



The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

Mark Griffin MSP  
*By email*

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Dear Mark

### Scottish Employment Injuries Advisory Council Bill at Stage 1

The Delegated Powers and Law Reform Committee considered the delegated powers in the above Bill at its meeting on 7 November and seeks further explanation on the following provisions.

#### Section 2(5): Council functions

As you are aware, Section 2(1)(a) to (e) of the Bill sets out the core functions of the Council. These include carrying out research in relation to employment injuries and reporting on the social security assistance provided to persons injured through their employment. Section 2(5) enables Scottish Ministers to confer additional functions on the Scottish Employment Injuries Advisory Council (the “Council”) by regulations.

The [Delegated Powers Memorandum](#) (“the DPM”) states that this power is being taken because “the Member wishes for there to be sufficient flexibility for Scottish Ministers to confer additional functions on the Council.”

Where a Bill delegates a power, that power should be limited and specific, and its exercise subject to parliamentary scrutiny. The Committee considers that a desire for flexibility without further explanation as to why the power is being taken does not meet those requirements. The Committee therefore seeks a compelling justification for the power: why it is needed, how it is intended to be exercised and how it is to be constrained.

Furthermore, as currently drafted, this power would allow Scottish Ministers to confer *any* additional functions on the Council. The power is not limited by reference to a particular type of function, or by subject matter. The Committee considers that, as drafted, the scope of this power may be wider than is necessary.

The Committee therefore asks the Member:

- 1. for an explanation as to why flexibility is required, and in what circumstances it is envisaged that the Council's functions may require to change; and**
- 2. how this power might be more focused, given the remit of the Council and the policy areas within which it will be operating.**

### **Schedule 1, Paragraph 4(2): Access to information**

Turning to Schedule 1, paragraph 4(1) provides the Council with the right to access "relevant information" that it may reasonably require for the purpose of performing its functions. Paragraph 4(2) provides that "relevant information" is information in the possession or under the control of a list of bodies which is set out in sub-sub paragraphs (a) to (h). Paragraph 4(2)(i) gives Scottish Ministers power to specify in regulations additional persons to those listed in sub-sub-paragraphs (a) to (h).

The DPM states that this power is being conferred "to ensure that the list is future proofed by allowing Ministers flexibility to add to the list of bodies the Council is able to access 'relevant information' from."

The bodies specified on the face of the Bill are all subject to the Freedom of Information (Scotland) Act 2002, which gives a person a right to request information subject to certain exemptions and exclusions. This provision gives Scottish Ministers the power to specify further persons from whom the Council will have a right to obtain information. However, the Committee notes that, as currently drafted, the provision refers only to "persons" and there is no limitation regarding the categories of persons who could be made subject to the access to information requirements.

Finally, the Committee also notes that the DPM explains that this power is being taken to "future proof" the Bill. However, the Committee considers that the power may not be suitably limited in its potential application.

The Committee therefore asks the Member:

- 1. what persons or categories of persons this power might be required to capture in future; and**
- 2. to consider ways in which the scope of this power might be appropriately limited, perhaps by reference to categories or descriptions of persons who might be made subject to the access to information requirements in future.**

I would be grateful if you could please email your response to [dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot) by **Monday, 20 November 2023**. The Committee will then consider your response at a future meeting and report on the delegated powers in the Bill to the lead committee.

Yours sincerely

Stuart McMillan MSP  
Convener of the Delegated Powers and Law Reform Committee