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

Delegated powers in the Victims, Witnesses and Justice Reform (Scotland) Bill (as amended at Stage 2)



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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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Introduction

1. This report considers the delegated powers in the Victims, Witnesses and Justice Reform Bill (“the Bill”) as amended at Stage 2.
2. This is a Scottish Government Bill which was introduced on 25 April 2025. The lead committee was the Criminal Justice Committee.

Delegated Powers

3. On introduction, the Bill conferred 19 delegated powers in total. At its meeting on 24 October 2023, the Committee indicated that it was content with 17 of those delegated powers. However, it agreed to write to the Scottish Government to raise questions in relation to 2 of the delegated powers. The Committee published its [report](#) on 22 December 2023.
4. The Bill completed Stage 2 on 2 April 2025. The Scottish Government produced a [Supplementary Delegated Powers Memorandum](#) (“SDPM”) covering the delegated powers as amended at Stage 2.
5. At Stage 2, 2 delegated powers have been removed, 2 delegated powers have been revised, and 3 new delegated powers have been added. Commentary on those powers is below.
6. One of the provisions that the Committee wrote to the Scottish Government about, and made recommendations on at Stage 1, has been removed. That is the power to bring forward a pilot of single judge rape trials. The Committee wrote to the Scottish Government questioning whether more limitations could be set out on the face of the Bill, such as the specified criteria and the time period of the pilot. The Committee also asked about the fact that it appeared that the power could be exercised more than once, where the intention appeared to be that the power would only be exercised once. The Committee recommended that the Scottish Government bring forward amendments at Stage 2 which would limit the scope of the power, particularly regarding the “specified criteria” to which a trial must meet to fall under the scope of the pilot, and the time period of the pilot. The Committee also recommended that the Scottish Government bring forward an amendment which would make clear that the pilot can only run once.
7. The power has now been entirely removed from the Bill at Stage 2, as the Scottish Government is no longer pursuing the policy of piloting juryless trials for rape and attempted rape cases.
8. The other delegated power removed from the Bill at Stage 2 also related to the pilot of single judge rape trials. It was a power for the High Court of Justiciary to make any incidental, supplementary, consequential, transitional, transitory or saving provision which it considered appropriate for giving full effect to the pilot. The Committee was content with this power in its Stage 1 report. However, given that the Scottish Government is no longer pursuing the policy of piloting juryless trials for rape and attempted rape cases, the ancillary power is no longer required.
9. The other power the committee made a recommendation on (Section 55(1)) has

also been amended, and is discussed further below.

Review of relevant powers

Section 29D: Victim Notification Scheme: Victim’s right to receive information concerning offender subject to compulsion order by virtue of cross-border transfer

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

10. Section 29D amends section 18B of the Criminal Justice (Scotland) Act 2003 (“the 2003 Act”). It enables the Scottish Ministers to amend section 16A of the 2003 Act (victim’s right to receive information concerning offender subject to compulsion order) by order to include patients who are received in Scotland and treated as subject to Compulsion Order and Restriction Order (“CORO”) which does not relate to an earlier CORO in Scotland, or received patients treated as subject to a compulsion order only.
11. Regulations made under this power will be subject to the affirmative procedure.

Committee consideration

12. The Scottish Government states in its SDPM that the independent review of the Victim Notification Scheme recommended that victim notification procedures for victims in Scotland regarding prisoners and patients who may be transferred around the United Kingdom be reviewed with a view to establishing appropriate protocols. It states that a consultation to seek views on this in greater detail is required, and that the regulation making power provides flexibility to make amendments to provisions that might be needed following a consultation period.
13. The Committee normally cautions against accepting delegated powers where the justification for the taking of that power relies on future consultation. The justification appears to suggest that this power may never be exercised. The Committee would generally not accept delegated powers where it is not clear that the power will be exercised. However, in this case, the power is relatively narrow in that it can only be used to do what is set out in the provision, which the Parliament can consider and give a view on during the passage of this Bill. The affirmative procedure also gives a level of parliamentary control to assess whether the exercise of the power is appropriate at the time.
14. The Committee therefore finds the Scottish Government’s justification acceptable and as such finds the power acceptable in principle.
15. **The Committee finds the power acceptable in principle and is content that it will be subject to the affirmative procedure.**

Section 29F: Victim Notification Scheme: Conditional Discharge: relevant conditions

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

16. Section 29F of the Bill amends section 18A of the 2003 Act, and provides the Scottish Ministers with the power, by regulations, to vary what is a “relevant condition” to a victim, or as the case may be, a supporter for the purposes of conditional discharge of a Compulsion Order and Restriction Order.
17. Currently, a condition is relevant to a victim if the condition is a restriction on the offender contacting an individual or being in a place, and the victim has made a valid request to the Scottish Ministers to be informed about any condition which restricts the offender from contacting that individual or being in that place or any wider area within which the place in questions falls.
18. The power is subject to the affirmative procedure.

Committee consideration

19. The Scottish Government states in its SDPM that the independent review of the Victim Notification Scheme recommended that the provisions around “relevant” conditions needed to be clarified, and relevant advice made available to registered victims. It states that it is not immediately clear whether the review thought that the provision required to be rephrased or refined, or whether it thought that clearer guidance is required. It states that a consultation to seek views on this in greater detail is required, and that the delegated power is sought to provide flexibility to make amendments to provisions that might be needed following such a consultation.
20. The Committee normally cautions against accepting a delegated power where it is not clear when that power may be required, or how it is likely to be exercised. However, in this instance, the Committee accepts that it may be a better use of parliamentary time to delegate such a power during the passage of this Bill rather than to require the Scottish Government to find another legislative vehicle to make any amendment required as a result of further consultation.
21. Whilst the Committee considers that significant provision could be made using this power, it considers that the affirmative procedure will give the Parliament an opportunity to ensure that it is exercised appropriately. It is noted that the SDPM suggests the power is likely to be exercised to make provision which rephrases or refines the current provision.
22. In light of the above, the Committee is content with the power in principle, and that it is subject to the affirmative procedure.

23. The Committee accepts the power in principle and is content that it is subject to the affirmative procedure

Section 47(7): Rights of audience: solicitors

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New

Provision

24. Section 47 makes provision about who can represent an accused in the Sexual Offences Court. Subsection (2A) sets out the offences in respect of which solicitors who are not also solicitor advocates would not have rights of audience to appear in the Sexual Offences Court and where the accused must therefore be represented by an advocate or solicitor advocate. These offences are:

- murder,
- rape,
- attempted murder,
- attempted rape,
- an offence under section 1(1) of the Domestic Abuse (Scotland) Act 2018, where the alleged course of conduct includes behaviour which amounts to a statutory offence of rape,
- any offence in relation to which the minimum sentence imposed by the judge is a custodial sentence of at least 5 years,
- an offence in relation to which the accused is being retired under the new evidence exception to the double jeopardy rule.

25. Section 47(7) enables the Scottish Ministers to modify the list above, allowing the Scottish Ministers to add an offence or description of an offence or to remove or amend any the entries on the list.

26. Regulations made under this power would be subject to the affirmative procedure. The Scottish Ministers must consult with specified criminal justice partners before making such regulations.

Committee consideration

27. The Scottish Government states in its SDPM that it is the intention that where the same types of cases are prosecuted in the Sexual Offences Court instead of the High Court, the accused will similarly be entitled to representation by counsel. It states that the power to amend the list of offences recognises that practice in the

prosecution and sentencing of sexual offences is unlikely to remain static and that it may be necessary to change who can represent accused in the Sexual Offences Court in response to that changing practice.

28. Whilst it is considered that significant provision may be made under this power, the Committee considers that the Scottish Government has provided sufficient justification as to why the power is necessary and how it is likely to be exercised. The exercise of the power is subject to the affirmative procedure, which means that the Parliament will have an appropriate opportunity to scrutinise the regulations that are made under it to ensure that provision in such regulations is made to ensure consistency across the High Court and the Sexual Offences Court.
29. In light of the above, the Committee accepts the power in principle and is content that it is subject to the affirmative procedure.

30. **The Committee finds the power acceptable in principle and is content that it will be subject to the affirmative procedure.**

Section 29H: Parole Board rules: decisions where prisoner has information about victim's remains

Power conferred on: Scottish Ministers

Power exercisable by: Rules made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new: Revised

Provision

31. Section 29H amends section 20(4)(c) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”). Section 20(4) of the 1993 Act enables the Scottish Ministers to make rules about proceedings of the Parole Board for Scotland. Section 20(4)(c) currently provides that those rules can make provision as to what matters “may” be taken into account by the Board in dealing with a case. Section 20(4B) states that such provision may in particular include provision about the taking into account by the Board of the likely impact of its decision on a prisoner's family.
32. Section 29H amends section 20(4)(c) in order that rules made by the Scottish Ministers may also set out the matters which “must” be taken into account by the Board in dealing with a case. This amendment is supplemented by new subsection 4AA, which provides that provision under subsection 4(c) must include provision that, when making any decision on release for a prisoner convicted of murder or culpable homicide, the Board must take into account whether there are reasonable grounds to believe that the prisoner has information about how or where the victim's remains were disposed of and the prisoner has not disclosed that information.
33. Rules made under this power would be subject to the negative procedure.

Committee consideration

34. This was a non-government amendment at Stage 2. The SDPM does not explain why it is considered necessary to revise the power in section 20(4)(c) to enable the Scottish Ministers to make rules that require the Parole Board to take matters into account.
35. However, the Committee considers that Parliament will have an opportunity to express its view on whether it considers it appropriate that the situation described above, whereby the Parole Board must take into account whether there are reasonable grounds to believe that the prisoner has information about how or where the victim's remains were disposed of and the prisoner has not disclosed that information, during the passage of this Bill. The delegated power would give effect to Parliament's intention, should that provision form part of the final Bill.
36. The Committee considers that it is foreseeable that the Scottish Ministers might consider, in the future, that other matters should be required to be taken into account by the Parole Board, rather than leaving those matters to the discretion of the Board. Whilst significant provision could be made under this power, the Committee considers that the power itself is relatively narrow and that the negative procedure provides for an appropriate level of scrutiny.
37. In light of the above, the Committee accepts the power in principle and is content that it is subject to the negative procedure.
38. **The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 55(1): Sexual Offences Court Procedure

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new: Revised

Provision

39. Section 55(1) applies the procedure of the High Court of Justiciary, as set out in the Criminal Procedure (Scotland) Act 1995, to proceedings in the Sexual Offences Court, but this will not apply where such procedure is inconsistent with other provision contained in the Bill or made using a power in the Bill.
40. Section 55(2) provides that the Scottish Ministers may, by regulations, make further provision for the procedure which applies to proceedings in the Sexual Offences Court. An amendment at Stage 2 has limited the scope of the power in order that regulations may only be brought forward where they are for the purpose of ensuring that the Sexual Offences Court Functions properly.
41. Regulations made under this power are subject to the affirmative procedure. Before making such regulations, the Scottish Ministers must consult the Lord Justice General. Regulations made under this power may modify any enactment, including

the Act that flows from this Bill.

Committee consideration

42. In its Stage 1 report, the Committee considered that the power appeared to be broad and noted that it could be used to modify any enactment including the Act flowing from this Bill. The Committee therefore asked the Scottish Government whether any consideration had been given to alternative drafting which would limit the use of the power to provision dealing only with 'inconsistencies and ambiguities' rather than making any substantive change to procedure.
 43. In its recommendation, the Committee acknowledged that it may be helpful to have a power to make further provision about criminal procedure in order to deal with unforeseen inconsistencies and ambiguities. However, it considered that the power as drafted was broader than necessary and therefore called on the Scottish Government to bring forward an amendment at Stage 2 which would limit the scope of the power.
 44. The Scottish Government has brought forward an amendment at Stage 2 which limits the scope of the power. The power has been restricted so that Scottish Ministers can only bring forward regulations where these are for the purpose of ensuring that the Sexual Offences Court functions properly. The Committee is now content with the power, given that its scope has been limited in light of the recommendation it made at Stage 1.
45. **The Committee welcomes the amendment, which is in line with its Stage 1 report recommendation, the Committee accepts the power in principle and is content that it is subject to the affirmative procedure.**

