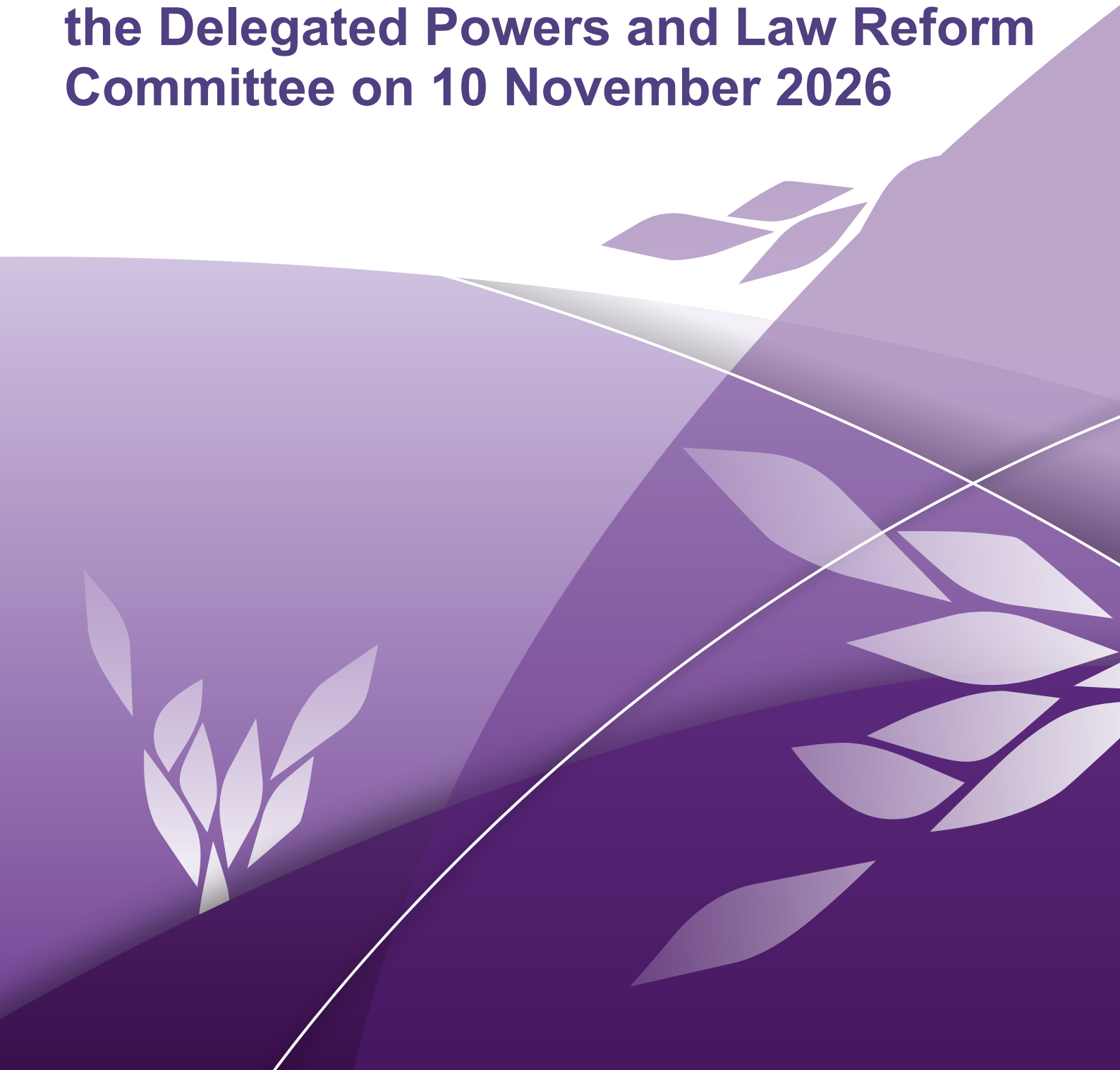
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Delegated Powers and Law Reform Committee

Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 10 November 2026



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Delegated Powers and Law Reform Committee

To consider and report on the following —
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.



DPLR.Committee@parliament.scot

Committee Membership



Convener
Calum Kerr
Scottish National Party



Deputy Convener
Q Manivannan
Scottish Green Party



Colm Merrick
Scottish National Party



Kim Schmulian
Reform UK



Paul Sweeney
Scottish Labour

Introduction

1. At its meeting on 10 November 2026, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:

    - The Scotland Act 1998 (Specifications of Functions and Transfer of Property etc.) (Amendment) Order 2026 (SI 2026/1095).

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 in the "No points raised" section of the report.

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

The Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) (Amendment) Order 2026 (SI 2026/1095)

4. This instrument is an Order in Council made under the power in section 93(3) of the Scotland Act 1998 ("1998 Act"). The power is being used to make certain Scottish Government functions exercisable by the UK Government on behalf of the Scottish Government, under agency arrangements.

5. The purpose of this instrument is to amend the Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019 ("2019 Order"), by:

   - updating and extending the list of forestry functions of the Scottish Ministers that may be exercised by UK Ministers under agency arrangements; and
   - correcting an error in the 2019 Order by removing a reference to the Scottish Ministers' functions under section 44 of the Climate Change (Scotland) Act 2009. The inclusion of this reference was a drafting error; there are no functions under section 44 that may be exercised through section 93 agency arrangements.

6. As this instrument is laid in both the UK and the Scottish Parliament, it is accompanied by a Policy Note prepared by the Scottish Government and an Explanatory Memorandum prepared by the UK Government.

7. These accompanying documents state that the instrument updates the list of forestry and tree health functions that may be exercised by UK Ministers on behalf of the Scottish Ministers, to reflect current plant health legislation and to specify certain forestry functions in more general terms in order to future-proof the legislation. The "future-proofing" is intended to avoid the need for further immediate amendments in the event of future changes to the law on plant health and forestry.

Specification of Official Controls Regulation functions

8. The Committee asked the Scottish Government for further information about the specification by the instrument of the functions in the Official Controls Regulation (Regulation (EU) 2017/625) ("OCR").[i]

9. It appeared to the Committee that the context of the instrument and the existing content of the 2019 Order suggest the subject matter is limited to forestry. We noted in the question that the Explanatory Note, Policy Note and Explanatory Memorandum for the instrument refer to updating the list of "forestry functions" specified in the 2019 Order. However, the scope of the OCR extends beyond forestry and plant health to cover a wider range of areas, for example, food and

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[i] article 2(3)(b) of the instrument, inserting new article 3(2)(g) of the 2019 Order..

feed safety, Genetically Modified Organisms for food and feed purposes, animal health and welfare, pesticides, organic production and labelling, and protected designations of origin.

10. The Committee therefore asked the Scottish Government for confirmation that the policy intention is to specify all of the Scottish Ministers' functions under the OCR, not just those which relate to forestry or plant health. The Scottish Government confirmed that this was the case.

11. In its response, the Scottish Government explained that the insertion of the reference to OCR functions is part of a package of forestry-related changes to the 2019 Order, which is why the reference to functions under the OCR is made in this instrument. It stated that the intention is for the functions to be carried out by the Forestry Commission, whose statutory functions are limited to forestry and tree health. The intention is to enter into an agency agreement in respect of forestry-related matters, and the Scottish Ministers do not intend to agree to non-forestry functions being carried out under a section 93 arrangement.

12. The Scottish Government also stated that the reference to all functions under the OCR is consistent with the existing reference in the 2019 Order to all Ministerial functions under the Plant Health Act 1967, and that it is therefore appropriate to refer to functions under the OCR in an instrument dealing with forestry matters.

13. The Committee acknowledged in the question that the 2019 Order specifies plant health functions under the 1967 Act that go beyond forestry. However, those functions remain within the realm of plant health and are significantly more limited in scope than the OCR. The Committee considers that this precedent is not sufficient in itself to justify now specifying the whole of the OCR functions and thereby extending into new policy areas, for example, animal health.

14. The Scottish Government further noted that the specified functions can only be exercised under agency arrangements under section 93 of the Scotland Act 1998 if both the Scottish and UK Ministers agree to such an arrangement, and that "the Scottish Ministers do not intend to agree to non-forestry functions being carried out under a section 93 arrangement".

15. The Committee notes, however, that any future administration may take a different view and would be entitled to proceed to make agency arrangements on the basis of this instrument. No further legislation or parliamentary scrutiny of the change in policy intention would be required.

16. **The Committee draws the instrument to the attention of the Parliament on reporting ground (g), in respect that specifying all of the Scottish Ministers' functions under the Official Controls Regulation, when the stated policy intention is to make arrangements only in respect of forestry and tree health functions, appears to be an unusual and unexpected use of the power conferred by the parent statute.**

Clarity of the accompanying documents

17. The Committee also asked the Scottish Government whether the accompanying documents should make clear that the instrument specifies all the Scottish

Ministers' functions under the OCR, not just those relating to forestry and/or plant health.

18. The Scottish Government considers that the accompanying documents are clear in that they state that Ministers' functions under the OCR have been specified and that the intention is to enter into an agency agreement in respect of forestry-related matters.

19. **The Committee considers that it would be helpful to the end user if the accompanying documents made clear that the instrument specifies all the Scottish Ministers functions under the OCR, not just those relating to forestry and/or plant health.**

"Extent" provision

20. The Committee noted that the 2026 Order includes an extent provision but that the 2019 Order, which is being amended, did not. The Committee asked the Scottish Government about the current standard drafting practice in relation to the inclusion of extent provisions in this type of instrument. The Scottish Government indicated in response that, notwithstanding the guidance in Statutory Instrument Practice (5th edition), it is now standard practice for the UK Government to include an extent provision in all Statutory Instruments.

Correction of error

21. This instrument fulfils a long-standing commitment by the Scottish Government to correct the error mentioned in paragraph 6, above, identified by the Session 5 Delegated Powers and Law Reform Committee during its scrutiny of the 2019 Order, and the Scottish Government's commitment to correct it was recorded in the Committee's report of 5 March 2019 (page 15).

22. The delay in making this correction was raised several times over the years by previous Delegated Powers and Law Reform Committees. The matter was raised again with the former Minister for Parliamentary Business during an evidence session on 28 October 2025 (O.R. columns 13-15). This prompted the most recent correspondence on this matter with the former Minister for Parliamentary Business and Veterans on 24 March 2026.

23. The lead committee for this instrument is the Rural Affairs Committee.

24. **The Committee welcomes that this instrument fulfils a long-standing commitment by the Scottish Government to correct an error in the Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019 (SSI 2019/183).**

No points raised

25. The Committee considered the following instruments under its remit, and agreed not to draw them to the attention of the Parliament.

Criminal Justice Committee

The Scottish Administration (Offices) Order 2026 (SI 2026/1097 (S. 1))

The Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) Act 2025 (Commencement No. 2) Regulations 2026 (SSI 2026/294 (C. 34))

Economy, Tourism and Energy Committee

The draft Procurement Reform (Scotland) Act 2014 (Thresholds) Amendment Order 2027

Education and Gaelic Committee

The draft Criminal Justice and Public Order Act 1994 (Modification) (Scotland) Regulations 2027

Social Justice, Housing and Local Government Committee

The Mobile Homes (Written Statement) (Scotland) Regulations 2026 (SSI 2026/320)

Transport Committee

The Parking Attendants (Wearing of Uniforms) (Dumfries and Galloway Council) Regulations 2026 (SSI 2026/295)

The Road Traffic (Permitted Parking Area and Special Parking Area) (Dumfries and Galloway Council) Designation Order 2026 (SSI 2026/296)

