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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 10 June 2025



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Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is 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; and

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

(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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Introduction

1. At its meeting on 10 June 2025ⁱ, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the Parliament:
 - Scottish Parliament (Constituencies and Regions) Order 2025 (SSI 2025/Draft); and
 - Town and Country Planning (Fees for Appeals) (Scotland) Amendment Regulations 2025 (SSI 2025/166)
2. The Committee's recommendations in relation to these instruments 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 instrument at the end of the report.

ⁱ Katy Clark MSP submitted apologies for this meeting.

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

Scottish Parliament (Constituencies and Regions) Order 2025 (SSI 2025/Draft)

4. The purpose of this instrument is to give effect to the recommendations in a report by Boundaries Scotland on its review of the boundaries of the Scottish Parliament's constituencies and regions ("the report"). It is to be made under the power in [schedule 1, paragraph 6\(5\)](#) of the Scotland Act 1998 ("the Act").
5. Boundaries Scotland is an independent body, responsible for reviewing and making recommendations for Scottish Parliament and local government constituency boundaries. The new boundaries would be effective for the next Scottish Parliament election in 2026.
6. The report by Boundaries Scotland can be found [here](#).
7. In [correspondence with the Scottish Government](#), the Committee asked a question about an issue arising from the instrument's preamble, which states:
 - ” In accordance with paragraph 3(9) of schedule 1 to the Act the report submitted by Boundaries Scotland and a draft of this instrument have been laid before the Scottish Parliament and approved by resolution of the Scottish Parliament.
8. The preamble suggests that both the draft Order and the report require approval by resolution of the Parliament. This is correct as regards the draft Order but the report requires only to be laid, and there is no basis in the Act for a motion to approve the report.
9. The Scottish Government, in its [response](#), agreed that the report does not require approval and stated its intention is to correct the preamble to make the position clear before the draft instrument is submitted to His Majesty in Council.
10. The lead committee for this instrument is the Standards, Procedures and Public Appointments Committee.

11. **The Committee draws the instrument to the attention of the Parliament on the general reporting ground because of the error in the preamble.**

12. **The Committee draws its correspondence to the attention of the lead committee, noting that the Scottish Government intends to correct the error in the signing copy of the instrument.**

13. **The Committee wishes to make clear that it is not expressing a view on the**

proposed method of correction.

Town and Country Planning (Fees for Appeals) (Scotland) Amendment Regulations 2025 (SSI 2025/166)

14. This amending instrument is intended to correct errors identified by the Scottish Government in the Town and Country Planning (Fees for Appeals) (Scotland) Regulations (SSI 2025/124). That instrument came into force on 9 June 2025.
15. Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 (the “2010 Act”) requires that a negative instrument must be laid before the Scottish Parliament at least 28 days before it comes into force. The 28 days do not include time during which the Parliament is in recess or dissolved for more than 4 days. This is known as “the 28 day rule”.
16. This instrument was laid on 29 May 2025. The instrument came into force on 8 June 2025, which is less than 28 counting days later. A failure to comply with the 28 day rule does not affect the validity of the instrument, but an explanation is required as to why the laying requirements have not been complied with.
17. The Scottish Government's explanation was, in summary, that the errors identified in SSI 2025/124 would result, in some cases, in appellants being required to pay a fee where the policy intention was that no fee would be payable, and in other cases, appellants being charged a higher fee than was intended. Those errors therefore required to be corrected before SSI 2025/124 came into force and had that practical effect on appellants.
18. 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.
19. The lead committee for this instrument is the Local Government, Housing and Planning Committee.

20. **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 the laying requirements in section 28(2) of the 2010 Act.**

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

No points raised

22. The Committee considered the following instrument under its remit and agreed not to draw it to the attention of the Parliament.

Rural Affairs and Islands Committee

Agriculture and Rural Communities (Scotland) Act 2024 (Commencement No. 1)
Regulations 2025 (SSI 2025/167)

Annexe

29 May 2025, correspondence from the Scottish Government to the Presiding Officer

Town and Country Planning (Fees for Appeals) (Scotland) Amendment Regulations 2025 (SSI 2025/166)

The Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 (SSI 2025/124) were made under Section 252 of the Town and Country Planning (Scotland) Act 1997. They were laid before the Scottish Parliament on 28 April 2025 and they are due to come into effect on 9 June 2025.

The general effect of the Town and Country Planning (Fees for Appeals) (Scotland) Regulations 2025 is to introduce the fees for appealing planning decisions to Scottish Ministers and they are due to come into effect on 9 June.

The Town and Country Planning (Fees for Appeals) (Scotland) Amendment Regulations 2025 are required to correct minor errors in the SSI 2025/124.

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.

An issue has been highlighted that in the event an applicant submits an appeal on the grounds of the non-determination of an application for a certificate of lawfulness, they would require to pay a fee which would be the only type of application where a fee was required to appeal on the grounds of non-determination. Regulations 1(2)(c) (citation, commencement and application) and 3(2) require to be amended to state that fees only apply to appeals submitted under section 154(1)(a) of the Town and Country Planning (Scotland) Act 1997.

In Part 3, Table 3, introduced by regulation 3 of SSI 2025/124, paragraphs 1 and 3 refer to the fee payable in respect of an application rather than appeal, meaning that fees for appeals for a certificate of lawful use or development, or a certificate of proposed use or development, would not be in line with the 40% figure that appeal fees have been set at.

The Scottish Government's view is, therefore, that it is necessary to breach the 28 day laying requirement to ensure that the errors identified are rectified in time for the coming into force of SSI 2025/124.

