SCOTTISH STATUTORY INSTRUMENTS

2025 No. 353

REPRESENTATION OF THE PEOPLE

The Representation of the People Act 1983 Remedial (Scotland) Order 2025

Approved by the Scottish Parliament

Made - - - - at 8.41 a.m. on 18th November 2025

Laid before the Scottish Parliament at 2.00 p.m. on 18th November 2025

Coming into force - - 19th November 2025

The Scottish Ministers make the following remedial Order in exercise of the powers conferred by section 12(1) and (3) of the Convention Rights (Compliance) (Scotland) Act 2001(**a**) ("the 2001 Act") and all other powers enabling them to do so.

The Scottish Ministers consider the provision made by this remedial Order to be necessary or expedient in consequence of the provisions in the Representation of the People Act 1983(**b**) in relation to the disfranchisement of offenders detained in mental hospitals which is or may be incompatible with Convention rights(**c**).

In accordance with section 12(2) of the 2001 Act the Scottish Ministers are of the opinion that there are compelling reasons for making a remedial order as distinct from taking any other action.

In accordance with section 14(1) of the 2001 Act it appears to them that, for reasons of urgency, it is necessary to make a remedial order without following the procedure under section 13(2) to (4) of the 2001 Act.

Citation, commencement and transitional provision

1.—(1) This Order may be cited as the Representation of the People Act 1983 Remedial (Scotland) Order 2025 and comes into force on 19 November 2025.

(2) Articles 3 to 7 and the schedule make temporary modifications in relation to elections.

(**a**) 2001 asp 7.

(**b**) 1983 c. 2 ("the 1983 Act"). Legislative competence for eligibility to vote in Scottish Parliament and local government elections has been devolved to the Scottish Parliament by virtue of section 3 of the Scotland Act 2016 (c. 11).

(**c**) "Convention rights" has the meaning given by section 1 of the Human Rights Act 1998 (c. 42). In the case of *Hirst v. United Kingdom (No. 2), Application no. 74025/01, 6 October 2005*, the European Court of Human Rights concluded there had been a violation of Article 3 of Protocol 1 to the European Convention on Human Rights by the United Kingdom in so far as section 3 of 1983 Act imposes a blanket restriction on all convicted prisoners detained in prison from voting. A similar restriction in section 3A of the 1983 Act which applies to offenders detained in mental hospitals is or may be incompatible with Article 3 of Protocol 1 and Article 14 of the Convention.

(3) The modifications made by articles 3 to 7 and the schedule do not have effect in relation to a local government election held in accordance with section 37 (filling of casual vacancies) of the Local Government (Scotland) Act 1973(**a**) if the day on which the poll is to be held at the election is before 7 May 2026.

Expiry

2.—(1) Articles 3 to 7 and the schedule expire on 28 February 2030.

(2) This article does not affect the validity of anything done pursuant to articles 3 to 7 or the schedule of this Order before they expire.

Voting by persons detained in hospitals etc.

3. The Representation of the People Act 1983 has effect as if in section 3A (disfranchisement of offenders detained in mental hospitals)(**b**) after subsection (3) there were inserted—

"(3A) But a person is not legally incapable of voting at a local government election in Scotland by virtue of subsection (1) during the time that—

(a) the person is detained if the detention is in pursuance of—

(i) an order made under section 53 of the Criminal Procedure (Scotland) Act 1995 and the person is not liable to be sentenced, in respect of the offence for which the person has been convicted, to imprisonment for a term exceeding 12 months,

(ii) an order made under section 54 of that Act,

(iii) an order made under section 57(2)(a) of that Act and the person—

(A) would not have been liable to be sentenced, if the person had been convicted of the offence in respect of which the person was charged, to imprisonment for a term exceeding 12 months, and

(B) is not subject to a further order made under section 57(2)(b) of that Act,

(iv) an order made under section 57A(2) of that Act and the person—

(A) is not liable to be sentenced, in respect of the offence for which the person has been convicted, to imprisonment for a term exceeding 12 months, and

(B) is not subject to a further order made under section 59 of that Act,

(v) a direction made under section 59A of that Act and the sentence imposed on the person does not include a term of imprisonment exceeding 12 months,

(vi) a direction made under section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and the person is not serving a sentence which includes a term of imprisonment exceeding 12 months,

(b) the person's personal welfare is placed under the guardianship of a local authority (or of such other person approved by a local authority) in

(**a**) 1973 c. 65; as amended by sections 3(2) and (3) and 4(5) of the Scottish Local Government (Elections) Act 2002 (asp 1).

(**b**) Section 3A of the Representation of the People Act 1983 was added by section 2 of the Representation of the People Act 2000 (c. 2) and relevantly amended by paragraph 96 of schedule 16 of the Armed Forces Act 2006 (c. 52) and S.I. 2005/2078.

pursuance of an order made under section 58 of the Criminal Procedure (Scotland) Act 1995.

(3B) For the purposes of subsection (3A)(a)(i), (iii) and (iv), a person who has been—

(a) convicted of more of more than one offence, or (as the case may be),

(b) charged with more than one offence,

is to be treated as if they are or (as the case may be) would have been liable to be sentenced to imprisonment for a term equal to the aggregate length of the maximum terms of imprisonment for each of the offences and sentenced consecutively on each other.

(3C) In calculating the term of imprisonment for the purpose of subsection (3A)(a)(v) and (vi), sentences that are consecutive or concurrent to any extent are to be treated as a single term if the sentences were imposed on that person—

(a) on the same occasion, or

(b) on different occasions but the person was not released (other than on temporary release) at any time during the period beginning with the first occasion and ending with the last.".

Residence of detained persons in hospitals etc.: uninterrupted residence

4. The Representation of the People Act 1983 has effect as if after section 7AA (residence: convicted person to whom section 3(1A) applies)(**a**) there were inserted—

"7AB Residence: detained person to whom section 3A(3A)(a) applies

(1) This section applies to a detained person to whom section 3A(3A)(a) applies.

(2) In determining whether the detained person is resident in a dwelling on the relevant date for the purpose of section 4(3)(a), the detained person's residence is not to be taken to have been interrupted by reason of the person's detention if—

(a) the detained person—

(i) intends to resume actual residence when released from the place they are detained (other than on temporary release), and

(ii) will not be prevented from doing so by an order of any court, or

(b) the dwelling serves as a permanent place of residence (whether for the detained person alone or with other persons) and the detained person would be in actual residence there but for their detention.

(3) In this section and section 7B "detained person" means a person detained at any place in pursuance of an order or direction mentioned in section 3A(3A)(a).".

Residence of persons detained in hospital etc.: notional residence

5. Section 7B (notional residence: declarations of local connection) of the Representation of the People Act 1983(**b**) has effect as if—

(a) in subsection (2D), for paragraphs (a) and (b) there were substituted—

(**a**) Section 7AA of the Representation of the People Act 1983 was added by section 7 of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6).

(**b**) Section 7B of the Representation of the People Act 1983 was added by section 6 of the Representation of the People Act 2000 (c. 2) and amended by section 14(1) of the Northern Ireland (Miscellaneous Provisions) Act 2014 (c. 13), section 8(2) to (4) of the Scottish Elections (Reduction of Voting Age) Act 2015 (asp 7), sections 1(4) and 8(2) of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6), section 10(9) of the Senedd Cymru (Members and Elections) Act 2024 (asp 4), and S.I. 2007/1388.

"(a) is either—

(i) a convicted person to whom section 3(1A) applies, or

(ii) a detained person to whom section 3A(3A)(a) applies, and

(b) would not be entitled to be registered by virtue of residence at any place other than—

(i) the penal institution in which the convicted person is detained, or (as the case may be)

(ii) the place in which the detained person is detained.",

(b) in subsection (4)(d)—

(i) in the opening words, the word "convicted" were omitted,

(ii) in sub-paragraph (i), the word "convicted" were omitted,

(iii) in sub-paragraph (ii)—

(aa) the word "convicted" were omitted,

(bb) after "penal institution" there were inserted "or other place the person is so detained",

(iv) in sub-paragraph (iii)—

(aa) the word "convicted", in each place it occurs, were omitted,

(bb) after "penal institution" there were inserted "or other place".

Method of voting by detained persons at local government elections

6. Schedule 4 (absent voting in Great Britain) of the Representation of the People Act 2000(**a**) has effect as if—

(a) in paragraph 2 (manner of voting at parliamentary or local government elections), for sub-paragraph (6ZA) there were substituted—

"(6ZA) In relation to a local government election in Scotland, nothing in the preceding provisions of this paragraph applies to a person to whom—

(a) section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, or

(b) section 3A(3A)(a) of the 1983 Act (exception to disenfranchisement for persons detained in hospitals etc.) applies,

and such a person may only vote by post or by proxy (where the person is entitled as an elector to vote by post or, as the case may be, by proxy at the election).",

(b) in paragraph 3(3) (absent vote at elections for definite or indefinite period), for sub-sub-paragraph (e)(**b**) there were substituted—

"(e) in the case of local government elections in Scotland, if the person is a person to whom—

(i) section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, or

(ii) section 3A(3A) of the 1983 Act (exception to disenfranchisement for persons detained in hospitals etc.) applies.",

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(**a**) 2000 (c. 2); schedule 4 was relevantly amended by section 9(2), (3)(b) and (4) of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6).

(**b**) Paragraph 3(3)(e) was inserted by section 9(3)(b) of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6).

(c) in paragraph 6 (proxies at elections), for sub-paragraph (5B) there were substituted—

"(5B) A person is not capable of voting as proxy at a local government election in Scotland if on the date of the election the person is a person to whom—

(a) section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, or

(b) section 3A(3A)(a) of the 1983 Act (exception to disenfranchisement for persons detained in hospitals etc.) applies.".

Consequential modifications to secondary legislation

7. The schedule contains temporary modifications of enactments in consequence of this Order.

Duration of registration

8.—(1) A person who is registered in the register of local government electors by virtue of section 3A(3A) of the 1983 Act is entitled to remain so registered until that article 3 expires in accordance with article 2.

(2) Where the entitlement of such a person to remain so registered terminates by virtue of paragraph (1), the registration officer concerned must remove the person's entry from the register, unless the person is entitled to remain registered otherwise than by virtue of this Order.

GRAEME DEY
Authorised to sign by the Scottish Ministers

St Andrew's House
Edinburgh
At 8.41 a.m. on 18th November 2025

SCHEDULE

Article 7

Consequential modifications

The Representation of the People (Scotland) Regulations 2001

1. The Representation of the People (Scotland) Regulations 2001(**a**) have effect as if modified as follows—

(a) in regulation 26G(4) (overseas electors: power to require additional evidence as to declaration of local connection)(**b**), for sub-paragraph (e) there were substituted—

"(e) where section 7B(2D) of the 1983 Act applied to the applicant, that—

(i) the applicant was either—

(aa) a convicted person to whom section 3(1A) of the 1983 Act applied, or

(bb) a detained person to whom section 3A(3A)(a) of the 1983 Act applied, and

(ii) the applicant would not have been entitled to be registered by virtue of residence at any place other than—

(aa) the penal institution in which the applicant was detained, or

(bb) the place in which the detained person was detained.",

(b) in regulation 26G(5)(a) after "3A" there were inserted ", 3A(3A)(a)",

(c) in regulation 32ZD (steps to be taken by a registration officer to encourage a person to make an application for registration in response to an invitation to do so)(**c**), for paragraph (7) there were substituted—

"(7) Paragraph (3) does not apply if, on the date that the registration officer gave an invitation to apply for registration under section 9E(1) of the 1983 Act, the person is a person to whom—

(a) section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, or

(b) section 3A(3A)(a) of the 1983 Act (exception to disenfranchisement for persons detained in hospitals etc.) applies.",

(d) in regulation 42(2) (marking of names)(**d**), after "section 3(1A)" there were inserted "or 3A(3A)".

(**a**) S.I. 2001/497; as relevantly amended by section 3(3) of the Scottish Elections (Reduction of Voting Age) Act 2015 (asp 7), S.I. 2007/925, S.S.I. 2013/3206, S.I. 2017/604, S.I. 2018/1310, S.S.I. 2020/180 and S.I. 2023/1406.

(**b**) Regulation 26G was inserted by S.I. 2023/1406.

(**c**) Regulation 32ZD was inserted by S.S.I. 2013/3206 and amended by section 3(3) of the Scottish Elections (Reduction of Voting Age) Act 2015 (asp 7), S.I. 2017/604 and S.S.I. 2020/180.

(**d**) Regulation 42 was amended by S.I. 2007/925, S.I. 2018/1310 and S.S.I. 2020/180.

The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007

2.—(1) The Representation of the People (Absent Voting at Local Government Elections) (Scotland) Regulations 2007(**a**) have effect as if modified as follows.

(2) Regulation 9A (additional requirements for applications for a proxy vote for a particular or indefinite period based on detention in a penal institution)(**b**) has effect as if—

(a) in the opening words, for "sentenced to term not exceeding 12 months" there were substituted "and detained persons",

(b) in paragraph (a), after "penal institution" there were inserted "or other place",

(c) in paragraph (b) after "penal institution" there were inserted "or other place",

(d) for the heading there were substituted "Additional requirements for applications for a proxy vote for a particular or indefinite period based on detention in a penal institution or other place".

(3) Regulation 10(5E) (additional requirements for applications for a proxy vote in respect of a particular election)(**c**) has effect as if, after "penal institution", in both places where it occurs, there were inserted "or other place".

(4) Regulation 11(4) (closing date for applications)(**d**) has effect as if after sub-paragraph (c) there were inserted—

"(d) by a person to whom section 3A(3A) of the 1983 Act (exception to disenfranchisement of persons detained in hospitals etc.) applies,".

The Scottish Parliament (Elections etc.) Order 2015

3.—(1) The Scottish Parliament (Elections etc.) Order 2015(**e**) has effect as if modified as follows.

(2) Article 7(6) (manner of voting at Scottish parliamentary elections)(**f**) has effect as if for sub-paragraph (c) there were substituted—

"(c) a person ("S") to whom—

(i) section 3(1A) of that Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, or

(ii) section 3A(3A)(a) of that Act (exception to disenfranchisement for persons detained in hospitals etc.) applies,

and S may only vote by post or by proxy (where S is entitled as an elector to vote by post or, as the case may be, by proxy at the election).".

(3) Article 8(3) (absent vote at Scottish parliamentary elections for an indefinite or a particular period)(**g**) has effect as if for sub-paragraph (f) there were substituted—

(**a**) S.S.I. 2007/170; as relevantly amended by paragraph 1(2) of schedule 1 of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6) and S.S.I. 2021/317.
(**b**) Regulation 9A was inserted by paragraph 1(2) of the schedule of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6).
(**c**) Regulation 10(5E) was substituted for regulation 10(5E) and (5F) by S.S.I. 2021/317.
(**d**) Regulation 11(4) was relevantly amended by S.S.I. 2021/317.
(**e**) S.S.I. 2015/425; as relevantly amended by paragraph 2(2)(b), (3)(b) and (4) of the schedule of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6) and S.S.I. 2020/426.
(**f**) Article 7(6) was relevantly amended by paragraph 2(2)(b) of the schedule of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6).
(**g**) Article 8(3) was relevantly amended by paragraph 2(3)(b) of the schedule of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6).

"(f) is a person to whom—

(i) section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, or

(ii) section 3A(3A) of the 1983 Act (exception to disenfranchisement for persons detained in hospitals etc.) applies.".

(4) Article 10 (proxies at Scottish parliamentary elections)(**a**) has effect as if for paragraph (4A) there were substituted—

"(4A) A person is not capable of voting as proxy at a Scottish parliamentary election if on the date of the election the person is a person to whom—

(a) section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, or

(b) section 3A(3A)(a) of the 1983 Act (exception to disenfranchisement for persons detained in hospitals etc.) applies.".

(5) Schedule 2 (Scottish parliamentary election rules)(**b**) has effect as if in paragraph 37, for sub-paragraph (2A) there were substituted—

"(2A) Paragraph (2) does not apply to an elector to whom—

(a) section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, or

(b) section 3A(3A)(a) of the 1983 Act (exception to disenfranchisement for persons detained in hospitals etc.) applies,

and the CRO may send such an elector's official poll card to the place where the elector is detained in legal custody.".

(6) Schedule 3 (absent voting)(**c**) has effect as if—

(a) in paragraph 1(4), for head (e)(**d**) there were substituted—

"(e) in the case of a person to whom—

(i) section 3(1A) of the 1983 Act (exception to disenfranchisement for offenders sentenced to term not exceeding 12 months) applies, or

(ii) section 3A(3A)(a) of the 1983 Act (exception to disenfranchisement for persons detained in hospitals etc.) applies,

the address shown on the declaration of local connection in accordance with section 7B(3)(d) of that Act.",

(b) in paragraph 6A(**e**)—

(i) in the opening words, for "offender sentenced to term not exceeding 12 months" there were substituted "offenders or detained persons",

(ii) in sub-paragraph (a), after "penal institution" there were inserted "or other place",

(iii) in sub-paragraph (b), after "penal institution" there were inserted "or other place",

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(**a**) Article 10 was amended by paragraph 2(4) of the schedule of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6).
(**b**) Schedule 2 was amended by S.S.I. 2020/426.
(**c**) Schedule 3 was relevantly amended by paragraph 2(5)(a) and (b) of the schedule of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6) and S.S.I. 2020/426.
(**d**) Paragraph 1(4)(e) was amended by S.S.I. 2020/426.
(**e**) Paragraph 6A was inserted by paragraph 2(5)(a) of the schedule of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6).

(iv) for the heading there were substituted "Additional requirements for applications for a proxy vote for a particular or indefinite period based on detention in a penal institution or other place",

(c) in paragraph 7(**a**)—

(i) in sub-paragraph (7A), in head (a), after "penal institution" there were inserted "or other place",

(ii) in sub-paragraph (7B)—

(aa) in head (a), after "penal institution" there were inserted "or other place",

(bb) in head (b), after "penal institution" there were inserted "or other place",

(d) in paragraph 9(4)(**b**), in head (c), after "penal institution" there were inserted "or other place".

(**a**) Paragraph 7 was relevantly amended by paragraph 2(5)(b) of the schedule of the Scottish Elections (Franchise and Representation) Act 2020 (asp 6).

(**b**) Paragraph 9(4) was substituted by S.S.I. 2020/426.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes temporary modifications to the law relating to Scottish parliamentary elections and local government elections in Scotland to remove an incompatibility with the European Convention on Human Rights arising from the disfranchisement of some persons detained in hospital under orders and directions relating to criminal justice from voting in Scottish parliamentary elections and local government elections in Scotland. This brings the law into line with the changes to the rules on prisoner voting made by Part 3 of the Scottish Elections (Franchise and Representation) Act 2020.

The Order comes into force on the day after the day on which it is made, but does not have effect in relation to any local government by-election held before 7 May 2026. The Order expires on 28 February 2030 but the expiration of the Order does not affect the validity of any actions taken under it before that date.

Section 3A(1) of the Representation of the People Act 1983 ("the 1983 Act") provides that a person is legally incapable of voting during the time they are detained under enactments listed in subsection (3) of that section as respects Scotland. This applies to all elections in Scotland, devolved (e.g. Scottish parliamentary elections and local government elections in Scotland) and reserved (e.g. UK general elections).

Article 3 of this Order temporarily amends section 3A of the 1983 Act so new subsections (3A) to (3C) are read in. Subsection (3A) provides that a person is not legally incapable of voting at a local government election in Scotland by virtue of section 3A(1) of the 1983 Act while they are detained in pursuance of an order or direction mentioned in subsection (3A) and any conditions specified are met. Section 11 of the Scotland Act 1998 provides that those entitled to vote in Scottish Parliament elections are those entitled to vote, and registered, as local government electors. Therefore, the modifications made by this article in respect of the local government franchise will also affect Scottish Parliament elections.

Subsection (3A)(a) provides that for orders made under sections 53, 57(2)(a) or 57A(2) of the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act") the offences for which the person has been convicted or charged must not be punishable by a term of imprisonment exceeding 12 months for that person to be able to vote. A person detained in pursuance of any such order will not have been sentenced, so it is the person's deemed liability, in respect of the offence for which they have been convicted or charged, that is to be taken into account. Accordingly, for example, a person convicted of an offence punishable by imprisonment of 2 years would not be able to vote in Scottish elections while they are detained in pursuance of any such order. New subsection (3B) sets out how a person's liability is to be calculated if they have been convicted or charged with more than one offence - their liability is to be equal to the aggregate length of the total maximum terms of imprisonment for each offence as if sentenced consecutively. For example, if a person is convicted of 3 offences carrying maximum penalties of 3 months, 6 months and 6 months respectively, the person would be treated as being liable to be sentenced to 15 months' imprisonment (so the person would not be legally capable of voting).

A person subject to an order made under section 57(2)(a) of the 1995 Act must also not be subject to a further order made under section 57(2)(b) of that Act to be legally capable of voting. Similarly, a person subject to an order made under 57A(2) of that Act must not be subject to a further order made under section 59 of that Act.

For directions made under 59A of that Act and section 136 of the Mental Health (Care and Treatment) (Scotland) Act 2003, the sentence imposed in conjunction with the direction, or already being served by the person at the point the direction is made, must not include a term of imprisonment exceeding 12 months. New subsection (3C) makes provision for detainees who are to serve, or are serving, consecutive or concurrent sentences. This applies where a person receives more than one sentence on the same occasion or where a person is sentenced on separate occasions but is not released (other than on temporary release) for any period between the first occasion of sentencing and the last. For example, a person sentenced (at the same time) to a 6 month and a 7 month sentence, to be served concurrently, would be regarded for the purposes of this section as serving a total term of 7 months and would therefore be covered by new subsection (3A). A detainee sentenced to two sentences of 7 months to run consecutively would not be able to vote whilst detained, as they would be considered to be serving a single term of 14 months.

Subsection (3A)(b) also removes the restriction on voting by persons during the time their personal welfare is placed under the guardianship of a local authority (or of such other person approved by a local authority) under section 58 of the 1995 Act.

Articles 4 and 5 make temporary provision regarding where a detained person is treated as residing.

Article 6 makes temporary provision about the method of voting by detained persons at local government elections.

Article 7 introduces the schedule which contains temporary modifications of secondary legislation in consequence of this Order. It contains provision related to the administration of voter registration, absent voting at local government elections in Scotland and Scottish parliamentary elections and the method of voting at Scottish parliamentary elections.

Article 8 provides that a person registered in the register of local government electors by virtue of article 3 is entitled to remain registered until article 3 expires. When article 3 expires, the registration officer must remove that person's entry unless they qualify to remain registered otherwise than by virtue of this Order.

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Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Saul Nassé, the King's Printer for Scotland.

ISBN 978-0-11-106642-3

£8.90

http://www.legislation.gov.uk/id/ssi/2025/353

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