



The Scottish Parliament
Pàrlamaid na h-Alba

Published 30 October 2025
SP Paper 897
77th Report, 2025 (Session 6)

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

Delegated Powers in the Contract (Formation and Remedies) (Scotland) Bill at Stage 1



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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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Overview of the Bill

1. The Bill was introduced by the Scottish Government on 2 October 2025. The lead committee is the Delegated Powers and Law Reform Committee.
2. The Scottish Government states in its Policy Memorandum that the Bill implements recommendations of the Scottish Law Commission (“the SLC”) published in its Report on [Review of Contract Law: Formation, Interpretation, Remedies for Breach, and Penalty Clauses](#).
3. The Bill restates and reforms aspects of the law of formation of contract (Part 1), some aspects of the law of remedies for breach of contract (Part 2) and contains some general provisions (Part 3 - saving, ancillary and commencement provisions).
4. This Report, which gives the Committee's views on the delegated powers in the Bill only, results from the Committee's consideration of the delegated powers undertaken at its meeting on 28 October 2025ⁱ.

ⁱ Katy Clark MSP submitted apologies for this meeting.

Delegated Powers

5. The Bill confers 3 powers to make subordinate legislation on the Scottish Ministers.
6. The Scottish Government has produced a [Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the delegated powers in the Bill and for the procedure chosen.

Review of relevant powers

Section 6(6) – Lapsing of offer on fundamental change of circumstances

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

7. Section 6(6) enables the Scottish Ministers, by regulations, to amend the list of circumstances, set out in section 6(4), in which an offeror or offeree becomes insolvent and to specify additional circumstances in which a person becomes insolvent.

8. Regulations made under section 6(6) are subject to the affirmative procedure.

Committee consideration

9. The Scottish Government explains in its DPM that section 6(3) provides that an offer does not lapse if the offeror or offeree becomes insolvent after the offer is made but before the contract is concluded. Subsection (4) defines insolvency for this purpose. The Scottish Government states in its DPM that the purpose of this power is to enable Scottish Ministers to keep up-to-date with relevant insolvency legislation to ensure that the definition remains aligned.

10. The Scottish Government states in the DPM that the power will be subject to the affirmative procedure, as regulations made under it will modify primary legislation and will affect when an offer to form a contract remains valid.

11. The Committee agrees that it is appropriate to include this power to ensure that any legislative developments in insolvency can be appropriately addressed by amending section 6(4). It also agrees that the affirmative procedure is appropriate.

12. The Committee accepts the power in principle, and is content and that such regulations would be subject to the affirmative procedure.

Section 24: Power to make ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instruments

Parliament procedure: Affirmative if making textual amendments to an Act, but otherwise negative

Provision

13. Section 24 provides that the Scottish Ministers may by regulations make any

incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to this Bill. Scottish Ministers may also modify any enactment.

14. Regulations made under this section will be subject to the negative procedure unless they add to, replace or omit any part of the text of an Act in which case they are subject to the affirmative procedure.

Committee consideration

15. The DPM states that the Scottish Government considers it appropriate for the full range of ancillary powers to be available to ensure that any unexpected issues which require further changes are able to be dealt with effectively so the purpose of the Bill is not inadvertently obstructed following Royal Assent.
16. The Committee agrees that it is appropriate to include an ancillary power in this Bill. The extent of the power is restricted as it can only be used for the purposes of giving full effect to the Bill as enacted. The power allows issues of an ancillary nature which may arise to be dealt with by the Scottish Ministers. Without such a power, any changes would require to be made by primary legislation, which the Committee considers would not be an effective use of either the Parliament's time or the Scottish Government's resources.
17. The Committee also considers it appropriate that the affirmative procedure would apply where the power is exercised to amend primary legislation, but that the negative procedure would apply in all other cases.

18. **The Committee accepts the power in principle, and is content with the specified parliamentary procedures, which are dependent on whether or not the power is exercised to amend primary legislation.**

Section 25(2) and (3) – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: laid only

Provision

19. Section 25(2) and (3) enables the Scottish Ministers, by regulations, to appoint the day or days on which the provisions of the Bill (other than sections 15, 23, 24 and 26) come into force. Regulations made under this section may make different provision for different purposes and may include transitional, transitory or saving provision.
20. As is standard for commencement powers, regulations will be laid before the Parliament but not subject to any further procedure.

Committee consideration

21. The DPM explains that the power will enable the Scottish Ministers to commence

the provisions of the Bill when suitable. The Bill's substantive provisions will affect parties negotiating or bound by a contract. To support orderly implementation, the DPM states that Scottish Ministers need the power to commence these changes at an appropriate time. In line with standard practice, the Scottish Government considers that commencement regulations should permit transitional, transitory, or saving provisions, and allow different provisions for different purposes.

22. It is standard to take a power at the end of a Bill to commence those sections of the Bill that are not commenced by the Bill itself. This allows the Scottish Ministers to appoint the day on which those sections are to be commenced.
23. It is also standard that commencement regulations are laid before the Parliament but are not subject to further procedure.

24. **The Committee is content with the power in principle, and that regulations will be before the Parliament but will not be subject to further procedure.**

