Delegated Powers and Law Reform Committee
Tuesday 10 November 2026
10th Meeting, 2025 (Session 7)

Instrument Responses

The Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) (Amendment) Order 2026 (SI 2026/1095)

On Thursday 29 October 2026, the Committee asked the Scottish Government:

1. The context of the instrument and the existing content of the 2019 Order suggest that the subject matter of the instrument is limited to forestry. The Explanatory Note, Policy Note and Explanatory Memorandum for the instrument refer to updating the list of "forestry functions" specified in the 2019 Order.

   However, among the functions which the instrument adds to that list are the Scottish Ministers' functions under or by virtue of the Official Controls Regulation (EUR 2017/625) ("OCR"), in whole. The scope of the OCR is wider than forestry and wider than plant health (we appreciate that the 2019 Order already specifies plant health functions under the Plant Health Act 1967 that go beyond forestry). The scope of the OCR covers, for example: food and feed safety, Genetically Modified Organisms for food and feed purposes, animal health and welfare, pesticides, organic production and labelling, and protected designations of origin.

   Can confirmation be provided that the policy intention is to specify all of the Scottish Ministers' functions under the OCR, not just those which relate to forestry or plant health? If so:

   (i) why it is considered appropriate to do so by way of insertion into an instrument the subject matter of which is limited to forestry and/or plant health; and

   (ii) do you consider that the accompanying documents should make clear that the instrument specifies all the Scottish Ministers' functions under the OCR, not just those relating to forestry and/or plant health?

2. The instrument contains an extent provision (article 1(2)), but the 2019 Order did not. What is the current standard drafting practice as regards the inclusion of extent provisions in this type of instrument?

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

DPLR/S7/26/10/2

On Thursday 5 November 2026, the Scottish Government responded:

Question 1

1. The OCR is cross cutting, with certain functions applying across a number of sectors. While the functions under the OCR have been specified generally, the functions can only be exercised under an arrangement under section 93 of the Scotland Act 1998 if both the Scottish Ministers and the relevant UK Minister agree to such an arrangement. In practice, the intention is that only those functions which are capable of being exercised in relation to forestry plant health are to be exercised through arrangements made by virtue of the 2019 Order.

   (i) The insertion of the reference to functions under the OCR is part of a package of forestry-related changes to the 2019 Order, which is why the reference to functions under the OCR is made in this instrument. The intention is that the functions will be carried out by the Forestry Commission, whose statutory functions are limited to forestry and tree health. As noted above, the functions can only be exercised under an arrangement under section 93 of the Scotland Act 1998 if both the Scottish Ministers and the relevant UK Minister agree to such an arrangement. The Scottish Ministers do not intend to agree to non-forestry functions being carried out under a section 93 arrangement. The reference to all functions under the OCR is consistent with the existing reference in the 2019 Order to all Ministerial functions under the Plant Health Act 1967. Therefore it is appropriate to refer to functions under the OCR in an instrument dealing with forestry matters.

   (ii) The Scottish Ministers' view is that the accompanying documents do not suggest that only forestry-related functions are specified in the amendments. Rather, the documents are clear in that they state that Ministers' functions under the OCR have been specified and that the intention is to enter into an agency agreement in respect of forestry-related matters.

Question 2

2. The current standard practice is that all Statutory Instruments should include an extent provision. While not set out in Statutory Instrument Practice (5th edition), we understand this is a change in drafting practice adopted by the UK Government since January 2021. We refer to the Joint Committee on Statutory Instruments, Fifteenth Report of Session 2021-22 (HL 99; HC 56-xv), 19 November 2021, Appendix 4 of which contains a memorandum from the Department for Levelling Up, Housing and Communities in connection with SI 2021/978 in which the Department explains the change in drafting practice in respect of extent provisions in Statutory Instruments.

Question 3

3. No corrective action is proposed.

The Scottish Administration (Offices) Order 2026 (SI 2026/1097 (S. 1))

On Thursday 29 October 2026, the Committee asked the Scottish Government:

1. The 2026 Order has been assigned a Scottish subsidiary number "(S. 1)", consistent with the 2002 and 2015 Scottish Administration (Offices) Orders. However, other Orders of this kind (1999, 2005, 2012 and 2018) were not assigned a Scottish subsidiary number. What is current standard practice for determining whether an instrument is given such a number?

2. The 2026 Order contains an extent provision (article 1(2)), but the previous Scottish Administration (Offices) Orders do not. What is the current standard drafting practice as regards the inclusion of extent provisions in this type of instrument?

On Tuesday 3 November 2026, the Scottish Government responded:

1. Assignation of Scottish subsidiary number

The current standard practice is that a Statutory Instrument covering reserved matters applying to Scotland only is assigned a Scottish subsidiary number. This is set out in Statutory Instrument Practice (5th edition) paragraph 3.7.4.

2. Extent provision

The current standard practice for Statutory Instruments is that an instrument should include an extent provision.

On Tuesday 3 November 2026, the Committee asked the Scottish Government:

The response to question 2 is: "The current standard practice for Statutory Instruments is that an instrument should include an extent provision." We assume this does not refer to all Statutory Instruments (given that Statutory Instrument Practice does not suggest so). Which Statutory Instruments does it refer to, for example all those that are laid in the Scottish Parliament, or all those under the Scotland Act 1998, or perhaps just those under the present power (s. 126(8)(b))? We would be grateful for clarification.

On Wednesday 4 November 2026, the Scottish Government responded:

In response to your further question, our understanding is that this drafting practice applies to all Statutory Instruments. While not set out in Statutory Instrument Practice, we understand this is a change in drafting practice adopted by the UK

Government since January 2021. We refer to the Joint Committee on Statutory Instruments, Fifteenth Report of Session 2021-22 (HL 99; HC 56-xv), 19 November 2021, Appendix 4 of which contains a memorandum from the Department for Levelling Up, Housing and Communities in connection with SI 2021/978 in which the Department explains the change in drafting practice in respect of extent provisions in Statutory Instruments.