

Equalities, Human Rights and Civil Justice Committee
Tuesday 3 February 2026
3rd Meeting, 2026 (Session 6)

Note by the Clerk on affirmative instruments

Overview

1. At this meeting, the Committee will take evidence from the Minister for Victims and Community Safety and officials on the following draft Scottish Statutory Instruments (SSIs), before debating motions inviting the Committee to recommend approval of the instruments to the Parliament.
2. More information about each instrument is summarised in the Annexes to this paper:
 - Annexe A: Criminal Legal Aid and Assistance by Way of Representation (Miscellaneous Amendment) (Scotland) Regulations 2026 [draft]
 - Annexe B: Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026 [draft]
 - Annexe C: First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure and Composition) (Miscellaneous Amendment) Regulations 2026 [draft]
3. Members will note that the [Minister for Victims and Community Safety wrote to the Committee on 28 January](#) to inform it that further regulations were laid on the same day to amend solicitors legal aid fees and fixed payments. This instrument provides for a 13% increase to legal aid and advice and assistance fees payable to solicitors.
4. The newly laid affirmative instrument: The Legal Aid and Advice and Assistance (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2026 is not yet available on [Legislation.gov.uk](https://legislation.gov.uk) but it is expected that the Committee will consider the regulations in due course.

Procedure

5. Under the affirmative procedure, an instrument must be laid in draft and cannot be made (or come into force) unless it is approved by resolution of the Parliament.
6. 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.

7. The lead committee, taking account of any recommendations made by the DPLR Committee (or any other committee), must report within 40 days of the instrument being laid.
8. The normal practice is to have two agenda items when an affirmative instrument is considered by the lead committee:
 - an evidence session with the Minister and officials, followed by
 - a formal debate on a motion, lodged by the Minister, inviting the lead committee to recommend approval of the instrument.
9. Where a single debate is held on two or more instruments, they are moved at the beginning of the debate, debated together, and separate questions are then put at the end of the debate.
10. Only MSPs may participate in the debate, which may not last for more than 90 minutes. If there is a division on one of the motions, only committee members may vote. If the motions are agreed to, it is for the Chamber to decide, at a later date, whether to approve the instruments.

Report

11. The Committee is invited to consider any issues which it wishes to raise on the instruments and to delegate to the Convener responsibility for finalising a report for publication that the Clerks will prepare on the basis of today's meeting.

Conclusion

12. Following the debate on the motions, the Committee will be invited to agree to the following motions:
 - [S6M-20270](#): That the Equalities, Human Rights and Civil Justice Committee recommends that the Criminal Legal Aid and Assistance by Way of Representation (Miscellaneous Amendment) (Scotland) Regulations 2026 [draft] be approved.
 - [S6M-20216](#): That the Equalities, Human Rights and Civil Justice Committee recommends that the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026 [draft] be approved.
 - [S6M-20225](#): That the Equalities, Human Rights and Civil Justice Committee recommends that the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure and Composition) (Miscellaneous Amendment) Regulations 2026 [draft] be approved.

Clerks to the Committee
January 2026

Annexe A: Criminal Legal Aid and Assistance by Way of Representation (Miscellaneous Amendment) (Scotland) Regulations 2026 [draft]

Laid under: [Legal Aid \(Scotland\) Act 1986](#)

Laid on: 15 December 2025

Procedure: Affirmative

Lead committee to report by: 8 February 2026

Commencement: If approved, the instrument comes into force on 1 April 2026, with the exception of regulations 3(2) and 4 to 10 coming into force on 14 December 2026.

Delegated Powers and Law Reform Committee consideration

The DPLR Committee considered the instrument on 6 January 2026 and reported on it in its [2nd Report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

The Policy Note accompanying the instrument states that the aim is to improve access to justice by simplifying legal aid processes for solemn and summary criminal cases, standardising eligibility, and ensuring fair and sustainable remuneration for solicitors. These changes are intended to reduce complexity, support early resolution, and guarantee timely representation for those most in need.

These Regulations therefore amend several regulations made under the Legal Aid (Scotland) Act 1986. They remove assistance by way of representation (“ABWOR”) for summary criminal proceedings other than those following conviction, make summary criminal legal aid under section 24 of the 1986 Act the primary form of legal aid for such proceedings, amend some solemn procedure first instance preparation fees, and also make related provision including in respect of automatic legal aid and legal aid in matters of special urgency. The changes to solemn fees made by regulation 3(3) apply to any case where work is done (e.g. where a guilty plea is made) on or after 1 April 2026. The rest of the amendments apply to proceedings where the complaint was served on or after 14 December 2026.

Relevant schedules which include details of the proposed changes to fees are available via the below link:

- [Payment Schedules](#)

Scottish Government Policy Note

The above instrument was made in exercise of the powers conferred by sections 9, 21(2) and (3), 33(2), (3)(a), (b) and (f), (3A) and (3C) and 36(1), (2)(a), (b), (c), (d) and (e) of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Summary

These Regulations aim to improve access to justice by simplifying legal aid processes for solemn and summary criminal cases, standardising eligibility, and ensuring fair and sustainable remuneration for solicitors. These changes reduce complexity, support early resolution, and guarantee timely representation for those most in need.

Policy objectives

The Criminal Legal Aid and Assistance by Way of Representation Miscellaneous Amendment (Scotland) Regulations 2026 amend criminal legal aid and assistance by way of representation (ABWOR) provision in relation to criminal matters with the objective of improving access to justice, simplifying legal aid processes, and ensuring fair and sustainable remuneration for solicitors.

For solemn cases, the Regulations align the preparation fee for cases resolved by a guilty plea at any diet prior to trial with the existing fee where intimation is given in accordance with section 76 of the Criminal Procedure (Scotland) Act 1995, supporting early resolution and maintaining fairness in payment structures.

In relation to summary criminal cases the Regulations remove ABWOR provision and make amendments to existing regulations to provide that summary criminal legal aid is the default form of legal aid. The Regulations aim to create a clearer, more consistent system by way of amendments which standardise financial eligibility tests, reduce administrative complexity, and provide greater certainty for solicitors. Automatic legal aid for guilty pleas from custody and undertakings ensures timely access to representation for those most in need.

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

The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Criminal Legal Aid and Assistance by Way of Representation Miscellaneous Amendment (Scotland) Regulations 2026 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

A targeted consultation on proposals to reform criminal legal aid was undertaken between 20 October and 9 November 2025, attracting 56 responses from a broad range of stakeholders, including solicitors, advocacy organisations, and representative bodies such as the Law Society of Scotland. Overall, respondents expressed support for the regulations and viewed the proposals as simplifying processes, improving access to justice, and supporting fair remuneration for solicitors.

Feedback varied across specific measures:

- **ABWOR reforms:** 24% supported, 15% opposed, 61% no view.
- **Simplified summary legal aid:** 39% supported, 5% opposed, 57% no view.
- **Removing duty solicitor exclusivity:** 36% supported, 14% opposed, 50% no view.
- **Undue hardship test:** 30% supported, 11% opposed, 59% no view.
- **Automatic legal aid for guilty pleas:** 38% supported, 11% opposed, 51% no view.
- **Solemn case provisions:** 27% supported, 7% opposed, 67% no view.

Overall, it is notable that a high number of “No view” responses were received across the consultation. This is likely attributable to the specialised nature of legal aid practice, with many solicitors commenting only on areas relevant to their expertise, whether that be civil, children, or criminal legal aid. While levels of active support varied and many respondents expressed no view, the consultation indicated broad acceptance of the overall direction of reform. Stakeholders generally welcomed measures that simplify processes, widen eligibility, and provide greater certainty for solicitors. The responses suggest that, despite limited engagement on some technical aspects, the proposed changes are seen as positive steps toward improving access to justice and ensuring a fair, sustainable legal aid system.

Impact assessments

The following impact assessments have been completed for the Criminal Legal Aid and Assistance by Way of Representation (Miscellaneous Amendment) (Scotland) Regulations 2026:

- [Equality Impact Assessment \(EQIA\)](#)
- [Business and Regulatory Impact Assessment \(BRIA\)](#)
- [Fairer Scotland Duty Impact Assessment \(FSDIA\)](#)
- [Children's Rights and Wellbeing Impact Assessment \(CRWIA\)](#)

It has been assessed that this instrument will improve and simplify access to justice across solemn and summary criminal legal aid cases by providing greater

administrative simplicity and wider eligibility for applicants, while supporting fair remuneration for solicitors. No negative impacts have been identified and accordingly no actions have been taken as a result.

Financial effects

A Business and Regulatory Impact Assessment (BRIA) has been completed. The impact of this policy on business is anticipated to be positive by simplifying the legal aid system, reducing administrative burden, and providing greater confidence and certainty of payment for solicitors and law firms who are registered to provide criminal legal aid in Scotland.

Employment in this sector includes:

- Solicitors and legal support staff
- Paralegals and administrative personnel
- Some staff may also be employed in third-sector organisations or law centres.

These professionals will be positively impacted by changes to fee structures, payment processes, and administrative requirements. Other groups positively impacted by the simplifications include the following:

- Service users: Individuals accessing legal aid may benefit from improved access and simplified processes.
- The Scottish Legal Aid Board (SLAB): As the administrator of the Scottish Legal Aid Fund, SLAB will be responsible for operationalising the changes.

Scottish Government
Directorate for Justice

Annexe B: [Legal Aid and Advice and Assistance \(Miscellaneous Amendment\) \(Scotland\) Regulations 2026](#) [draft]

Laid under: [Legal Aid \(Scotland\) Act 1986](#)

Laid on: 15 December 2025

Procedure: Affirmative

Lead committee to report by: 8 February 2026

Commencement: If approved, the instrument comes into force on 1 June 2026.

Delegated Powers and Law Reform Committee consideration

The DPLR Committee considered the instrument on 13 January 2026 and reported on it in its [6th Report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument, however minor points were raised in relation to the following:

- In relation to this instrument, the Committee welcomes that the Scottish Government proposes to amend the Policy Note to explain that regulation 5(3)(i) and (4), which amend references to “the 2024 Regulations”, are correcting previous errors, as set out in the [Instrument Responses paper for the meeting](#).
- Also in relation to this instrument, and as set out in the [Instrument Responses paper](#), the Committee welcomes that the Scottish Government intends, at the next suitable legislative opportunity:
 - to correct other erroneous references to “the 2024 Regulations” in the Civil Legal Aid (Scotland) Regulations 2002; and
 - to address a minor drafting point on regulation 6(4)(b).

On the basis of the Scottish Government responses to the minor points raised, the DPLR Committee agreed not to draw the instrument to the attention of the Parliament.

Purpose of the instrument

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026 remove means and merits tests for any child accessing assistance by Way of Representation (ABWOR) applications in relation to proceedings under the Children’s Hearings (Scotland) Act 2011. This is intended to ensure that children in the hearings system can access legal representation without unnecessary barriers, while reducing administrative complexity for solicitors and the Scottish Legal Aid Board.

The Regulations amend five sets of legal aid regulations, bulleted below, to extend the scope and duration of ABWOR where made available, increase the initial authorised expenditure limit from £135 to £550 and provide that Care Leaver Payments are to be disregarded in the assessment of a person's disposable capital and income for the purpose of financial eligibility for civil or children's legal aid and advice and assistance.

- [The Advice and Assistance \(Financial Limit\) \(Scotland\) Regulations 1993](#)
- [The Advice and Assistance \(Scotland\) \(Consolidation and Amendment\) Regulations 1996](#)
- [The Civil Legal Aid \(Scotland\) Regulations 2002](#)
- [The Advice and Assistance \(Assistance by Way of Representation\) \(Scotland\) Regulations 2003](#)
- [The Children's Legal Assistance \(Scotland\) Regulations 2013](#)

Scottish Government Policy Note

The above instrument was made in exercise of the powers conferred by section 9, 12(3), 36(2)(b) and 42 of the Legal Aid (Scotland) Act 1986. The instrument is subject to affirmative procedure.

Summary

The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland)

Regulations 2026 remove means and merits tests for children's Assistance by Way of Representation (ABWOR) applications in relation to proceedings under the Children's Hearings (Scotland) Act 2011, extend the scope and duration of ABWOR where made available, increase the initial authorised expenditure limit to £550 and provide that Care Leaver Payments are to be disregarded in the assessment of person's disposable capital and income for the purpose of financial eligibility for civil or children's legal aid and advice and assistance.

Policy objectives

The policy objectives are to ensure that children in the children's hearings system can access legal representation without unnecessary barriers, while reducing administrative complexity for solicitors and the Scottish Legal Aid Board. Removing means and merits testing reflects the principles of The UN Convention on the rights of Children (UNCRC) including article 12, 19 and 20, and addresses feedback that current financial eligibility tests are confusing and disproportionate for children. Extending the scope and duration of ABWOR grants will improve continuity of representation and reduce repeated applications and financial reassessments for what is effectively a single case. Increasing the initial authorised expenditure limit will allow solicitors to undertake essential work without routine requests for additional funding, further reducing administrative burden. Introducing a disregard for the Care Leaver Payment ensures that young people moving on from care are not disadvantaged in accessing legal aid as a result of receiving this payment.

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

The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026 are 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

A targeted consultation on proposals to amend ABWOR provisions for children was undertaken between 20 October and 9 November 2025, attracting 56 responses from a broad range of stakeholders, including solicitors, representative bodies, and advocacy organisations such as the Law Society of Scotland, Children's Hearings Scotland, and Citizens Advice Scotland. Overall, respondents expressed support for the regulations and viewed the proposals as consistent with the principles of the UNCRC, simplifying processes, and ensuring that children have access to appropriate legal representation.

The consultation sought views on three key measures designed to strengthen access to justice for children involved in the Children's Hearings system:

- **Removing means and merits testing for all children:** 46% supported, 9% opposed, 45% no view. This change aims to remove financial barriers and ensure that all children can access legal assistance regardless of their circumstances.
- **Increasing initial authorised expenditure from £135 to £550:** 55% supported, 7% opposed, 38% no view. This increase reflects the complexity of cases and ensures solicitors are fairly remunerated for the work required.
- **Extending ABWOR to cover representation through to full Compulsory Supervision Order hearings:** 51% supported, 4% opposed, 45% no view. This measure ensures continuity of representation for children throughout the process, reducing disruption and improving outcomes.

While levels of active support varied and many respondents expressed no view, likely due to the specialised nature of children's legal aid, the consultation indicated broad acceptance of the overall direction of reform. Stakeholders generally welcomed measures that simplify processes, widen eligibility, and provide greater certainty for solicitors. One respondent suggested that children who can afford to pay should do so; however, this was a minority view and no changes were made to the regulations.

These reforms are intended to make the system more child-centred, reduce administrative burdens, and uphold Scotland's commitment to UNCRC principles by ensuring that every child has access to timely and effective legal representation.

Impact assessments

The following impact assessments have been completed on The Legal Aid and Advice and Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026:

- [Equality Impact Assessment \(EQIA\)](#)
- [Business and Regulatory Impact Assessment \(BRIA\)](#)
- [Fairer Scotland Duty Impact Assessment \(FSDIA\)](#)
- [Children's Rights and Wellbeing Impact Assessment \(CRWIA\)](#)

It has been assessed that this instrument will improve and simplify children's access to justice by removing existing administrative obstacles in children's ABWOR and ensure that young people moving on from care are not disadvantaged in accessing legal aid as a result of receiving the Care Leaver Payment. No impact issues have been identified and accordingly no actions have been taken as a result.

Financial effects

A Business and Regulatory Impact Assessment (BRIA) has been completed. The impact of this policy on business is anticipated to be positive by improving and simplifying the legal aid system for solicitors and law firms who are registered to provide children's legal aid in Scotland. Employment in this sector includes:

- Solicitors and legal support staff
- Paralegals and administrative personnel
- Some staff may also be employed in third-sector organisations or law centres.

Other groups positively impacted by the simplifications include the following:

- Service users: Individuals accessing legal aid — including children — may benefit from improved access and simplified processes.
- Consumers: Members of the public may experience more consistent and transparent legal aid services.
- The Scottish Legal Aid Board (SLAB): As the administrator of the Scottish Legal Aid Fund, SLAB will be responsible for operationalising the changes.

Scottish Government
Directorate for Justice

Annexe C: First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure and Composition) (Miscellaneous Amendment) Regulations 2026 [draft]

Laid under: [Tribunals \(Scotland\) Act 2014](#)

Laid on: 17 December 2025

Procedure: Affirmative

Lead committee to report by: 10 February 2026

Commencement: If approved, the instrument comes into force on 1 April 2026.

Delegated Powers and Law Reform Committee consideration

The DPLR Committee considered the instrument on 13 January 2026 and reported on it in its [6th Report, 2026](#). The DPLR Committee made no recommendations in relation to the instrument.

Purpose of the instrument

The purpose of the draft amending instrument is to make technical amendments to the Procedure Rules and Composition Rules applicable to the Local Taxation Chamber ('the LTC'). The LTC considers various appeals relating to non-domestic rates ("NDR"), water charges, civil penalties and council tax matters.

The Policy Note accompanying the instrument explains that it is intended that necessary consequential changes stemming from the Valuations (Proposals Procedure) (Scotland) Regulations 2025 are made and that resources of the LTC are deployed as efficiently as possible as a result of this instrument.

The Note also states that the amendments seek to allow for a more efficient withdrawals process.

Section 11(2) and paragraph 4(3) of schedule 9 of the Tribunals (Scotland) Act 2014 require the Scottish Ministers to consult the President of the Scottish Tribunals and such other persons as they consider appropriate before making regulations under those sections. The preamble and the Policy Note confirm that these statutory requirements have been complied with.

Scottish Government Policy Note

The amending instrument is titled The First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure and Composition) (Miscellaneous Amendment) Regulations 2026 ("the draft amending instrument"). It seeks to make amendments to the First-tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure) Regulations 2022 (S.S.I. 2022/364) ("the Procedure Rules") and the First-tier Tribunal for Scotland Local Taxation Chamber and Upper Tribunal for Scotland

(Composition) Regulations 2023 (S.S.I. 2023/47) ("the Composition Regulations"). The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 10(2) and (3), 38(1) and (2), and paragraph 4(2) of schedule 9 of the Tribunals (Scotland) Act 2014 ("the 2014 Act") and all other powers enabling them to do so. In accordance with section 11(2) and paragraph 4(3) of schedule 9 of the 2014 Act, they have consulted the President of the Scottish Tribunals and such other persons as they considered appropriate prior to making these Regulations. The draft amending instrument is subject to the affirmative procedure.

Summary

The purpose of the draft amending instrument is to make technical amendments to the Procedure Rules and Composition Rules applicable to the Local Taxation Chamber ('the LTC'). The LTC considers various appeals relating to non-domestic rates ("NDR"), water charges, civil penalties and council tax matters.

The purpose of the amendments to the Procedure Rules is to insert reference to the Valuations (Proposals Procedure) (Scotland) Regulations 2025, which will come into force on 1 April 2026 and make provision as to the making of proposals by proprietors, tenants and occupiers of lands and heritage for alteration of entries in the valuation roll for non-domestic rates. In addition, the draft instrument also allows an appellant to withdraw an appeal without first requiring a request to be made to the LTC.

The purpose of the amendments to the Composition Regulations is to provide a non-exhaustive list of procedural or incidental matters which can be considered by a single legal member, judicial member or the Chamber President of the LTC sitting alone.

Policy objectives

The policy intention is to make the necessary consequential changes stemming from the Valuations (Proposals Procedure) (Scotland) Regulations 2025 and allow the resources of the LTC to be deployed as efficiently as possible. The policy intention in respect of the Procedural Regulations amendments is also to allow for a more efficient withdrawals process.

Amendments to the Composition Regulations seek to facilitate the efficient use of the LTC resources by providing a non-exhaustive list of preliminary or incidental matters to be determined by a single legal member, judicial member or the Chamber President sitting alone. This has the further advantage of allowing decisions in the matters to be addressed as promptly as possible.

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

The Scottish Ministers have made the following statement regarding children's rights:

In accordance with section 23(2) of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 (the Act), the Scottish Ministers certify that, in their view, the First-Tier Tribunal for Scotland Local Taxation Chamber (Rules of Procedure and Composition) (Miscellaneous Amendment) Regulations 2026 is compatible with the UNCRC requirements as defined by section 1(2) of the Act.

EU alignment consideration

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

Consultation

In accordance with section 11(2) and paragraph 4(3) of schedule 9 of the 2014 Act, Scottish Ministers have consulted the President of the Scottish Tribunals and such other persons as they considered appropriate prior to making these Regulations.

Scottish Ministers have engaged with the Temporary Chamber President of the LTC regarding these amendments. Stakeholders with an interest in the operation of NDR appeals in the LTC were also asked for their views and no concerns have been raised with the proposed approach.

The draft amendment instrument has been adjusted further to this engagement.

Impact assessments

An [impact assessment regarding Child Rights and Wellbeing \(CRWIA\)](#) has been completed and the Scottish Government has concluded that the proposal will have no impact on children's rights.

Additionally, an [impact assessment regarding Islands Community \(ICIA\)](#) has been completed. The Scottish Government believes the draft amending instrument is not likely to have an effect on an island community, which is significantly different from its effect on other communities (both mainland and other island communities).

Officials have concluded there is no requirement for a Data Protection Impact Assessment (DPIA) as these regulations make no changes to how data is processed.

Financial effects

A [Business and Regulatory Impact Assessment \("BRIA"\)](#) has been completed for this draft amending instrument which highlighted no impact on businesses.

Scottish Government
Directorate for Justice