

Local Government, Housing and Planning Committee
Tuesday 17 June 2025
19th Meeting, 2025 (Session 6)

Note by the Clerk on The Town and Country Planning (Fees for Appeals) (Scotland) Amendment Regulations 2025 SSI (2025/166)

Overview

1. At this meeting, the Committee will consider the following Scottish Statutory Instrument (SSI), which is subject to the negative procedure. The Committee is invited to consider the instrument and decide what, if any, recommendations to make.
2. More information about the instrument is summarised below:

Title of instrument: [The Town and Country Planning \(Fees for Appeals\) \(Scotland\) Amendment Regulations 2025](#) (SSI 2025/166)

Laid under: section 252 of the Town and Country Planning (Scotland) Act 1997(a)

Laid on: 29 May 2025

Procedure: Negative

Deadline for committee consideration: 8 September 2025

Deadline for Chamber consideration: 10 September 2025

Commencement: 8 June 2025

Procedure

3. Under the negative procedure, an instrument is laid after it is made, and is subject to annulment by resolution of the Parliament for a period of 40 days beginning on the day it is laid.
4. Once laid, the instrument is referred to:
 - the Delegated Powers and Law Reform (DPLR) Committee, for scrutiny on various technical grounds, and
 - a lead committee, whose remit includes the subject-matter of the instrument, for scrutiny on policy grounds.
5. Any MSP may propose, by motion, that the lead committee recommend annulment of the instrument. If such a motion is lodged, it must be debated at a meeting of the Committee, and the Committee must then report to the Parliament (by the advisory deadline referred to above).

6. If there is no motion recommending annulment, the lead committee is not required to report on the instrument.

Delegated Powers and Law Reform Committee consideration

7. The DPLR Committee considered the instrument on 10 June 2025 and reported on it in its [46th Report of 2025](#).
8. The DPLR Committee drew the report to the attention of the Parliament on the grounds that it breached the requirement that a negative instrument be laid 28 days before coming into force. The DPLR Committee is content with the reasons offered for this breach (contained in a letter to the Presiding Officer at Annexe B).
9. An extract from the Committee's report is available at Annexe C.

Purpose of the instrument

10. The Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 (SSI 2025/124), due to come into force 9 June 2025, set out the fees which Scottish Ministers can charge for appealing planning decisions. The instrument contained errors which this instrument seeks to correct ahead of the original coming into force.
11. The Local Government, Housing and Planning Committee considered the Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 (SSI 2025/124) at its meeting on 27 May 2025. It took evidence from the Minister for Public Finance, Ivan McKee MSP, before [concluding it had no recommendations to make on the instrument](#).
 - [Local Government, Housing and Planning Committee Meeting 27 May 2025 – Papers and Official Report](#)
12. The Policy Note accompanying the instrument is included in Annexe A. It includes a summary of consultation undertaken on the instrument, impact assessments carried out, and the anticipated financial effects. Details of the impact assessments are also available at **Annexe D**.

Explanation to the Presiding Officer

13. As the instrument was not laid as soon as practicable after it was made / was laid less than 28 days before coming into force, the Scottish Government is required by law to provide an explanation. This is set out in Annexe B.

Committee consideration

14. So far, no motion recommending annulment has been lodged.
15. Members are invited to consider the instrument and decide whether there are any points they wish to raise. If there are, options include:

- seeking further information from the Scottish Government (and/or other stakeholders) through correspondence, and/or
- inviting the Minister (and/or other stakeholders) to attend the next meeting to give evidence on the instrument.

It would then be for the Committee, at the next meeting, to consider the additional information gathered and decide whether to make recommendations in relation to the instrument.

16. If members have no points to raise, the Committee should note the instrument (that is, agree that it has no recommendations to make).

17. However, should a motion recommending annulment be lodged later in the 40-day period, it may be necessary for the Committee to consider the instrument again.

Clerks to the Committee
June 2025

Annexe A: Scottish Government Policy Note

THE TOWN AND COUNTRY PLANNING (FEES FOR APPEALS) (SCOTLAND) AMENDMENT REGULATIONS 2025 SSI 2025/166

The above instrument was made in exercise of the powers conferred by section 252 of the Town and Country Planning (Scotland) Act 1997 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Summary Box

The Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 (SSI2025/124), due to come into force 9 June 2025, set out the fees which Scottish Ministers can charge for appealing planning decisions.

The Town and Country Planning (Fees for Appeals) (Scotland) Amendment Regulations 2025 correct the following errors:

- Regulations 1(2)(c) (citation, commencement and application) and 3(2) require to be amended to state that fees only apply to appeals submitted under section 154(1)(a) of the Town and Country Planning (Scotland) Act 1997;
- Regulation 10(2) (amendment of the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 and saving provision) in new regulation 55A (fees for appeals) to be inserted into the Town and Country Planning (Hazardous Substances) (Scotland) Regulations 2015 requires to be amended so that “(5)” is substituted with “(3); and
- Part 3, Table 3, applies to the fee to be paid where there is an appeal in respect of a ‘certificate of lawful use or development’ (CLUD) and requires to be amended so that the entries in column 2 applying to paragraphs 1 and 3 apply to an appeal in respect of an application for planning permission. Under SSI 2025/124 they apply to applications for planning permission.

Policy Objectives

The amendment regulations are intended to correct the errors identified in advance of The Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 coming into force on 9 June 2025.

UN Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 Compatibility

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024, the Scottish Ministers certify that, in their view, the The Town and Country Planning (Fees for Appeals) (Scotland) Amendment Regulations 2025 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government's policy to maintain alignment with the EU.

Consultation

Given extensive consultation had been undertaken prior to formulating the regulations intended to introduce fees for appeals to Scottish Ministers, further consultation has not been undertaken as the amendment regulations are only intended to correct errors identified after SSI 2025/124 was laid.

Impact Assessments

The full range of impact assessments were considered during the consultation process and in drafting the regulations. We sought views on draft impact assessments during the consultation, including our decision to screen out the following impact assessments: Data Protection Impact Assessment; Child Rights and Wellbeing Impact assessment; Consumer Duty; Equality Impact Assessment; Fairer Scotland Duty; Islands Communities Impact Assessment; and Strategic Environmental Assessment. The views provided in response to the consultation have not led to us change our decision and the impact assessments have been screened out and the relevant documentation completed.

A revised Child Rights and Wellbeing impact Assessment has been completed to accompany this SSI. We do not consider that the other individual impact assessments are required to be revised due to the change proposed by this SSI.

Financial Effects

A full Business and Regulatory Impact Assessment¹ (BRIA) was completed and published to accompany SSI 2025/124.

This amendment SSI corrects errors, contrary to our policy intention, meaning that there is no fee for an appeal against non-determination of a CLUD, and the fee for CLUD appeals is set approximately at 40% of the application fee.

Scottish Government Planning, Architecture and Regeneration Directorate
28 May 2025

¹ https://www.legislation.gov.uk/ssi/2025/124/pdfs/ssifia_20250124_en_001.pdf

Annexe B: Explanation to the Presiding Officer of why the instrument was laid in breach of the statutory laying requirements

Dear Presiding Officer

THE TOWN AND COUNTRY PLANNING (FEES FOR APPEALS) (SCOTLAND) AMENDMENT REGULATIONS 2025

The Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 (SSI 2025/124) were made under Section 252 of the Town and Country Planning (Scotland) Act 1997. They were laid before the Scottish Parliament on 28 April 2025 and they are due to come into effect on 9 June 2025.

The general effect of the Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 is to introduce the fees for appealing planning decisions to Scottish Ministers and they are due to come into effect on 9 June.

The Town and Country Planning (Fees for Appeals) (Scotland) Amendment Regulations 2025 are required to correct minor errors in the SSI 2025/124.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with Section 31(3) of that Act, this letter explains why.

An issue has been highlighted that in the event an applicant submits an appeal on the grounds of the non-determination of an application for a certificate of lawfulness, they would require to pay a fee which would be the only type of application where a fee was required to appeal on the grounds of non-determination. Regulations 1(2)(c) (citation, commencement and application) and 3(2) require to be amended to state that fees only apply to appeals submitted under section 154(1)(a) of the Town and Country Planning (Scotland) Act 1997.

In Part 3, Table 3, introduced by regulation 3 of SSI 2025/124, paragraphs 1 and 3 refer to the fee payable in respect of an application rather than appeal, meaning that fees for appeals for a certificate of lawful use or development, or a certificate of proposed use or development, would not be in line with the 40% figure that appeal fees have been set at.

The Scottish Government's view is, therefore, that it is necessary to breach the 28 day laying requirement to ensure that the errors identified are rectified in time for the coming into force of SSI 2025/124.

Yours sincerely

Chris Sinclair

Policy Manager

Planning and Development Delivery

Annexe C: Extract from the 46th Report, 2025 of the Delegated Powers and Law Reform Committee

Town and Country Planning (Fees for Appeals) (Scotland) Amendment Regulations 2025 (SSI 2025/166)

14. This amending instrument is intended to correct errors identified by the Scottish Government in the Town and Country Planning (Fees for Appeals) (Scotland) Regulations (SSI 2025/124). That instrument comes into force on 9 June 2025.
15. 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. The 28 days do not include time during which the Parliament is in recess or dissolved for more than 4 days. This is known as “the 28 day rule”.
16. This instrument was laid on 29 May 2025. The instrument came into force on 8 June 2025, which is less than 28 counting days later. A failure to comply with the 28 day rule does not affect the validity of the instrument, but an explanation is required as to why the laying requirements have not been complied with.
17. The Scottish Government's explanation was, in summary, that the errors identified in SSI 2025/124 would result, in some cases, in appellants being required to pay a fee where the policy intention was that no fee would be payable, and in other cases, appellants being charged a higher fee than was intended. Those errors therefore required to be corrected before SSI 2025/124 came into force and had that practical effect on appellants.
18. The full version of the letter to the Presiding Officer setting out the reasons for failing to comply with the 2010 Act's requirements on laying regulations can be found in the annexe of this report.
19. The lead committee for this instrument is the Local Government, Housing and Planning Committee.
20. **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 2010 Act.**
21. **The Committee is satisfied with the reasons given for the failure to comply with the laying requirements.**

Annexe D: Impact Assessments

- [Child Rights and Wellbeing Impact Assessment](#)