



The Scottish Parliament
Pàrlamaid na h-Alba

Published 8 October 2025
SP Paper 887
74th Report, 2025 (Session 6)

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

Delegated Powers in the Children (Care, Care Experience and Services Planning) (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. This Bill was introduced on 17 June 2025 by the Scottish Government. The lead committee is the Education, Children and Young People Committee.
2. The Bill is colloquially known as the “Promise Bill”. In 2020 the Scottish Government promised that “all children in Scotland will grow up feeling loved, safe and respected”, and the Government promised to achieve this by implementing the conclusions of the Independent Care Review by 2030.
3. The Policy Memorandum to the Bill states that the Bill has been informed by findings of the Independent Care Review, and by the Scottish Government’s response to the Hearings for Children report. It states that this is in combination with a wide range of engagement and consultation work that has been underway throughout 2024 and 2025.

Delegated Powers

4. The Bill confers 6 powers to make subordinate legislation on the Scottish Ministers, and 1 power to issue guidance.
5. 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.
6. The Committee considered this Bill at its meetings on 9 September and 7 October 2025ⁱ. At its meeting on 9 September, it agreed to [write to the Scottish Government](#). It considered the [Scottish Government's response](#) on 7 October.

ⁱ Stuart McMillan MSP, Roz McCall MSP and Jeremy Balfour MSP submitted apologies for the meeting of 7 October 2025. Rona Mackay MSP substituted for Stuart McMillan MSP, and Oliver Mundell MSP substituted for Roz McCall MSP.

Review of relevant powers

Section 4: Advocacy Services for Care-Experienced Persons

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

7. Section 4 provides that the Scottish Ministers must, by regulations, confer rights of access to care experience advocacy services.
8. Section 4(2) explains that “care experience advocacy services” are independent services of support and representation provided for the purpose of assisting a care-experienced person:
 - to access services through which the person may be provided with care or assistance; or
 - to make the person's views in relation to matters connected with the provision of care or assistance to the person known to persons making decisions in relation to such matters.
9. Section 4(6) states that a person is “care-experienced” for the purposes of section 4 if they are a child who is or has at any time been looked after, subject to a kinship care order or cared for or otherwise supported in such circumstances as may be specified, or a person who was, at any time when they were a child, looked after, subject to a kinship care order or cared for or otherwise supported in such circumstances as may be defined.
10. Regulations made under this provision may specify the circumstances in which, or in relation to which, the right conferred by such regulations is or is not exercisable or specify particular descriptions of care-experienced persons by whom a right conferred is or is not exercisable.
11. Regulations may also modify the provision itself by adding, varying or removing purposes for which services of support and representation may be provided.
12. Before making regulations under this section, the Scottish Ministers must consult care-experienced persons, persons who may become care-experienced by virtue of the regulations, persons who represent the interest of care-experienced persons or other persons as the Scottish Ministers consider appropriate.
13. Regulations made under section 4 are subject to the affirmative procedure.

Committee consideration

14. The Committee asked the Scottish Government whether it considers it foreseeable that the power will be used, and if so, to provide some examples of the circumstances or descriptions of care-experienced persons such regulations will

likely cover.

15. The Scottish Government responded that it is required to consult people with experience of care, people representing those with experience of care and anyone else considered appropriate prior to exercising the power. It stated that this consultation will inform how the power is exercised and any additional descriptions of care experienced persons who are entitled to access advocacy support.
16. The Scottish Government stated that the regulations may cover people who were not formally 'looked after' but were subject to other care arrangements where there was some involvement with the local authority, such as non-looked after kinship care. It provided another example, in relation to circumstances in which regulations may be used to limit the circumstances in which the right to access advocacy services could be exercised, of where the person was in care for a very short period of time.
17. The Scottish Government stated in its response that any use of the power for this purpose would be carefully considered and informed by consultation, and that intention is that eligibility to access advocacy services will be broad and inclusive.
18. The Scottish Government didn't respond directly to the question about the likelihood of the regulation making power being used, however the Committee considered that the provision of the above examples suggests that its use is foreseeable.
19. The power is subject to the affirmative procedure and therefore the Parliament will have an opportunity to scrutinise any decision taken to exercise this power at that point. Although the opportunity to influence the policy at that stage is more limited, given the relatively limited scope of the application of the power, the Committee considers it reasonable to ask the Parliament to reach a binary decision at that point.
20. On balance, the benefits of retaining an element of flexibility in order to "future-proof" the Bill, coupled with the statutory requirements to consult and the application of the affirmative procedure, the Committee finds the power acceptable in principle.

21. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.

Section 5: Guidance in relation to care experience

Power conferred on: Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: Laid only

Provision

22. Section 5 requires the Scottish Ministers to issue guidance for the purposes of promoting understanding by public authorities, and others exercising functions of a public nature, of care-experienced persons and their experiences.
23. Section 5(2) provides an illustrative list of matters which the guidance may cover,

including the promotion of best practice in communicating with care-experienced persons, or using language in a way that avoids stigmatising care experience, and facilitating access by persons who are or may be care-experienced to public services.

24. Section 5(3) provides that a public authority must have regard to guidance issued under section 5 when exercising the public authority's functions in relation to persons who are or may be care-experienced. A public authority must also ensure that, where it exercises functions by entering into arrangements (contractual or otherwise) under which functions of a public nature will be exercised by a person other than a public authority, the arrangements require the person to have regard to such guidance when exercising those functions in relation to those who are or may be care-experienced.
25. Such guidance will be laid before the Scottish Parliament but will not be subject to any parliamentary procedure.

Committee consideration

26. The Scottish Government states in its DPM that the purpose of the guidance will be to promote a better understanding and awareness of care experience and the care system, and best practice which in turn should help reduce stigma associated with individuals who have care experience. It states that it is not intended that guidance will cut across existing legislative entitlements that care-experienced people may have.
27. The Committee carefully considers powers to publish guidance, especially where there is a requirement to “have regard” to such guidance. In particular, the Committee will consider whether those powers should be subject to some form of parliamentary procedure. In this instance, the Committee considers that it appears that the power to issue guidance will be used to provide supplementary advice to public authorities about the use of language and the context in which they may be providing services to care-experienced people. This type of advice is better placed in guidance, which can offer more narrative than legislation. The Committee does not consider that such guidance could be used to place any substantive obligations on public authorities, or those it has contracted with to exercise such functions on its behalf, and for that reason is content that guidance published under this power will be laid before the Parliament, but not subject to any further parliamentary procedure.

28. **The Committee finds the power to issue guidance appropriate in principle and is content that such guidance will be laid before the parliament but not subject to any further parliamentary procedure.**

Section 8: Children’s residential care services: profit limitation – Inserting new section 78E to 78G into the Public Services Reform (Scotland) Act 2010

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

29. Section 8 of the Bill amends the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) by inserting new sections 78E to 78G. Existing section 78(2) of the 2010 Act provides that regulations under that Act may impose, in relation to care services, any requirements which the Scottish Ministers consider appropriate for the purposes of Part 5 (Social care and social work: scrutiny and improvement).
30. New section 78E(1)(a) provides that the Scottish Ministers must exercise that power to impose an initial information requirement on those who provide care home services which are provided wholly or mainly to children and those who provide a school care accommodation service. The information requirement would require those providers to provide such financial and other information as is required, in relation to such a time period as is specified in the regulations, for the purpose of assessing the level of profit being made by the provider.
31. New section 78E(1)(b) provides that the Scottish Ministers may, subject to new section 78F, exercise the existing power to impose on those providers a profit limitation requirement and a continuing information requirement. New section 78F provides that the Scottish Ministers may only impose or modify a profit limitation requirement where they are satisfied that it is necessary to do so, having regard to the public interest in securing that such providers are providing care on terms which represent value for money, after having regard to the information provided by those providers under an initial or continuing information requirement.
32. Regulations made under this section would be subject to the affirmative procedure.

Committee consideration

33. The Scottish Government states in its DPM that the enhanced financial transparency provided by these provisions will enable local authorities to manage their budgets and make decisions about residential care placements. It states that this information will allow the Scottish Government to understand the range of different types of care support offered, and to understand what ‘need’ and ‘complex need’ of children and young people looks like in more detail, in order to build clarity around how that translates into fees charged, and subsequently determine whether or not excessive profit is being made.
34. It also states that the affirmative procedure provides the appropriate level of scrutiny given the potential impact on the residential care market in Scotland.
35. The Committee considers that this is an appropriate delegation of power. The decision to impose an initial information requirement is made by the provision itself, through requiring the Scottish Ministers to exercise the regulation making power in that way. It is therefore clear to the Parliament how the power will be used, and there will be further opportunity for scrutiny when the regulations are laid. The regulation making power at 78E(1)(b) will involve the making of what could be a significant policy decision. However, the power is limited by the provision in the Bill which specifies when the power may appropriately be exercised. The Committee also considers that the power is limited in what it may do, that is to impose a profit limitation requirement or continuing information requirement. Should the Parliament not agree that such requirements should be imposed, it would have the option to

vote against such regulations.

36. The Committee is content with the power in principle and is content that it is subject to the affirmative procedure.

Section 9: Fostering Services to be Charities

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

37. Section 9 of the Bill amends section 59(3) of the Public Services Reform (Scotland) Act 2010 (“the 2010 Act”) to require that any person providing a fostering service must be a charity, and amends section 105 of the 2010 Act to insert a new definition of “charity” for the purposes of that Act. The definition includes non-natural persons registered with the Scottish Charity Register, as well as those registered as charities in England and Wales and Northern Ireland, and those exempt from registering in England and Wales and Northern Ireland.
38. It inserts a new subsection (4) into section 105 of the 2010 Act, which provides the Scottish Ministers with the power to make regulations modifying that definition.
39. Regulations made under this power would be subject to the affirmative procedure.

Committee consideration

40. The Scottish Government states in its DPM that it is necessary to take this power to enable the modification of the definition of “charity”, in order that it can include organisations recognised as charities under the law of other jurisdictions within the UK. This would only occur where the Scottish Government is satisfied that the applicable regulatory framework ensures that assets are used for exclusively charitable purposes and not for private gain. The DPM states that the power could be used to exclude particular categories of organisation from qualifying if the relevant regulatory regime does not provide sufficient assurance that the policy objective is being met. It states that this flexibility supports the effective implementation of the policy objective whilst respecting the role of charity regulators in their respective jurisdictions. It adds that the power will allow the Scottish Ministers to respond flexibly and at pace if the definition of charity requires to be amended to support the effective regulation of fostering services or to respond to future developments in the sector or in charity regulation.
41. The Scottish Government states that the affirmative procedure is appropriate given that any changes to the definition of charity could have significant implications for providers, children and young people and the regulatory bodies.
42. The Committee considers that it is appropriate to have such a regulation making power to amend the definition in the circumstances outlined at paragraph 40. It considers that it is foreseeable that this power may require to be exercised in light

of changes in other jurisdictions, and that should such a scenario arise, it is more appropriate to deal with such changes through subordinate legislation rather than requiring more primary legislation.

43. The Committee is content with the power in principle, and that it is subject to the affirmative procedure.

Section 10: Register of Foster Carers: Inserting new sections 30A and 30G into the Children (Scotland) Act 1995

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

44. Section 10 of the Bill inserts new sections 30A and 30G into the Children (Scotland) Act 1995 to provide for the establishment, operation and regulation of a national register of foster carers for the purposes of facilitating the approval of persons as foster carers by fostering services, the placing of children with foster carers by fostering services or for facilitating foster care generally (including improvements in foster care).
45. New section 30A(2) sets out information which is to be included in the register and enables Scottish Ministers to specify in regulations additional information in relation to foster carer's approval status and other information about the carer or members of their household.
46. New section 30B also confers a delegated power for the Scottish Ministers to make further provision, by regulations, in relation to the arrangements to be made in respect of the establishment, operation and regulation of a national register of foster carers, or the register of foster carers generally. This may in particular include provision as to circumstances in which information in relation to a person who has been approved (or not approved) is not to be included in the register, rules on data retention and removal and offences associated with failure to comply with requirements.
47. Regulations made under these powers will be subject to the affirmative procedure.

Committee consideration

48. The Scottish Government states in its DPM that the powers will provide the necessary degree of flexibility to ensure the register can adapt to meet the needs of the foster care sector. It states that the operational complexity and the evolving nature of data and technology means that regulation making powers are required to ensure implementation can be adapted to reflect best practice in digital security, data protection, and the needs of foster carers.
49. It states that the breadth and significance of the powers conferred mean that the affirmative procedure is the most appropriate, given that they relate to the

safeguarding of children and the professional status of foster carers.

50. The Committee agrees that the regulation making powers are broad and could make significant provision. However, it also agrees that it is foreseeable, given the evolving nature of data and technology, that such regulations may be required to be made under this provision. On balance, in those circumstances, the Committee agrees that it is appropriate for such provision to be made by regulations. The affirmative procedure will enable an appropriate level of scrutiny when such regulations are made.

51. The Committee accepts the power in principle and is content that it is subject to the affirmative procedure.

Section 11: Single member children’s hearings and pre-hearing panels

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

52. Section 11(15) of the Bill amends section 177 of the Children’s Hearings (Scotland) Act 2011 to enable Scottish Ministers to specify in regulations whether a matter that may be determined by a pre-hearing panel may be determined by a pre-hearing panel consisting of one member of the Children’s Panel.

53. Regulations made under this power would be subject to the affirmative procedure.

Committee consideration

54. The Committee asked the Scottish Government to provide examples of the kinds of matters it foresees using the regulation making power to address.

55. The Scottish Government responded that the policy position is that the decisions currently taken by a pre-hearing panel should be taken by a single member panel, however, further work is being undertaken with stakeholders to ensure that the mechanisms which exist are well understood. Those are the decisions referred to in Part 12 of the Children’s Hearings (Scotland) Act 2011 (Rules of Procedure in Children’s Hearings) Rules 2013 (“the 2013 Rules”).

56. The Scottish Government states in its response that the single panel member will be a Chairing Member who will be qualified and trained to a standard deemed appropriate by the National Convener.

57. Whilst the Committee considers that it may have afforded greater certainty to the Parliament had the aforementioned consultation been undertaken prior to the introduction of the Bill, thereby enabling the policy intention to be set out on the face of the Bill, it accepts that the scope of the power is relatively limited. The matters which may be specified are already set out in the 2013 Rules, which provides an element of foreseeability. It also considers that it is reasonable in such circumstances to ask the Parliament to reach a binary decision, and as such is

content that the affirmative procedure will apply.

- 58. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 23: Ancillary Provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if modifying primary legislation, otherwise negative

Provision

59. Section 23 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.
60. Regulations made under section 23 may modify any enactment, including the Act flowing from this Bill.
61. 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

62. The DPM states that the Scottish Government considers it necessary to include such ancillary provision to deal with anything that might emerge in the course of implementing the Bill, to ensure that any unexpected issues which require further changes can be dealt with effectively and so that the purpose of the Bill is not inadvertently obstructed.
63. The Committee agrees that it is appropriate to include an ancillary power in this Bill. The extent of the power is restricted in that it can only be used for the purposes of, in connection with, or for giving full effect to the Bill as enacted. 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 or the Government's resources.
64. The Committee also consider 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.

- 65. The Committee finds the power acceptable 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: Commencement

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

66. Section 25(2) provides that the Scottish Ministers may, by regulations, appoint days on which provisions of the Bill will come into force, other than sections 23, 24, 25 and 26 which come into force on the day after Royal Assent.
67. Regulations under section 25 may include transitional, transitory or saving provision and may make different provision for different purposes.
68. Regulations made under section 25 will be laid before the Parliament but will not be subject to any further parliamentary procedure.

Committee consideration

69. The Scottish Government explains in its [letter to the Committee, dated 4 September 2025](#), that the commencement power is required in order that advance notice can be given of substantial changes to the law.
70. It is standard to take a power at the end of a Bill to commence those sections of the Bill that have not been commenced by the Bill itself. This enables the Scottish Ministers to appoint a day of their choosing on which specific provisions are to be commenced. It is also standard that commencement regulations are laid before the Parliament but not subject to further parliamentary procedure.

71. **The Committee is content with the power in principle, and that it is not subject to any parliamentary procedure.**

