



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 23 April 2025  
SP Paper 771  
26th Report, 2025 (Session 6)

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

## **Delegated powers in the Dog Theft (Scotland) Bill at Stage 1**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

---

All documents are available on the Scottish Parliament website at:  
<http://www.parliament.scot/abouttheparliament/91279.aspx>

For information on the Scottish Parliament contact Public Information on:  
Telephone: 0131 348 5000  
Textphone: 0800 092 7100  
Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

# Contents

Introduction	1
Delegated Powers	2
Review of relevant powers	3

# 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.



[dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot)



0131 348 5212

# Committee Membership



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Roz McCall**  
Scottish Conservative  
and Unionist Party



**Katy Clark**  
Scottish Labour

# Introduction

1. At its meetings on 25 March and 22 April 2025, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers in the Dog Theft (Scotland) Bill ("the Bill") at Stage 1.
2. The Committee submits this report to the lead committee for the Bill under Rule 9.6.2 of Standing Orders.
3. This is a Member's Bill which was introduced by Maurice Golden MSP on 17 February 2025. The lead committee is the Rural Affairs and Island Committee.
4. The Policy Memorandum accompanying the Bill explains that the Member believes greater recognition of the emotional impact on the owner of the theft of a dog is needed and that this should be an important consideration in sentencing. The Bill creates a statutory offence of dog theft, which currently would be considered under the common law of theft. The Bill allows for victim statements to be made. The Bill provides that the offence of dog theft is aggravated if the dog is an assistance dog as defined in the Bill.

# Delegated Powers

5. The Bill confers three powers to make subordinate legislation on the Scottish Ministers.
6. The Member has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the delegated powers in the Bill and the procedure chosen.
7. At its meeting on Tuesday, 25 March, the Committee agreed to write to the Member to raise queries in relation to one delegated power in the Bill. The Committee was content with the other two powers in the Bill.
8. The Committee [wrote](#) to the Member on 26 March and received a [response](#) on 1 April.

# Review of relevant powers

## Section 2(2)(b): Theft of assistance dogs

### Power conferred on: The Scottish Ministers

### Power exercisable by: Scottish statutory instrument

### Parliamentary procedure: Negative procedure

### Provision

9. Section 2 of the Bill provides that an offence of dog theft is aggravated if the dog is an assistance dog. An aggravated offence is to be taken into account by the court when determining the appropriate sentence. The Bill uses the definition of assistance dog which is set out in section 173(1) of the Equality Act 2010:
- a dog which has been trained to guide a blind person;
  - a dog which has been trained to assist a deaf person;
  - a dog which has been trained by a prescribed charity to assist a disabled person who has a disability that consists of epilepsy or otherwise affects the person's mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects; and
  - a dog of a prescribed category which has been trained to assist a disabled person who has a disability of a prescribed kind.
10. Section 2(2)(b) enables the Scottish Ministers to prescribe other categories of dog to be included in the definition of assistance dog for the purposes of the Bill.

### Committee consideration

11. The Committee asked the Member why section 2(2)(b) refers to categories of dog without any further narrowing of the power to reflect the intention that the power is only to be used to add categories of dog trained to assist people with certain disabilities and particular needs, as set out in the Delegated Powers Memorandum.
12. In his response, the Member explains that:
1. As outlined in the DPM, assistance dogs are normally trained by charities. It is important to note that assistance dogs can also be trained by their owners or independent trainers. The Member does not consider it appropriate to restrict this regulation making power to only assistance dogs that are trained by charities.
  2. Assistance dogs not only support disabled individuals but also aid people with other medical conditions in a variety of ways. Enabling the Scottish Ministers to prescribe a dog of a category rather than narrowing the scope of the power will ensure that provision can also be made for specific cases in the future.
13. During its consideration of the Bill on 25 March, the Committee considered that

there is a small risk that the power could be used in an unintended way by prescribing a category of dog that might not fall within what is either commonly understood to be an assistance dog or a category of dog which the Member had not intended as explained in the DPM.

14. The Member has explained in his response why he considers the power to be properly drafted. In particular, he departs slightly from what is said in the DPM and highlights the need for the power to have flexibility to allow for a category of dog to be prescribed that is not trained by a charity or is a category which assists those with medical conditions rather than a particular disabled group.
15. The Committee considers this further explanation helpful in that it puts on the record that the Member intends the power to be used in a slightly wider context than is set out in the DPM. However, the Committee also considers it necessary to highlight this further explanation of the power to ensure that it is considered when the lead committee takes evidence from the Minister for Victims and Community Safety and from the Member at Stage 1.
16. It is the Committee's view that the power is important because the effect of a new category of dog being prescribed is to expand the categories of dog the theft of which becomes aggravated when brought before the courts. For that reason, and because the explanation given by the Member is that the power is wider than the DPM suggests, the Committee considers the power should be subject to the affirmative procedure. This will allow the Parliament to scrutinise the use of the power more fully to ensure that its use in the future reflects the scrutiny that the Committee has carried out at this stage.

**17. The Committee:**

- notes the Member's explanation;
- accepts the power in principle; and
- recommends to the lead committee that in light of the Member's explanation, consideration should be given to the affirmative procedure applying to the power in section 2(2)(b) instead of the negative procedure.

**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**

18. 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.

19. By virtue of subsection (2), regulations made under section 6 may modify any enactment, including the Act flowing from the Bill.
20. Section 6(4) provides that the affirmative procedure will apply where regulations made under section 6 amend primary legislation. Otherwise, the negative procedure will apply (subsection (3)).

### Committee consideration

21. The power to make standalone 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.
22. 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.

23. **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 7(2) to (3): Commencement

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Laid, no procedure**

**Provision**

**Provision**

24. Section 7(2) to (3) provide that the Scottish Ministers may by regulations commence the sections of the Bill which are not in force on the day of Royal Assent. Section 7(1) provides that section 6, 7 and 8 come into force on the day of Royal Assent. Regulations under section 7 may include transitional, transitory, or saving provisions, and may also make different provision for different purposes.

### Committee consideration

25. The DPM explains that the Member considers it appropriate to allow the Scottish Ministers to bring the remaining provisions in force by regulations as this will ensure that measures are in place to implement the provisions of the Bill, and that stakeholders, such as Police Scotland and the Crown Office and Procurator Fiscal Service have sufficient time to prepare for the operation of the new offence and the data reporting obligations.

26. 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. This allows the Scottish Ministers to appoint the day on which those sections are to be commenced. The Committee is therefore content with the power in principle.
27. It is also standard that commencement regulations are laid before the Parliament but not subject to further parliamentary procedure.

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

