

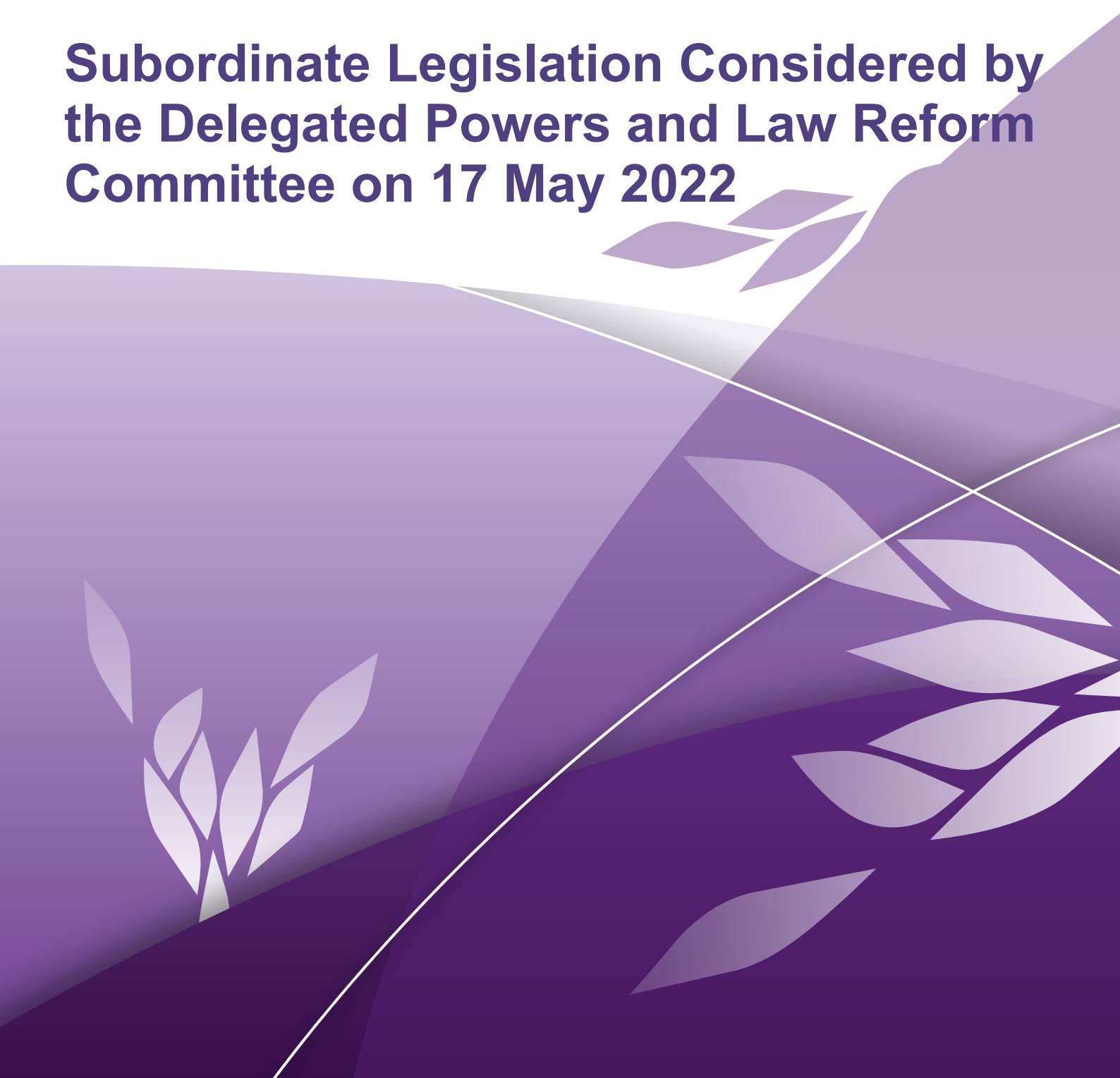


The Scottish Parliament  
Pàrlamaid na h-Alba

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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 17 May 2022**



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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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# Committee Membership



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**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**Craig Hoy**  
Scottish Conservative  
and Unionist Party



**Paul Sweeney**  
Scottish Labour

# Introduction

1. At its meeting on 17 May, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the relevant lead committee:
  - Police Act 1997 (Criminal Records) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Regulations 2022 (SSI 2022/158).
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. Some broader points highlighted by the Committee are noted below the relevant instruments.

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

## Police Act 1997 (Criminal Records) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Regulations 2022 (SSI 2022/158)

4. The instrument amends the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010, by extending the categories of individuals to whom an exempted question may be asked for the purpose of an enhanced criminal record certificate. This applies to individuals seeking to provide accommodation in relation to the Homes for Ukraine Sponsorship Scheme, whether or not they reside in the accommodation themselves.
5. The instrument was laid on 6 May 2022 and came into force on 12 May. It therefore breaches the 28-day rule in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.
6. In correspondence with the Presiding Officer, the Scottish Government explained that a breach of the laying requirements had been necessary to ensure the safeguarding system in place is suitable for all individuals who are being assessed to provide accommodation under the Scheme.
7. A copy of the correspondence can be found in the **Annex**.

8. **The Committee draws this instrument to the attention of the Parliament under reporting ground (j) for failure to comply with the laying requirements in section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010.**
9. **The Committee is nevertheless content with the explanation provided by the Scottish Government for failure to comply with the laying requirements.**

# No points raised

## Criminal Justice Committee

Criminal Justice Act 1988 (Offensive Weapons) (Amendment, Surrender and Compensation) (Scotland) Order 2022 (SSI 2022/Draft)

Surrender of Offensive Weapons (Compensation) (Scotland) Regulations 2022 (re-laid SSI 2022/Draft)

- In its consideration of both draft instruments listed above, the Committee noted the challenge of defining the relevant knives in law, for the purposes of criminal offence provisions and compensation schemes for surrender of offensive weapons including those known as ‘zombie knives’. It therefore agreed to highlight this to the lead committee in its consideration of these instruments.

Defamation and Malicious Publication (Scotland) Act 2021 (Commencement and Transitional Provision) Regulations 2022 (SSI 2022/154 (C.10))

## Education, Children and Young People Committee

Education (Fees) (Scotland) Regulations 2022 (SSI 2022/156)

Student Support (Scotland) Regulations 2022 (SSI 2022/157)

## Local Government, Housing and Planning Committee

Local Government Pension Scheme (Scotland) (Miscellaneous Amendments) Regulations 2022 (SSI 2022/153)

## Social Justice and Social Security Committee

Council Tax Reduction (Scotland) Amendment (No. 3) Regulations 2022 (SSI 2022/161)



# Annex

## Police Act 1997 (Criminal Records) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Regulations 2022 (SSI 2022/158)

### **On 6 May 2022, the Scottish Government wrote to the Presiding Officer:**

The Police Act 1997 (Criminal Records) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Regulations 2022, SSI 2022/158 were made by the Scottish Ministers under sections 113B(2)(b), 113CA(1), 113CB(1) and 125(1) and (5) of the Police Act 1997 on 6th May 2022. They are being laid before the Scottish Parliament today, 6th May 2022 and come into force on 12th May 2022.

Section 28(2) of the Interpretation and Legislative Reform (Scotland) Act 2010 sets out that a negative SSI must be laid before the Scottish Parliament at least 28 days before the instrument comes into force. On this occasion, this has not been complied with and to meet the requirements of section 31(3) of that Act, this letter explains why.

These Regulations make amendments to the Police Act 1997 (Criminal Records) (Scotland) Regulations 2010 (“the 2010 Regulations”) to ensure the statutory framework for state disclosure allows for higher level disclosures checks to be carried out on any individuals offering to provide accommodation (or any other individuals over the age of 16 years residing in accommodation that is to be provided), to ensure those fleeing the conflict in Ukraine are placed in safe accommodation. Connected amendments to the statutory framework in relation to self-disclosure are intended to be made by the Rehabilitation of Offenders Act 1974 (Exclusions And Exceptions) (Homes for Ukraine Sponsorship Scheme) (Scotland) Amendment Order 2022 which is also being laid before the Scottish Parliament today.

The Scottish Parliament previously considered and approved the Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Amendment Order 2022 and the Police Act 1997 (Criminal Records) (Scotland) Amendment Regulations 2022 which came into force on 24 March 2022. These SSIs made provision for enhanced disclosure checks with suitability information to be undertaken on individuals offering to provide accommodation **within their own homes that they were also residing in** (and for those individuals over the age of 16 years also residing within the accommodation). This was done with urgency as there was no provision at that point in disclosure legislation for such persons and hosts were being approved under the Homes for Ukraine Sponsorship Scheme (“the scheme”) and offers of accommodation had already been made.

Since then the policy position has been developing further and in addition to individuals offering accommodation within their own homes, there are offers of accommodation from individuals with second homes and whole properties. Occupancy arrangements in these circumstances under the Homes for Ukraine Sponsorship Scheme will not be the same as standard tenancy agreements, and individuals offering whole properties under the scheme will not have entry to their property restricted by the terms of any lease. The Scottish Government considers that there is a significant risk that the scheme could attract individuals who are seeking to exploit this opportunity to gain access to vulnerable people. Further examination of the risks and emerging evidence of those risks materialising in other parts of the UK, as well as information of concern being disclosed on those checks already happening on those offering rooms, has led the Scottish Ministers to conclude an

enhanced disclosure with suitability information relating to children and adults on everyone offering accommodation through the scheme (whether that be within personal homes or via second properties) offers the appropriate level of safeguarding in these circumstances.

The primary focus of enabling enhanced disclosure checks with suitability information for individuals offering accommodation under the scheme in these circumstances is to contribute to assessment of suitability of hosts to ensure that the safety of the displaced Ukrainians remains paramount. Those arriving are predominantly women, children and older people; many who will be vulnerable due to trauma experienced, being displaced and having insufficient support networks.

The instruments laid today work together to both increase the options for housing of Ukrainian people fleeing conflict and ensure those housing options are safe. The urgency stems from the number of people due to arrive in Scotland in a very short timescale now that applications are turning into visas and people are starting to travel. The Scottish Government are determined to ensure safe accommodation options are in place.

These Regulations are required to come into force urgently in order to ensure that the safeguarding system in place is suitable and ensures the appropriate level of check can be undertaken on all individuals who are being assessed as suitable to provide accommodation under the scheme, in advance of matching taking place. Bringing the regulations into force this week ensures agencies placing refugees with sponsors will have access to the appropriate level of conviction and other criminal history information to make informed placement decisions.

