

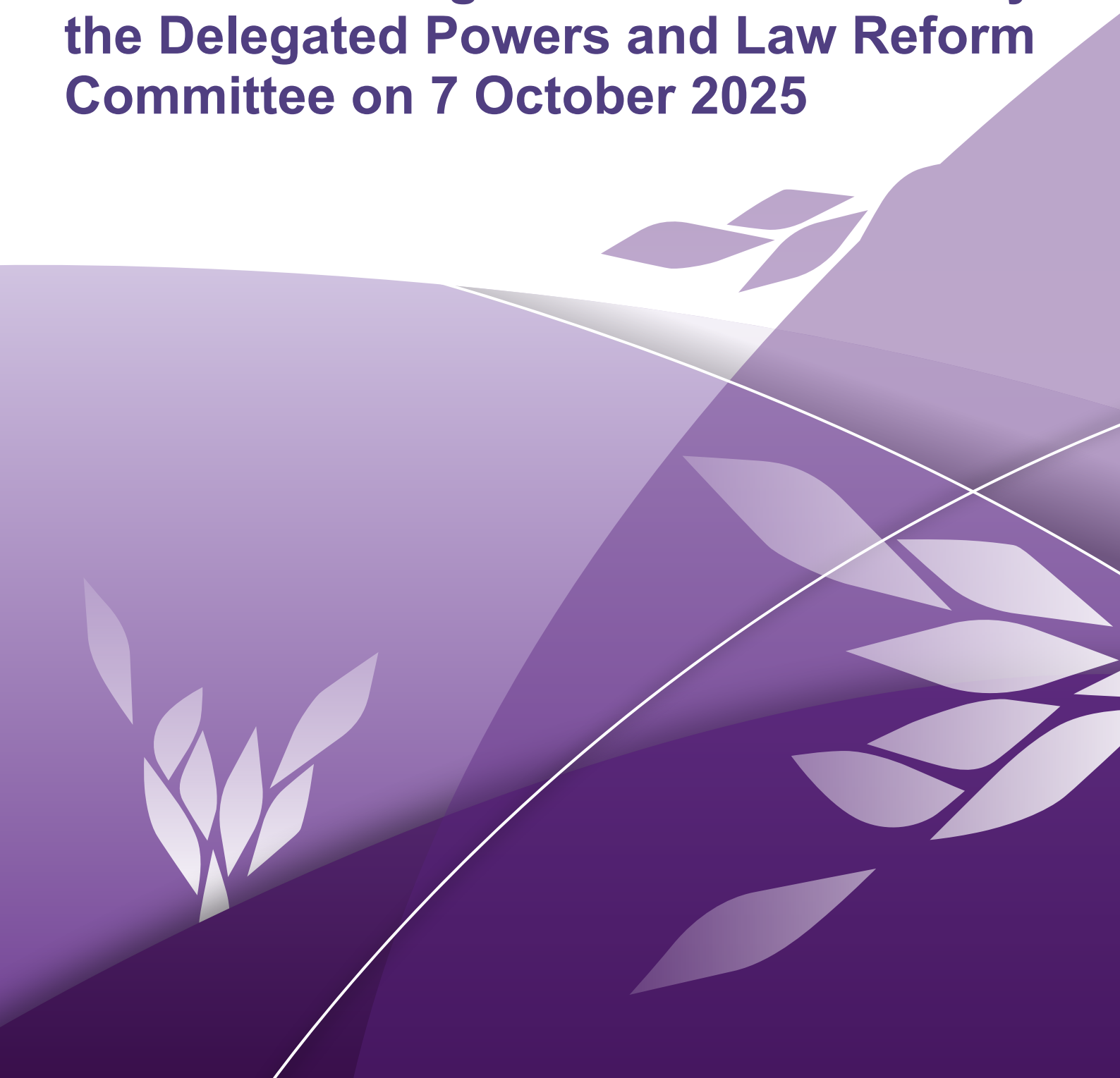


The Scottish Parliament
Pàrlamaid na h-Alba

Published 8 October 2025
SP Paper 885
72nd Report, 2025 (Session 6)

Delegated Powers and Law Reform Committee

Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 7 October 2025



Published in Scotland by the Scottish Parliamentary Corporate Body.

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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Committee Membership



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Bill Kidd
Scottish National Party



Katy Clark
Scottish Labour



Roz McCall
Scottish Conservative
and Unionist Party



Jeremy Balfour
Independent

Introduction

1. At its meeting on 7 October 2025ⁱ, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the Parliament:
 - Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2025 (SSI 2025/277).
2. The Committee's recommendations in relation to this instrument are set out in the next section of this report.
3. The Committee also determined that, in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

ⁱ Stuart McMillan MSP, Roz McCall MSP and Jeremy Balfour MSP submitted apologies for the meeting of 7 October 2025. Rona Mackay MSP substituted for Stuart McMillan MSP, and Oliver Mundell MSP substituted for Roz McCall MSP.

Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the Parliament

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2025 (SSI 2025/277)

4. This instrument amends the Prisons and Young Offenders Institutions (Scotland) Rules 2011 to provide that the Governor may authorise the Deputy Governor to exercise, on their behalf, the Governor's function in section 3C5(b) of the Prisoners and Criminal Proceedings (Scotland) Act 1993.
5. That section provides that the power to release prisoners early is subject to a "governor's veto", in circumstances where the governor considers that the person would, if released, pose an immediate risk of harm to an identified person, or to an identified group of people.
6. This instrument is connected to the Early Release of Prisoners (Scotland) Regulations 2025, also considered in this report.
7. Under section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 ("the 2010 Act"), instruments subject to the negative procedure must be laid at least 28 days before they come into force, not counting recess periods of more than 4 days. Recess days are excluded for the purpose of counting the days between the instrument being laid and coming into force.
8. The instrument was laid on 2 October and will come into force on 10 November, breaching the 28-day rule in the 2010 Act.
9. A failure to comply with the 28 day rule does not affect the validity of the instrument, but the "responsible authority" is required by section 31(1) of the 2010 Act to explain to the Presiding Officer why the laying requirements have not been complied with.
10. The Scottish Prison Service's explanation was, in summary, that the rules require to be amended in time for the first release of prisoners under the Early Release of Prisoners (Scotland) Regulations 2025.
11. The full version of the letter to the Presiding Officer setting out the reasons for failing to comply with the 2010 Act's requirements on laying regulations can be found in the annexe of this report.
12. The lead committee for this instrument is the Criminal Justice Committee.
13. **The Committee draws the instrument to the attention of the Parliament under reporting ground (j) - for a failure to lay the instrument in accordance with section 28(2) of the Interpretation of Legislative Reform (Scotland) Act 2010.**

14. **The Committee is satisfied with the reasons given for the failure to comply with the laying requirements.**

No points raised

15. At its meeting on 7 October 2025, the Committee considered the following instruments under its remit and agreed not to draw them to the attention of the Parliament.

Criminal Justice Committee

Early Release of Prisoners (Scotland) Regulations 2025 (SSI 2025/Draft)

- In relation to the above instrument, [Oliver Mundell MSP](#) stated "I want to make it clear that I do not support the Early Release of Prisoners (Scotland) Regulations 2025. I believe that it is a disproportionate use of power and that such matters should not be decided by delegated legislation."

Finance and Public Administration Committee

Budget (Scotland) Act 2025 Amendment Regulations 2025 (SSI 2025/Draft)

Rural Affairs and Islands Committee

Rural Support (Simplification and Improvement) (Data Publication) (Scotland) Regulations 2025 (SSI 2025/274)

Social Justice and Social Security Committee

Council Tax Reduction (Miscellaneous Amendment) (Scotland) (No. 5) Regulations 2025 (SSI 2025/275)

Standards, Procedures and Public Appointments Committee

Absent Voting at Scottish Parliament and Local Government Elections (Signature Refresh) (Miscellaneous Amendment) (Scotland) Order 2025 (SSI 2025/Draft)

Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2025 (SSI 2025/263)

- In relation to the above instrument, the Committee agreed to highlight its [correspondence with the Scottish Government](#) to the lead committee, for its information.

Annexe

Letter from the Scottish Prison Service to the Presiding Officer, sent as required by section 31(1) of the Interpretation and Legislative Reform (Scotland) Act 2010 to explain why the laying requirements have not been complied with in the case of SSI 2025/277.

Presiding Officer,

THE PRISONS AND YOUNG OFFENDERS INSTITUTIONS (SCOTLAND) AMENDMENT RULES 2025 SSI/2025/277

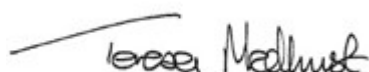
The above instrument was made by the Scottish Ministers under sections 39 of the Prisons (Scotland) Act 1989 on 2 October 2025. It is being laid before the Scottish Parliament today and is to come into force on 10 November 2025.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 has not been complied with. In accordance with section 31(3) of that Act, this letter explains why.

The changes made by this instrument to the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (“the Prison Rules”) are being taken forward to support SPS’ response to the exceptional population pressures facing prisons and to support operational stability and the implementation of The Early Release of Prisoners (Scotland) Regulations 2025 (“the 2025 Regulations”) which are also being laid before Parliament today

SPS considers that in the current circumstances it has become necessary not to comply with the 28-day rule. This is due to the need to implement a change to the Prison Rules quickly to properly equip Governors in Charge and the prison service with the flexibility it needs in order to assist in managing the rapidly evolving situation related to the population pressures currently impacting across the SPS estate. If these changes are not brought into force in time for the first release tranche provided for in the 2025 Regulations (if passed by Parliament), there is a risk that Governors’ time will be taken up with a focus on this particularly important function in the release process. That will take away their ability to attend to other urgent prison management issues that they are facing as a result of the current population pressures. Allowing them to delegate this function to the Deputy Governor will provide the necessary flexibility to ensure that they can manage their competing demands while ensuring that these important decisions continue to be taken by senior, experienced officers with specific experience in risk-based decision making. It also provides additional resilience in the application of the Governor Veto which is an important element of the emergency release process.

Yours sincerely



TERESA MEDHURST

Chief Executive

