

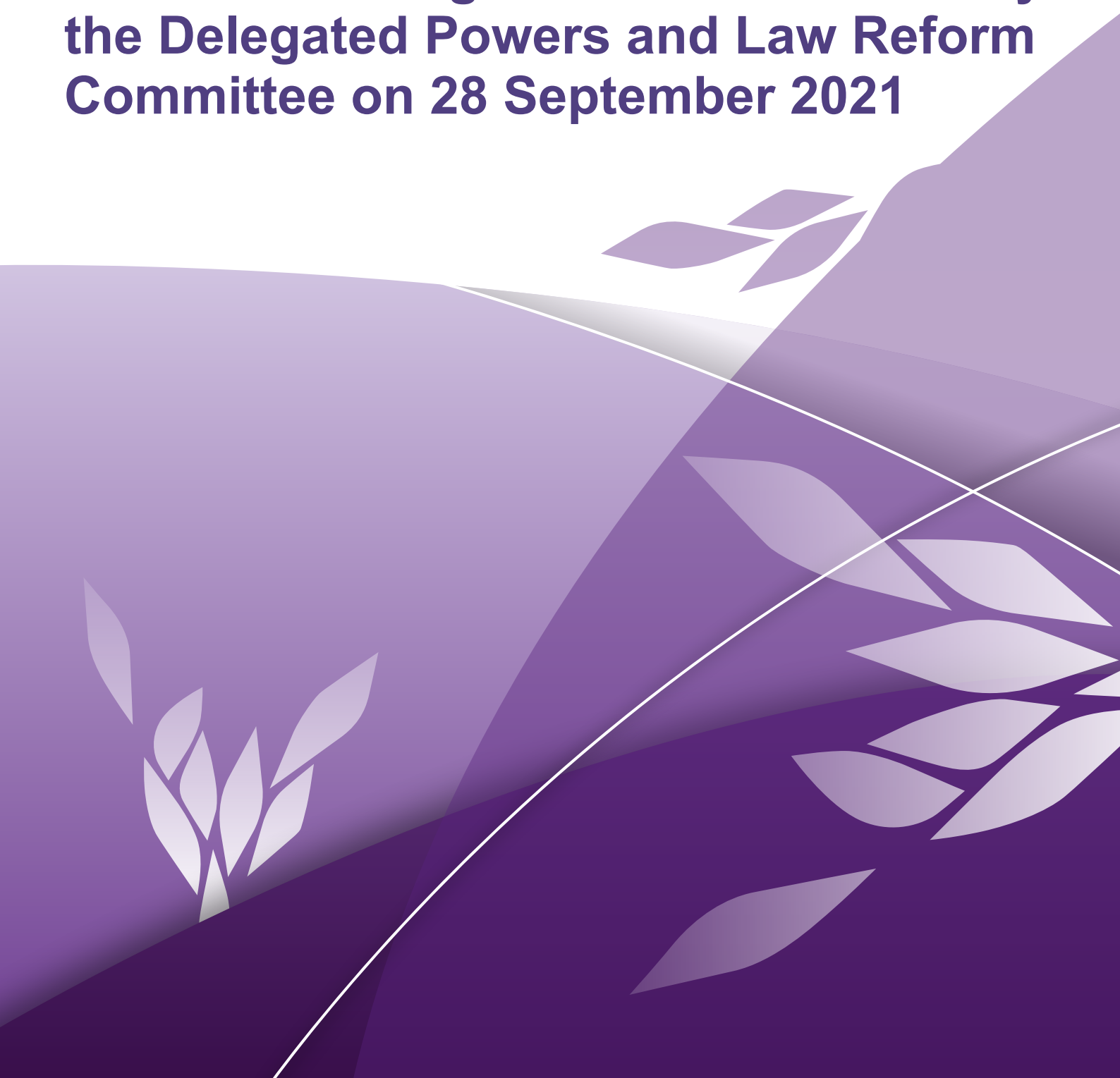


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Pàrlamaid na h-Alba

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## **Delegated Powers and Law Reform Committee**

# **Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 28 September 2021**



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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. matters relating to equal opportunities, and upon the observance of equal opportunities within the Parliament; and
- b. matters relating to human rights.
- c. matters relating to civil justice within the responsibility of the Cabinet Secretary for Justice and Veterans.

In these Rules

(a) “equal opportunities” includes the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds or on grounds of disability, age, sexual orientation, language or social origin or of other personal attributes, including beliefs or opinions such as religious beliefs or political opinions; and

(b) “human rights” includes Convention rights (within the meaning of section 1 of the Human Rights Act 1998) and other human rights as for example contained in any international convention, treaty or other international instrument ratified by the United Kingdom.



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# Committee Membership



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



**Deputy Convener**  
**Bill Kidd**  
Scottish National Party



**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**Craig Hoy**  
Scottish Conservative  
and Unionist Party



**Paul Sweeney**  
Scottish Labour

# Introduction

1. At its meeting on 28 September 2021, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the relevant lead committee:
  - Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No. 6 and Transitional Provision) Order 2021 (SSI 2021/314)
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 it did not need to draw the Parliament's attention to the instruments set out at the end of this report.

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

## Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No. 6 and Transitional Provision) Order 2021 (SSI 2021/314)

4. This instrument brings into force section 17 and schedule 1 of the [Local Electoral Administration and Registration Services \(Scotland\) Act 2006](#) ("the 2006 Act") on 28 September 2021. It forms part of a package of elections SSIs laid before the Parliament earlier this month.
5. In correspondence with the Scottish Government (see Annex), the Committee asked why section 17 and schedule 1 of the 2006 Act are only now being commenced, 15 years after the 2006 Act was passed.
6. In its response, the Scottish Government advised there had been an apparent omission in section 17 of the 2006 Act at the time it was enacted insofar as it did not commence the accounting period for election expenses when an individual became a candidate.
7. The Scottish Government noted that the omission is being corrected by article 3(4) of the Scottish Local Government Elections Amendment Order 2021, which the Delegated Powers and Law Reform Committee considered at its meeting on 21 September 2021. This in turn enables section 17 of the 2006 Act to be brought into force by the current instrument.
8. The Scottish Government also pointed out that steps to rectify this omission were not given priority, despite there having been various local government elections since 2006.
9. **The Committee draws the instrument to the attention of the Parliament under reporting ground (g) on the basis that it has been made by what appears to be an unusual or unexpected use of the commencement powers conferred by the parent statute.**
10. **The Committee also highlights the Scottish Government's response as to why the delay in rectifying this omission occurred to the lead Committee so that it might consider whether the explanation is satisfactory from a policy perspective.**

# No points raised

## COVID-19 Recovery Committee

Health Protection (Coronavirus) (International Travel and Operator Liability) (Scotland) Amendment Regulations 2021 (SSI 2021/328)

Health Protection (Coronavirus, Restrictions) (Directions by Local Authorities) (Scotland) Amendment Regulations 2021 (SSI 2021/329)

## Criminal Justice Committee

Act of Adjournal (Criminal Procedure Rules 1996 Amendment) (Extradition) (SSI 2021/316)

## Economy and Fair Work Committee

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Company Insolvency Rules Amendment) (Insolvency) 2021 (SSI 2021/324)

## Education, Children and Young People Committee

Redress for Survivors (Historical Child Abuse in Care) (Exceptions to Eligibility) (Scotland) Regulations 2021 (SSI 2021/draft)

## Standards, Procedures and Public Appointments Committee

Representation of the People (Absent Voting at Local Government Elections) (Scotland) Amendment Regulations 2021 (SSI 2021/317)



# Annex

## **Local Electoral Administration and Registration Services (Scotland) Act 2006 (Commencement No. 6 and Transitional Provision) Order 2021 (SSI 2021/314)**

### The Scottish Government was asked:

The Order commences section 17 and schedule 1 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 on 28 September 2021. This instrument is part of a package of elections SSIs laid this week, including SSI 2021/311, which commences various sections of the Scottish Elections (Reform) Act 2020 the following day.

The Scotland Act 2016 conferred additional powers on the Scottish Parliament and Scottish Ministers in relation to the operation of local government elections in Scotland. In the absence of any explanation in the accompanying documents, please explain why section 17 and schedule 1 of the 2006 Act, which replace and insert provisions in the Representation of the People Act 1983 defining (Scottish local government) election expenses, are only being commenced now, 15 years later.

### The Scottish Government responded:

Section 17 of the Local Electoral Administration and Registration Services (Scotland) Act 2006 (“the 2006 Act”) introduced new section 90ZB to the Representation of the People Act 1983 (“the 1983 Act”) and gives effect to schedule 1 of the 2006 Act which in turn inserts new schedule 4B into the 1983 Act. Section 90ZB provides a definition of election expenses for the purposes of Scottish local government elections. Similar provisions were made for English and Welsh local government elections in section 27 of the Electoral Administration Act 2006 (“EEA 2006”).

A late change was made to section 27 of EEA 2006 prior to the Bill being passed by the UK Parliament. During the passage of the Bill, section 27 had previously provided that accounting period for election expenses would start four months before the election. This received criticism in the UK Parliament as it could have required candidates to retrospectively account for their expenses. The four month period was replicated in the 2006 Act in order to maintain consistent of practice in elections across the UK.

The four month period was removed from EEA 2006, before the Bill was passed, in response to the criticism it received and the accounting period for election expenses was instead commenced when an individual became a candidate. While the removal of the four month period was replicated in the 2006 Act prior to the Bill being passed by the Scottish Parliament, there was no corresponding amendment to commence the accounting period when an individual became a candidate. This apparent omission meant that section 17 could have been interpreted so widely as to include any expenditure incurred at any time (before or after a person becomes a candidate) which was used for the candidates election.

The amendments made by Article 3(4) of the Scottish Local Government Elections Amendment Order 2021 (laid before the Scottish Parliament on 14th September 2021) correct this error by ensuring that the accounting period for election expenses commences when the individual becomes a candidate at the election. It is this amendment which enables section 17 of the 2006 Act to be brought into force.

The 2006 Act obtained Royal Assent on 1st August 2006 making it difficult to bring in the necessary changes in time for the 2007 local government elections. There have only been two further ordinary local government elections in 2012 and 2016 in relation to which the definition of election expenses could have been changed but on those two occasions, section 17 and schedule 1 of the 2006 Act were not brought into force.

The need to amend section 90ZB of the 1983 Act either before or immediately after it was brought into force accounts in part for the delay. Competing priorities in 2012 and in 2016 meant that the legislative steps being taken now were pushed back. As the system of election expenses has operated effectively there were no widespread calls for these provisions to be brought into force and, as they serve to clarify the meaning of election expenses, they were not given priority. The Scottish Government acknowledges the delay but is now content that the necessary amendment to section 90ZB is being made which enables the commencement of section 17 and schedule 1 of the 2006 Act.

