

Delegated Powers and Law Reform Committee
Tuesday 27 October 2026
8th Meeting, 2025 (Session 7)

Instrument Responses

The draft Qualifications Scotland and His Majesty's Chief Inspector of Education in Scotland (Miscellaneous Listings) Regulations 2026

On Thursday 8 October, the Committee asked the Scottish Government:

Is the reference in regulation 4(1) to the Consumer (Scotland) Act **2024** (Relevant Public Authorities) Regulations 2024 intended instead to be a reference to the Consumer (Scotland) Act **2020** (Relevant Public Authorities) Regulations 2024?

Please advise whether any corrective action is proposed and, if so, what action is proposed and when it is intended to be taken.

On Wednesday 14 October, the Scottish Government responded:

Thank you for drawing this to our attention. The reference in regulation 4(1) to the Consumer (Scotland) Act 2024 (Relevant Public Authorities) Regulations 2024 is intended to be a reference to the Consumer (Scotland) Act 2020 (Relevant Public Authorities) Regulations 2024. The Scottish Government considers this error to be minor and self-evident, particularly in view of the heading of regulation 4 and the footnote to regulation 4(1). A correction slip has now been made to address this.

The draft Visitor Levy (Amendment of Returns and Miscellaneous Amendment) (Scotland) Regulations 2026

On Friday 25 September 2026, the Committee asked the Scottish Government:

Note: the following questions from the Committee and answers by the Scottish Government concerned the original draft of the SSI, which was laid on 22 and withdrawn on 25 September 2026. These have been addressed in the re-laid draft of 6 October 2026.

1. Regarding the use of the ancillary power: (i) does the negative procedure apply, and, if so, should there be reference to the powers being combined; and (ii) should section 69(6) be cited among the laying requirements?
2. Regarding regulation 2:
 - (i) under paragraph (5), evidence must be sent (in short) within 14 days after the local authority requests it; but under paragraph (8), if the evidence isn't received, the local authority must issue a refusal notice "on or after" the last day of that 14 day period. It seems that a person could comply with

paragraph (5) by sending the evidence in time, but the local authority could issue the refusal notice before the evidence is received (which, by post, could be several days later). Paragraph (17) applies a presumption of date of receipt to requests, notices and returns, but not to evidence, so is presumably not relevant here (and the timing issue would remain anyway). Is this intended?

(ii) under paragraph (8), there is no deadline for the local authority to send the refusal notice, as the provision says that this must be done “on or after...”. Is this intended?

3. Regulation 5(2)(c) and (d) insert text into the Visitor Levy (Local Authority Assessment) (Scotland) Regulations 2026. The text refers to the “Amendment of Returns Regulations”, being the present instrument. Should the name of the present instrument be cited in full?
4. Regulation 6(a) makes provision regarding agreement to the use of electronic communication. It is different to, and more involved than, the equivalent provision in two related instruments - the Visitor Levy (Local Authority Assessment) (Scotland) Regulations 2026 ([regulation 9](#)) and the Visitor Levy (Reviews and Appeals) (Scotland) Regulations 2026 ([regulation 12](#)) – which allow for agreement to inferred rather than requiring an exchange of messages. Is this intended?
5. Please advise whether any corrective action is proposed, and if so, what action and when.

On Wednesday 30 September 2026, the Scottish Government responded:

On point 1(i), the negative procedure does apply to the use of the ancillary power in section 78 of the Visitor Levy (Scotland) Act 2024. Accordingly, the Scottish Government accepts that it would be in line with standard practice to include a footnote reference to the powers being combined. The absence of such a reference does not, though, affect the validity of the instrument,. However, given that the instrument has now been withdrawn, the opportunity will be taken to address the point when it is re-laid.

On point 1(ii), the Scottish Government accepts that section 69(6) of the Visitor Levy (Scotland) Act 2024 should be cited among the laying requirements. This will be added in the draft as re-laid.

On your points 2(i) and 2(ii) in relation to regulation 2, the Scottish Government is reviewing the drafting of regulation 2 in the draft as re-laid in order to provide further clarification around the timescales that will apply where no evidence is submitted by a liable person in regard to their request to amend a return. .

On point 3, the Scottish Government accepts that the title of the present instrument should be written out in full in regulation 5(2)(c), with an abbreviated form for the

purposes of reference in regulation 5(2)(d). This point will be addressed in the draft as re-laid.

On point 4, the Scottish Government intends to replace regulation 6(a) with a provision modelled on the approach taken in the Visitor Levy (Local Authority Assessment) (Scotland) Regulations 2026 and the Visitor Levy (Reviews and Appeals) (Scotland) Regulations 2026, in the interests of consistency between the three instruments. This will be addressed in the draft as re-laid.

On point 5, and as covered in the preceding responses, corrective action will be undertaken, where appropriate, in the draft instrument as re-laid.

The Criminal Legal Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026 (SSI 2026/267)

On Friday 2 October 2026, the Committee asked the Scottish Government:

1. The instrument appears to make retrospective provision in relation to the fee increases provided for by regulation 3. However, the parent Act does not appear expressly to authorise the exercise of the relevant powers so as to make retrospective provision.
 - a) Does the Scottish Government agree that no such express authority exists?
 - b) If so, what is the Scottish Government's justification for relying on the cited powers to make retrospective provision?

On Tuesday 6 October 2026, the Scottish Government responded:

Whilst the Scottish Government agrees that there is no express statutory power in the Legal Aid (Scotland) Act 1986 ("the 1986 Act") to make retrospective provision in relation to the fee increases provided for by regulation 3, it is of the view that the cited powers can be relied on to make retrospective provision. The Scottish Government consider that in the absence of clear words, the test to be applied is whether it would be unfair to apply the provisions retrospectively.

The Government has had particular regard to whether the effect of the provision would be detrimental to those whom it affects and confirm that in this case it would not. Section 33 of the 1986 Act provides the power to make regulations in respect of the fees and outlays of solicitors and counsel, including the rates or scales of payment.

The Legal Aid and Advice and Assistance (Fees) (Miscellaneous Amendment) (Scotland) Regulations 2026 (S.S.I. 2026/144) were intended to apply a 13% increase to all fees and outlays for legal aid and advice and assistance from 1 September 2026, but two fees tables were inadvertently omitted. Regulation 3 of these Regulations amends the Advice and Assistance (Scotland) Regulations 1996 to implement the 13% increase on the two omitted fees tables.

The retrospective effect of regulation 3 will be entirely to the benefit of any legal practitioners involved in the relevant legal aid work. Without the retrospective

provision, legal practitioners would not be entitled to claim the uplifted fees that they expected to be applied from 1 September 2026.

It may be worth noting that the degree of retrospection in this case is limited. The Scottish Government is aware that no fees have ever been claimed from the tables being amended by these regulations. As the retrospective effect applies between 1 September 2026 and 19 November 2026, it is highly likely that no fees will be claimed retrospectively.

On the basis of the above, the Scottish Government is content that the Criminal Legal Assistance (Miscellaneous Amendment) (Scotland) Regulations 2026 are *intra vires*. The 1986 Act in general (and section 33 in particular), which provides for a comprehensive and flexible system of payment in respect of publicly-funded legal representation does not prevent such an approach.

It is also worth noting that Parliament's concern about the *vires* of legislating with retrospective effect by virtue of the powers conferred by the 1986 Act has previously been addressed by the Scottish Government on a number of occasions. It was addressed in oral evidence to the Justice 1 Committee in relation to the Criminal Legal Aid (Scotland) (Fees) Amendment (No. 2) Regulations 2005 (SSI 2005/584) where it was explained to the Committee that in determining whether retrospective legislation is *ultra vires* the Government has regard, in particular, to whether its effects are detrimental to those whom it affects (SP OR J1 7 December 2005, col 2643). It was raised again in respect of SSI 2009/203.