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

Supplementary Delegated Powers in the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (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.

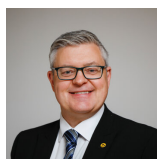


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Introduction

1. This report considers the delegated powers in the Criminal Justice Modernisation and Abusive Domestic Behaviour Reviews (Scotland) (“the Bill”) as altered at Stage 2.
2. The delegated powers in the Bill at Stage 1 were considered by the Committee at its meetings on 26 November and 17 December 2024. [The Committee’s report on the delegated powers in the Bill at Stage 1](#) was published on 13 January 2025.
3. The lead committee was the Criminal Justice Committee. As this report is after Stage 2, it is addressed to the Parliament.

Delegated Powers

4. Following Stage 2, one new power has been added and another has been revised. The Scottish Government has therefore produced a [Supplementary Delegated Powers Memorandum](#) (“SDPM”).

Review of relevant powers

Section 5A(2): Power to modify list of persons issued with and wearing ‘body-worn video cameras’

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: New

Provision

5. Section 5A of the Bill inserts a new section 283A into the Criminal Procedure (Scotland) Act 1995, which, in some circumstances, provides that when body-worn video footage is produced in evidence by the prosecution, and any or all of the date, time and place of the events are displayed on the footage, the footage is deemed to be sufficient evidence of those displayed details.
6. This provision only applies to body-worn video cameras issued to and worn by Police Scotland. Under new section 283A(6), the Scottish Ministers have the power to modify this section by regulations to enable the footage from body-worn video cameras used by other organisations to fall under this provision. Prior to making such regulations, the Scottish Ministers are required to consult the Chief Constable of Police Scotland, the Lord Advocate and the Lord Justice General.

Committee consideration

7. Although this power allows for the amendment of Scottish primary legislation, any changes made would be administrative in nature as the power can only be used to name additional organisations in order to maintain one comprehensive list on the face of the Bill as enacted. The Committee agrees that the negative procedure is proportionate in the circumstances and that the requirement to consult the Chief Constable of Police Scotland, the Lord Advocate and Lord Justice General provides an appropriate safeguard on the use of the power.
8. The Committee is content with the power in principle, and that it is subject to the negative procedure.

Section 10 (1)(e): Power to modify the basis on which a determination under section 16 is to be made

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision

9. At introduction, section 10 of the Bill gave Scottish Ministers power to make changes to the domestic homicide or suicide review mechanism provided for by section 9 of the Bill.
10. More specifically, this power allows the Scottish Ministers to:
 - under paragraph (a), make provision about what it means for abusive behaviour to ‘result in’, or in the case of suicide to be a contributing factor to a death;
 - under paragraph (b), modify what relationship requires to exist or have existed between two people in order to give rise to a review for the purposes of section 9;
 - under paragraph (c), modify the circumstances relating to abusive behaviour which may give rise to a review for the purposes of section 9; and
 - under paragraph (d), modify the name of the review provided for by section 9 in consequence of a change made under paragraph (c).
11. Under subsection (2), such regulations may modify any enactment including the provisions of this Bill.
12. At Stage 2 a new subparagraph (e) was added. It enables the Scottish Ministers to modify the basis on which a determination under section 16 is to be made. Section 16 requires the review oversight committee to satisfy itself as to whether the death is a reviewable death, and, where it is so satisfied determine whether a domestic homicide or suicide review should be carried out.

Committee consideration

13. The SDPM explains that this expansion of the regulation-making power in section 10 is necessary in consequence of amendments made during Stage 2 to the definition of “domestic abuse death”. The power will allow Scottish Ministers to modify the circumstances which the review model encompasses – for example, to expand the review model to include so-called “honour killings” in future.
 14. All of the powers in section 10 attract the affirmative procedure. The Committee considers that this is appropriate and reflects the potential significance of changes that could be made under this power.
 15. Making changes to the circumstances that are capable of being covered by the review model is central to the operation of the system of reviews. As such, the Committee considers it appropriate that the affirmative procedure also applies to the use of this power, even in cases where primary legislation is not being modified.
16. The Committee is content with the power in principle, and that it is subject to the affirmative procedure.

