

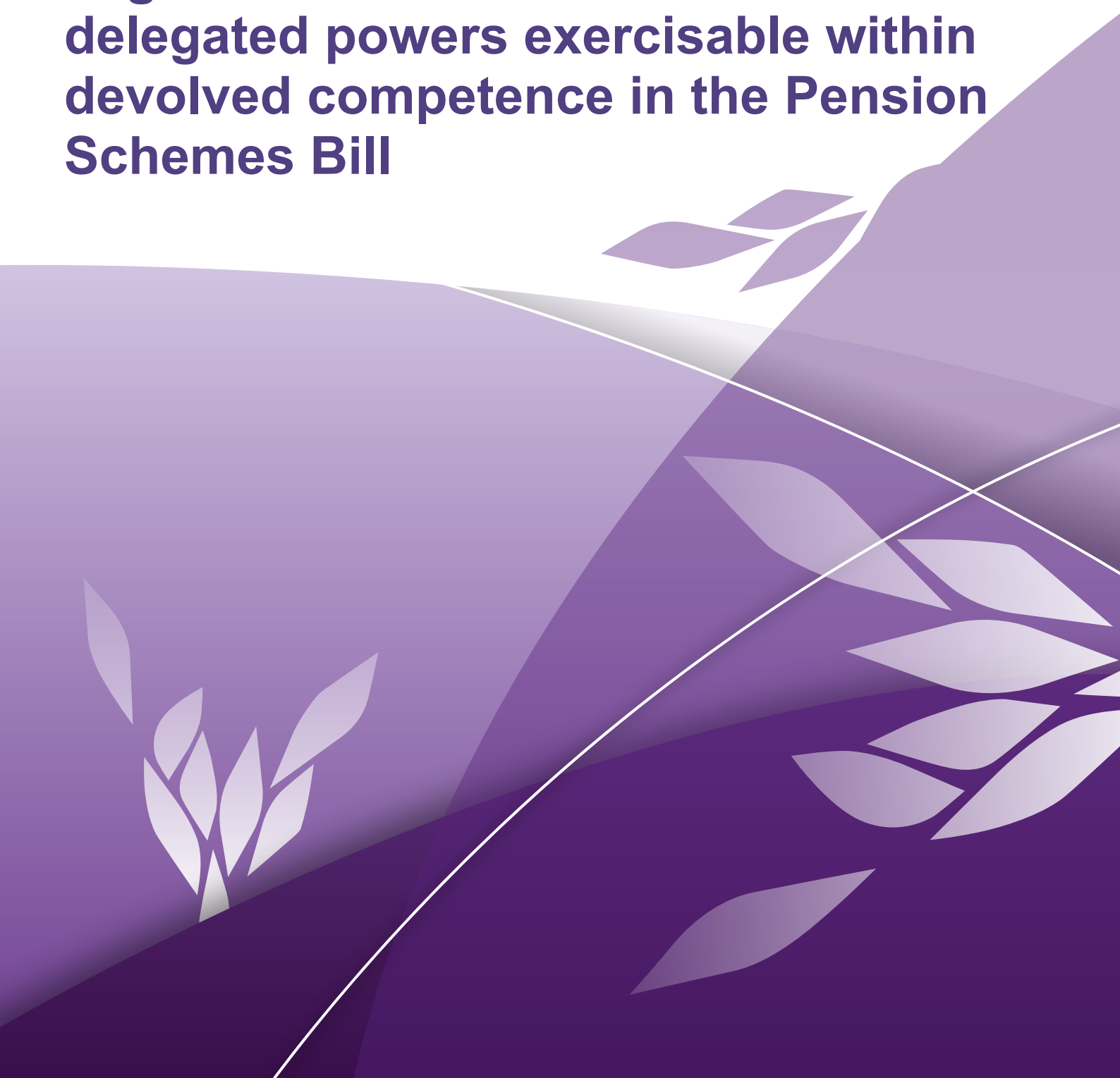


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Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers exercisable within devolved competence in the Pension Schemes Bill



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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) 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;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(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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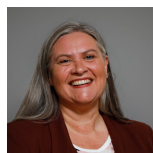
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Introduction

1. The purpose of this paper is to consider the delegated powers that are exercisable within devolved competence in the [Pension Schemes Bill](#) (“the Bill”).
2. The Committee considered the [Legislative Consent Memorandum](#) (“LCM”) for the Pension Schemes Bill by virtue of Rule 9B.3.6 of the Parliament’s Standing Orders. Paragraph 6 of Rule 9B.3 provides that where the Bill that is the subject of an LCM contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee (“DPLRC”) shall consider and may report to the Lead Committee on those provisions.
3. The Committee considered the LCM at its meeting on 28 October 2025ⁱ.

ⁱ Katy Clark MSP submitted apologies for this meeting.

The Bill

4. The Bill was introduced by the UK Government in the House of Commons on 5 June 2025. The Committee Stage started on 2 September 2025. As the Bill is still progressing through the UK Parliament, it is subject to amendment. The Committee may therefore need to consider a supplementary LCM in due course.
5. This is a substantial Bill made up of 5 parts (118 clauses) and a schedule. The majority of the provisions of the Bill extend to England, Wales and Scotland only, with sections 105 to 107 extending to Northern Ireland only.
6. The stated purpose of the Bill is to improve pension scheme governance and efficiency by consolidating Local Government Pension Scheme (“LGPS”) funds in England and Wales, enabling surplus returns from well funded defined benefit schemes, and strengthening defined contribution schemes through value for money requirements, small pot consolidation, and the creation of larger “megafunds”. It also updates the legal powers of the Pensions Ombudsman and adjusts provisions relating to the Pension Protection Fund.
7. During the House of Commons’ Committee stage several [amendments were tabled](#)ⁱⁱ on 1 September 2025 and agreed on 4 September 2025ⁱⁱⁱ. As a result, certain clauses contained in Chapter 1 of Part 1 now extend to the Scottish Local Government Pension Scheme (“LGPS(S)”). Chapter 1 of Part 1, as amended, makes provision enabling the informal asset pooling arrangements which some local government pension administering authorities in England and Wales currently engage in to be put on a statutory basis. Delegated powers to make the statutory arrangements are conferred on the Secretary of State for LGPS funds in England & Wales, and on the Scottish Ministers for the LGPS(S).
8. The UK Government agreed to make these changes following exchanges between the Scottish Ministers and the UK Government, in which it was agreed that maintaining the parity of powers for the respective regulation-making authorities in the UK was desirable.
9. While provision about occupational pensions schemes is for the most part reserved to the UK Government, the LCM explains that the Public Service Pensions Act 2013 (“PSPA”) gives the Scottish Ministers executive competence to make regulations in relation to local government pensions schemes in Scotland. The Bill, as amended, confers further powers on the Scottish Ministers to make provision for the LGPS(S) and in this way expands the Scottish Ministers’ executive competence. The Scottish Parliament’s legislative consent is accordingly being sought for the Bill.
10. The Scottish Government lodged the LCM for the Bill on 26 September 2025. It recommends that the Parliament consent to the relevant clauses.

ii The relevant amendments are numbered 7, 8, 10, 11, 12, 16, 17, 18, 19,20, 21, 22, 23 and 24.

iii The revised [Bill](#) as amended in Public Bill Committee, which is the version referred to in this report, incorporates the agreed amendments.

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11. The lead committee for the LCM is the Local Government, Housing and Planning Committee.

Delegated Powers

12. The Bill confers three powers on the Scottish Ministers, all of which are relevant to this Committee's remit. The powers are contained in clause 1 (Asset pool companies), clause 2 (Asset Management) and clause 5 (Scheme manager governance reviews).
13. The UK Government has published a [Delegated Powers Memorandum](#) ("DPM") to accompany the Bill. As is normal for UK Bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government's view is set out in the LCM.
14. The DPM explains in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected. However, the DPM was created before the amendments to extend the Bill to Scotland. Therefore, the DPM does not address the delegation of powers to the Scottish Ministers in clauses 1, 2 and 5 (referred to as Clause 4 in the LCM and DPM). Nonetheless, the powers conferred on the Scottish Ministers are in identical terms to the powers which the Bill conferred on the Secretary of State at introduction. The explanations in the DPM of the powers, the parliamentary procedure, and the justification for taking them therefore apply equally to the powers as exercisable by the Scottish Ministers.
15. Although the policy approach being taken on asset pooling and fund consolidation differs between England and Wales and Scotland, the Scottish Government has explained in the LCM that it considers it desirable to maintain parity of powers for making regulations in related areas.

Review of relevant powers

Clause 1 – Power for scheme regulations to make provision about asset pool companies

Power conferred on: Scottish Ministers (as the responsible authority for a public service pension scheme for local government workers in Scotland under clause 8(1) of the Bill).

Power exercisable by: Regulations (specifically scheme regulations under sections 1 and 3 of the Public Service Pensions Act 2013).

Parliamentary procedure: In accordance with section 24 of the Public Service Pensions Act 2013 (“PSPA”) (i.e. affirmative procedure if amending primary legislation or containing retrospective provision with significant adverse effects; otherwise, negative procedure).

Provision

16. Clause 1 provides that scheme regulations for LGPS may include provisions relating to asset pool companies and participation of scheme managers^{iv} in them. In particular, it enables such regulations to include requirements or prohibitions on both scheme managers and asset pool companies. It also allows for regulations to include a mechanism through which the Scottish Ministers can require a scheme manager to participate, or not participate, in a particular asset pool company. The regulations must require the responsible authority to consult specified persons before requiring that a scheme manager join or leave the asset pool company. These include the scheme manager, the asset pool company, and the other scheme members participating in the asset pool.
17. In addition, such regulations may enable the Scottish Ministers to issue guidance and directions to asset pool companies. Directions may require the company to comply with the guidance, or direct it as to the manner in which it is to carry out any specified investment management activities. If regulations enable the giving of directions, they must also require the Scottish Ministers to consult relevant parties before giving a direction, including the asset pool company, the scheme managers participating in the asset pool company, and the Financial Conduct Authority (FCA).
18. Regulations may further require FCA authorisation for certain activities and restrict scheme managers from participating in more than one asset pool company at a time.

Committee consideration

19. The UK Government, in the DPM, explains that while PSPA grants broad powers for managing public service pension funds, it does not explicitly cover investment pooling. A specific power was needed to confirm that LGPS scheme regulations can address pooling. Statutory backing will clarify responsibilities and promote consistent best practice across authorities.

^{iv} The administering authorities for local government pension schemes are the scheme managers under the PSPA.

20. The UK Government explains that clause 1 defines the required pooling model: each scheme manager (known as an administering authority for LGPS) must join a single asset pool company, wholly owned by authorities and established solely for the purpose of managing LGPS investments. The clause allows regulations to specify which pool an authority must or must not join, helping resolve disputes while keeping pooling arrangements authority-led.
21. The key characteristics are accordingly set out on the face of the primary legislation, while leaving the technical detail to be set out in secondary legislation. The DPM explains that this is consistent with the wider approach to public service pensions under the PSPA.
22. Paragraph 12(a) of Schedule 3 of PSPA already allows scheme regulations to empower the Secretary of State (and Scottish Ministers) to issue guidance and directions to administering authorities. Existing regulations applying to the LGPS in England & Wales (S.I.2016/946) require authorities to consider such guidance and permit directions in specific cases. The DPM explains that, by providing that regulations may enable the Secretary of State to issue guidance to asset pool companies, and to give directions to them in prescribed circumstances, the clause ensures that pooling's formal recognition doesn't hinder current oversight mechanisms.
23. In the DPM, the UK Government explains that the parliamentary procedure is consistent with the existing framework for making scheme regulations under the PSPA. Regulations are subject to the affirmative procedure if amending primary legislation or containing retrospective provision with significant adverse effects. They are otherwise subject to the negative procedure. The DPM notes that the PSPA framework is well-established and has built in opportunities for scrutiny of proposed scheme regulations before they are made, for example, the duty to consult before making any scheme regulations under this power.
24. In the LCM the Scottish Government explains that amendments made at the request of the Scottish Ministers ensure there remains parity of powers for the respective authorities responsible for making regulations for the LGPS in England and Wales and Scotland, and ensures that, should any related or equivalent changes be desirable to the LGPS(S) in future, they may be made by the Scottish Ministers, following consultation with stakeholders, without the need for further primary legislation in the UK Parliament.
25. The Committee is content with this approach. The power is limited to making provision about asset pool companies and participation in them by LGPS scheme managers. Some key details of the intended regulatory framework are set out in clause 1, with an illustrative list of the type of provision which may be made. The power follows the model which currently exists for regulation of the LGPS(S), setting out the principles on the face of the Bill, while leaving the technical detail to regulations. It also continues the ability of the Scottish Ministers to give guidance or direction in relation to the management of such pension schemes, where appropriate.
26. **The Committee is content with the power conferred on the Scottish Ministers in principle and content with the parliamentary procedure applied.**

Clause 2 – Power for scheme regulations to make provision about asset management

Power conferred on: Scottish Ministers (as the responsible authority for a public service pension scheme for local government workers in Scotland under clause 8(1) of the Bill).

Power exercisable by: Regulations (specifically scheme regulations under sections 1 and 3 of the Public Service Pensions Act 2013).

Parliamentary procedure: In accordance with section 24 of the Public Service Pensions Act 2013 (i.e. affirmative procedure if amending primary legislation or containing retrospective provision with significant adverse effects; otherwise, negative procedure).

Provision

27. Clause 2 provides that where the Scottish Ministers make scheme regulations under clause 1(1) relating to asset pool companies and participation by scheme managers, the regulations must also make provision about the management of LGPS funds and assets. These regulations must ensure that each scheme manager formulates, publishes, and reviews an investment strategy, and that the LGPS funds or other assets (excluding those needed for pension payments) are held and managed by an asset pool company in line with that strategy. The regulations may also specify sources of advice and required content for investment strategies, including responsible investment, local investment, and strategic asset allocation.

Committee consideration

28. The UK Government explains in the DPM that while the PSPA provides broad powers for scheme regulations on managing and investing public service pension funds, it does not explicitly cover investment pooling. This clause introduces a statutory power to require LGPS investment and asset management decisions to be made through asset pool companies. By placing pooling on a statutory footing, rather than leaving it to individual authorities to opt in voluntarily, the UK Government aims to ensure consistency, wider adoption of best practices, and greater clarity.
29. The DPM also explains that this approach is consistent with the wider approach to regulation of public service pensions under the PSPA, in that the key requirements that will be imposed on administering authorities in order to ensure that they fully engage with pooling (namely to require any management of LGPS funds and assets to be carried out by the asset pool company) is set out on the face of the primary legislation, whilst leaving the technical detail to be set out in regulations.
30. The explanation given for the choice of parliamentary procedure is the same as for clause 1, set out above.
31. The Scottish Government offers the same explanation for recommending that the Parliament consent to this clause as it gave for clause 1, set out above.
32. The Committee is content with this approach. The power is narrowly drawn, in that the key responsibilities of both parties are set out on the face of the Bill: regulations

must provide for the scheme manager to have an investment strategy, and for the asset pool company to manage the funds in accordance with that strategy. The power accordingly follows the model which currently exists for regulation of the LGPS(S), setting out the principles on the face of the Bill, while leaving the technical detail to regulations. If regulations are made to require scheme managers to participate in asset pool companies under clause 1, then this further power will enable the Scottish Ministers to provide clarity as to the respective responsibilities of each party in relation to the pension funds.

33. The Committee is content with the power conferred on the Scottish Ministers in principle and content with the parliamentary procedure applied.

Clause 5 (referred to as clause 4 in DPM and LCM) – Power for scheme regulations to make provision about governance reviews

Power conferred on: Scottish Ministers (as the responsible authority for a public service pension scheme for local government workers in Scotland under clause 8(1) of the Bill).

Power exercisable by: Regulations (specifically scheme regulations under sections 1 and 3 of the Public Service Pensions Act 2013).

Parliamentary procedure: In accordance with section 24 of the Public Service Pensions Act 2013 (i.e. affirmative if amending primary legislation or containing retrospective provision with significant adverse effects; otherwise, negative).

Provision

34. Clause 5 provides that Scottish Ministers may make provision for periodic or ad hoc governance reviews of individual scheme managers. Such regulations may provide that the Scottish Ministers can issue guidance on how such reviews should be conducted and may provide for the Scottish Ministers to have functions in response to review reports.
35. Any regulations made under this power must provide for governance reviews to be carried out at least once in every prescribed review period. It also requires the regulations to provide for the circumstances in which the Scottish Ministers may direct a scheme manager to carry out an ad hoc review, specifying the review period. Such regulations must also provide for governance reviews to be conducted independently, under arrangements made and funded by the scheme manager. Lastly, they must provide for the reviewer to prepare a report, send it to both the scheme manager and the Scottish Ministers, and for the scheme manager to publish it.

Committee consideration

36. In the DPM, the UK Government explains that this clause is necessary to strengthen governance within the LGPS due its growing scale and complexity. Administering authorities are already responsible for effective governance under the existing regulations, and while (in England and Wales) many demonstrate good practice, consistent high standards are needed across the scheme. The DPM states that evidence suggests that well governed pensions schemes deliver better

financial outcomes and are more agile in managing risks and opportunities.

37. The UK government believes that alongside further pooling, there is a clear case to enhance governance arrangements to ensure resilience and effectiveness throughout LGPS. This clause provides a specific power for scheme regulations to mandate regular governance reviews by independent third parties, with findings published. These reviews will assess the effectiveness of each administering authority's governance over a set period. This clause will also allow Scottish Ministers to require additional reviews when necessary. Although the PSPA provides broad powers for scheme regulations to make provision about the administration and management of the LGPS, it does not explicitly cover governance assurance, so this new power clarifies and embeds governance reviews into the LGPS framework, with core requirements in primary legislation and technical details in secondary legislation.
38. The explanation given in the DPM for the choice of parliamentary procedure is the same as for clause 1, set out at above.
39. In the LCM, the Scottish Government offers the same explanation for recommending that the Parliament consent to this clause as it gives for clause 1, set out above.
40. The Committee is content with this approach. The power is narrowly drawn, with key features of the regulatory scheme being set out in the clause, for example, the meaning of a governance review, and requirements as to the independence and the funding of such reviews. The power accordingly follows the model which currently exists for regulation of the LGPS(S), in that it sets out the key requirements relating to governance reviews on the face of the Bill, while leaving the technical detail about frequency of reviews, and how they should be carried out, to regulations. This appears to strike an appropriate balance between primary and secondary legislation.
41. **The Committee is content with the power conferred on the Scottish Ministers in principle and content with the parliamentary procedure applied.**

