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

Delegated Powers in the Non-surgical Procedures and Functions of Medical Reviewers (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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Introduction

1. This report considers the delegated powers in the [Non-surgical Procedures and Functions of Medical Reviewers \(Scotland\) Bill](#) (“the Bill”) at Stage 1.
2. The Committee considered the Bill at its meetings on 28 Octoberⁱ, 25 Novemberⁱⁱ and 9 December 2025.
3. At its meeting on 28 October 2025, the Committee agreed to [write to the Scottish Government](#) to raise several queries regarding the delegated power in section 5 of the Bill. It [received a response](#) on 10 November 2025.
4. On 25 November, the Committee agreed that it would be beneficial to hold an evidence session with the Minister, which took place on 9 December 2025.

ⁱ Katy Clark MSP submitted apologies for this meeting

ⁱⁱ Stuart McMillan MSP submitted apologies for this meeting

Overview of the Bill

5. This Scottish Government Bill was introduced on 8 October 2025. The lead committee is the Health, Social Care and Sport Committee.
6. The Bill proposes to regulate certain non-surgical procedures which pierce or penetrate the skin. Generally speaking, these procedures are sought for cosmetic or wellbeing reasons. Procedures which are undertaken for health care treatment purposes are not covered.

Delegated Powers

7. The Bill contains seven provisions which create new delegated powers. The Scottish Government has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out all the delegated powers in the Bill and explains the reasons for taking the powers and the choice of procedure.

Review of relevant powers

Review of relevant powers

Section 1(4) – Meaning of “non-surgical procedure”

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument Parliamentary procedure: negative

Provision

8. Section 1 sets out circumstances where a procedure is not treated as a “non-surgical procedure” for the purposes of Part 1 of the Bill. One such circumstance is where the procedure is carried out for the prevention, diagnosis, or treatment of illness by a “regulated health care professional”, or under their direction. Regulated health professionals are persons who are regulated by the General Medical Council, General Dental Council, General Optical Council, General Osteopathic Council, General Chiropractic Council, General Pharmaceutical Council, Nursing and Midwifery Council, or the Health and Care Professions Council.
9. Section 1(4) gives the Scottish Ministers power, by regulations, to modify this list of health regulators (and therefore the definition of “regulated health care professional”).

Committee consideration

10. The DPM addresses this power at paragraphs 16 and 17 where it is explained that a power is required to amend the list of health care regulators to:
 - add any new and relevant regulators which are established;
 - remove any which are abolished; or
 - make amendments where the name of any listed regulator is changed.

This will ensure the list of regulators remains accurate and up to date.

11. The Committee considers that it is appropriate in principle to delegate this power to Scottish Ministers, given the need to ensure the list of regulators remains accurate and responsive to changes in the regulatory landscape.
12. This power allows for the modification of primary legislation through secondary legislation. While the Committee would usually expect such powers to be subject to the affirmative procedure, that will not always be appropriate. In this case, the power is clearly drafted and limited in scope — it may only be used to add, vary, or remove regulators from the list in section 1(3). It does not permit broader changes to the definition of “non-surgical procedure”.
13. The purpose of the power is to ensure that the exemption for regulated professionals remains up to date and reflects any changes in the regulatory

framework. Given the technical nature of the power and its limited impact, the Committee considers that the negative procedure provides a sufficient level of parliamentary scrutiny.

- 14. The Committee accepts the proposed power in principle and is content with the choice of procedure.**

Section 1(5) – Meaning of “non-surgical procedure”

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

15. Section 1(a)(iii) introduces schedule 1 of the Bill which specifies descriptions of procedures that constitute a “non-surgical procedure” for the purposes of the Bill. These include laser treatments, chemical peels and injectable procedures. Section 1(5) provides that the Scottish Ministers may by regulations amend the list of non-surgical procedures specified in schedule 1. This power is subject to the affirmative procedure.

Committee consideration

16. The DPM explains that a regulation-making power is needed to keep Schedule 1 up to date by: (i) adding new non-surgical procedures or those that change in how they are performed; (ii) amending descriptions of existing procedures and (iii) removing procedures that are no longer practised or no longer require permitted premises.
17. The Committee considers that it is appropriate in principle to delegate this power to Scottish Ministers, given the need to respond to developments in the aesthetics and cosmetic procedures sector, including the emergence of new techniques or changes in risk profile. That said, the inclusion or removal of a procedure from Schedule 1 could have significant legal consequences — including criminal liability. Given the potential significance of this power, which permits the modification of primary legislation, the Committee also considers that the affirmative procedure provides an appropriate level of parliamentary scrutiny.

- 18. The Committee accepts the proposed power in principle and is content with the choice of procedure.**

Section 2(6) – Offence of providing a non-surgical procedure to person under 18

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative

Provision

19. Section 2 creates a new offence of providing a non-surgical procedure to a person (“a client”) under the age of 18 years. It is a defence for anyone charged with this offence to show that they had taken reasonable steps to establish the client’s age and reasonably believed the client to be aged 18 or over. Section 2(4) lists acceptable forms of ID such as a passport or driving licence. Section 2(6) of the Bill allows the Scottish Ministers to amend the list of documents that may be used to prove that a person is aged 18 or over.

Committee consideration

20. The Committee considers that it is appropriate in principle to delegate this power to Ministers, as it enables the list of acceptable documents to be updated in response to changes in available forms of identification or developments in digital verification.
21. Although this power allows for the modification of primary legislation, its scope is narrow and technical. The power is limited to amending the list of documents that may be accepted as proof of age. Given the limited and administrative nature of the power, the Committee considers that the negative procedure provides a sufficient level of parliamentary scrutiny. This approach is consistent with other legislation where similar powers are taken to update lists or technical criteria.

- 22. The Committee accepts the proposed power in principle and is content with the choice of procedure.**

Section 4(4) – Meaning of “permitted premises”

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

23. Section 3 provides that it is an offence to provide a non-surgical procedure outwith permitted premises. Section 4 defines “permitted premises” for the purposes of the Bill. Some of the permitted premises listed involve the provision or management of services by specified healthcare professionals. Section 4(4) provides that the Scottish Ministers may, by regulations, modify the meaning of “permitted premises”.

Committee consideration

24. The DPM explains that the non-surgical procedures sector is evolving quickly; new procedures and new ways of performing existing procedures are constantly developing. This may affect, among other things, the way procedures are administered, the type of settings they take place in, the training and skills required to administer them, and the level of healthcare intervention that is required to perform them or respond to potential complications. To future-proof the Bill, Scottish Ministers need power to amend the definition of “permitted premises” so they can add, remove, or change the types of settings where

procedures may be offered.

25. The Committee considers that it is appropriate in principle to delegate this power to Ministers, given the need to respond to developments in practice settings and regulation in the aesthetics sector.
26. This power allows for the modification of primary legislation through secondary legislation. The Committee would usually expect such powers to be subject to the affirmative procedure, and that expectation is met here. Given the centrality of the definition to the operation of the offence, the Committee considers that the affirmative procedure provides an appropriate level of parliamentary scrutiny.

27. The Committee accepts the proposed power in principle and is content with the choice of procedure.

Section 5 – Power to make further provision about non-surgical procedures

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

28. Section 5 allows the Scottish Ministers to impose further restrictions and requirements in relation to the provision of non-surgical procedures. Such regulations may include:
 - imposing different restrictions and requirements by reference to categories of non-surgical procedure as specified in the regulations;
 - specifying persons or descriptions of persons who may provide or supervise the provision of a non-surgical procedure;
 - specifying requirements about the training or qualifications of persons who may provide or supervise the provision of a non-surgical procedure;
 - creating an offence in connection with a contravention of a restriction, or failure to comply with a requirement, imposed by virtue of the regulations; or
 - conferring functions relating to the enforcement of provisions made under the regulations.
29. Section 5 also allows any regulations made under the power to modify any enactment (including the Bill).

Committee consideration

30. The Committee [wrote to the Scottish Government](#) to raise several queries regarding the delegated power in section 5 of the Bill. It received a [response](#) on 10 November 2025.

31. The Committee also took oral evidence from the Minister for Public Health and Women's Health on 9 December 2025.
32. The Committee's questions focused on:
1. The rationale for introducing the Bill before UKIMA position is resolved; and
 2. The breadth of the enabling power in section 5(1).
33. The Official Report of the meeting is available from [this link](#). The correspondence above also provides additional background.

34. The Committee accepts the Minister's explanation for the timing of the Bill, and acknowledges that, as a result, significant policy decisions will be implemented through subordinate legislation.

35. The Committee highlights to the lead committee the breadth of the power in section 5(1), which is unusually open-ended, lacks statutory limitations or guiding principles, and permits the amendment of primary legislation by secondary legislation.

36. The Committee recommends that the lead committee considers whether the power could be limited, for instance, by adding statutory consultation requirements or guiding principles to ensure its use is evidence-based and compatible with public health.

37. The Committee notes the Minister's offer to update the Committee regarding the UKIMA position.

Section 18 – Ancillary provision

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative if amending primary legislation, otherwise negative

Provision

38. Section 18 provides the Scottish Ministers with the power to make, by regulations, such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate in connection with or for giving full effect to the Bill, any provision of the Bill or any provision made under it.

Committee consideration

39. This power is drafted in similar terms to the ancillary powers which are taken in

most Bills. Its extent is restricted, as it can only be used to give full effect to the Bill as enacted or any provision made under it. The power allows the Scottish Ministers to address any ancillary issues that may arise. Without such a power, any changes would require primary legislation, which would be an inefficient use of the Parliament's time and the Scottish Government's resources.

40. The affirmative procedure applies where the power is exercised to make regulations that amend primary legislation, otherwise the negative procedure applies.

41. The Committee accepts the proposed power in principle and is content that it is subject to the negative procedure unless amending primary legislation when it will be subject to the affirmative procedure.

Section 20(2) – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: laid, no procedure

Provision

42. Section 20 provides for the Scottish Ministers, by regulations, to appoint a day when the provisions of the Bill come into force. Certain sections are excepted from this power, namely sections 15, 18, 19, 20 itself and 21, as they come into force on the day after Royal Assent.

Committee consideration

43. This is a standard commencement power. The Committee is therefore content.

44. The Committee accepts the proposed power in principle and is content that it will not be subject to any parliamentary procedure.

