

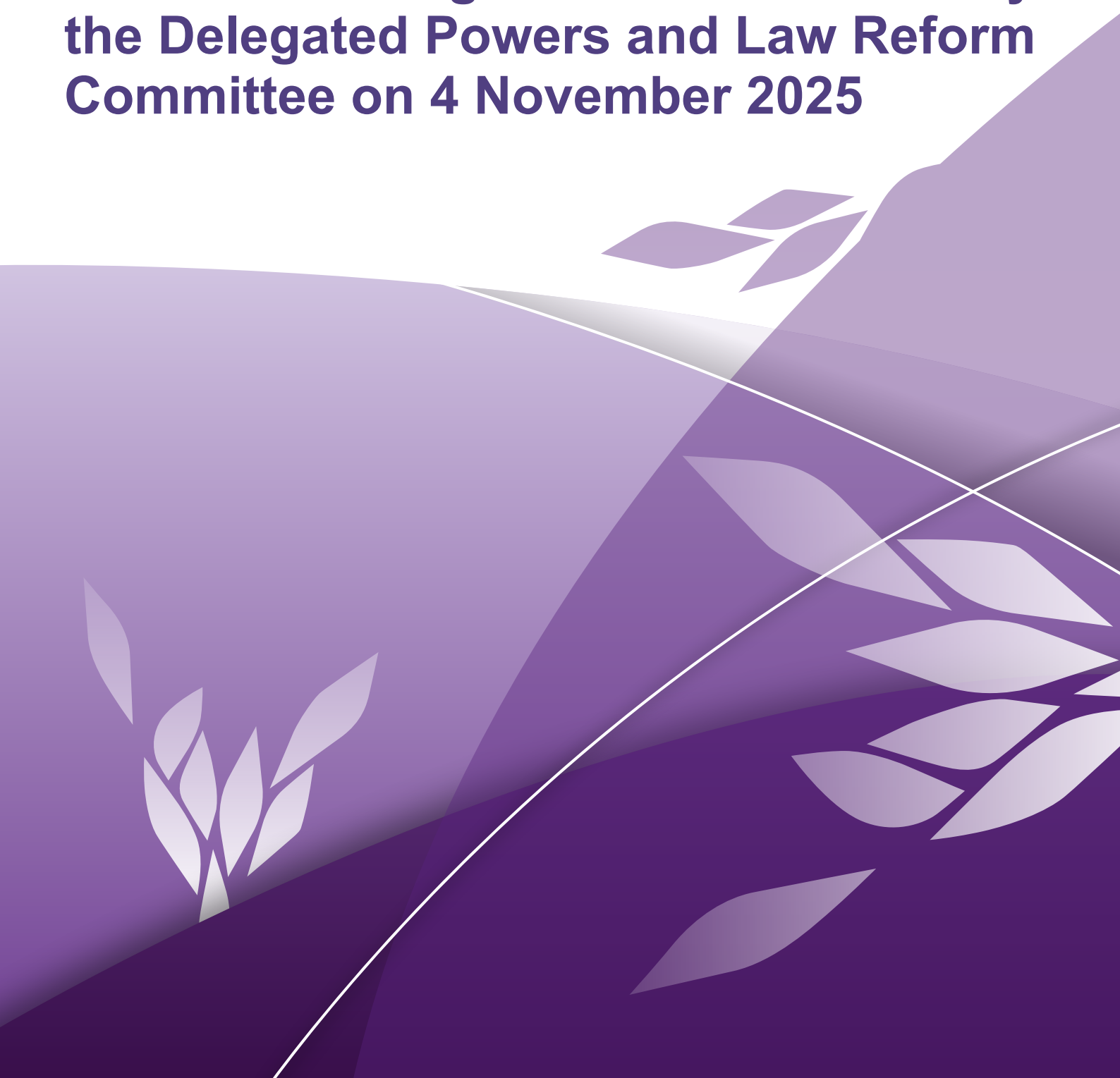


The Scottish Parliament  
Pàrlamaid na h-Alba

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82nd Report, 2025 (Session 6)

## Delegated Powers and Law Reform Committee

# Subordinate Legislation considered by the Delegated Powers and Law Reform Committee on 4 November 2025



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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



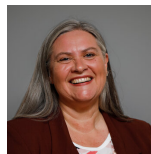
**Convener**  
**Stuart McMillan**  
Scottish National Party



**Deputy Convener**  
**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 4 November 2025<sup>i</sup>, the Committee considered the following document under its remit and agreed to draw it to the attention of the Parliament:
  - Environmental Standards Scotland - Strategy 2026-2031 (ESS/2025/01)
2. The Committee's recommendations in relation to this document 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.

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<sup>i</sup> Jeremy Balfour MSP submitted apologies for this meeting. Roz McCall MSP did not attend this meeting.

# Scrutiny of instruments and documents under the Committee's remit: document drawn to the attention of the Parliament

## Environmental Standards Scotland - Strategy 2026-2031 (ESS/2025/01)

4. This document is a revised strategy for Environmental Standards Scotland (“ESS”), and is subject to parliamentary control. The strategy is subject to a bespoke procedure for parliamentary consideration under the [UK Withdrawal from the European Union \(Continuity\) \(Scotland\) Act 2021](#) (“the Continuity Act”). The procedures in Chapter 10 of Standing Orders apply to this document, with such modifications as are appropriate, under Rule 10.10.1.
5. The lead committee for this instrument is the Net Zero, Energy and Transport Committee.
6. ESS is an independent public body established by the Continuity Act. Its purpose includes monitoring public authorities’ compliance with, and monitoring the effectiveness of, environmental law in Scotland.
7. When ESS was first established, the Continuity Act required ESS to prepare and publish a first strategy setting out how it intended to exercise its functions. This was done in 2022, and the Committee considered the first strategy then.<sup>ii</sup>
8. Under [schedule 2, paragraph 4](#) of the Continuity Act, ESS is required to review the strategy from time to time and may, if it considers it appropriate, revise it. The present document is a revised strategy for the purposes of paragraph 4. Paragraph 4 also provides that, unless a revision makes only minor modifications to the previous strategy, the revised strategy is subject to [schedule 2, paragraph 2](#), which involves parliamentary procedure.
9. The Committee considered whether it is appropriate that this revised strategy should be laid before Parliament (under the test in schedule 2, paragraph 4(2)(b)). It is content that this revised strategy does make more than just minor modifications to the previous strategy, and therefore that the parliamentary procedure in schedule 2, paragraph 2 does apply.
10. The revised strategy is subject to a relatively large number of statutory preconditions (in schedule 2, paragraphs 1 and 2. [Paragraph 1](#) contains a detailed list of information that must be contained in the strategy itself, concerning how ESS intends to go about its work. The Committee considered whether the strategy does contain all this information, and agreed that it appears some of the required information is not contained within the strategy.
11. ESS produced and published separate guidance elsewhere that appears to contain some of this information, but the legal obligation is to include all of it in the revised strategy laid before Parliament. Schedule 2 gives Parliament the role of scrutinising

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ii [Minutes for Delegated Powers and Law Reform Committee 26th Meeting, 25 October 2022](#). The first strategy is published on the ESS website: [Strategic Plan 2022-25](#)

all of this information before it decides whether to approve the revised strategy, but Parliament cannot do so if the material is contained somewhere other than in the laid document.

12. An indicative list of the required information and where it is located can be found in the table in the Annexe of this report.

**13. The Committee reports on the general reporting ground that some of the information required by paragraph 1 of schedule 2 does not appear to be contained in the revised strategy itself.**

14. The Committee also noted, as a matter of accuracy, a relatively minor point in paragraph 1.3 of the revised strategy, which says:

” The public sector organisations we scrutinise include the Scottish Government, regulatory bodies (such as the Scottish Environment Protection Agency and NatureScot), local authorities, Scottish Water and any organisation which performs functions of a public nature.

15. The Committee considers that this could more accurately reflect that not all organisations which perform functions of a public nature are within ESS’ remit, given the exceptions in [section 42](#) of the Continuity Act. The Committee noted that while the first strategy included a similar broad statement (at paragraph 2.5), it also set out the definition of “public authority” (on page 58) which notes there are a number of exclusions.

**16. The Committee highlights this relatively minor point to the lead committee.**

# No points raised

17. At its meeting on 4 November 2025, the Committee considered the following instruments under its remit and agreed not to draw them to the attention of the Parliament.

## Economy and Fair Work Committee

Public Procurement (Iraq Free Trade Agreement) (Miscellaneous Amendment) (Scotland) Regulations 2025 (SSI 2025/Draft)

Cross-Border Public Procurement (Miscellaneous Amendment) (Scotland) Regulations 2025 (SSI 2025/Draft)

## Local Government, Housing and Planning Committee

Energy Performance of Buildings (Scotland) Regulations 2025 (SSI 2025/Draft)

## Net Zero, Energy and Transport Committee

Vehicle Emissions Trading Schemes (Amendment) (No. 2) Order 2025 (SI 2025/1101)

## Standards, Procedures and Public Appointments Committee

Scottish Parliament Elections (Regional Returning Officers and Constituency Returning Officers) Order 2025 (SSI 2025/287)

Scottish Elections (Representation and Reform) Act 2025 (Statutory Guidance on Imprints on Electronic Materials) (Appointed Date) Regulations 2025 (SSI 2025/289)

# **Annexe - Statutory preconditions in the Continuity Act, schedule 2**

Paragraph of sch. 2	The strategy must set out:	Location in the revised strategy	Comments
1(1)(a)	How ESS intends to monitor (i) public authorities' compliance with environmental law, and (ii) the effectiveness of environmental law and of how it is implemented and applied.	Page 16	
1(1)(b)	How ESS intends to provide for persons (including members of the public, non-government organisations and other bodies) to make representations to it about any matter concerning (i) whether a public authority is failing (or has failed) to comply with environmental law and (ii) the effectiveness of environmental law or of how it is (or has been) implemented or applied.	Page 17	
1(1)(c)	How ESS intends to handle those representations, including how it will keep persons informed about its handling of their representations.	There is no explicit reference to how ESS will keep persons informed about its handling of their representations, other than (on page 15) that full details of ESS's conclusion will be published, and (on page 17) that ESS' approach to communications and engagement will include publishing updates on its progress and completed work.	The first strategy mentioned updating relevant parties at paragraph 5.10.
1(1)(d)	How ESS intends to exercise its functions in a way that respects and avoids any overlap with—(i) other statutory regimes (including statutory provision for appeals) or administrative complaints procedures,(ii) the exercise of functions by the Scottish Public Services Ombudsman, the Commissioner for Ethical Standards in Public Life in Scotland, the Scottish Information Commissioner, Audit Scotland or the Committee on Climate Change,(iii) the exercise of functions by the Scottish Parliament committee whose responsibilities include environmental law.	Paragraph 1.7 gives limited information in this regard.	Relevant paragraphs in the first strategy are 7.2 and 7.3, and figure 8 on page 40.
1(1)(e)	How ESS intends to determine whether to carry out an investigation into any matter concerning—(i) whether a public authority is failing (or has failed) to comply with environmental law,(ii) the effectiveness of environmental law or of how it is (or has been) implemented or applied.	Paragraph 3.8 contains criteria for this. Paragraph 4.2 suggests that the detail is contained in the ESS' <a href="#">operational investigation guidance</a> (March 2024) rather than in the strategy itself.	In the first strategy, this was in paragraphs 4.4, 5.1 and 5.2.
1(1)(f)	How ESS intends to carry out and prioritise any such investigations.	The strategy suggests that the detail on this is contained in the operational investigation guidance or on the ESS website (e.g. paragraphs 4.2 and 4.6).	In the first strategy this was on pages 26 to 28.
1(1)(g)	How ESS intends to engage with the public authorities it investigates with a view to —(i) swiftly resolving (so far as possible without the need to issue a compliance notice or prepare an improvement report) any matter concerning a failure to comply with environmental law, to make effective environmental law or to implement or apply it effectively, and(ii) reaching agreement on any appropriate remedial action to be taken for the purpose of environmental protection.	Paragraphs 4.2 and 4.6 suggest that this information is on the ESS website rather than in the strategy.	Contained in the first strategy: pages 16 and 17.
1(1)(h)	How ESS intends to identify and recommend measures to improve the effectiveness of environmental law or of how it is implemented or applied.	Paragraph 4.9 – 4.12 regarding “identify”; paragraph 4.13 and 5.3 regarding “recommending measures”.	
1(2)(a)	The general factors that ESS intends to consider before exercising its functions (including its power to require public authorities to provide information).	Paragraph 3.8.	
1(2)(b)(i)	How ESS intends to take account of different kinds of	Paragraph 4.6 suggests that this	The first

**Delegated Powers and Law Reform Committee**

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Paragraph of <i>sch. 2</i>	The strategy must set out:	Location in the revised strategy	Comments
	information (for example, evidence, research, independent and expert advice and developments in international environmental protection legislation) for the purpose of exercising its functions.	is set out on ESS' website rather than in the strategy.	strategy contained more information on this.
1(2)(b)(ii)	How ESS intends to determine what constitutes a systemic failure for the purpose of section 26(2).	Paragraph 4.2 indicates that this is set out in ESS' operational investigation guidance rather than in the strategy.	The first strategy contained more information on this.
1(2)(b)(iii)	How ESS intends to determine whether a failure to comply with environmental law could be addressed more effectively by issuing a compliance notice (rather than by preparing an improvement report) for the purpose of section 26(3),	Not specifically addressed in the strategy, addressed specifically in the <a href="#">Investigation operational guidance</a> , page 70, section titled "Compliance notice or improvement report?".	
1(2)(b)(iv)	How ESS intends to determine whether a failure to comply with environmental law is serious for the purposes of section 38(1)(a) and (4)(a).	Not specifically addressed in the strategy, addressed specifically in the <a href="#">Investigation operational guidance</a> , page 72, section titled "Determining whether the failure to comply is serious".	In the first strategy, paragraph 4.22.
1(2)(b)(v)	How ESS intends to determine whether environmental harm is serious for the purposes of section 38(1)(b) and (4)(b).	Not specifically addressed in the strategy, addressed specifically in the <a href="#">Investigation operational guidance</a> , page 73, section titled "Determining whether environmental harm is serious".	In the first strategy, paragraph 4.21.

