

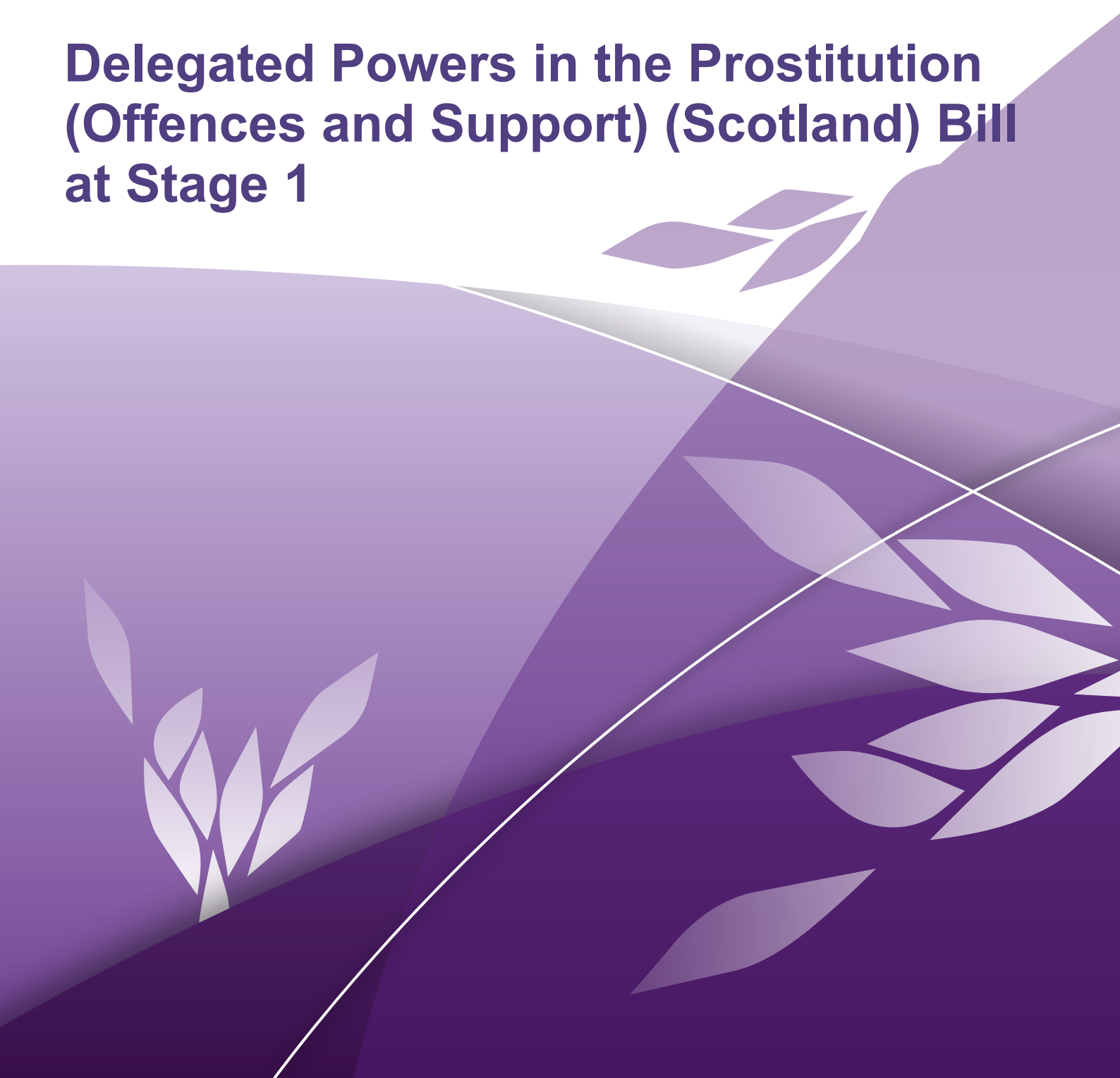


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Pàrlamaid na h-Alba

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

## **Delegated Powers in the Prostitution (Offences and Support) (Scotland) Bill at Stage 1**



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# Contents

<b>Overview of the Bill</b>	<b>1</b>
<b>Delegated Powers</b>	<b>2</b>
<b>Review of relevant powers</b>	<b>3</b>

# 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



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Independent



**Roz McCall**  
Scottish Conservative  
and Unionist Party



**Katy Clark**  
Scottish Labour

# Overview of the Bill

1. This Bill was introduced on 20 May 2025 by Ash Regan MSP. The lead committee is the Criminal Justice Committee.
2. The Bill introduces a new criminal offence of paying for sexual acts, and repeals section 46 of the Civic Government (Scotland) Act 1982, which criminalises soliciting and importuning for the purposes of prostitution in a public place. It also quashes historic convictions under section 46.
3. The Bill also provides a legal right to support to people who are or have ever been in prostitution and places a corresponding duty on the Scottish Ministers to ensure the provision of such support is available for those individuals.
4. Following consideration on 30 September, correspondence was sent [from the Committee to the Scottish Government](#) on 2 October 2025. A [response was received](#) on 15 October 2025. This was considered at the Committee's meeting on 28 October 2025<sup>i</sup>.

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<sup>i</sup> 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 Member in Charge 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 7(1): Regulations about assistance and support

**Power conferred on:** Scottish Ministers

**Power exercisable by:** Regulations made by Scottish statutory instrument

**Parliamentary procedure:** Affirmative

### Provision

7. Section 7 provides that the Scottish Ministers may by regulations make provision for or in connection with the assistance and support to be provided in accordance with section 6.
8. Section 6 requires that Scottish Ministers ensure that those in prostitution, and those who were in prostitution at any time before or after the coming into force of the section, are provided with assistance and support.
9. Section 6 provides that assistance and support provided under this section must not be made conditional on the person acting as a witness in any criminal proceedings, may only be provided with the agreement of that person, and must be provided in a manner which takes due account of the needs of that person as regards safety and protection from harm.
10. Section 6(5) provides an illustrative list of assistance and support that may be provided, including: appropriate and safe accommodation, financial assistance and translation and interpretation services.
11. There is another illustrative list in section 7 setting out matters which may be included in regulations made under section 7. However, such regulations may cover other matters that the Scottish Ministers consider appropriate. The illustrative list includes: eligibility criteria, conditions that may or must be imposed when providing assistance and support, and the conferral of functions on bodies such as health boards, integration joint boards and local authorities.
12. Before making regulations under this power, the Scottish Ministers must consult with such persons as they consider likely to be interested in or affected by provisions in section 6.
13. Regulations made under section 7 may make incidental, supplementary, consequential, transitional, transitory or saving provision and may make different provision for different purposes.
14. Regulations under section 7 are subject to the affirmative procedure.

### Committee consideration

15. The Committee considered that the power is a fairly wide power to make provision about how section 6 is to operate in practice. It acknowledged that it is limited by the principles established by section 6 itself, however otherwise the power enables the Scottish Ministers to design the system of support and assistance to be

delivered as required by section 6. It noted the Member in Charge's explanation for leaving the design of such a system to be set out in regulations made by the Scottish Ministers. The Member in Charge considers that the Scottish Ministers are best placed to know how health and social services are delivered in practice, how persons looking to exit prostitution can best be identified and supported and also how the various bodies, on which functions may be conferred, work together.

16. The Committee agreed to write to the Scottish Government to ask for its views on the provision, and how it envisages it would be used should the Bill pass.
17. The Minister for Victims and Community Safety responded to the Committee, setting out her concerns regarding the lack of detail surrounding the duty to provide assistance and support under section 6(1) and the associated regulation making power under section 7(1). In particular, the Minister raised concerns with the retrospective nature of the duty, meaning that it would apply to any person who has been in prostitution at any time before or after the coming into force of the provision. In summary, the Minister is concerned about the 'breadth of uncoded and potentially open-ended responsibility' being placed on support services and the wider public sector.
18. The Committee considers that although the power is fairly open-ended, its use is confined to quite a limited area. It is subject to a high level of Parliamentary scrutiny via the affirmative procedure, including additional consultation requirements. However, it would also be reasonable in the circumstances, if the lead committee were minded to do so, to suggest that more detail about how such a system is to operate in practice should be set out on the face of the Bill.
19. The Committee considers that the Minister's questions - specifically, whether the duty and the associated regulation-making power should be limited in terms of who they apply to - are matters of policy that are more appropriately addressed by the lead committee as part of its broader consideration of the Bill.

**20. The Committee notes that this is a wide power. It highlights the Minister's response to its questions to the lead committee, to consider whether it should be limited from a policy perspective.**

### **Section 8(1): Ancillary provision**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Negative**

### **Provision**

21. Section 8 enables the Scottish Ministers, by regulations, to make incidental, supplementary, consequential, transitional, transitory or saving provision for the purposes of, in connection with, or for giving full effect to the Bill.
22. Regulations under section are subject to the negative procedure.

## Committee consideration

23. This power is similar in terms to other ancillary powers that the Committee has scrutinised. Ancillary powers appear in most Scottish bills.
24. 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 and any provision made under it. The power allows issues of an ancillary nature which may arise to be dealt with effectively by the Scottish Ministers. Without such a power, any changes would require to be made by primary legislation, which we consider would not be an effective use of either the Parliament's time or the Scottish Government's resources.
25. Somewhat unusually, the power does not extend to enabling the modification of any enactment, including primary and subordinate legislation. Therefore, it is considered appropriate in the circumstances that the negative procedure applies.

**26. The Committee finds the power acceptable in principle and is content that its exercise will be subject to the negative procedure.**

## Section 10: Commencement

### Power conferred on: Scottish Ministers

### Power exercisable by: Regulations made by Scottish statutory instrument

### Parliamentary procedure: Laid, no procedure

### Provision

27. Section 10 makes commencement provision. It provides that sections 2, 8, 9 10 and 11 will come into force on the day after Royal Assent, and the remaining provisions will come into force on such day as the Scottish Ministers may by regulations appoint.
28. Regulations made under section 10 may also include transitional, transitory or saving provision, and may make different provision for different purposes.
29. Regulations made under section 10 will be laid before the Parliament but will not be subject to any further procedure.

## Committee consideration

30. It is standard to take a power at the end of a Bill to commence those sections of the Bill where provision has not been made in the Bill for commencement. This allows the Scottish Ministers to appoint the day on which those sections are to be commenced.
31. It is also standard that commencement regulations are laid before the Parliament but not subject to further parliamentary procedure.

**32. The Committee may wish to be content with the power in principle, and that**

**it is not subject to any parliamentary procedure.**

