The Scottish Parliament
Pàrlamaid na h-Alba

Published 3 September 2026
SP Paper 3
2nd Report, 2026 (Session 7)

Delegated Powers and Law Reform Committee

Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 1 September 2026

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 —

(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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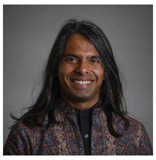

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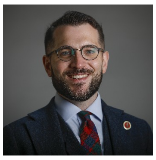

Paul Sweeney
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Introduction

1. At its meeting on 1 September 2026, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the Parliament:

   - the Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) 2026 (SSI 2026/208); and
   - the Tobacco and Vapes Act 2026 (Consequential, Transitional and Saving Provisions) (Scotland) Regulations 2026 (SSI 2026/213).

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

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

The Act of Sederunt (Fees of Messengers-at-Arms and Sheriff Officers) 2026 (SSI 2026/208)

4. This instrument concerns the fees that can be charged by sheriff officers and messengers-at-arms.

5. The instrument introduces a new unit-based model for these fees. It sets the value of a unit and provides for this to increase at the start of financial years 2027 and 2028. The instrument provides for charging on a "time" basis for certain types of work, and provides for reductions and surcharges to fees.

6. The instrument consolidates, and revokes, the SSIs which contain the current fee charging model.[i]

7. In correspondence with the Lord President's Private Office (LPPO), the Committee asked several questions about the instrument. The questions and responses are set out, in full, in the correspondence. A summary of the correspondence, and the Committee's conclusions, are set out below.

Question 1 – definition of "first class recorded delivery post"

8. Paragraph 2 is the interpretation provision for the instrument.

9. It contains a definition of "first class recorded delivery post", but this term is not used in the instrument. The Committee asked whether this should have been "first class recorded delivery service", which is used in the instrument.

10. The LPPO agreed. They responded that they do not consider a court would have any difficulty in interpreting the provision, but that they nonetheless intend to amend the provision at the earliest opportunity.

Question 2 – alphabetical order of defined terms

11. Paragraph 2 also contains a definition of "the relevant court". "The" is not used for the other defined terms in the list (other than Acts), with the result that "relevant court" appears out of alphabetical order.

12. The Committee asked whether it would be better for consistency of drafting and ease of finding this definition in the list if "relevant court" appeared in alphabetical order.

13. In response, the LPPO advised that the inclusion of "the" has no effect on the legal interpretation of the instrument and that, in their view, it does not create a risk of

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i Act of Sederunt (Fees of Sheriff Officers) (No. 2) 2002 and Act of Sederunt (Fees of Messengers-at-Arms) (No. 2) 2002, as amended.

confusion for the reader. As far as the alphabetical ordering of definitions is concerned, the LPPO did not consider that the location of the definition would have anything other than a minor impact on ease of finding it.

14. The Committee agrees that there is no effect on the legal interpretation of the instrument but notes that this drafting is not in line with standard drafting practice.

Question 3 – redundant words

15. Paragraph 7 begins "Subject to this Chapter". The Committee asked whether these words are redundant given that the provision goes on to say "unless otherwise provided for in this Act of Sederunt", or whether another meaning was intended.

16. The LPPO responded that the words were otiose. The LPPO intend to amend the provision at the earliest opportunity.

Question 4 – surcharge for messengers-at-arms

17. Paragraph 9, sub-paragraph (1), provides that a surcharge applies to out-of-hours, remote or high value work carried out by sheriff officers. Sub-paragraph (2), for messengers-at-arms, does not allow for a surcharge for these types of work. The Committee asked whether this achieves the policy intention.

18. The LPPO advised that it did not; that the policy intention is to permit surcharging by both sheriff officers and messengers-at-arms; and that the LPPO intend to amend the provision at the earliest opportunity to ensure surcharging in these circumstances continues.

19. The Committee considers that this is a significant error, which results in the instrument failing to deliver the intended policy on surcharging by messengers-at-arms. If the error was not fixed before the instrument comes into force on 25 September 2026, messengers-at-arms would have no legal basis for charging a surcharge for out-of-hours, remote or high value work carried out after that date.

Question 5 – reference to paragraphs 16-18 rather than 16-19

20. Paragraph 15(4) provides that, "unless paragraphs 16 (use of ferry) to 18 (enquiries) apply," messengers-at-arms are to charge on a "time" basis from the points in time identified in that sub-paragraph. The Committee asked whether this should refer instead to paragraphs 16 to <u>19</u>. It appeared to the Committee that paragraphs 16 to 18 are identified here because they concern work that is wholly chargeable on a "time basis", but that paragraph 19 (realising of money attachment) also falls into this category.

21. The LPPO indicated, in response, that this issue originates in a drafting error in a 2009 instrument, which has been re-stated in this consolidating instrument. The LPPO advised that this gap has been operating without incident since 2009 and is considered a valid reflection of current policy. However, in the circumstances, the LPPO agreed that to aid the reader's understanding there is value in closing the gap. They therefore intend to make this correction by amendment at the earliest opportunity.

Question 6 – "and" or "or"

22. Paragraph 19 says:

> "Where, in respect of a money attachment, an officer of court is required to—
>
> (a) realise the value of money attached and dispose of this under section 184 of the 2007 Act); **and**
>
> (b) deposit cash and proceeds of foreign currency (including conversion of foreign currency),
>
> the fee for such work must be charged on a time basis." (emphasis added)

23. The Committee asked whether sub-paragraphs (a) and (b) are intended to be alternatives, and if so, whether "**and**" (at the end of sub-paragraph (a)) should be "**or**". We noted the contrast with the use of "and" in paragraph 20(2) and (5) of the instrument, where clearly both (a) and (b) need to apply.

24. The LPPO noted in their response that, in the provisions which paragraph 19 re-states, the word "and" is used as the connector. The provisions being re-stated say:

> "Where, in relation to a money attachment, a [sheriff officer/messenger-at-arms] is required to realise the value of the money attached and dispose of same under section 184 of the Act of 2007 and deposit cash and proceeds of foreign currency (including conversion of foreign currency) the fee for such work shall be chargeable on a time basis."[ii]

25. The LPPO advised that, in the absence of any indication that a different policy is indicated and since these provisions have been in effect for 17 years without any indication that the policy is incorrect, they do not consider that "and" is incorrect. Rather, they consider that it reflects extant policy.

26. On the basis of the LPPO's confirmation that the drafting reflects the intended policy, the Committee is content that no reporting grounds are engaged.

Question 7 – "debtor or other occupier"

27. Paragraph 20 provides:

> "(2) Where, in respect of an attachment, **a debtor or other occupier** of the premises claims that goods are—
>
> (a) subject to a hire purchase agreement or are the property of someone other than the debtor; and
>
> (b) refuses or is unable to produce evidence to that effect,
>
> an officer of court may attach the goods.
>
> (3) Where sub-paragraph (2) applies, an officer of court must add a note on the schedule of the attachment stating that **the debtor** claims that goods

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ii paragraph 12A (messengers) of schedule 1 of SSI 2002/566 and paragraph 12A (sheriff officers) of S.S.I. 2002/567, both as amended. The publicly available version of these provisions is not up to date, so the links here are to the amending provisions in the 2009 SSIs.

are subject to a hire purchase agreement or are the property of someone other than the debtor.

...

(5) Where, in respect of a money attachment**, a debtor or other occupier** of the premises claim that money is—

(a) the property of someone other than the debtor; and

(b) refuses, or is unable to produce evidence to that effect,

an officer of court may attach the money.

(6) Where sub-paragraph (5) applies, an officer of court must add a note on the schedule of the attachment stating that **the debtor** claims that the money is the property of someone other than the debtor." (emphasis added)

28. The Committee asked whether each of sub-paragraphs (3) and (6) should reflect that the person making a claim about the ownership etc. of the goods or money may be another occupier rather than the debtor (under sub-paragraphs (2) and (5)).

29. Similar to the previous answer, the LPPO responded that the re-stated law correctly reflects the current law as it has stood without challenge for many years. In the absence of any indication that the policy enshrined is incorrect, the LPPO do not consider that it would be appropriate to amend it. They note that considering the policy would be a matter for the Scottish Civil Justice Council.

30. On the basis of the LPPO's confirmation that the drafting reflects the intended policy, the Committee is content that no reporting grounds are engaged.

Question 8 – "taxable supply"

31. Paragraph 21(2)(b) defines the term "taxable supply", but this term is not used in sub-paragraph (1). The Committee asked whether a different defined term or different wording in sub-paragraph (1) should have been used.

32. The LPPO responded that, while they do not consider a court would have any difficulty in the interpretation of the provision (as the term "supplies a taxable service" was clearly intended to link to the definition of a "taxable supply"), they intend to amend the opening words to refer to "taxable supply" to make this clearer.

Question 9 – "subject to sub-paragraph (2)"

33. The Committee asked whether, in paragraph 21(1), the inclusion of "subject to sub-paragraph (2)" is an error, since sub-paragraph (2) only contains definitions.

34. The LPPO agreed, and advised that this would be removed at the earliest opportunity.

35. The lead committee for this instrument is the Equalities, Human Rights and Civil Justice Committee.

36. **The Committee draws the instrument to the attention of the Parliament on reporting ground (i) (that its drafting appears to be defective) in respect that the instrument fails to deliver the intended policy on surcharging because it fails to allow for messengers-at-arms to charge a surcharge for out-of-hours, remote or high value work (the point raised in question 4).**

37. **The Committee also draws the instrument to the attention of the Parliament on the general reporting ground in respect of the points raised in questions 1, 2, 3, 5, 8, and 9.**

38. **The Committee welcomes that the Lord President's Private Office intends, subject to the Court's approval, to bring forward an amending instrument with a view to addressing all the acknowledged points before the present instrument comes into force.**

The Tobacco and Vapes Act 2026 (Consequential, Transitional and Saving Provisions) (Scotland) Regulations 2026 (SSI 2026/213)

39. The purpose of the instrument is to make technical amendments to other legislation to reflect changes to the law that will be made by the Tobacco and Vapes Act 2026.[iii] For example, the instrument:

- updates references and definitions to reflect that tobacco-related regulations are being extended to cover also herbal smoking products and nicotine products,
- updates terminology, for example "nicotine vapour product" becoming "vaping product", and
- reflects the change to the age-of-sale limit for the ban on selling tobacco products to those under the age of 18, which is changing to those "born on or after 1 January 2009."

40. The instrument also makes transitional provision for retailer Banning Orders already in effect when the changes to the law come into force.

41. In correspondence with the Scottish Government, the Committee asked whether, in the schedule of the instrument, "herbal smoking business" should be "herbal smoking product business", to reflect the defined term.

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iii The SSIs being amended by this instrument are: the Sale of Tobacco (Register of Tobacco Retailers) Regulations 2010; the Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2011; the Prisons and Young Offenders Institutions (Scotland) Rules 2011; the Sale of Nicotine Vapour Products (Prescribed Documents) (Scotland) Regulations 2017; the Sale of Tobacco (Prescribed Documents) (Scotland) Regulations 2013; and the Sale of Tobacco and Nicotine Vapour Products by Persons Under 18 (Scotland) Regulations 2017.

42. The context is as follows. Under the Tobacco and Primary Medical Services (Scotland) Act 2010, a court can make a Banning Order, banning a person from selling tobacco etc. products at particular premises. The size and wording of the Banning Order Notice, which must be displayed at the premises, is specified in the schedule of the Sale of Tobacco (Register of Tobacco Retailers) Regulations 2010 ("the principal regulations"). This instrument amends the principal regulations by substituting a new schedule. The purpose of this is to update the prescribed wording of the Banning Order Notice to reflect that the 2026 Act will extend Banning Orders to herbal smoking products and will introduce new terminology. In the new terminology, "herbal smoking product business" will be defined in section 35(1) of the 2010 Act as "a business involving the sale of herbal smoking products by retail".[iv]

43. The Banning Order Notice in the new schedule lists the "registrable businesses" which the person is banned from carrying out from the premises. One of these is given as "herbal smoking business". The Scottish Government accepted, in response to the Committee's question, that this should be "herbal smoking product business".

44. The Scottish Government proposed that the error would be corrected by correction slip.

45. **The Committee draws this instrument to the attention of the Parliament on the general reporting ground in respect of this point.**

46. **The Committee notes that this point has now been corrected by correction slip.**[v]

47. The Committee also asked about regulation 6 of the instrument. It amends the Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2011 by omitting regulation 6, which is headed:

> "Amount of fixed penalty… for offences under sections 5 and 7 of the Act".

However, the heading of regulation 7 will remain unchanged:

> "Amount of fixed penalty… for all other offences under Chapters 1 and 2 of Part 1 of the Act" (emphasis added).

48. The Committee noted that, following the omission of regulation 6, it appears that regulation 7 will now contain the fixed penalty etc. for all the offences in Chapters 1 and 2 of Part 1 of the Act rather than "all other" offences. The Committee asked whether it would be clearer if the heading of regulation 7 was updated to reflect this change (as the instrument is doing for other provisions).

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iv Schedule 9, paragraph 19 of the Tobacco and Vapes Act 2026, inserting the new definition into section 35(1) of the Tobacco and Primary Medical Services (Scotland) Act 2010.

v **Correction Slip, 27 August 2026**

49. The Scottish Government responded that it considered the wording and effect of regulation 7 itself to be clear, but agreed that the heading would be clearer if it was updated to reflect the omission of regulation 6. The Scottish Government advised that, while it does not propose to take any immediate corrective action, it will consider amending this in the future at an appropriate opportunity.

50. The lead committee for this instrument is the Health, Care and Sport Committee.

51. **The Committee welcomes that the Scottish Government will consider amending the heading of regulation 7 in the future, at an appropriate opportunity.**

No points raised

52. 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 Dangerous Dogs (Compensation and Exemption Schemes) (Miscellaneous Amendment) (Scotland) (No. 2) Order 2026 (SSI 2026/212).

Equalities, Human Rights and Civil Justice Committee

The Act of Sederunt (Taxation of Judicial Expenses Rules) (Amendment) 2026 (SSI 2026/238).

Health, Care and Sport Committee

The Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Act 2026 (Commencement No. 1 and Saving Provision) Regulations 2026 (SSI 2026/206 (C.21)).

The Tobacco and Vapes Act 2026 (Commencement No. 1, Transitional and Saving Provisions) (Scotland) Regulations 2026 (SSI 2026/210 (C.22)).

Rural Affairs Committee

The Wildlife Management and Muirburn (Scotland) Act 2024 (Consequential Amendments) Regulations 2026 (SSI 2026/240).