

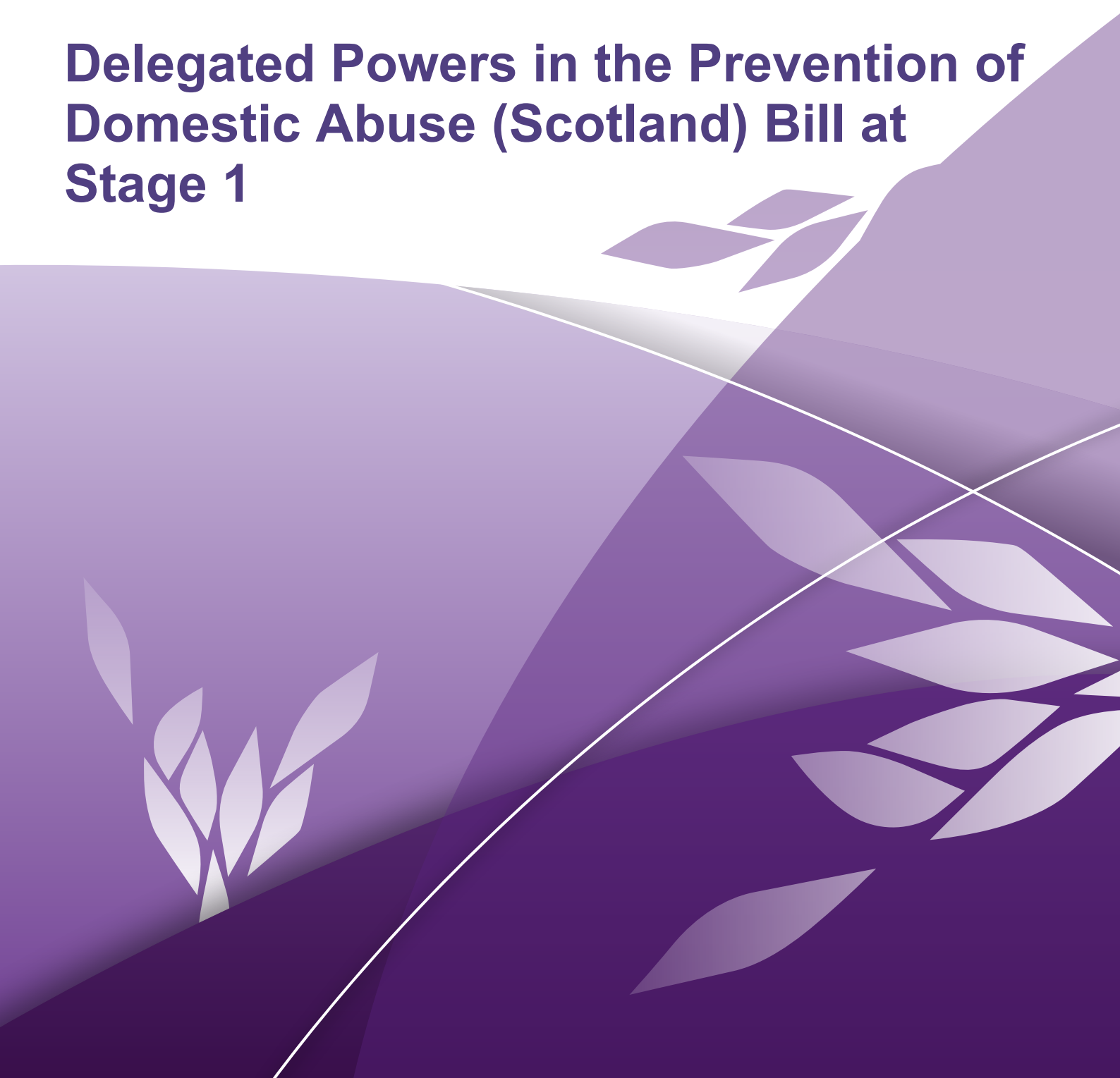


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Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh

Delegated Powers in the Prevention of Domestic Abuse (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.

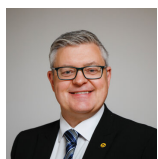


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Overview of the Bill

1. This Member's Bill was introduced on 7 May 2025. The lead committee is the Criminal Justice Committee.
2. The Bill aims to reduce instances of domestic abuse and lower re-offending rates. The Bill proposes to achieve this by making provision for a range of measures, including long-term monitoring of individuals convicted of domestic abuse, rehabilitation services, enhancing data collection, and educational programmes focused on prevention.

Delegated Powers

3. The Bill contains twelve provisions which create new delegated powers or amend existing ones. The Member-in-charge of the Bill has prepared [a Delegated Powers Memorandum](#) (“DPM”) which sets out all the delegated powers in the Bill and explains the reasons for taking the powers and the choice of procedure.

Review of relevant powers

Section 3(3)(i): Initial notification

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

4. Part 1 of the Bill establishes notification requirements for domestic abuse offenders – those convicted on indictment of certain offences involving domestic abuse and sentenced to imprisonment for 12 months or more or subject to a community payback order with a supervision requirement.
5. Section 3(3) provides a list of information which a domestic abuse offender must, within the period specified, notify to the police as part of their initial notification, such as date of birth, national insurance number, name, address etc. Section 3(3)(i) allows the Scottish Ministers to add other information about the offender or the offender's personal affairs to this list.

Committee consideration

6. This power is in similar terms to that in section 83(5)(i) of the Sexual Offences Act 2003 (“2003 Act”). The Committee agrees that, given the similarities between the notification requirements under this Bill and the sexual offences notification scheme in the 2003 Act, it is appropriate for Scottish Ministers to be given equivalent powers to adapt the list of information which must be notified, should this prove necessary.

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

Section 4(1)(g): Changes

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

8. Section 4 requires domestic abuse offenders to notify the police of changes to their notified details, such as a change of name, address, passport or their release from custody.
9. Section 4(1)(g) gives the Scottish Ministers the power to prescribe other changes in circumstances which domestic abuse offenders would require to notify.

Committee consideration

10. This power is in similar terms to that in section 84(1)(g) of the 2003 Act. The Committee agrees that, given the similarities between the notification requirements under this Bill and the sexual offences notification scheme in the 2003 Act, it is appropriate for Scottish Ministers to be given equivalent powers in the context of this scheme.

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

Section 5(5)(a): Periodic notification**Power conferred on: the Scottish Ministers****Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure: Affirmative**

Provision

12. Section 5 provides that a domestic abuse offender must re-notify the police of the required information within one year after their initial notification, a notification of a change, or their last periodic notification, unless during this period the offender re-notifies due to a change of circumstances.
13. In cases where, at their last notification, a domestic abuse offender notifies that they have no sole or main residence in the UK and instead provides an address or location of a place where they can be regularly found, then the Scottish Ministers have the power to specify the period in which the offender must re-notify police of the necessary information, provided this period does not exceed one year.

Committee consideration

14. This power is in similar terms to that in section 85(5) of the 2003 Act. The Committee agrees that, given the similarities between the notification requirements under this Bill and the sexual offences notification scheme in the 2003 Act, it is appropriate for Scottish Ministers to be given equivalent powers in the context of this scheme.

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

Section 6(1)(a): Method of notification and related matters**Power conferred on: the Scottish Ministers****Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure: Negative**

Provision

16. Under section 6(1)(a) the Scottish Ministers may prescribe the police stations at which domestic abuse offenders can give notification.

Committee consideration

17. This power is in similar terms to that in section 87 of the 2003 Act. The Committee agrees that, given the similarities between the notification requirements under this Bill and the sexual offences notification scheme in the 2003 Act, it is appropriate for Scottish Ministers to be given equivalent powers in the context of this scheme. As the regulations would be administrative in nature, the Committee considers that the negative procedure is appropriate.

- 18. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 14: Power to amend periods

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

19. The duration of the notification requirements in Part 1 of the Bill depends on the length of the sentence imposed on a domestic abuse offender. Where the offender is subject to a community payback order, the requirements last as long as the order is in effect; where a domestic abuse offender is sentenced to imprisonment for between 12 and 30 months, the requirements will last for 3 times the length of the sentence (and half of that if under 18); and where the sentence is over 30 months' imprisonment, the requirements last indefinitely, subject to review.
20. Under section 14(a) the Scottish Ministers may by regulations amend the time periods of 15 years or 6 years (for those under 18 at the time of conviction) when the date of discharge falls in section 9(1) – that is the date when a domestic abuse offender subject to the indefinite notification requirements would be due a review by the Chief Constable of Police Scotland (or if necessary a Sheriff) as to whether they should continue to be subject to the requirements. If it is decided that the domestic abuse offender should remain subject to the notification requirements, a notification continuation order can be made under section 10(2) for up to a maximum of 15 years.
21. Under section 14(b) the Scottish Ministers may make regulations changing the maximum period.

Committee consideration

22. This power is in similar terms to that in section 88H of the 2003 Act. The Committee agrees that, given the similarities between the notification requirements under this Bill and the sexual offences notification scheme in the 2003 Act, it is appropriate for

Scottish Ministers to be given equivalent powers in the context of this scheme.

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

Section 19: Assessment of prisoners prior to release

Power conferred on: the Scottish Ministers

Power exercisable by: Rules made by Scottish statutory instrument

Parliamentary procedure: Negative

Provision

24. Part 3 of the Bill provides that a domestic abuse offender's suitability for participation in rehabilitation services is considered prior to sentencing, whilst in custody, and prior to release from prison.
25. Section 19 inserts a new section 20A into the Prisoner and Criminal Proceedings (Scotland) Act 1993 ("the 1993 Act") to ensure that the rules made in respect of proceedings of the Parole Board for Scotland in relation to prisoners convicted of an offence involving domestic abuse include provision for rehabilitation.

Committee consideration

26. This section supplements the existing delegated power in section 20(4) of the 1993 Act, which provides that the Scottish Ministers make rules about the proceedings of the Parole Board.
27. Currently, the Parole Board Rules (Parole Board (Scotland) Rules 2022) make provision for the information the Scottish Ministers must send to the Parole Board. This section of the Bill provides that the report on an offender's suitability for rehabilitation would be included as part of this information. The Committee finds the adjustment to the existing power acceptable.

- 28. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure.**

Section 20(2): Relevant personal data

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

29. Part 3 of the Bill provides for the collection of certain data about victims of domestic abuse, to inform reports by the Scottish Ministers which are to be published and laid before the Scottish Parliament. Section 20(1) defines "relevant personal data".

These are the categories of data about victims of domestic abuse to be collected by the police, the Crown Office and Procurator Fiscal Service and charities. Victims may decline to provide this data.

30. Subsection (2) provides that the Scottish Ministers may, by regulations, amend the definition of relevant personal data, for example, by adding or removing categories.

Committee consideration

31. The Committee accepts the rationale set out in paragraph 28 of the DPM, which states that Scottish Ministers should retain the flexibility to adjust the data to be collected in light of operational practice.

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

Section 24: Collection of data in relation to victims under the age of 16

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

33. Section 24 provides that the Scottish Ministers may by regulations modify the application of sections 21, 22 and 23 (which all relate to data collection by Police Scotland, the Crown Office and Procurator Fiscal Service and domestic abuse charities) for cases where the victims of domestic abuse or alleged offences involving domestic abuse are under the age of 16.

Committee consideration

34. The Committee is content with the rationale for taking this power, set out in paragraph 31 of the DPM which explains that the Member considers it appropriate to allow the Scottish Ministers to make bespoke provision, subject to necessary safeguards, regarding the collection of data from domestic violence victims who are under the age of 16.

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

Section 25(1): Submission of collected data to the Scottish Ministers

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

36. Section 25(1) provides the Scottish Ministers with a regulation-making power to specify the form, manner and timing of the submission of relevant personal data by the chief constable, the Lord Advocate (through the Crown Office and Procurator Fiscal Service) and charities. Under section 25(2) the relevant personal data submitted to the Scottish Ministers must not disclose the identity of the person to whom it relates.

Committee consideration

37. The Member considers that the affirmative procedure should apply to the exercise of this power on account of the sensitive nature of the data to be collected (which could include data on age, sex, disability status, and ethnic origin, amongst other matters). Whilst the data which may be collected about domestic abuse victims constitutes sensitive personal data, the power in this section is only concerned with the form and manner in which such data should be submitted to the Scottish Ministers. These are administrative matters and, as such, the Committee considers that the negative procedure would provide an appropriate degree of parliamentary oversight.

- 38. The Committee finds the power acceptable but recommends that the parliamentary procedure applicable should be changed to the negative procedure.**

Section 29: Guidance to education authorities relating to domestic abuse education

Power conferred on: the Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: No procedure

Provision

39. Under section 28 of the Bill, the Scottish Ministers must promote, facilitate and support domestic abuse education in schools. Education authorities (councils) must do the same in schools under their management.
40. Section 29(1) requires the Scottish Ministers to issue guidance to education authorities about domestic abuse education in schools. In turn, under subsection (3), education authorities are under a duty to have regard to this guidance. Subsection (2) requires Scottish Ministers to keep the guidance under review and allows them to issue revised guidance from time to time.
41. Under subsection (4) in preparing the guidance the Scottish Ministers must consult charities or other bodies that provide support for those who have suffered from or are suffering from domestic abuse along with any other persons that the Scottish Ministers think appropriate. This could include, for example, education authorities, representatives of teachers and parents, and academics working in this field. Subsection (5) requires the guidance be published.

Committee consideration

42. This section of the Bill places Scottish Ministers under a duty to issue guidance to education authorities relating to domestic abuse education in schools. The Member envisages that guidance will, amongst other things, “set out how domestic abuse education should be provided”. However, the Bill does not mandate compulsory domestic abuse education. The duty on educational authorities is to “promote, facilitate, and support domestic abuse education in schools”.
43. In the event that an education authority sought to offer domestic abuse education in any of the schools for which it is responsible, the issue of guidance would support the delivery of that education. In preparing such guidance, the Scottish Ministers are obliged to consult charities or other bodies that provide support for people who have suffered or are suffering domestic abuse, and such other persons as they consider appropriate. The Committee is content with the guidance-issuing power in this instance.

44. The Committee finds the power acceptable in principle and is content that it will not be subject to any parliamentary procedure.

Section 30(1): Standards relating to domestic abuse education

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

45. Section 30(1) provides that the Scottish Ministers may by regulations specify the standards and requirements to which an education authority must conform in promoting, facilitating and supporting domestic abuse education in the schools under its management. Under subsection (2) these regulations may provide for exemptions from any requirement to provide or participate in this education and impose requirements to make reasonable adjustments. Under subsection (3), Scottish Ministers must consult education authorities, charities or other bodies providing support or people who have suffered or are suffering domestic abuse and such other persons they consider appropriate.

Committee consideration

46. The power in this section gives the Scottish Ministers the option of introducing standards to which an education authority must conform in discharging its functions relating to domestic abuse education in the schools under its management. Unlike the guidance-issuing power discussed above, the Scottish Ministers are not required to exercise the power set standards, it is optional. It would therefore be for Scottish Ministers to determine whether specific standards are necessary or whether guidance will suffice. In the circumstances, the Committee is content with this power and with the applicable procedure.

47. The Committee finds the power acceptable in principle and is content that it

is subject to the affirmative procedure.

Section 34(1): Ancillary provision

Power conferred on: the 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

48. Section 34(1) enables the Scottish Ministers by regulations to make any incidental, supplementary, consequential, transitional, transitory or saving provision they consider appropriate (including modifying any enactment and making different provision for different purposes) to give full effect to the Bill.

Committee consideration

49. 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 would be an inefficient use of the Parliament's time and the Scottish Government's resources.
50. The affirmative procedure applies where the power is exercised to make regulations that amend primary legislation, otherwise the negative procedure applies.

- 51. The Committee finds the power acceptable in principle and is content that it is subject to the negative procedure unless amending primary legislation when it will be subject to the affirmative procedure.**

