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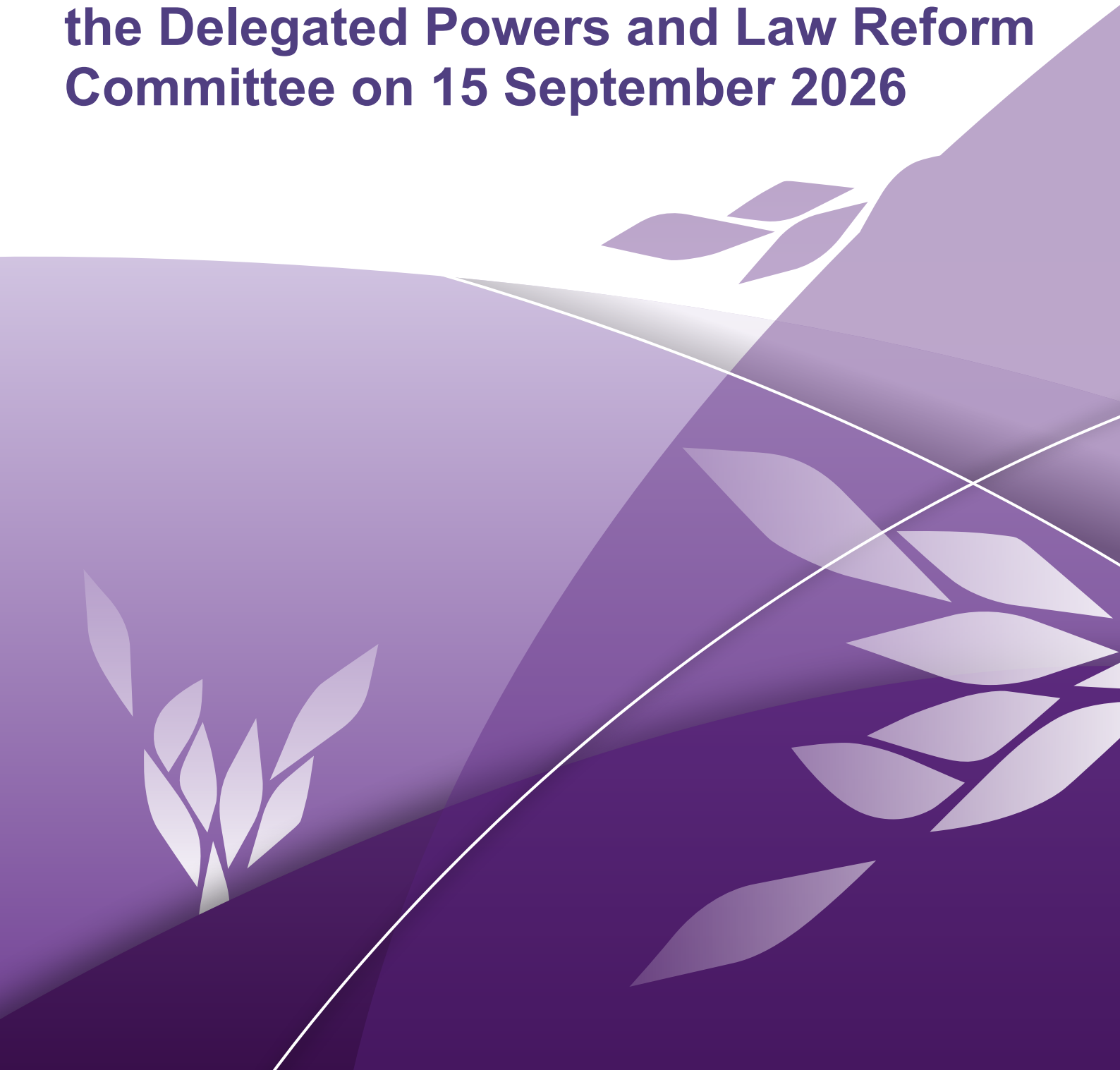
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4th Report, 2026 (Session 7)

Delegated Powers and Law Reform Committee

Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 15 September 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.



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Committee Membership



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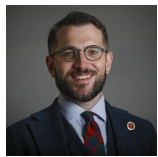
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Introduction

1. At its meeting on 15 September 2026, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
 - Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2026 (SSI 2026/252).
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.
4. The Committee's observations in relation to the following are contained in the "No points raised" section of this report:
 - The draft Employment Tribunals Extension of Jurisdiction (Amendment) (Scotland) Order 2026; and
 - The Welfare of Equidae Code of Practice (Revocation) (Scotland) Notice 2026 (SG/2026/193).

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

Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) (Amendment) 2026 (SSI 2026/252).

5. The instrument corrects errors identified by the Committee in the [Act of Sederunt \(Fees of Messengers-at-Arms and Sheriff Officers\) 2026 \(SSI 2026/208\)](#).
6. The instrument is subject to annulment (negative procedure). Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (the “2010 Act”) requires that a negative instrument must be laid before the Scottish Parliament at least 28 days before it comes into force.
7. This instrument was laid on 4 September 2026 and comes into force on 25 September 2026, breaching that rule. Breaching the rule does not affect the validity of the instrument, but does trigger an automatic report by this Committee.
8. The authority responsible for making the instrument is required by section 31(3) of the 2010 Act to explain to the Presiding Officer why the laying requirements have not been complied with. The Lord President’s Private Office (LPPO) has done so in its letter to the Presiding Officer of 4 September 2026, which is set out in full in the annexe of this report.
9. The lead committee for this instrument is the Equalities, Human Rights and Civil Justice Committee.

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

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

12. **The Committee welcomes that this instrument fulfils a commitment by the LPPO to address points raised by the Committee on the Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) 2026 (SSI 2026/208) before that instrument comes into force.**

No points raised

13. The Committee considered the following instruments and document subject to parliamentary approval under its remit, and agreed not to draw them to the attention of the Parliament.

Economy, Tourism and Energy Committee

The draft Employment Tribunals Extension of Jurisdiction (Amendment) (Scotland) Order 2026

- In relation to this instrument, the Committee highlights its [correspondence with the Scottish Government](#) to the Economy, Tourism and Energy Committee and notes that the delayed implementation creates a temporary divergence in employment rights and remedies between Scotland and England and Wales, resulting in the policy change not being available to affected workers in Scotland until around 5 weeks after it takes effect in England and Wales.
- The Committee suggests that the Economy, Tourism and Energy Committee may wish to explore whether the change could have been prioritised and implemented earlier, given that the invitation from UK Ministers to exercise the power was received on 15 December 2025.

The draft Renewables Obligation (Scotland) Amendment (No. 2) Order 2026

Education and Gaelic Committee

The draft Provision of Early Learning and Childcare (Specified Children) (Scotland) Amendment Order 2026

Equalities, Human Rights and Civil Justice Committee

The draft Maximum Number of Judges (Scotland) Order 2026

Act of Sederunt (Summary Cause Rules 2002 Amendment) (Domestic Abuse (Protection) (Scotland) Act 2021) 2026 (SSI 2026/253)

Health, Care and Sport Committee

The draft Mental Health (Care and Treatment) (Scotland) Act 2003 Remedial Order 2026

Rural Affairs Committee

The Welfare of Equidae Code of Practice (Revocation) (Scotland) Notice 2026 (SG/2026/193)

- In relation to this document, the Committee notes that it was laid without any accompanying documents or other information. The Committee asked the Scottish Government for an explanation as to why the Code is being revoked, to give the Committee an understanding of the context. The Scottish Government provided this information in [response to the Committee's request](#) for context. The Committee considers that it would have been helpful if the

Scottish Government had given the Parliament this information when laying the document before the Parliament for its approval.

- The Committee highlights the following observations regarding the legal context of the document to the Rural Affairs Committee, for its information:

Under the Animal Health and Welfare (Scotland) Act 2006, the procedures for making a Code and Guidance respectively are as follows. A Code requires to be laid in draft before the Parliament and is subject to approval by resolution of the Parliamentⁱ. Guidance is not laid in Parliament or subject to any parliamentary procedureⁱⁱ. Accordingly there is a significant difference in the parliamentary scrutiny of a Code rather than Guidance.

However, under the powers in the Act, the Scottish Government is not obliged to make either a Code or Guidance. Whether to do so is entirely a matter for the Scottish Government (subject to Parliament's approval, in the case of a Code).

As the Scottish Government's response states, "in common with the recently published guidance, the content of the Code is advisory in nature and includes advice regarding compliance with duties under Part 2 of the 2006 Act". To expand on this, the Committee notes that, while the Act provides that (in proceedings for a relevant offence) failure to comply with a Code may be relied upon as "tending to establish liability", and compliance may be relied upon as "tending to negative liability"ⁱⁱⁱ, the Act says nothing about the consequences of failing to comply with Guidance. This is recognised in [the new Guidance](#). It explains that the guidance does not have legislative effect; the welfare advice in the guidance may be considered relevant by the courts in a prosecution of a welfare offence; but that, in some cases, the guidance may not have any bearing on the prosecution^{iv}.

A Code on the welfare of pigs was similarly replaced with Guidance in 2023^v.

The Charges for Residues Surveillance Amendment (Scotland) Regulations 2026 (SSI 2026/249)

Standards, Procedures and Public Appointments Committee

The draft Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2026

The draft Scottish Local Government Elections (Election Agents, Expenses and Publication of Information) Amendment Order 2026

The Scottish Local Government Elections Amendment Order 2026 (SSI 2026/254)

ⁱ [section 37\(6\)](#)

ⁱⁱ [section 38](#)

ⁱⁱⁱ under [section 37\(9\)](#). Section 37(8) provides that a person's failure to comply with a Code does not itself render the person liable to proceedings of any sort.

Annexe

Correspondence from the Lord President's Private Office letter to the Presiding Officer, 4 September 2026

I refer to the above instrument which is laid before the Scottish Parliament today, 4 September 2026, under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010. It exercises powers which, were it not for section 33(4) of that Act, would be subject to both negative procedure and no parliamentary procedure.

Section 28(2) of that Act 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, further to section 31(3) of that Act, I write to explain why.

At its meeting earlier this week, the Delegated Powers and Law Reform Committee identified one error in the drafting of Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) 2026 (SSI 2026/208) and reported it. I am very grateful to the Committee for its scrutiny of that instrument.

The nature of the drafting error is that, were it left uncorrected, it would remove messengers-at-arms' existing ability to charge fees for out of hours work, remote rural area work or actions with a value of over £100,000. It would therefore have had a small financial impact on messengers-at-arms.

To avoid that outcome, the error requires to be corrected for 25 September 2026, the date on which SSI 2026/208 will come into force. The instant amending instrument being laid today therefore cannot be laid for 28 days before it comes into force and accordingly its laying period does not comply with section 28(2) of the 2010 Act.

The Court prides itself on correcting legal errors promptly and on this occasion my officials have moved swiftly to address the error identified just a few days ago.

Further, as an immediate instrument has been necessary on this occasion, the opportunity has been taken to address some of the other minor drafting points reported by the Delegated Powers and Law Reform Committee which would otherwise have been amended in much slower time. I am pleased that the Committee acknowledged the positive relationship between the Court and Parliament by welcoming the intention to bring forward an amending instrument expeditiously.

May I take the opportunity again to thank the Committee for its work. A copy of this letter goes to the Convenors of the Delegated Powers and Law Reform Committee and the Equalities, Human Rights and Civil Justice Committee.

