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

Delegated powers in the Community Wealth Building (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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Introduction

1. At its meetings on 3 and 24 June 2025, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers in the Community Wealth Building (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 Bill was introduced by the Scottish Government on 20 March 2025. The lead committee is the Economy and Fair Work Committee.

Overview of the Bill

4. The Bill aims to generate, circulate and retain wealth within local areas. The Policy Memorandum for the Bill explains that community wealth building ("CWB") is a place-based approach to local economic development, designed to redirect wealth into the local economy.
5. As part of the 2020-21 Programme for Government, the Scottish Government committed funding to develop CWB action plans in five areas (Fife, Clackmannanshire, Glasgow City Region, South of Scotland and the Western Isles) known as the 'CWB pilots'. Following this, a legislative commitment to ensure consistent implementation of the CWB model of economic development across Scotland was included in the 2024-25 Programme for Government. The Policy Memorandum states that the Bill's provisions seek to deliver this commitment.
6. The Bill obliges:
 - the Scottish Ministers to publish a CWB statement setting out the measures they intend to take to reduce economic and health inequality and support economic growth in local areas, and to publish related guidance;
 - local authorities to work with certain public bodies in their areas to publish a CWB action plan for that area, having regard to the guidance, then to implement the plan; and
 - both the Scottish Ministers and local authorities to revise and report on their progress with the above duties every 5 years.

Delegated Powers

7. The Bill confers five powers to make subordinate legislation on the Scottish Ministers.
8. The Scottish Government has prepared a [Delegated Powers Memorandum](#) (“DPM”) which sets out the reasons for taking the delegated powers in the Bill and for the procedure chosen.
9. At its meeting on Tuesday, 3 June, the Committee was content with four of the powers. However, it agreed to write to the Scottish Government in relation to:
 - Section 9(1) – a power requiring the Scottish Ministers to issue guidance about community wealth building action plans, and about facilitating and supporting the generation, circulation and retention of wealth in local and regional economies.
10. The Committee [wrote](#) to the Scottish Government on 6 June and received a [response](#) on 19 June 2025.
11. All five delegated powers are discussed in the next section of the report.

Review of relevant powers

Section 5(9): Community wealth building action plan

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Provision

12. Section 5(9) enables the Scottish Ministers, by regulations, to modify the list of “relevant public bodies” set out in section 5(8) in order to: (a) add a person or description of a person, (b) remove an entry listed or (c) amend an entry listed. Relevant public bodies, defined in relation to local authority areas, are required to work with local authorities in the preparation and implementation of the CWB action plans, forming CWB partnerships.
13. Regulations made under this power are subject to the affirmative procedure.

Committee consideration

14. The DPM explains that relevant public bodies will play a key role in the preparation and implementation of CWB action plans and therefore it is important that those bodies listed under section 5(8) are in a position to exercise duties required by the Bill.
15. The Scottish Government states that whilst key influential public sector anchor organisations have initially been listed, it may become clear over time that other public bodies should also be added or that some should be removed. Accordingly, that this power will ensure the list in section 5(8) only applies to bodies to which it is relevant and appropriate.
16. The Scottish Government considers that the affirmative procedure is appropriate to ensure a high degree of parliamentary scrutiny of any changes to the public bodies subject to the duties under the Bill, given that the question of to whom the duties apply is central to its operation and effect. It is also stated in the DPM that the duties imposed on the relevant public bodies are relatively onerous and therefore any imposition of this duty on additional or substitute organisations should be given full consideration by Parliament.
17. The Committee considers that the reasons for the power are clear from the DPM and it is therefore content with the explanation as to why the power has been taken, primarily to provide a degree of flexibility in keeping the list in section 5(8) relevant and appropriate as time passes. Given that the power permits modification of primary legislation, the Committee is also content that it is subject to the affirmative procedure.
18. **The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

Section 9(1): Guidance about community wealth building

Power conferred on: Scottish Ministers

Power exercisable by: Guidance


Parliamentary procedure: None

Provision

19. Under section 9(1) of the Bill the Scottish Ministers must issue guidance about community wealth building (“CWB”) action plans, and about facilitating and supporting the generation, circulation and retention of wealth in local and regional economies. The Scottish Ministers must review the guidance from time to time and may revise it (subsection (3)).
20. Sections 5(7) and 10(1) of the Bill require CWB partnerships (local authorities and relevant public bodies relating to them) and “specified public bodies” (contained in the schedule of the Bill) to have due regard to such guidance, including any revised version of it.
21. The guidance is not subject to any parliamentary procedure, but it must be published.

Committee consideration

22. The Committee asked for further information from the Scottish Government about this guidance issuing power, in the absence of the power being addressed in the DPM. The following questions were asked:
 1. The reasons for taking this guidance issuing power.
 2. Why the Bill does not specify the type of content that any guidance might include.
 3. Why there is no parliamentary oversight of such guidance, such as laying it before Parliament, in light of the requirements to have due regard to the guidance under section 5(7) and section 10(1).
 4. Why there is no requirement to consult community wealth building partnerships or specified bodies before preparing or issuing such guidance given that the guidance is put on a statutory basis and the duty to have regard to it.
23. In relation to the first question, the response states:

 The Delegated Powers Memorandum is focused on subordinate legislation powers, but I am happy to address the Committee’s questions about the guidance issuing power. The Scottish Ministers do not require statutory authority to issue guidance, but section 9 of the Bill requires them to do so. A positive obligation to issue guidance was thought desirable to ensure that all of the good practice already developed by local authorities and others is gathered in one central resource for future use by the Community Wealth Building partnerships and other bodies as provided for in the Bill.
24. The Scottish Government also considers that such guidance will lead and

encourage others to use CWB policies as well as assisting CWB partnerships and specified public bodies to take a consistent approach to CWB in their action plans, corporate plans and associated strategies (as applicable).

25. Whilst the Scottish Government considers that the focus of the DPM does not include guidance issuing powers, the Committee notes that it normally expects to see guidance issuing powers covered in the DPM. Indeed, it is a Standing Orders requirement, in accordance with Rule 9.3.3B, a DPM should do so.
26. Nonetheless, in its response, the Scottish Government has clearly conveyed its policy position that the purpose of placing such guidance on statutory footing is to ensure good practices continue and that the guidance leads and encourages CWB policies.
27. In relation to the second question, the Scottish Government takes the view that CWB is a dynamic and evolving economic strategy and therefore that the Bill should not be unduly prescriptive on the face of it, as to the content of the guidance. The response also states that guidance will be produced together with partner organisations and accordingly, that the Scottish Government does not wish to prejudge its content. The Scottish Government does, however, state that evidence sessions held by the Economy and Fair Work Committee (the lead committee) covered the same matter and that as the scrutiny of the Bill progresses, it will consider the views and suggestions of Committees and partners.
28. It is clear from the DPM, the Bill's accompanying documents and the response from the Scottish Government that such guidance is considered an integral part of achieving the policy objectives of the Bill. Accordingly, specifying some detail on the content of the guidance on the face of the Bill, such as some further categories or topics that must be included in it, might be appropriate in enabling the Parliament to properly scrutinise the provisions of the Bill requiring CWB partnerships and specified public bodies to have due regard to the guidance. On this matter, the Committee considers it helpful that the Scottish Government has stated its intention to consider the views and suggestions of Committees and partners as the scrutiny of the Bill progresses.
29. With regards to the third question concerning the lack of parliamentary oversight of such guidance, the Scottish Government states that its approach here is guided by an overall desire to take a focused and proportionate approach to legislating for CWB. The response explains that it is anticipated that the guidance will be the product of a practitioner dialogue, enabled by the Scottish Government, and therefore that the consideration of an applied guidance document by the Scottish Parliament is not considered necessary. It is also noted that the Scottish Ministers will report to Parliament on their CWB statement which will include measures that they are taking or intending to take in this area generally.
30. In light of the additional context provided by the Scottish Government, including detail on how the guidance will be developed in practice and that its CWB statement will also cover measures it is taking or intending to take in this area, the Committee accepts the explanation provided by the Scottish Government as to why parliamentary scrutiny of any guidance issued under this section would not be considered appropriate.
31. In response to the final question, the Scottish Government explains that the duty to

have regard to the guidance will not mean it will be mandatory that relevant bodies “follow it to the letter”. Rather, the Scottish Government considers that it requires relevant bodies to give the guidance appropriate weight, alongside any other relevant considerations.

32. The Scottish Government is also of the view that due to the inclusive approach to development and the discretion in terms of following the guidance, consultation duties placed upon Scottish Ministers is not required. The Scottish Government does, however, state that in line with its comments for question 2, the views of Committees and partners will be considered thoroughly on this matter.
33. As explained above, it appears that the guidance is intended to play a crucial role in supporting and advancing the policy objectives of the Bill. Further, the Scottish Government has also stated in its response that it intends to co-produce the guidance with partner organisations, key delivery bodies and other stakeholders.
34. Given the significance of the guidance for the achievement of the Bill’s policy objectives and that it is described by the Scottish Government as something that will be developed through co-production with relevant organisations, key delivery bodies and stakeholders, the Committee considers that it is appropriate that there should be a consultation requirement with CWB partnerships and specified bodies before issuing any guidance under this provision.

35. The Committee notes that it normally expects to see guidance issuing powers to be covered in the Delegated Powers Memorandum and that in accordance with Rule 9.3.3B, the Scottish Parliament’s Standing Orders require that a DPM should do so.

36. The Committee accepts the further explanation provided by the Scottish Government on the purpose of placing the guidance on a statutory footing and requiring community wealth building partnerships and specified bodies to have due regard to it.

37. The Committee recommends that the lead committee considers further whether the proposed content of the guidance could be included on the face of the Bill to provide more clarity to those that will be subject to the duties under the Bill.

38. The Committee also recommends that the exercise of the power in section 9(1) should be subject to a requirement to consult with community wealth building partnerships and specified bodies before being exercised, and is otherwise content that it is not subject to any parliamentary procedure.

Section 10(3): Duty to have regard to guidance

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative

Provision

39. Section 10(3) confers a power on the Scottish Ministers to amend the list of “specified public bodies” in the schedule to the Bill. These public bodies are subject to a duty to have due regard to guidance produced by the Scottish Ministers under section 9(1) when developing their corporate plans and associated delivery strategies. The power enables the Scottish Ministers to (a) add a person or description of a person to this list; (b) remove an entry from the list; (c) or amend an entry.
40. Regulations made under this power are subject to the affirmative procedure.

Committee consideration

41. The DPM explains that this power will enable the Scottish Ministers to make changes to the list of “specified public bodies”, for example in circumstances when a new public body is created, or it is appropriate to remove a body from the list if it has been dissolved or replaced. The Scottish Government considers that this will ensure that the duty only applies to bodies to which it is relevant.
42. Similar to the reasoning provided for the power in section 5(9), the Scottish Government considers that the affirmative procedure will ensure a high degree of parliamentary scrutiny of any changes to the bodies subject to the relevant duty under section 9(1). It is explained in the DPM that the duties imposed on specified public bodies, while not overly onerous, will require a level of commitment and awareness from the bodies and therefore that it is important to give careful consideration to imposing the duty on any further bodies or removing any from the list.
43. The Committee considers that the reasons for the power are clear from the DPM and it is therefore content with the explanation as to why the power has been taken. Similar to the power in section 5(9), the intention is primarily to provide a degree of flexibility in keeping the list, in this case that containing “specified public bodies”, relevant and appropriate as time passes. Given that the power permits modification of primary legislation, the Committee is also content that it is subject to the affirmative procedure.

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

Section 11: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Affirmative if modifying primary legislation otherwise negative

Provision

45. Section 11(1) of the Bill confers on the Scottish Ministers a power to make any incidental, supplementary or consequential provision as they consider appropriate for the purposes of, or in connection with or for giving full effect to the Bill as enacted. The regulations may make different provision for different purposes and modify any enactment (including the Act which will flow from the Bill).
46. If the power is exercised to make regulations that amend primary legislation, the affirmative procedure applies. The negative procedure applies where no modifications to primary legislation are included in the regulations.

Committee consideration

47. The DPM explains that this power will enable the Scottish Ministers to efficiently address any unforeseen issues with the operation of the new legislation. It is further explained that this will avoid the need for further primary legislation to deal with technical, operational, or implementation matters that fall within the scope and policy intentions of the Bill.
48. This power is drafted in similar terms to the ancillary powers which are taken in most Bills. Its extent is restricted, as it can only be used to give full effect to the Bill as enacted and any provision made under it. The power allows the Scottish Ministers to address any ancillary issues that may arise. Without such a power, any changes would require primary legislation, which the Committee considers would not be an efficient use of parliamentary time and the Scottish Government's resources.

- 49. The Committee is content with the power to make ancillary provision in regulations under section 11 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 13: Commencement**Power conferred on: Scottish Ministers****Power exercisable by: Regulations****Parliamentary procedure: Laid, no procedure****Provision**

50. Sections 11 to 14 come into force on the day after Royal Assent. The other provisions of the Bill will come into force on such day as the Scottish Ministers may by regulations appoint. Regulations under this section may make different provision for different purposes.

Committee consideration

51. 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.

52. It is also standard that commencement regulations are laid before the Parliament but not subject to further parliamentary procedure.

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

