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

Delegated Powers in the Digital Assets (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.

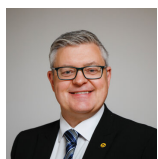


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Scottish Conservative
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Scottish Labour

Overview of the Bill

1. This Bill was introduced by the Scottish Government on 30 September 2025. The lead committee is the Economy and Fair Work Committee.
2. The Policy Memorandum explains that the policy objective of the Bill is to clarify Scots private law by confirming the status of digital assets as objects of property which can be owned. Digital assets, as defined in the Bill, are to be treated as incorporeal moveable property. The Bill implements some of the [recommendations of the Expert Reference Group](#) set up by the former Lord Advocate, The Rt Hon James Wolffe KC, to provide legal clarification of the treatment of digital assets within Scots private law.
3. The Delegated Powers and Law Reform Committee considered the Bill at its meeting on 28 October 2025.ⁱ

ⁱ Katy Clark MSP submitted apologies for this meeting.

Delegated Powers

4. The Bill confers two powers to make subordinate legislation on the Scottish Ministers.
5. The Scottish Government has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the delegated powers in the Bill and the procedure chosen.

Review of relevant powers

Section 6: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative procedure if adding to, replacing or omitting any part of the text of an Act, otherwise negative procedure

Provision

6. Section 6 makes standard ancillary provision, giving the Scottish Ministers the power to 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 the Act flowing from the Bill.
7. By virtue of subsection (2), regulations made under section 6 may modify any enactment. Section 7(2) determines that regulations will be subject to the affirmative procedure if they modify an Act. Otherwise, the negative procedure will apply.

Committee consideration

8. The power to make stand-alone ancillary provision by regulations is common in modern primary legislation. The power is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate for the purposes of, in connection with, or for giving full effect to the Bill or any provision made under it.
9. 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 the Committee considers would not be an effective use of either the Parliament's time or the Scottish Government's resources.

10. **The Committee is content with the power to make ancillary provision in regulations under section 6 of the Bill. The Committee is also content that the affirmative procedure applies to any provision which modifies primary legislation and that otherwise the negative procedure applies.**

Section 8(2): Commencement

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

11. Section 8(2) provides that the Scottish Ministers may by regulations commence the sections of the Bill which are not in force on the day after Royal Assent. Section 8(1) provides that sections 6, 7, 8 and 9 come into force on the day after Royal Assent.

Committee consideration

12. The DPM explains that the Scottish Government considers that it is necessary to provide certainty about the coming into force of the key provisions of the Bill as this may affect the impact on people which might require them to need time to order their affairs before the law changes. The only way to do this is to provide for commencement in regulations. This will allow advance notice of a precise date to be communicated.
13. 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.
14. It is also standard that commencement regulations are laid before the Parliament but not subject to further parliamentary procedure.

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

