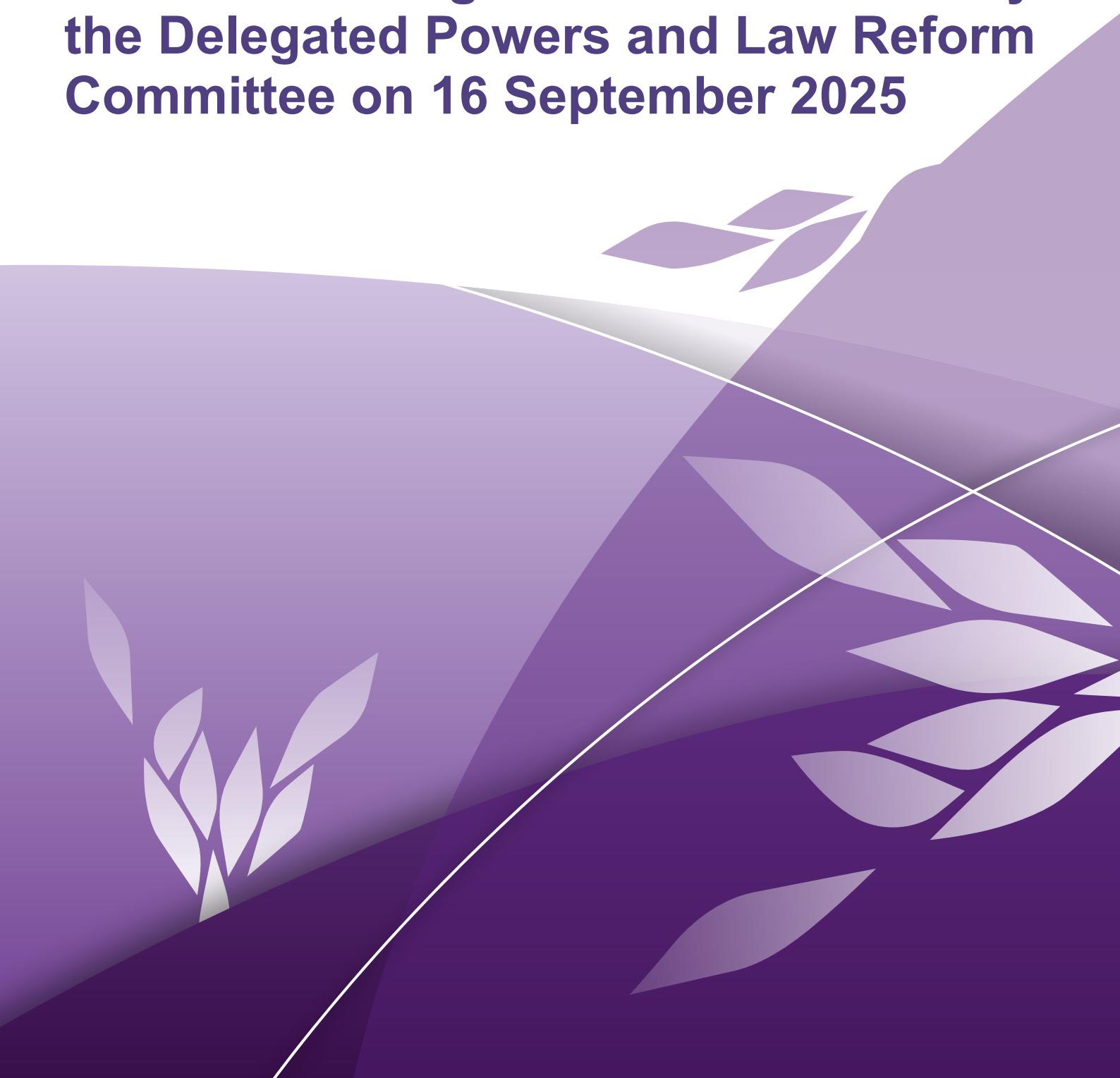


The Scottish Parliament
Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 16 September 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
No points raised	5

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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Introduction

1. At its meeting on 16 September 2025, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the Parliament:
 - Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2025 (SSI 2025/Re-laid Draft); and
 - Scottish Parliament (Disqualification of Members of the House of Commons) Regulations 2025 (SSI 2025/Draft).
2. The Committee's recommendations in relation to these instruments 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.

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

Scottish Parliament (Elections etc.) (Miscellaneous Amendments) Order 2025 (SSI 2025/Draft) (Re-laid)

4. The purpose of this draft instrument is to update the rules governing the conduct of Scottish Parliament elections ahead of the 2026 Scottish Parliamentary election. It does this by amending other legislation, mainly the [Scottish Parliament \(Elections etc.\) Order 2015 \(SSI 2025/425\)](#), as well as one provision in each of the Representation of the People Act 1983, and the Political Parties, Elections and Referendums Act 2000.
5. The present draft instrument was re-laid by the Scottish Government on 28 August. The previous version, which was laid on 23 June, was withdrawn on 26 August.
6. As set out in [a letter from the Scottish Government dated 26 August](#) (sent in addition to the [withdrawal letter of the same date](#)), the original version of the draft instrument was withdrawn in order to correct an issue with article 9 (changing the date on which a person becomes a “candidate”) which was raised by the Committee with the Scottish Government on 13 August.
7. Separately, in relation to the original draft instrument, the Committee asked four questions, which are available in the [instrument responses paper](#) (correspondence dated 31 July and 12 August). Questions 1, 2 and 3 remain relevant to the re-laid instrument. Question 4 was addressed in the re-laid instrument. The answers to questions 1 and 2 provide additional information and explanation that may be of interest to the lead committee, the Standards, Procedures and Public Appointments Committee, for its consideration of articles 14 (equipment at polling stations for voters with a disability) and 15(a) (proxy voting arrangements for a person who is accompanying someone to a medical appointment).

8. The Committee draws this correspondence with the Scottish Government to the attention of the lead committee.

9. Additionally, in correspondence with the Scottish Government about the re-laid draft instrument (correspondence dated 4 and 9 September), also available in the instrument responses paper linked above, the Committee asked about a new provision in article 16(2) of the re-laid draft instrument which was not present in the original draft instrument.
10. This provision amends forms in the [Appendix of Forms](#) of the 2015 Order. These are the official forms for (for example) nomination papers, ballot papers, and applications for postal/proxy votes.
11. Article 16(2)(a)(d) and (e) of the re-laid instrument amend Forms K, T and U respectively. These forms are postal voting statements that must be returned with

ballot papers. Each amendment was intended to change one reference in the form to “10pm” to “5pm”, to reflect the change in the deadline for replacing a lost or spoilt ballot paper on the day of the poll. The provisions making the amendment refer to 10pm “where it first appears”. However, in each case “10pm” appears only once in the part of the form that is specified (that is, in the “Getting Help” box)ⁱ. “10pm” does appear in other parts of each of these Forms.

12. The Scottish Government acknowledged that the wording “where it first appears” may be superfluous, but considered that the amendments remain sufficiently clear because they guide the reader to the “Getting Help” box, where the term “10pm” appears once in each case. On that basis, the Scottish Government did not propose to take corrective action.
13. The Committee considers that this error is unlikely to affect the operation of the legislation, and may have been content not to report this matter if it had appeared in a less significant context. However the Committee considers it desirable to ensure the greatest possible clarity in relation to changes to the wording of electoral forms, given their importance to individuals’ exercise of their democratic right to vote.

14. The Committee draws this instrument to the attention of the Parliament on the general reporting ground, in respect of superfluous references to “where it first appears” in the amendments made by article 16(2)(a)(d) and (e) of the draft instrument to the “Getting Help” section of postal voting statement forms K, T and U respectively.

Scottish Parliament (Disqualification of Members of the House of Commons) Regulations 2025 (SSI 2025/Draft)

15. This draft instrument would disqualify a person from being an MSP if they are also a Member of the House of Commons, and operates by amending the Scotland Act 1998.
16. This is one of a package of three “disqualification” instruments considered at today's meeting, with the other two instruments disqualifying a person from being an MSP if they are also a Member of the House of Lords or a local authority Councillor.
17. In [correspondence with the Scottish Government](#), the Committee asked about regulation 5(c) of the draft instrument. It would amend section 82 of the Scotland Act 1998 by inserting a new subsection (2A), which is intended to prevent an MSP who is also an MP from receiving an MSP salary. This subsection would state “The Parliament is to make no payment of salary to a member of the Parliament in accordance with section 81(1) in respect of any period in which the member is or was also a member of the House of Commons.”.
18. The Committee asked whether the formulation “The Parliament is to make no payment” is sufficiently accurate, given the contrast with the wording of section 81(1) of the Act, under which the Parliament does not itself make the payment of

ⁱ When viewing the [Appendix of Forms](#) on [legislation.gov.uk](#), the relevant references to 10pm are not seen in the body of the forms themselves but rather are listed at the top of that page under the heading “Textual Amendments”, having been added by amendments made by SSI 2020/426.

salaries but rather “make[s] provision for the payment” (for example by making provision for this to be done by the Scottish Parliamentary Corporate Body under section 81(5)). This wording also contrasts with the equivalent provision in the draft Councillors' Regulations which states: “the Parliament must ensure that the amount of salary payable...” (emphasis added), which is more consistent with the wording of section 81(1).

19. The Scottish Government, in its [response](#), stated that it does consider this to be sufficiently accurate. It considers that the reference to section 81(1) in new section 82(2A) is sufficient to indicate that the authority conferred by section 81(1), to provide for payments to be made, is not to be used to make payment of a salary to a person to whom section 82(2A) applies. The Scottish Government considers it is clear that new section 82(2A) fits into the scheme whereby payments are at present made under provision referred to in section 81 and that the Scottish Parliament Corporate Body would make payment in line with this requirement.
20. The Committee agrees that the provision should achieve the desired legal effect because it specifies “in accordance with section 81(1)”. However, given that this is an amendment to a constitutional Act, the Committee considers it desirable for the provision to be as accurate as possible and to be as consistent as possible with the other provisions of the Act.
21. The lead committee for this instrument is the Standards, Procedures and Public Appointments Committee.
22. **The Committee draws this draft instrument to the attention of the Parliament on the general reporting ground, as the wording of new subsection (2A), to be inserted by regulation 5(c) of the draft instrument into section 82 of the Scotland Act 1998, could be more consistent with the provision in sections 81 and 82 of the Act.**

No points raised

23. At its meeting on 16 September 2025, the Committee considered the following instruments and proposed draft regulations under its remit and agreed not to draw them to the attention of the Parliament.

Criminal Justice Committee

Proposed Draft Regulations - The Hate Crime and Public Order (Scotland) Act 2021 (Characteristic of Sex) Amendment Regulations 2026 (SG/2025/179)

Finance and Public Administration Committee

Aggregates Tax and Devolved Taxes Administration (Scotland) Act 2024 (Commencement No. 2) Regulations 2025 (SSI 2025/243 (C.20))

Health, Social Care and Sport Committee

National Health Service (Common Staffing Method) (Scotland) Amendment (No. 2) Regulations 2025 (SSI 2025/244)

Rural Affairs and Islands Committee

Free-Range Poultrymeat Marketing Standards (Amendment) (Scotland) Regulations 2025 (SSI 2025/Draft)

Standards, Procedures and Public Appointments Committee

Scottish Parliament (Disqualification of Members of the House of Lords) Regulations 2025 (SSI 2025/Draft)

Scottish Parliament (Disqualification of Councillors) Regulations 2025 (SSI 2025/Draft)

