

# Contract (Third Party Rights) (Scotland) Bill

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## Delegated Powers Memorandum

### Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Contract (Third Party Rights) (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.
2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

### Outline of Bill provisions

3. The Bill reforms the common law known as *jus quaesitum tertio* which enables parties to a contract to create an enforceable right in favour of a third party. The Bill replaces the common law rule with a statutory version.
4. In particular, the Bill deals with how third-party rights can be created and enforced, when contracting parties lose the freedom to change a third party's right, and when third-party rights prescribe. A full outline of the Bill's provisions can be found in the Explanatory Notes for the Bill.

This document relates to the Contract (Third Party Rights) (Scotland) Bill (SP Bill 5) as introduced in the Scottish Parliament on 31 January 2017

## Delegated Powers

### Section 14 – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: laid, no procedure

### Provision

5. Section 14(2) confers a regulation-making power on the Scottish Ministers to bring into force the majority of the provisions of the Act which will result from the Bill (if it is passed).

6. Sections 13 (application), 15 (short title) and 14 itself will come into force automatically on the day after Royal Assent

### Reason for taking power

7. The coming into force of the Bill's substantive provisions will have implications for agreements entered into from that date; specifically, those agreements will be capable of giving rise to third-party rights under section 1. Accordingly, it is important for there to be certainty about that date some time ahead of its arriving. Having the Scottish Ministers appoint the date by regulations ensures there can be that certainty.

8. It is standard for the Scottish Ministers to have control over the date of commencement.

### Choice of procedure

9. As is now usual for commencement regulations, the default laying requirement applies (as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010). This is considered appropriate

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because the policy behind the provisions will have already been considered by the Parliament during the passage of the Bill.

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