DPLR/S7/26/2/2

Delegated Powers and Law Reform Committee
Tuesday 1 September 2026
2nd Meeting, 2025 (Session 7)

Instrument Responses

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

On Thursday 20th August 2026, the Committee asked the Lord President's Private Office:

1. Paragraph 2 contains a definition of "first class recorded delivery post" but this term is not used in the instrument. Should this have been "first class recorded delivery service"?

2. Paragraph 2 also contains a definition of "the relevant court". "The" is not used in the other defined terms in the list (other than Acts), with the result that "relevant court" appears out of alphabetical order. Would it be better for consistency of drafting and ease of finding this definition in the list if "relevant court" appeared in alphabetical order?

3. Paragraph 7 begins "Subject to this Chapter". Are these words redundant given that the provision goes on to say "unless otherwise provided for in this Act of Sederunt", or is another meaning intended?

4. Paragraph 9, sub-paragraph (1), provides that a surcharge applies to out-of-hours / remote / high value work carried out by sheriff officers. Sub-paragraph (2), for messengers-at-arms, does not allow for such a surcharge. Does this achieve the policy intention?

5. 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. Should this refer instead to paragraphs 16 to 19? It appears that paragraphs 16 to 18 are identified here because they concern work that is wholly chargeable on a "time basis", but paragraph 19 (realising of money attachment) also falls into this category.

6. Paragraph 19: are sub-paragraphs (a) and (b) intended to be alternatives, and if so, at the end of sub-paragraph (a) should "and" be "or"? (Contrast with the use of "and" in paragraph 20(2) and (5), where clearly both (a) and (b) need to apply.)

7. Paragraph 20: should each of sub-paragraphs (3) and (6) 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))? Sub-paragraphs (3) and (6) require the officer of court to state, in a note on the schedule of attachment, that the claim was made by the debtor.

8. Paragraph 21(2)(b) defines the term “taxable supply”, but this term is not used in sub-paragraph (1). Should a different defined term or different wording in sub-paragraph (1) have been used?

9. Paragraph 21(1): is the inclusion of “subject to sub-paragraph (2)” an error, since sub-paragraph (2) only contains definitions?

10. Please advise whether any corrective action is proposed, and if so, what action and when.

On Tuesday 25th August 2026, the Lord President’s Private Office responded:

The Lord President’s Private Office responds as follows:

1. We are grateful to the Committee for bringing this to our attention. The reference should have been to first class recorded delivery service rather than post. We do not, however, consider that a court would have any difficulty in interpreting the provision but nonetheless we intend to amend the provision at the earliest opportunity.

2. The inclusion of the definite article has no effect on the legal interpretation of the instrument and we do not consider it creates a risk of confusion for the reader. As far as the alphabetical ordering of definitions is concerned, we do not consider that the location of the definition would have anything other than a minor impact on ease of finding it.

3. We are grateful to the Committee for bringing this to our attention. The reference to “Subject to this Chapter” is otiose. We intend to amend the provision at the earliest opportunity.

4. We are grateful to the Committee for bringing this to our attention. The policy intention is to permit surcharging by both sheriff officers and messengers-at-arms. As the instrument would have the effect of removing surcharging for messengers-at-arms, we intend to amend the provision at the earliest opportunity to ensure surcharging in these circumstances continues.

5. The instrument is a consolidating instrument. Paragraph 9 of schedule 1 of S.S.I. 2002/566 provides that time is charged in accordance with that paragraph, except in relation to time under paragraphs 10, 11 and 12. That is re-stated in paragraph 15(4) of S.S.I. 2026/208 as a straight consolidation of the pre-existing law. Paragraph 12A of schedule 1 of S.S.I. 2002/566 was inserted by S.S.I. 2009/383. It appears that, 17 years ago, the drafter omitted to amend paragraph 9 to include reference to paragraph 12A in consequence of its introduction to S.S.I. 2002/566. That lacuna has been operating without incident since 2009 and was considered a valid reflection of current policy. In the circumstances, we agree that to aid the reader’s understanding there is value in closing the lacuna and intend to amend paragraph 15(4) to expand it so as to include paragraph 19 at the earliest opportunity and thank the Committee for bringing this to our attention.

6. In the provisions which paragraph 19 re-states, paragraph 12A of schedule 1 of S.S.I. 2002/566 and S.S.I. 2002/567, both as amended, the word “and” is used as the connector. 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, we do not consider that the connector is incorrect. Rather, it reflects extant policy.

7. As with the answer to the point raised in paragraph 6 above, the re-stated law correctly reflects the current law as it has stood without challenge, in the case of attachment, for 24 years and in the case of money attachment, for 17 years. In the absence of any indication that the policy enshrined is incorrect, we do not consider that it would be appropriate to amend it and note that considering the policy would be a matter for the Scottish Civil Justice Council.

8. We are grateful to the Committee for bringing this to our attention. While we 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”, we intend to amend the chapeau to make it refer in exact words to “taxable supply” so as to make this clearer.

9. We are grateful to the Committee for bringing this to our attention also. The reference to making sub-paragraph (1) subject to sub-paragraph (2) is clearly irrelevant. It will be removed at the earliest opportunity.

10. We thank the Committee for its consideration of the instrument. All but one of the drafting issues identified are of little or no impact. As the provision concerning surcharges has an effect, we intend, subject to the Court’s approval, to bring forward an amending instrument with a view to addressing all of the acknowledged points prior to the instant instrument coming into force. That will breach the 28 day rule and a letter to the Presiding Officer will issue in due course.

Tobacco and Vapes Act 2026 (Consequential, Transitional and Saving Provisions) (Scotland) Regulations 2026 (SSI 2023/213)

On Thursday 13th August 2026, the Committee asked the Scottish Government:

1. In the schedule of the instrument, should “herbal smoking business” be “herbal smoking product business”, to reflect the defined term in section 35(1) of the 2010 Act, inserted by the 2026 Act?

2. Regulation 6 of the instrument omits regulation 6 of the Sale of Tobacco (Registration of Moveable Structures and Fixed Penalty Notices) (Scotland) Regulations 2011, which is headed:

   “Amount of fixed penalty… for offences under sections 5 and 7 of the Act”.

However, the heading of regulation 7 remains unchanged:

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

Following the omission of regulation 6, it appears that regulation 7 will now contain the fixed penalty etc. for <u>all</u> the offences in Chapters 1 and 2 of Part 1 of the Act rather than "all other" offences. Would it be clearer if the heading of regulation 7 was updated to reflect this change (as the instrument is doing for other provisions)?

3. Please advise whether any corrective action is proposed, and if so, what action and when.

On Tuesday 25th August 2026, the Scottish Government responded:

1. In response to question 1, the Scottish Government agrees that the wording in the schedule of the instrument should be "herbal smoking product business". The Scottish Government will arrange for this to be corrected by way of correction slip.

2. In response to question 2, the Scottish Government considers the wording and effect of regulation 7 itself to be clear. However, the Scottish Government agrees that the heading of regulation 7 would be clearer if it was updated to reflect the omission of regulation 6. Whilst no immediate corrective action is proposed, the Scottish Government will consider amending this in the future at an appropriate opportunity.