



The Scottish Parliament
Pàrlamaid na h-Alba

Published 16 December 2021
SP Paper 68
22nd Report, 2021 (Session 6)

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 14 December 2021

Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish Parliament website at:
<http://www.parliament.scot/abouttheparliament/91279.aspx>

For information on the Scottish Parliament contact Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

Contents

Introduction	1
Scrutiny of instruments under the Committee’s remit: instruments drawn to the attention of the lead committee	2
No points raised	4
Annex A	5
Annex B	9

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.



dplr.committee@parliament.scot



0131 348 5212

Committee Membership



Stuart McMillan
Scottish National Party



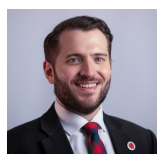
Bill Kidd
Scottish National Party



Convener
Graham Simpson
Scottish Conservative
and Unionist Party



Craig Hoy
Scottish Conservative
and Unionist Party



Paul Sweeney
Scottish Labour

Introduction

1. At its meeting on 14 December, the Committee considered the following instruments under its remit and agreed to draw them to the attention of the relevant lead committee:
 - Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022 (SSI 2021/Draft); and
 - Prisons and Young Offenders Institutions (Scotland) Amendment Rules (SSI 2021/446)
2. The Committee's recommendations in relation to these instruments are set out in the next section of the report.
3. The Committee also determined that it did not need to draw the Parliament's attention to the instruments at the end of the report.

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

Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022 (SSI 2021/Draft)

4. The regulations are made as part of a wider legislative framework for the administration of social security assistance in Scotland provided for by the Social Security (Scotland) Act 2018. Section 97(9) of this Act includes a requirement on the Scottish Ministers at the time of laying the instrument to also lay either:
 - a response to the Scottish Commission on Social Security's report on the proposals for the regulations (section 97(9)(a)); or
 - a statement explaining why the Scottish Ministers consider it appropriate to lay the draft instrument before the Commission has submitted its report on the proposals for the regulations (section 97(9)(b)).
5. While the Scottish Government laid responses to two reports by the Commission on 29 November which conformed with section 97(9), a third set of minor technical amendments in this instrument were not reported on by the Commission prior to laying the instrument. While a statement under section 97(9)(b) was sent to the Social Justice and Social Security Committee on 1 December, the statement was not laid until 3 December.
6. In a written response to a question from the Committee (please see Annex A), the Scottish Government apologised for the administrative oversight.

7. **The Committee draws the instrument to the attention of Parliament under the general reporting ground in respect of a failure to lay the necessary statement when laying the draft instrument on 29 November 2021, as required under section 97(9)(b) of the Social Security (Scotland) Act 2018.**
8. **The Committee notes that the failure to comply with section 97(9)(b) was due to an administrative oversight and the necessary statement was subsequently sent to the Social Justice and Social Security Committee. While it welcomes the Scottish Government's apology for the administrative oversight, and acknowledges that this oversight was only related to one set of minor technical amendments in the instrument, it will also write to the Minister for Parliamentary Business to highlight its desire for the laying requirements in section 97(9) to be complied with in full.**

Prisons and Young Offenders Institutions (Scotland) Amendment Rules (SSI 2021/446)

9. The instrument amends the Prisons and Young Offenders Institutions (Scotland) Rules 2011. It was laid before the Parliament on 30 November and came into force

on 13 December 2021. Accordingly, it fails to comply with the requirement in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2020 that at least 28 days should elapse between the laying of an instrument which is subject to the negative procedure and the coming into force of that instrument.

10. The Scottish Government wrote to the Presiding Officer on 30 November 2021 outlining the reasons for breaching the 28-day requirements (please see Annex A).
11. Although the letter made clear why the instrument was required to come into force in early December, prior to the festive period, it was not clear why the instrument could not have been made in sufficient time to allow it to come into force then whilst respecting the requirements of section 28(2).
12. The correspondence between the Committee and the Scottish Government can be found in Annex A.
13. The Committee also considered a letter from the Scottish Centre for Crime and Justice Research on the Amendment Rules, which can be found in Annex B.
14. **The Committee draws the instrument to the attention of the Parliament under reporting ground (j) for failure to lay it in accordance with laying requirements under the Interpretation and Legislative Reform (Scotland) Act 2010.**
15. **The Committee is not content with the Scottish Government's explanation for breach of the requirement in section 28(2) of the 2010 Act, and highlights, as the Committee has done in the past, that the Scottish Government should normally comply with laying requirements to facilitate timely parliamentary scrutiny of such important policy choices.**
16. **The Committee also highlights the correspondence it received from the Scottish Centre for Crime and Justice Research to the lead committee.**
17. **Finally, the Committee will write to the Cabinet Secretary for Justice, who is responsible for prison reform and prisoner policy, and the Minister for Drugs Policy, to highlight its concerns about the speed of change in policy.**

No points raised

COVID-19 Recovery Committee

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 11) Regulations 2021 (SSI 2021/454)

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment (No. 12) Regulations 2021 (SSI 2021/455)

Criminal Justice Committee

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (Miscellaneous) (No.2) 2021 (SSI 2021/434)

Education, Children and Young People Committee

Redress for Survivors (Historical Child Abuse in Care) (Reconsideration and Review of Determinations) (Scotland) Regulations 2022 (SSI 2021/Draft)

Equalities, Human Rights and Civil Justice Committee

Age of Criminal Responsibility (Scotland) Act 2019 (Commencement No. 4) Regulations 2021 (SSI 2021/449 (C.32))

Rural Affairs, Islands and Natural Environment Committee

Avian Influenza (H5N1 in Birds etc.) (Miscellaneous Amendment and Revocation) (Scotland) Order 2021 (SSI 2021/444)

Annex A

Scottish Child Payment Regulations 2020 and the Disability Assistance for Children and Young People (Scotland) Regulations 2021 (Miscellaneous Amendments) Regulations 2022 (2021/Draft)

On 1 December 2021 the Scottish Government was asked:

Section 97 of the Social Security (Scotland) Act 2018 applies to any Regulations made under Chapter 2, Part 2 (sections 28 to 36) and section 79 of the 2018 Act. The present instrument is made using the Scottish Ministers' powers under sections 31, 36, 51, 52, 79 and 95 of the 2018 Act. Accordingly, it appears that the Scottish Ministers are required to comply with sections 97(2), (5), (9) and (10) when laying this instrument.

The preamble to the instrument and the Policy Note both explain that the Scottish Ministers have complied with the requirements of section 97(2). However, section 97(9) imposes a further requirement on the Scottish Ministers "when laying a draft" instrument to also lay before Parliament either:

- (a) a response to the Commission's report on the proposals for the regulations, or
- (b) a statement explaining why the Ministers consider it appropriate to lay the draft instrument before the Parliament before the Commission has submitted its report on the proposals for the regulation.

As was the case for the laying email for the draft Winter Heating Assistance for Children and Young People (Scotland) Amendment Regulations 2021, the email laying for this instrument does not appear to contain either of these.

1. Has the SCoSS prepared a report on this instrument?
2. Does the Scottish Government consider that section 97(9) applies to this instrument?
3. If so, please confirm whether this requirement has been met or, if it has not been met, how the Scottish Government intends to rectify the issue.

On 7 December 2021 the Scottish Government responded:

Section 97(9) of the Social Security (Scotland) Act 2018 requires the Scottish Ministers to lay before Parliament, if available, the response to the Commission's report on the proposals for the regulations when laying a draft Scottish statutory instrument under this section. The Commission made two reports on these Regulations both of which were published on 18 November 2021. The Scottish Government laid the responses to the reports on the proposals on 29 November 2021 which was the same date these Regulations were laid. So we confirm that the requirement under section 97(9)(a) of the 2018 Act was met in relation to the reports and responses. A third set of minor technical amendments in these Regulations were not reported on by the Commission prior to laying the Regulations. In accordance with section 97(9)(b) of the 2018 Act, the Scottish Ministers laid a statement explaining why the Scottish Ministers consider it appropriate to lay the draft instrument before the Commission has reported on the proposals. The statement was sent to the Social Justice and Social Security Committee on 1 December but due to an administrative oversight, the statement was not laid until 3 December.

We apologise for this oversight.

Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2021 (2021/446)

On 30 November 2021, the Scottish Government wrote to the Presiding Officer:

The above instrument was made by the Scottish Ministers under section 39 of the Prisons (Scotland) Act 1989 on 30 November 2021. It is being laid before the Scottish Parliament today and is to come into force on 13 December 2021. The amendments have been designed to mitigate against the risks of illicit substances, particularly Psychoactive Substances (PS), being introduced via the prisoner mail system and thus reduce the risk of such substances causing harm to those in the care of Scottish Prison Service (SPS) and those working in or visiting our prisons.

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.

Drug misuse in Scottish Prisons has evolved over the last few years, shifting from well-known and readily identifiable controlled substances such as heroin, cocaine, cannabis and prescribed medication(s) to PS including synthetic cannabinoids. Synthetic cannabinoids are very potent drugs which can be soaked into paper at low concentrations but still have a significant psychoactive effect. Easy access to PS within the community, the low cost and the ability to introduce these relatively easily and with minimal risk into the prison system in large quantities has resulted in the use of PS becoming the preferred drug of choice in prisons. The most common method of introducing this substance into prisons is to spray the substance onto sheets of paper which are then posted in via the prisoner mail system.

Over the course of the 12-month period August 2020 – July 2021 there have been 9 deaths in SPS custody linked to suspected drug overdoses. Recent information indicates that the number of emergency escorts to hospital which were drug related and incidents of prisoners being found suspected to be under the influence of drugs has escalated and shows little sign of abating.

There is no way of directly evidencing that the deaths in custody, emergency escorts, the incidences of prisoners being found under the influence of drugs, are as a direct result of substances that have been introduced exclusively via the prisoner mail system. However, given the high number of positive mail indications and the intelligence suggesting that this is the most commonly used method, SPS have assessed that there is a high probability that the substances used in these instances have been introduced via this method.

Given this escalation, I consider it necessary for the instrument to be made and laid urgently and for it to come into force on 13 December 2021.

I understand that in normal circumstances, negative Scottish Statutory Instruments (SSI) require to be laid before the Parliament for at least 28 days (not counting recess periods) before they come into force (the 28-day rule). However, I am concerned that as the festive period approaches and the volume of mail increases, SPS will experience an even higher escalation in the volume of PS being sent into prisons via general correspondence to prisoners. I therefore consider it necessary we take action quickly and before mid-January, which is when the SSI would come into force if laid before parliament in accordance with the 28-day rule, to mitigate against the harm that may be caused by further increases in the volumes of PS entering prisons and to ensure the health and safety of staff and those

in our care, and the safe and stable operation of our prisons.

My reasons for requesting that the SSI comes into force on 13 December 2021 is twofold; (1) I recognise these changes to the Prisons and Young Offenders Institutions (Scotland) Rules 2011, interferes with Article 8 rights (the right to respect for private and family life, home and correspondence) of prisoners. Therefore, given the serious nature of the amendments, I consider that it is important to give some time for Parliament to be aware of this and at least some time to scrutinise the proposals prior to their implementation; and (2) SPS needs time to finalise preparations for the implementation of the changes to make sure that our systems are tested and operational to ensure that prisoners will receive copies of their correspondence timeously and thus minimise disruption. Further, to mitigate against the possibility of unrest in the prison estate if access to the original copies of mail is removed with no notice, we need time to inform those in our care of the changes.

In view of all of the above, I consider a mid-December coming into force date strikes the right balance of protecting those in SPS' care and staff from further PS entering the estate, but also ensures Parliament is given some time to scrutinise the amendment given the Parliamentary interest in this issue.

On 2 December 2021 the Committee wrote to the Scottish Government:

This instrument was laid before the Parliament on Wednesday 1 December 2021 and will come into force on Monday 13 December 2021. It has therefore been laid in breach of the rule in 28(2) of ILRA that an instrument subject to the negative procedure should be laid before the Scottish Parliament at least 28 days before it comes into force. The instrument provides prison officers and employees with powers that will allow them to photocopy prisoner's general correspondence and retain the original correspondence, in light of concerns regarding illicit substances being introduced via the prisoner mail system.

The letter to the Presiding Officer acknowledges that this instrument implements significant amendments to the Rules, and that in light of the serious nature of the amendments it is important to give the Parliament time to scrutinise the proposals. However, the letter also explains that it has not been possible to comply with the 28 day rule in this case due to the desire to have the amendments in force before the upcoming festive period, when the volume of mail in prisons is expected to increase. The letter references deaths linked to suspected drug overdoses in the period August 2020-July 2021, and "recent information" regarding the escalation of drug use in prisons.

Please could you provide further detail as to why the instrument could not have been made in sufficient time to both respect the 28 day rule, and to be in force prior to the festive period?

On 7 December 2021, the Scottish Government responded:

For this instrument to have been made in sufficient time to comply with the 28 day rule and to be in force prior to the festive period (or at least the current coming into force date of 13 December 2021) the instrument would need to have been made on 11 November and laid on 15 November.

The data on deaths linked to suspected drug overdoses over the 12 month period between August 2020 and July 2021 and emerging evidence at that time that psychoactive substances were being introduced to prisons through the mail system, resulted in work being carried out by the Scottish Prison Service (SPS) to consider options for changing the way in which mail received into prisons is processed. This review assessed the impact and

risks associated with the options, the operational requirements to implement them and the legal implications of them, as noted by the Cabinet Secretary for Justice and Veterans in his letter to Russell Findlay MSP (and copied to the Convener of the Criminal Justice Committee) dated 23 September 2021 (see [here](#)).

The decision to make a change to the Prison Rules to allow prison officers and staff to copy general correspondence and hand only the copy to the prisoner which this instrument implements was announced to Parliament by the Cabinet Secretary for Justice and Veterans on 2 November 2021.

In the run up to this decision there was a serious incident at a Scottish prison linked to illicit substances. On 25 November there was a further serious incident linked to illicit substances at another Scottish prison. Following the first of these incidents, the Prison Officers' Association (Scotland) called for urgent action to be taken to address the issue of psychoactive substances in prisons.

The Scottish Ministers are under positive obligations to protect prisoners' and prison staff's article 2 (right to life – see *Osman v UK*, 23452/94), 3 (protection from torture or inhuman or degrading treatment – see *A v UK* [1998] ECHR 85) and 8 (right to private life, specifically the right to protection of an individual's physical integrity – see *MC v Bulgaria* [2003] ECHR 651) convention rights. That applies to the prisoners at risk from taking the psychoactive substances but also to the prisoners and staff who are at risk from the unpredictable behaviour of those who have taken psychoactive substances, and those prisoners who are used by the criminal gangs to receive the impregnated mail and then face threats and intimidation to provide it to its intended recipients. SPS has taken a number of actions to address this issue including the continued testing of correspondence.

The recent escalation requires the Scottish Ministers to take quick action to provide further protection for the convention rights of those impacted.

But for operational concerns about the risk to the security and good order of the prisons of implementing this change without giving prisoners notice of it and to allow Parliament the opportunity to scrutinise this instrument before it comes into force, the coming into force date would likely have been even sooner after the instrument was made and laid.

Annex B

Prisons and Young Offenders Institutions (Scotland) Amendment Rules (SSI 2021/446)

13 December 2021, correspondence from the Scottish Centre for Crime and Justice Research

I write to you regarding the secondary legislation effective as of 13 December 2021, conferring broad power on the Scottish Prison Service to photocopy prisoner mail. I understand you will be considering this legislation in your meeting Tuesday.

I hope the Committee will take account of a letter of objection signed by numerous experts in substance abuse, public health, prison conditions and detention harms. In this letter, I attempt to specify and elaborate, given the Committee's remit, the rights concerns raised in that document.

The powers granted, and restriction of Article 8 rights, through the SSI are:

- **Not proportionate:** The new powers grant broad rights of interfering with prisoner correspondence primarily as a strategy of interfering with drugs supply in prison. Not only has there been insufficient scrutiny of the effectiveness of this approach (see next), there has been lack of attention to the impact on families and relationships, a crucial cornerstone in the wellbeing of imprisoned people, to assess the costs of the restriction and therefore its overall proportionality. Moreover, international human rights frameworks, which inform the ECHR, make clear that prisoner rights may only be infringed where they are 'demonstrably necessitated by the fact of incarceration'. In this case, the claimed necessity has been established by one body, that is neither expert in crime prevention operations nor drug strategy.
- **Not effective:** The aim of the new rule is, ultimately, to reduce drug use, overdose and death. However, even assuming successful interception of drug laced post, the majority of non-natural deaths in prison are due to suicide (mainly by hanging) and prescribed drugs. No drug death in 2020 or 2019 was listed as solely due to NPS; only two drug deaths mentioned NPS, always in combination with multiple prescribed substances.¹ A number of recent and highly publicised incidents involving NPS overdoses has overshadowed higher rates of death from other, preventable causes. Why have not these been the subject of emergency legislation? Moreover, study after study has documented the failure of supply focused drug strategies. On the other hand, demand focused strategies and harm reduction strategies have demonstrated stronger evidence of success. Extending the power of the state with poor evidence that these powers will be effective further renders the rights infringement disproportionate.
- **Not consistent with evidence and Government policy on a public health approach to drug use in Scotland.** The nation's world beating rate of drug deaths has been responded to by creation of task forces and a commitment to a public health approach. The powers of copying post are not consistent with this, and do not come with any comparable strategy of managing the drivers of drug use in prison. Evidence about the current state of mental health in prison addressing causes of drug use is readily available, not least from a team I led who completed a rapid research study gathering information from every prison in Scotland during the pandemic. We have

reported some of these results, and will be publishing within the next month detailed evidence of the state of wellbeing in prisons.² With other colleagues, we will also be publishing the most extensive literature review on drug use, interventions and support needs in prison in the next month.

- **Creating significant risk of abuse of power:** The extensive and permanent powers created can now be exercised, under rules allowing restriction of rights for maintaining good order or security, over a broad and unspecified range of issues beyond management of drug supply. The recent report of the Independent Review of the Response to Deaths in Prison Custody noted the great difficulty in obtaining SPS records and access to officers to carry out its work.³ The authors noted SPS resistance to transparency and accountability in relation to its own conduct in cases of deaths in custody was raised as a significant concern. This suggests that monitoring and regulating use of the new powers will be challenging. The difficulty of ensuring oversight of this power ought to be considered in assessing the proportionality of the new rule. Moreover, the claim of prison authorities of a problem and of the best way to address it should not be taken as self-evident. Numerous experts and civil society organisations are able and ready to provide rapid responses to assess powers such as these.

Seeking to prevent the tragedy of drug overdoses in prison should not come at the cost of granting carte blanche to penal authorities. This is a rule that has as much chance of worsening the current situation in prisons as ameliorating it, establishing a permanent power to interfere with correspondence and relationships of imprisoned people and their loved ones.

Open Letter expressing concern and objection to new powers to photocopy all prisoner mail

To Convenors and Members of the Criminal Justice Committee, Members of the Delegated Powers and Law Reform (DPLR) Committee, and all Members of the Scottish Parliament –

New powers, which will allow the Scottish Prison Service to [routinely photocopy prisoner mail](#), will come into effect on 13 December 2021, having been fast-tracked without consultation (i.e. the Scottish Statutory Instrument (SSI): the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2021 (SSI 2021: 446)).

This raises significant concerns on the grounds of human rights, human decency, resource efficiency and consistency with Scottish Government policy in relation to trauma informed practice, family support, whole systems approaches, [a public health approach to drug use](#), harm reduction principles and evidence-based policy.

The [Policy Note](#) accompanying the law (SSI 2021: 446) offers no specific evidence that prisoner mail is the primary cause of drug overdoses in prison. No verified details are offered. It is admitted there is no specific evidence to support the legislation, claiming that ‘there is no way of directly evidencing that the deaths in custody are as a direct result of substances that have been introduced exclusively via the prisoner mail system’. This is not correct. There are multiple methods of gathering factual information including via independent research with prisoners and staff, sample testing of letters, speaking with health professionals working with prisoners and more. That none of this has been undertaken prior to proposing legislation that has significant human rights and other implications is unwise, and in violation of human rights commitments in Scotland. For example, **we know according to the SPS’s own published data that the majority of**

drug deaths in prison are due to prescribed substances, and not the new psychoactive substances that this law targets.

The fact that the SPS's own determination of a need for this amendment to the Prison Rules is not being supplemented by independent views is deeply problematic. Significantly, the **lack of any consultation, formal or informal, with organisations with relevant expertise and independence such as human rights bodies, monitors, prison reform organisations, health organisations, substance misuse experts** and more is deeply concerning.

Among the issues of concern about broad powers the legislation confers are:

- Lack of specific and verified evidence of the problem it claims to address
- Violation of rights to privacy
- Violation of rights to family life
- Violation of right to correspondence
- Violation of right against excessive punishment and torture
- Potential violation of right to freedom of expression
- Potential violation of right against punishment without law
- No consideration of how this law will impact family relationships and personal wellbeing of those in prison
- No details on how the law will be implemented and its use monitored or regulated
- No information on resource implications of this legislation in staff time and copy equipment

It is unacceptable that this law is drafted with the recognition that 'prohibiting prisoners from receiving general correspondence interferes with Article 8 rights' (Policy Note) but nevertheless argues these are acceptable based only on consultation of those in SPS and a small circle of people in Scottish Government.

The sharp rise in deaths in prison during the pandemic is indeed a cause for concern. However, a review of drug deaths in 2020 and 2021 shows the majority of these deaths are from substances prescribed within prisons and not new psychoactive substances. **There is currently a mental health crisis in prison, as the sharp rise in prison suicides in 2021 shows.** Research conducted by University of Glasgow has documented [intensifying levels of distress within prisons due to pandemic restrictions](#). Specifically, **lack of mental health support, family contact and meaningful opportunities of recreation and association were cited as causes for this**. The proposed law purports to address a symptom of pandemic lockdown in prison – increased drug use – by further intruding on imprisoned people's vital connections to those on the outside. It will do nothing to address this underlying crisis.

What is known is that post is just one of many entry routes for drugs into prison, with [other well-known routes](#) including people entering prison for different reasons, not least prison officers themselves, as well as getting drugs over the wall. The many failed attempts to tackle the issue show that that control of supply has limited impact. **The issue will not be**

resolved by closing one route down, but only by addressing demand, which involves addressing the quality of life for people in prison especially during the pandemic, including the importance of family contact, access to treatment and support for those who need it, as well as minimising the use of prison in the first place.

Drug deaths in Scotland are at unprecedented levels. There is broad acceptance that criminalizing use is not effective. Investment in mental health, recovery support, and greater family contact would more likely support those inside from feeling the need to turn to drugs. Compromising access to these things is likely to contribute to rather than alleviate deaths in prison.

We call on the Criminal Justice Committee to exercise its the power to annul implementation of this legislation. We call on the Delegated Powers and Law Reform Committee to consider the lawfulness of the legislation in terms of compatibility with the European Convention on Human Rights. This legislation constitutes an unjustified and disproportional infringement of human rights, lacking evidence and due deliberation on its necessity and on the negative impacts such an approach will have on prisoner rights, the wellbeing of them and their families and wider Government policy on family life and reduction of drug deaths.

Signed,

Prof Sarah Armstrong, University of Glasgow

Dr Sarah Anderson, Edinburgh Napier University

Prof Margaret Malloch, University of Stirling

Dr Marguerite Schinkel, University of Glasgow

Prof Fergus McNeill, University of Glasgow

Dr Caitlin Gormley, University of Glasgow

Dr Jamie Buchan, Edinburgh Napier University

Dr Sharon Greenwood, University of Glasgow

Dr Christine Haddow, Edinburgh Napier University

Dr Ryan Casey, University of Oxford

Dr Aileen O’Gorman, University of the West of Scotland

Prof Richard Sparks, University of Edinburgh

Dr Louise Brangan, University of Strathclyde

Dr Kirsty Deacon, University of Strathclyde

Dr Maria Fotopoulou, University of Stirling

Dr Kirstin Anderson, Edinburgh Napier University

Dr Hannah Graham, University of Stirling

Delegated Powers and Law Reform Committee

Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 14 December 2021, 22nd Report, 2021 (Session 6)

Dr Estelle Zinsstag, Edinburgh Napier University

Dr Johanne Miller, University of the West of Scotland

Prof Laura Piacentini, University of Strathclyde

Prof Anne Schwan, Edinburgh Napier University

Dr Niall Hamilton-Smith, University of Stirling

Dr Sarah Galloway, University of Stirling

