DPLR/S6/26/4/2

Delegated Powers and Law Reform Committee
Tuesday, 27th January 2026
4th Meeting, 2026 (Session 6)

Instrument Responses

Visitor Levy (Reviews and Appeals) (Scotland) Regulations 2026 (SSI 2026/Draft)

On 15 January 2026 the Scottish Government was asked:

“The Delegated Powers and Law Reform Committee intends to consider this instrument at its meeting on 27 January 2026.

The Committee has delegated authority to its legal advisers to ask questions directly of the Scottish Government Legal Directorate.

1. In regulation 2, why does the definition of “the levy” not cross-refer to section 1 of the Visitor Levy (Scotland) Act 2024, where that term is defined?
2. Regulation 3(2)(b) refers to the "conclusion of the local authority..." whereas the Visitor Levy (Local Authority Assessment) (Scotland) Regulations refer to the "outcome of an assessment". Might it be clearer to use consistent terminology across both instruments where appropriate? (see also references to "conclusion" in regulations 5, 6 and 8).
3. Regulation 5(4) refers to a “review request” rather than a “review notice” (as defined in regulation 3 and used throughout). Might it be clearer to the reader if “review request” was used throughout?
4. Regulation 10 permits suspension of information notices only where an appeal has been brought, despite information notices being reviewable under regulation 3. Is it the policy intention that suspension of an information notice is unavailable pending review (in contrast to regulation 9 which permits postponement of payment pending review or appeal)?

Please confirm whether any corrective action is proposed.”

On 20 January 2026 the Scottish Government responded:

“On point 1, cross-reference to section 1 of the 2024 Act was not considered particularly helpful or necessary. The definition is intended to focus on levies that have been introduced, as distinct from those that *may* be charged.

On point 2, the references to “conclusion” reflect the fact that the provisions in question are concerned about particular aspects of local authority assessments, rather than the result of the assessment as a whole. The Visitor Levy (Local Authority Assessment) (Scotland) Regulations 2026 refer to the “outcome” of the assessment as a whole. In the context of the Assessments Regulations, it seems more appropriate to talk about “outcome”, but for the Reviews and Appeals Regulations we consider conclusion to be more appropriate. Given that regulation 3 specifically refers to “aspects of an assessment made in accordance with regulation 3 of the Visitor Levy (Local Authority Assessment) (Scotland) Regulations 2026” we do not consider that any confusion will arise.

On point 3, we would agree that, in hindsight, referring to “the person who submitted the review notice” would be preferable to “the person who submitted the review request”, given that as you say we have defined that term and frequently used it elsewhere in the Regulations. We would plan to consider replacing the reference to “review request” in regulation 5(4) with “review notice” if the regulations are in future to be amended for a substantive purpose. In the meantime, however, it is considered that the meaning is sufficiently clear in the circumstances and no genuine confusion can arise given that regulation 5(4) is clearly addressing the timescales within which a “review under paragraph (1) must be carried out”. Given the meaning attributed to “review notice” by regulation 3(2) (namely a written notice to a local authority requesting a review by that local authority), we think that there can be no genuine doubt that a review notice and a review request are the same thing. Both amount to a request that a review be carried out. However, as we say, we will take a note to consider addressing this point if the regulations are being amended substantively in future.

On point 4, it is the deliberate policy intention that there be provision for suspension of an information notice only where an appeal is brought. Under section 30(2) of the 2024 Act the provision of information or documentation can only be sought if it is reasonably required by the officer for the purpose of assessing liability to pay the levy and where it is reasonable for the liable person to be required to provide the information or document. The consequences of an erroneous or defective information notice – which would only involve the provision of information that may not be needed or justified - are not considered to be as serious as cases involving erroneous payments, which could have cashflow implications if payments could not be postponed. Where, however, the issue is considered by the person affected to be sufficiently serious as to warrant an appeal to the FTT, then the Scottish Government’s policy is that suspension may be appropriate and a process to apply for one is accordingly provided in regulation 10. For these policy reasons, it was a deliberate choice to permit suspension of information notices only where an appeal has been brought.”

Visitor Levy (Local Authority Assessment) (Scotland) Regulations 2026 (SSI 2026/Draft)

On 14 January 2026 the Scottish Government was asked:

"The Delegated Powers and Law Reform Committee intends to consider this instrument at its meeting on 27 January 2026.

1. In regulation 2, why does the definition of "the levy" not cross-refer to section 1 of the Visitor Levy (Scotland) Act 2024, where that term is defined?
2. In regulation 3(2), what is the rationale for including the word "honestly" alongside "reasonably believes"? Could "reasonably believes" alone achieve the intended effect? How would a local authority demonstrate that its belief was held "honestly" in practice?
3. In regulation 4(1)(c), why is it necessary to state that the assessment will be made using information available to and obtained by the local authority? Could this be considered redundant, given that assessments must logically rely on available information?
4. In regulation 4(2)(a) assessing the deadline is complex and difficult to interpret (e.g., "on or before the last day of the period of two months beginning with… the end of the period of 30 days beginning with the last day of the relevant period"). Could this be simplified or expressed more clearly?
5. In regulation 5(1), could the phrase "notice of the outcome of an assessment made in accordance with regulation 3" be simplified to improve clarity?
6. In regulation 5(3), should the word "issued" be deleted (for consistency with regulation 5(2))?
7. In regulation 5(2)(d) and 5(3)(e), which refer to "timescale" and "deadline" respectively, would it be clearer to adopt consistent terminology for time limits?
8. Could regulation 6 be simplified to state that: (1) An assessment may be reviewed or appealed in accordance with the Reviews and Appeals Regulations. (2) If the outcome of a review or appeal alters the assessment, or if the authority corrects an error in the original notice, the authority must send a replacement notice?
9. Regulation 8 is an "avoidance of doubt" provision. Why has this provision been included and what is its legal effect in the context of the 2024 Act?
10. In regulation 9, should reference to "the person" be a reference to "the recipient", which is the standard wording for electronic communication provisions?"

On 20 January 2026 the Scottish Government responded:

"Point 1 – Cross-reference to section 1 of the Visitor Levy (Scotland) Act 2024 ("the 2024 Act") was not considered particularly helpful or necessary. The definition is intended to focus on levies that have been introduced, as distinct from those that *may* be charged.

Point 2 – The inclusion of the word "honestly" mirrors the wording of section 45(1)(b) the 2024 Act for consistency and is intended to indicate that the belief must be genuinely-held, as well as having a proper basis.

Point 3 – It is considered helpful to the recipient of the notice to set out the basis on which the assessment will be made, bearing in mind that an assessment can be made where the person has not made a return to the local authority at all, or where the return is believed to be incorrect. In practice it will be made on the basis of information that local authorities already hold, and, where relevant, that obtained by them via information notices.

Point 4 – The time periods described in regulation 4(2)(a) are necessarily complicated by the fact that, in terms of section 26(2) of the 2024 Act, a return does not become overdue until the period of 30 days after the end of the relevant period has lapsed. Although a simpler drafting approach was considered, we concluded that precision was important when prescribing these deadlines. While there is always scope for more than one drafting approach, it is considered that the time periods in regulation 4(2)(a) are clearly expressed in the circumstances, albeit perhaps at the cost of conciseness.

Point 5 – It is considered that regulation 5(1) sets out sufficiently clearly what is to be provided by a local authority as a result of an assessment.

Point 6 – On reflection, we would agree that the word “issued” is not really needed in 5(3). However, it is not considered that the inclusion of the word “issued” in regulation 5(3) is likely to cause harm or confusion in relation to the interaction between regulations 5(2) and (3), and so do not consider remedial action to remove the word to be proportionate. Should the regulations be amended in future for a substantive purpose, however, we will consider taking the opportunity to tidy this up.

Point 7 – In hindsight, stylistic consistency of language as between regulations 5(2)(d) and 5(3)(e) would have been preferred. However, it is not considered that the difference in wording as between regulation 5(2)(d) or 5(3)(e) is likely to cause harm or confusion in the circumstances. In both cases it should be apparent that what is to be covered in the notice is the time period within which any review request is to be submitted. Again, that is something that we will note to consider addressing should the regulations be amended in future for a substantive purpose.

Point 8 – We note your suggested alternative drafting approach. We do not consider, though, that it fully reflects the significance of the word “only” in regulation 6 as it currently stands. The intention of that word is to limit the circumstances in which the outcome of an assessment may be altered, namely to the circumstances set out in paragraph (1). Further, regulation 6 as drafted makes clear that the replacement notice of the outcome of the assessment supersedes the original notice. The suggested alternative drafting does not provide expressly for that.

Point 9 – Regulation 8 is made in exercise of the power in section 45(2)(f) of the 2024 Act. It is intended to put beyond doubt that the fact a local authority makes its own assessment does not prevent the imposition of a penalty for a failure to make a visitor levy return or to pay the full amount of the levy due.

Point 10 – We are not aware of there being standard wording for electronic communications provisions. Section 26 of the Interpretation and Legislative Reform (Scotland) Act 2010 uses the language of “the person authorised or required to serve the document” and “the person on whom it is to be served” agreeing in writing that the document may be sent to “the person” electronically. We do accept that referring to “the recipient” in regulation 9(a) would be slightly clearer in this context, given that term is used in 9(b). However, it is considered that it is sufficiently clear in the circumstances that by “person” is meant the person in receipt of the notice or document. “Person” is used in the provisions about sending notice (regulations 4 and 5) and so “the person” in regulation 9(a) refers to the person to whom the notice must be sent in accordance with these regulations. Whilst no immediate corrective action is proposed, we will consider addressing the point, should the regulations be amended in future for a substantive purpose.”

Digital Waste Tracking (Scotland) Regulations 2026 (SSI 2026/Draft)

On 15 January 2026 the Committee asked:

1. The enabling powers cited in the instrument and in the Policy Note differ, with sections 34CA(10) and 34CB(7) being cited in the Policy Note, but not in the instrument. Is this an error in the instrument or in the Policy Note?

2. The enabling powers permit the relevant national authority to make provision for the purpose of tracking relevant waste, including about the establishment of an electronic system and including designating a person (Scottish Ministers) to establish, operate or maintain such system and conferring function on them. They also allow for the creation of criminal offences and imposition of civil sanctions by an enforcement authority (SEPA). The instrument appears to confer a monitoring function on SEPA in regulation 13, "SEPA must monitor compliance with these regulations". The footnote refers to the enforcement powers in section 108(4) of the 1995 Act. Please explain why you consider that the instrument is effective in engaging those enforcement powers in respect of SEPA's functions under these Regulations?

3. Paragraph (2) of regulation 4 of the instrument disapplies the requirement to enter specified information into the digital waste tracking system if the permitted facility is a place provided by a waste disposal authority under section 53(1)(a) of the 1990 Act. This has the effect of exempting "*places at which to deposit waste before the authority transfers it to a place or plant or equipment provided under the following paragraph"*. The provisions of section 53(1)(b) are not disapplied, therefore regulation 4 does apply if the permitted facility is a "*[place] at which to dispose of or recycle the waste and plant or equipment for processing, recycling or otherwise disposing of it*". The Policy Note describes this instrument as the first phase of the tracking system, during which waste received at household waste and recycling centres will be excluded from the digital system. Does regulation 4(2) deliver the desired policy intent?

4. The instrument provides a definition of "end of the quarter" and "quarter" in regulation 2, but these terms do not otherwise appear in the instrument. Is this an error?

5. Regulation 23(4) of the instrument defines "public authority" as having the same meaning as in section 30(1) of the 2018 Act. However, that section defines "competent authority" rather than "public authority", and a definition of "competent authority" by reference to that section is also provided within that regulation. Is this an error?

6. Schedule 1, paragraph 1, provides a definition of "consignment note" with reference to the 1996 Regulations. The 1996 Regulations are not otherwise referred to or defined in the instrument or the parent Act. Is it sufficiently clear what is meant by the 1996 Regulations and should that term be defined?

7. Paragraphs 12, 13 and 15 of schedule 2 refer to a person appointed under, or determination of an appeal in accordance with, paragraphs 14(a) and 14(b), however, these paragraphs relate to the procedure upon determination of appeals. Are these errors?

8. Paragraph 15(b) of schedule 2 refers to a report made to the Scottish Ministers in accordance with paragraph 16, however, there is no paragraph 16. Is this an error?

9. Please confirm whether any corrective action is proposed, and if so, what action and when."

On 20 January 2026 the Scottish Government responded:

1. This is an error in the draft Policy Note, and the powers to which the instrument refers are correct. The Policy Note will be amended appropriately in due course.

2. Section 34CB(1) allows regulations under section 34CA(1) to make provision about the enforcement of requirements imposed by or under the regulations. Regulation 13 of the instrument, which requires SEPA to monitor compliance is making provision regarding enforcement of the instrument, and is made in exercise of this power in section 34CB(1). That allows SEPA to exercise its powers under section 108(1) of the Environment Act 1995 to authorise a person in writing to exercise any of the powers specified in section 108(4) for the purpose, among others, of determining whether any provision of the pollution control enactments is being, or has been, complied with. In section 108(15) of the 1995 Act, pollution control enactments is defined as meaning enactments and instruments relating to the pollution control functions of that authority; and "pollution control functions" refers in head (g) to functions in Parts I, II, IIA of the Environmental Protection Act 1990. Sections 34CA and 34CB of the 1990 Act which contain the enabling powers for this instrument in relation to digital waste tracking are in Part II of the 1990 Act and so the functions under this instrument fall under the definition of SEPA's "pollution control functions" and consequently within the definition of the pollution control enactments in relation to which SEPA can exercise the powers in section 108.

3. Section 53(1)(b) is not disapplied as this relates to the activities of local authorities to dispose of waste, rather than to the deposit of waste.

   The policy intent is for the exemption only to apply to those sites at which waste is deposited, and not those at which disposal or recycling operations are carried out. "Household waste and recycling centres" as described in the Policy Note is the name used to refer to sites provided by local authorities under section 53(1)(a). Disposal and recycling as referred to in section 53(1)(b) do not take place in such centres, and so the exemption for such sites is covered by section 53(1)(a) only.

   As such, regulation 4(2) delivers the policy intent. The intent is for sites covered under section 53(1)(b) of the Act which dispose of or recycle waste to be required to comply with obligations in the instrument.

4. This is an error in the instrument, and we agree that this definition is not required to be included. These definitions will have no effect and we do not consider that they impact on the operation of the instrument.

5. This is an error in the instrument. The correct provision to which the definition of "public authority" should refer is to section 7(1) of the 2018 Act.

6. We note that the term "1996 Regulations" is not defined in the instrument. In the definition of 'consignment note' it should have referred to the Special Waste Regulations 1996.

7. These are errors in cross-referencing in the instrument. The references to paragraphs 14(a) and 14(b) should in fact be to paragraphs 11(a) and 11(b).

8. This is a cross-referencing error in the instrument. The reference to paragraph 16 should correctly be to paragraph 13.

9. Corrective action is proposed in relation to points 4, 5, 6, 7 and 8 above. We will do so at the earliest opportunity. The policy note will be corrected at the time the Regulations are made."

Greenhouse Gas Emissions Trading Scheme (Amendment) (Extension to Maritime Activities) Order 2026 (SI 2026/Draft)

On 15 January 2026 the Committee asked:

1. In the instrument on page 50, in the new Schedule 2A paragraph 95, is it sufficiently clear what is meant by “EN standards”?

2. Please confirm whether any corrective action is proposed, and if so, what action and when.

On 21 January 2026 the Scottish Government responded:

1. “EN standards” is an abbreviation and means “European Norm”. It refers to the European technical standards which have been specified by one of the three European Standards Organisations (European Committee for Standardisation “CEN”, European Committee for Electrotechnical Standardisation “CENELEC” and European Telecommunications Standards Institute “ETSI”) in order to harmonise technical requirements across EU member States. These organisations develop and publish standards across a wide range of industrial and scientific fields, and the term “EN standards” is used in both UK and EU regulation to refer that body of standards.

2. Within the UK ETS, it is a term that will be familiar to operators, verifiers and other users. This is, in part, because of the consistency of approach taken with the already operationalised EU ETS Maritime regime, which as noted above, employs the same terminology. Our position is that users will read “EN standards” in its ordinary, technical sense, as referring to the appropriate harmonised analytical standards applicable in the circumstances.

3. The reference in paragraph 95 is intentionally general as it directs operators to use analytical methods underpinned by the relevant EN standard for the type of analysis being undertaken. The phrase therefore operates as a generally understood term rather than as a freestanding reference to something specific requiring a definition within the Order.

4. For these reasons, we do not consider that it is necessary to define the term in the Greenhouse Gas Emissions Trading Scheme (Amendment) (Extensions to Maritime Activities) Order 2026 and do not propose any corrective action.