



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 14 May 2025  
SP Paper 785  
32nd Report, 2025 (Session 6)

## **Delegated Powers and Law Reform Committee**

# **Supplementary Legislative Consent Memorandum: delegated powers exercisable within devolved competence in the Employment Rights Bill**



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

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# Delegated Powers and Law Reform Committee

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;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.

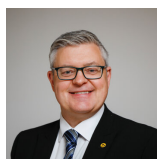


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# Committee Membership



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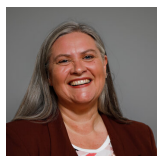
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**Bill Kidd**  
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**Jeremy Balfour**  
Independent



**Katy Clark**  
Scottish Labour



**Roz McCall**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 13 May 2025<sup>i</sup>, the Committee considered the [Supplementary Legislative Consent Memorandum](#) (“supplementary LCM” / “SLCM”) lodged by the Scottish Government in respect of the [Employment Rights Bill](#)<sup>ii</sup> (“the Bill”).
2. The Committee is considering the supplementary LCM by virtue of Rule 9B.3.6 of the Scottish Parliament’s Standing Orders. Paragraph 6 of Rule 9B.3 provides that where the Bill that is subject to an LCM contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions.
3. The lead committee in respect of the SLCM is expected to be the Health, Social Care and Sport Committee.
4. The Committee previously considered a [Legislative Consent Memorandum](#) on the delegated powers exercisable within devolved competence at its meeting on 25 February 2025. This LCM considered delegated powers in earlier versions of the Bill (Bill as introduced, [10 October 2024](#) and Bill as amended, [27 January 2025](#)). These delegated powers were in respect of avoiding, where possible, the creation of a two-tier workforce when outsourcing services from a public body to a private provider. A [Committee Report](#) was subsequently produced on 4 March 2025 in which the Committee indicated it was content with those powers conferred on Scottish Ministers.

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<sup>i</sup> Stuart McMillan MSP substituted apologies for this meeting.

<sup>ii</sup> This is the latest version the Bill available online.

# Overview of the Bill

5. The Bill was introduced by the UK Government in the House of Commons on 10 October 2024. The Bill has now had its first and second readings in the Lords and is at the report stage with the report still to be published. As the Bill is still progressing through the UK Parliament, it is subject to amendment. The Committee may therefore need to consider a further supplementary LCM in due course.
6. The stated purpose of the Bill is to amend the law relating to employment rights. This includes making provision for handling redundancies, for the treatment of workers under certain public contracts, imposing equality duties on employers in relation to equality, and about trade unions, industrial action, employers' associations and the functions of the Certification Officer.
7. The amended Bill consists of 157 clauses in 6 parts and 12 schedules. Parts 1, 2, 4, 5, 6 and chapters 2 and 3 of part 3 extend to Scotland. The Bill makes provision on a range of matters relating to employment law, industrial relations and employer equality duties. Employment and industrial relations and equal opportunities are reserved to the UK Parliament respectively by Heads H1 and L2 of Schedule 5 to the Scotland Act 1998 ("the 1998 Act").
8. Matters reserved under Head H1 dealt with in the Bill include zero hours contracts, flexible working, statutory sick pay, family leave, unfair dismissal, fire and rehire, trade unions, and industrial action. Matters reserved under L2 include protecting staff from sexual harassment and gender pay gap action plans. In the main therefore the Bill is dealing with reserved matters.
9. The Bill now extends chapter 2 - clauses 36 to 52 - to Scotland and provides for the setting up, remit and operation of the Social Care Negotiating Body for Scotland ("the Negotiating Body"). This extends the original provisions to set up the Adult Social Care Negotiating Body for England to provide for similar bodies in Scotland and Wales. The provision of social care is a devolved matter in Scotland however, as the Negotiating Body will negotiate on pay and conditions of employment then this is reserved to the UK Parliament to legislate for. Clauses 36-38, 40-43 and 45-46 confer delegated powers on Scottish Ministers, altering their executive competence, and therefore meets the test of a relevant Bill.
10. The Scottish Government supports the Bill as further amended and in its SLCM has sought the consent of the Scottish Parliament to the provisions of chapter 2 of the Bill.
11. It states: "The Scottish Government welcomes the intention of the new UK Government to address the lack of a negotiated and bargaining financial remuneration mechanism in social care. This is consistent with the Scottish Government's approach to drive fair work standards. The Scottish Government recommends consent to all of the relevant provisions."

# Delegated Powers

12. The UK Government has published a second [Delegated Powers Memorandum](#) (“DPM”) to accompany the Bill as amended. It explains in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government’s views are set out in the SLCM.

# Review of relevant powers

## General - Clause 36 - Agreement of Secretary of State required for Scottish Ministers to exercise delegated powers

### *Provision*

13. Clause 36 confers a power on Scottish Ministers to establish the Negotiating Body for Scotland. This clause also provides that the exercise of this power and the other powers conferred on Scottish Ministers by chapter 2 – clauses 37 to 38, 40 to 43 and 45 to 46 discussed further below - require the agreement of the Secretary of State.

### *Committee consideration*

14. The exercise of the powers conferred on Scottish Ministers by chapter 2 of the Bill may not be exercised without the agreement of the Secretary of State.
15. The Committee's notes that no further detail is provided in either the second DPM or the SLCM as to what form this agreement will take in establishing, and in the operation of, the Negotiating Body.
16. Seeking agreement of the Secretary of State, before Scottish Ministers exercise the delegated powers conferred upon them by the UK Government, is a novel development for the Committee to consider. However, given that employment and industrial relations are reserved matters and that the UK Government is delegating the power to set up the Negotiating Body to Scottish Ministers, the Committee considers that it could be reasonably seen as appropriate for the UK Government to have oversight of the process in Scotland in order to maintain parity and consistency of conditions for social care workers across the jurisdictions, as this is a reserved matter. The Committee also considers that there will be ample opportunity for Parliamentary scrutiny of these delegated powers through the affirmative procedure when the regulations are laid.
17. In the absence of further details of the agreement process, the Committee draws the attention of the lead committee to this condition on exercising the delegated powers conferred on Scottish Ministers, as the lead committee may wish to consider further how the agreement process will operate in practice in the developing of the Negotiating Body and its policies.

18. **The Committee draws the attention of the lead committee to the requirement for the agreement of the Secretary of State in the exercise of the delegated powers conferred on Scottish Ministers. It suggests to the lead committee it may wish to consider further how the agreement process will operate in practice in the developing of the Negotiating Body and its policies.**

## **Clause 36: Power to establish the Adult Social Care Negotiating Body in England and the Social Care Negotiating Bodies in Scotland and Wales**

## **Power conferred on: Secretary of State, Scottish Ministers and Welsh Ministers**

### **Power exercised by: Regulations**

#### **Parliamentary Procedure: Affirmative**

##### *Provision*

19. This clause confers a power on Scottish Ministers to establish the Negotiating Body in Scotland. The Secretary of State, Scottish Ministers and Welsh Ministers are referred to in this Chapter as “appropriate authorities.”

##### Committee consideration

20. The UK Government has stated in its DPM that the reasons for taking this power is to enable the appropriate authorities to engage with interested parties to refine the details of how the Negotiating Bodies will be constituted and operate before they are set up. As these will be the first bodies of their kind in a complex and essential sector, engagement with a wide range of stakeholders is needed before establishment to ensure that the detailed policy is able to work effectively for different groups of people in different areas. Further, the other powers in chapter 2 are required so appropriate authorities can make changes as lessons are learned and as the sector changes.
21. The UK Government also considers it appropriate that the Scottish Parliament and the other legislatures can debate and formally approve the regulations through the affirmative procedure to ensure they have sufficient oversight and scrutiny of the creation of a new public body and the accompanying provisions relating to appointments and decision-making processes. These aspects are fundamental to the workings and processes, and it is appropriate that there is effective scrutiny.
22. The Scottish Government has stated in its SLCM that its reason for recommending legislative consent is that it has a clear and long-standing commitment to fair work and continues to provide funding to support the real living wage for social care workers providing direct care through commissioned services. However, the current mechanism is based on contractual arrangements which is limited by the devolution settlement as employment matters are reserved. Therefore, having a clear power conferred on Scottish Ministers to address this aspect of fair work through a Negotiating Body for Scotland would represent a significant development as regards the employment terms and conditions for this workforce.
23. The Committee considers that this power to establish the Negotiating Body in Scotland requires to be created by the UK Government as it would not be within the devolved competence of the Scottish Parliament to do so as it relates to the reserved matter of employment and industrial relations. The power is limited in scope as the Negotiating Body can only negotiate on and reach agreement on its remit, being the terms and conditions of employment for social care workers. Its establishment will follow upon engagement with a wide range of stakeholders and the Negotiating Body must include trade union and employer representatives.
24. For the reasons outlined above, it is the Committee’s view that it is appropriate that the power is being proposed by the UK Government as it relates to reserved matters and that it is being delegated to Scottish Ministers to exercise in respect of social care workers in Scotland as Scottish Ministers are best placed to understand

the context in which social care operates in Scotland. This power and those delegated under clauses 37 and 38 below are also clearly drafted, will operate in a balanced and a proportionate manner, and go no further than necessary.

25. Further, as the regulations will contain the details of the obligations to be placed on the Negotiating Body and will impact a substantial number of workers, it is the Committee's view that it is appropriate that they receive the Parliamentary scrutiny provided by the affirmative procedure.

- 26. The Committee is content with the power conferred on Scottish Ministers in principle and that its exercise would be subject to the affirmative procedure.**

### **Clause 37: Power to make provision for the operation of the Adult Social Care Negotiating Body in England and the Social Care Negotiating Bodies in Scotland and Wales**

**Power conferred on: Secretary of State, Scottish Ministers and Welsh Ministers**

**Power exercised by: Regulations**

**Parliamentary Procedure: Affirmative**

#### *Provision*

27. This clause confers a power on Scottish Ministers to make provision for the operation of the Negotiating Body established under clause 36. Provision that may be made includes such matters as membership, decision making, record keeping, payment of fees and expenses, staff and facilities, and reporting requirements. Membership must include trade union and employer representatives and may also include persons of other descriptions to be specified. This clause also includes a power to make amendments to any enactment but this is limited to amendments that are in consequence of establishing the Negotiating Body.

#### *Committee consideration*

28. The UK Government has stated in its DPM that the reason for taking this power is to enable the appropriate authorities to ensure that their respective Negotiating Body is designed for its specific context and can be adjusted as circumstances require. Once these Bodies are established and have started carrying out their functions, this power will provide appropriate flexibility to update the regulations based on the learning which will arise from practical implementation. It is considered likely that certain operational aspects may need to change as the Body's priorities and remit shift.
29. The UK Government also considers it appropriate that the Scottish Parliament and the other legislatures can debate and formally approve the regulations through the affirmative procedure, to ensure that they have sufficient oversight and scrutiny. The constitution and decision-making process are fundamental to the purpose and functioning of the Negotiating Body, so it is appropriate for legislators to have this oversight.

30. The Scottish Government has stated in its SLCM its reason for recommending legislative consent and this is outlined at paragraph 22 above.
31. The Committee considers that this power to make provision for the operation of the Negotiating Body established under clause 36 is a corollary to the power in clause 36 establishing the Body. Therefore, its rationale outlined in paragraphs 23 to 25 above as to why the Committee is content with the power and the parliamentary procedure apply equally to this power.

**32. The Committee is content with the power conferred on Scottish Ministers in principle and that its exercise would be subject to the affirmative procedure.**

### **Clause 38(1): Power to set the Negotiating Body's remit**

**Power conferred on: Secretary of State, Scottish Ministers and Welsh Ministers**

**Power exercised by: Regulations**

**Parliamentary Procedure: Affirmative**

#### *Provision*

33. This clause confers a power on Scottish Ministers to set the remit of the Negotiating Body including matters relating to the remuneration, the terms and conditions of employment, and any other specified matters, of relevant social care workers or relevant social care workers of a specified description. This clause allows appropriate authorities to add specified matters relating to employment to the remit, and references to social care workers "of a specified description" allows appropriate authorities to narrow a Body's remit to categories of social care workers, where appropriate.

#### Committee consideration

34. The UK Government has stated in its DPM that the reason for taking this power is to set the scope of a Negotiating Body's remit and in turn the matters and groups of workers which may be subject to negotiation. Taking this power ensures that a broad range of terms and conditions might be included in scope of the negotiations, which is suitable given the diversity of the sector particularly across the different jurisdictions.
35. The UK Government also considers that significant involvement from sector stakeholders is required to understand the variety of roles carried out by staff in the social care sector and further consultation is anticipated to scope out which roles could fall within the remit of each Body. This power will allow appropriate authorities to respond quickly to changing circumstances in a highly complex sector. It will also help to ensure that the agreements reached are compatible with broader policy goals.
36. The UK Government also considers it appropriate that the Scottish Parliament and the other legislatures can debate and formally approve the regulations through the affirmative procedure. This ensures appropriate scrutiny concerning the remit of any

new public bodies, which is necessary given the impact it will have on the sector. As such, legislatures should have the opportunity to debate which aspects of the sector are included in the remit.

37. The Scottish Government has stated in its SLCM its reason for recommending legislative consent and this is outlined at paragraph 22 above.
38. The Committee considers that this power to set the remit of the Negotiating Body is a corollary to the powers in clauses 36 and 37 establishing the Body and its operations. Therefore, its rationale outlined in paragraphs 23 to 25 above as to why the Committee is content with the power and the parliamentary procedure apply equally to this power.

**39. The Committee is content with the power conferred on Scottish Ministers in principle and that its exercise would be subject to the affirmative procedure.**

#### **Clause 40: Power to make regulations regarding the Negotiating Body's negotiations**

**Power conferred on: Secretary of State, Scottish Ministers and Welsh Ministers**

**Power exercised by: Regulations**

**Parliamentary Procedure: Affirmative**

##### *Provision*

40. This clause confers a power on Scottish Ministers to enable appropriate authorities to make regulations regarding the consideration by a Negotiating Body of matters within its remit. The regulations can make provision about the matters that may or must be considered by a Body, including requiring a Body to consider matters referred to it by the appropriate authority. Appropriate authorities may also regulate to prescribe conditions that any agreement must meet, including in relation to funding, among others. Regulations may also require Negotiating Body members to provide the Negotiating Body with information for the purpose of considering a matter.

##### Committee consideration

41. The UK Government has stated in its DPM that the reason for taking this power is to allow for sufficient flexibility on how a Negotiating Body should consider matters within its remit and factors to which they may or must have regard, as well as allowing appropriate authorities to ensure that agreements respond to specific concerns or broader policy objectives as they evolve. As such, it is appropriate that these matters are contained in secondary legislation, given that they might need to be amended more frequently. The power to require information-sharing will also be crucial for enabling the smooth functioning of the Body's negotiation process.
42. The UK Government also considers that since sectoral stakeholders will form part of the Body it is essential that the regulations are duly informed by what these parties consider will be a practical and effective negotiation process. The UK

Government states that it will consult with sectoral stakeholders in England regarding the design of these regulations to allow for a greater understanding of the consideration that could be carried out by the Adult Social Care Negotiating Body for England in relation to matters within its remit. The Committee envisages that, for reasons of efficacy and practicability, that Scottish Ministers would have to consult likewise with sectoral stakeholders in Scotland.

43. The UK Government also considers it appropriate that the Scottish Parliament and the other legislatures can formally approve the regulations through the affirmative procedure, to have appropriate oversight of how any new Negotiating Body will consider matters. This enhanced scrutiny is also appropriate as this clause allows regulations to impose duties on the members of a Negotiating Body in relation to information-sharing.
44. The Scottish Government has stated in its SLCM its reason for recommending legislative consent and this is outlined at paragraph 22 above.
45. The Committee considers that this power, on the face of the Bill, appears wide ranging. However, it is clear that sectoral stakeholders will form part of the Negotiating Body and that the regulations will be duly informed by what these parties consider will be a practical and effective negotiation process; and will be essential to the efficacy of the operation of the Body. Further, the affirmative procedure is appropriate to ensure parliamentary oversight and approval of regulations regarding the consideration by a Negotiating Body of matters within its remit.

**46. The Committee is content with the power conferred on Scottish Ministers in principle and that its exercise would be subject to the affirmative procedure.**

**Clauses 41(1) and (2): Power to make provision for the appropriate authority to refer agreements back to the Body for reconsideration**

**Power conferred on: Secretary of State, Scottish Ministers and Welsh Ministers**

**Power exercised by: Regulations**

**Parliamentary Procedure: Affirmative**

*Provision*

47. This clause confers a power on Scottish Ministers to enable appropriate authorities to establish a process whereby an agreement submitted by a Negotiating Body may be referred back to the Negotiating Body for reconsideration. The clause also includes a power to make provision about what happens when an agreement is referred back to the Body. This could require the Body to reconsider specific aspects of the agreement, including factors it must have regard to when doing so and conditions that any revised agreement needs to meet. The power also allows the appropriate authority to make provision for information-sharing obligations that members of a Negotiating Body may be subject to for the purposes of enabling the Body to reconsider the agreement.

*Committee consideration*

48. The UK Government has stated in its DPM that the reason for taking this power is that it considers it necessary as it enables regulations to set out the circumstances in which the appropriate authorities might send an agreement back for reconsideration and allows the appropriate authorities to design a process through which the Body can reconsider an agreement that has been submitted for ratification. Like the power taken above at clause 40, since sectoral stakeholders will form part of the Body itself it is essential that the regulations are duly informed by what these parties consider to be a practical and effective negotiation process.
49. The UK Government also considers it appropriate that the Scottish Parliament and the other legislatures can formally approve the regulations through the affirmative procedure, to have scrutiny of the process by which the appropriate authorities can refer agreements back to the Body for further reconsideration. This enhanced scrutiny is also appropriate as this clause allows regulations to impose duties on the members of the Negotiating Body in relation to information-sharing.
50. The Scottish Government has stated in its SLCM its reason for recommending legislative consent and this is outlined at paragraph 22 above.
51. The Committee considers that this power, on the face of the Bill, appears wide ranging. However, it is clear that sectoral stakeholders will form part of the Negotiating Body and that regulations will be duly informed by what these parties consider the circumstances to be in which the appropriate authorities might send an agreement back for reconsideration; and will be essential to the efficacy of the operation of the Body. Further, the affirmative procedure is appropriate to ensure parliamentary oversight and approval of the process whereby an agreement may be referred back to the Negotiating Body for reconsideration.

**52. The Committee is content with the power conferred on Scottish Ministers in principle and that its exercise would be subject to the affirmative procedure.**

**Clause 42(1): Power to make provision about cases where the Negotiating Body is unable to reach agreement, including dispute resolution**

**Power conferred on: Secretary of State, Scottish Ministers and Welsh Ministers**

**Power exercised by: Regulations**

**Parliamentary Procedure: Affirmative**

*Provision*

53. This clause confers a power on Scottish Ministers to enable appropriate authorities to make regulations setting out provision for situations where a Negotiating Body has failed to reach agreement. This may include methods for dispute resolution in such a situation, conferring functions on appropriate authorities or other persons specified in regulations, and requiring the Body to act in accordance with decisions by the appropriate authority or other persons specified in regulations.

## Committee consideration

54. The UK Government has stated in its DPM that this power is necessary to create flexibility to address disputes under a range of circumstances in which a Negotiating Body might fail to come to an agreement. Different provision might be required where there are disputes over procedural matters as compared to substantive matters and different approaches may be justified when a Body is first established compared to when its procedures are mature. Further, different bodies might be used as part of the dispute resolution process, and setting this out in regulations means that there is no need to amend primary legislation if another body becomes more suitable or there are name changes.
55. The UK Government also considers it appropriate that the Scottish Parliament and the other legislatures can formally approve the regulations through the affirmative procedure. This is so they can scrutinise the process by which the appropriate authority or other persons may be required to address disputes that arise during negotiations where the Body is unable to reach agreement.
56. The Scottish Government has stated in its SLCM its reason for recommending legislative consent and this is outlined at paragraph 22 above.
57. The Committee considers that this power is necessary and proportionate for the reasons outlined in the UK Government's DPM and that the affirmative procedure is appropriate to ensure parliamentary oversight and approval of the process to address disputes that arise during negotiations where the Body is unable to reach agreement.
- 58. The Committee is content with the power conferred on Scottish Ministers in principle and that its exercise would be subject to the affirmative procedure.**

### **Clause 43(2): Power to give effect to the Negotiating Body's agreements**

**Power conferred on: Secretary of State, Scottish Ministers and Welsh Ministers**

**Power exercised by: Regulations**

**Parliamentary Procedure: Negative**

#### *Provision*

59. This clause confers a power on Scottish Ministers to enable the appropriate authority to make regulations ratifying an agreement reached by a Negotiating Body (in full or in part). This clause explains that the effect of ratification is that the detail set out in the agreement will take effect as terms and conditions of the relevant social care worker's employment. If the agreement relates to remuneration, the social care worker will have to be paid in accordance with that agreement. Any existing terms or conditions in the social care worker's contract that are inconsistent with the terms of a ratified agreement will cease to have effect. Ratifying regulations made under this clause can have retrospective effect but cannot reduce remuneration or alter the conditions of employment to the worker's detriment.

## Committee consideration

60. The UK Government has stated in its DPM that the reason for taking this power is to give effect to each agreement, meaning there needs to be a power which can be exercised each time the negotiation process is concluded, and an appropriate agreement has been reached. The appropriate authority can also regulate to implement the agreement in part, which may be necessary depending on a range of factors appropriate at the time of ratifying the agreement, such as potential financial implications.
61. The UK Government considers it appropriate for this power to be subject to the negative procedure as the agreement to be ratified will be proposed by the Negotiating Body and will have been the subject of detailed negotiation.
62. The Scottish Government has stated in its SLCM its reason for recommending legislative consent and this is outlined at paragraph 22 above.
63. The Committee considers for the reasons outlined in the UK Government's DPM that this power is a necessary administrative matter and that the negative procedure is appropriate in the circumstances.

**64. The Committee is content with the power conferred on Scottish Ministers in principle and that its exercise would be subject to the negative procedure.**

**Clauses 45(1) and (2): Power to make provision in cases where the Negotiating Body is unable to reach an agreement**

**Power conferred on: Secretary of State, Scottish Ministers and Welsh Ministers**

**Power exercised by: Regulations**

**Parliamentary Procedure: Affirmative**

*Provision*

65. This clause confers a power on Scottish Ministers to set out in regulations the circumstances where the appropriate authority can make provision about a matter where the Negotiating Body has failed to come to an agreement. Like ratifying regulations made under clause 43, terms and conditions set out in these regulations will take effect as terms and conditions of the relevant social care worker's employment. If the regulations relate to remuneration, the social care worker will have to be paid in accordance with that regulation. They can also have retrospective effect subject to the same limitations set out above.

## Committee consideration

66. The UK Government has stated in its DPM that the reason for taking this power is that it is necessary to allow the appropriate authority to take action where a Negotiating Body has failed to come to an agreement in circumstances that will be specified in legislation, such as when an urgent need arises to resolve a matter on which a Body is unable to reach agreement. This power ensures that there is a potential solution to such impasses and should therefore disincentivise parties from

rejecting all offers, thereby smoothing the negotiating process.

67. In contrast to the procedure outlined above in relation to clause 43, the regulations created by the appropriate authority under this clause will not necessarily have been the product of detailed negotiation by a Negotiating Body. As such, the UK Government considers it appropriate for legislatures to have oversight in circumstances where the appropriate authority imposes provision on the sector which has the power to override existing terms of employment contracts. The affirmative procedure will ensure that legislatures can debate the matters.
68. The Scottish Government has stated in its SLCM its reason for recommending legislative consent and this is outlined at paragraph 22 above.
69. The Committee considers that this power could be seen as necessary and proportionate for the reasons outlined in the UK Government's DPM and that the affirmative procedure is appropriate to ensure parliamentary oversight and approval of any provision which is imposed on the sector where a Negotiating Body has failed to come to an agreement.

**70. The Committee is content with the power conferred on Scottish Ministers in principle and that its exercise would be subject to the affirmative procedure.**

#### **Clause 46: Power to make provision about issuing codes of practice and guidance**

**Power conferred on: Secretary of State, Scottish Ministers and Welsh Ministers**

**Power exercised by: Regulations**

**Parliamentary Procedure: Affirmative**

##### *Provision*

71. This clause confers a power on Scottish Ministers to make regulations about the issuing of guidance and codes of practice in relation to an agreement submitted under clause 40 or 41 or regulations made under clause 45 as well as to make provision about the consequences of non-compliance with either guidance or codes of practice.

##### *Committee consideration*

72. The UK Government has stated in its DPM that the reason for taking this power is to allow for sufficient flexibility for the appropriate authority to create codes of practice or guidance related to agreements submitted by a Negotiating Body. This may cover elements that are not typically included in employment contracts, for instance, in relation to the development of career opportunities within the sector. Such matters might not be incorporated into contracts but should be encouraged via codes of practice and guidance, to support the objective of establishing a Negotiating Body, which is to improve the overall working conditions of those in the sector.
73. There are also a range of bodies within the social care system beyond workers and

their employers on whose functions any negotiating body's agreements will have a bearing and where there may be a need for them to take account of regulations made by the appropriate authority in this area. The power to impose specific duties on bodies that can be set out in secondary legislation provides flexibility to ensure that these duties apply even where there are changes to bodies within the social care sector.

74. The UK Government also considers it appropriate that the Scottish Parliament and the other legislatures can appropriately scrutinise instances where additional guidance and codes of practice may be placed on a statutory footing, especially as breaches of these codes may give rise to consequences for employers. The affirmative procedure will ensure they can debate the duties that the regulations impose on persons in relation to provisions of these codes and guidance and importantly, the consequences that may follow if a person fails to comply with those duties.
75. The Scottish Government has stated in its SLCM its reason for recommending legislative consent and this is outlined at paragraph 22 above.
76. The Committee considers that this power is necessary and proportionate for the reasons outlined in the UK Government's DPM. Further, the affirmative procedure is appropriate to ensure parliamentary oversight and approval of codes of practice or guidance related to agreements submitted by a Negotiating Body.

- 77. The Committee is content with the power conferred on Scottish Ministers in principle and that its exercise would be subject to the affirmative procedure.**

