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Delegated Powers and Law Reform Committee

Representation of the People Bill (UK Parliament legislation) - delegated powers exercisable within devolved competence, with reference to LCM-S6-74, LCM-S7-7 and LCM S7-7a.

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Delegated Powers and Law Reform Committee

To consider and report on the following —
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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Introduction

1. This report considers the delegated powers that are exercisable within devolved competence in the Representation of the People Bill ("the Bill").

2. At its meeting on 1 and 29 September, the Committee considered the Legislative Consent Memorandum dated 27 February 2026, Supplementary Legislative Consent Memorandum dated 24 June 2026, the Second Supplementary Legislative Consent Memorandum dated 21 August 2026 and Third Supplementary Legislative Consent Memorandum dated 10 September 2026 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 Bill is also being considered in terms of the Committee's wider remit contained in Rule 6.11.1(b) of the Standing Orders which provides that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills or other proposed legislation.

4. The lead committee is the Standards, Procedures and Public Appointments Committee.

The Bill

5. The Bill was re-introduced by the UK Government on 14 May 2026, having been carried over from the previous Parliamentary Session. and It is currently at Committee Stage in the House of Lords. As the Bill is still progressing through the UK Parliament, it remains subject to amendment.

6. The Bill encompasses a wide range of electoral reforms. Its overarching purpose is to modernise electoral administration, improve democratic participation and strengthen the integrity and security of the electoral system. The Bill also aims to deliver on several recommendations from the UK Government's 2024 strategic review of electoral registration.

7. Key measures include:

   - **Voting rights**: lowers the voting age for UK Parliament elections to 16 and provides for pre-registration from age 14.
   - **Electoral registration**: reforms registration processes, including powers to test direct voter registration and measures to improve registration accuracy and accessibility.
   - **Election administration**: updates electoral procedures and addresses administrative issues identified through the UK Government review of election arrangements.
   - **Voter identification**: expands the range of accepted voter ID at parliamentary elections.
   - **Political finance**: strengthens donation controls, introduces additional due diligence requirements and updates digital campaigning rules.
   - **Electoral Commission**: expands the Commission's regulatory and enforcement responsibilities.
   - **Candidate and electoral staff protection**: introduces measures to address intimidation and harassment and strengthens protections for personal information.

8. The Scottish Government has lodged legislative consent memoranda because the Bill makes provision applying to Scotland for purposes within the legislative competence of the Scottish Parliament and alters the executive competence of the Scottish Ministers. The interaction between electoral law and the devolution settlement in Scotland is complex. Generally speaking, matters related to UK parliamentary elections are reserved, while electoral law in relation to Scottish Parliament and local government elections is devolved to the Scottish Parliament, subject to the carve-outs in section B3 of schedule 5 of the Scotland Act 1998.

9. The Scottish Government and the UK Government agree that certain measures within the Bill engage the legislative consent process to the extent that they apply to elections within the devolved responsibility of the Scottish Parliament and so apply to Scotland for a purpose within the legislative competence of the Parliament.

10. The Scottish Government has now recommended that the Scottish Parliament gives legislative consent to clauses 30, 32, 33, 36, 37 and clause 48 and Schedule 3 of the Bill. In relation to a number of other provisions, particularly within Parts 4 and 5 of the Bill, it has not yet reached a final position. The Scottish Government has indicated that it expects to lodge a further supplementary Legislative Consent Memorandum once outstanding issues have been resolved.

Delegated Powers

11. The UK Government has published a Delegated Powers Memorandum to accompany the Bill, which explains the purpose of each power, why a delegated power is appropriate, and the parliamentary procedure that has been selected.

12. As is standard practice for UK bills, the Scottish Government has not published a delegated powers memorandum. Its position on the relevant clauses is set out in the LCM.

Review of relevant powers

Clause 5(4)(c) inserting section 16(1A) into the Representation of the People Act 1983 ("RPA 1983") - power to prescribe the manner of attestation for certain service declarations

Power conferred on: Scottish Ministers so far as it relates to service declarations made for the purpose of registering as a local government elector in Scotland

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

13. Section 16 of the RPA 1983 requires certain service declarations to be attested and confers a power on Scottish Ministers, in relation to registration as a local government elector in Scotland, to prescribe the manner of attestation.

14. Clause 5(4) amends and reorganises section 16, however, the amendments do not alter the substance of the existing delegated power. Scottish Ministers retain the power to prescribe the manner in which service declarations that require attestation are to be attested.

Committee consideration

15. This provision is a restatement of an existing power and does not alter the nature of the underlying power to prescribe the manner of attestation. The affirmative procedure continues to apply as under the existing provision. The Committee therefore considers the revision to the power to be acceptable.

Recommendation

16. **The Committee is content with the revision to this existing power and that it remains subject to the affirmative procedure.**

Clause 6 and paragraph 11 of Schedule 1 amending paragraph 3C of Schedule 2 of the RPA 1983 - restriction on power to make provision about the annual canvass in respect of persons under the age of 16

Power conferred on: Scottish Ministers in respect of local government elections in Scotland

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

17. Paragraph 3C of Schedule 2 to the RPA 1983 confers a regulation-making power on the Scottish Ministers to make provision specifying steps to be taken when

carrying out the annual canvass and when encouraging a person to apply for registration as a local government elector in Scotland.

18. Clause 6 and paragraph 11 of Schedule 1 amend paragraph 3C of Schedule 2 to the RPA 1983 to make clear that regulations made under that power may not authorise or require an electoral registration officer to make house-to-house inquiries for the purpose of contacting a person under the age of 16. The amendment is consequential on other provisions in the Bill relating to the reduction of the voting age and the registration of younger voters.

Committee consideration

19. This provision narrows an existing power to ensure that it is consistent with amendments made elsewhere in the Bill concerning persons under the age of 16. The amendment does not confer any new regulation-making power on the Scottish Ministers. The affirmative procedure continues to apply as under the existing provision. The Committee therefore considers the amendment to be acceptable.

20. **The Committee is content with the amendment to the existing power and that it remains subject to the affirmative procedure.**

Clause 30(2)(a) inserting section 7C(2)(aba) into the RPA 1983 - power to make provision as to the procedure for determining that a declaration of local connection should cease to have effect

Power conferred on: Appropriate national authority (Scottish Ministers in relation to local government elections in Scotland)

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

21. A declaration of local connection enables a person to register to vote in respect of an address despite not satisfying the usual residence requirement. Clause 30(2)(a) inserts new section 7C(2)(aba) into the RPA 1983, which enables the appropriate national authority to make provision about the procedure to be followed by an electoral registration officer when determining that a declaration of local connection should cease to have effect.

22. The power is intended to apply in circumstances where a person no longer meets the conditions under which the declaration was made, for example where a person ceases to be homeless or exceeds the “relevant age” (which is 21 in relation to local government elections in Scotland).

Committee consideration

23. The power is confined to procedural matters and does not permit amendment of the substantive eligibility criteria. The Committee therefore considers the power and the application of the affirmative procedure to be acceptable.

24. **The Committee is content with the power in principle and that it is subject to the affirmative procedure.**

Clause 34(4) (previously clause 33(4)) inserting section 13BAA into the RPA 1983 - power to change the application deadline ahead of pending elections

Power conferred on: Appropriate national authority (Scottish Ministers in relation to local government elections in Scotland)

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

25. The current deadline for receipt of a registration application to take effect for an upcoming election is established through a combination of primary and secondary legislation. The deadline is, in effect, midnight on the twelfth working day before polling day. Clause 34 provides for the deadline to be moved to 5pm on the day which is twelve working days before the day of poll at an election. This is to avoid excessive pressure on EROs after the end of the working day during a busy period in the lead up to elections, ensure queries can be dealt with at a reasonable time for electors and to provide a clear statement on the face of primary legislation about the registration deadline. The amendments also confer a power on the appropriate national authority to change the date and time before which the application must be received if it is to take effect prior to a pending election.

Committee consideration

26. The UK Government states that, although there is already provision for registration deadlines to be set in secondary legislation, it considered it appropriate for the deadline to be placed on the face of the Bill for reasons of clarity and transparency. Power is conferred upon the appropriate national authorities to amend the statutory deadline if required.

27. The Committee notes that the power permits amendment of provision contained in primary legislation and is therefore a Henry VIII power. The power is, however, limited in scope and may only be used to amend the registration deadline. The Committee also notes that the Electoral Commission must be consulted before the power is exercised.

28. In light of the limited nature of the power and the requirement for consultation with the Electoral Commission, the Committee considers the delegation of the power and the application of the affirmative procedure to be acceptable.

29. **The Committee is content with the power in principle and that it is subject to the affirmative procedure.**

Clause 37 (previously clause 36) amending paragraphs 1 and 1A of Schedule 2 to the RPA 1983 - amendment of powers to make provision for data sharing for the purposes of electoral registration

Power conferred on: Scottish Ministers in relation to local government elections in Scotland

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

30. Clause 37 amends the existing powers in paragraphs 1 and 1A of Schedule 2 to the RPA 1983 relating to the disclosure, sharing and inspection of information for electoral registration purposes. The amendments are intended to support new registration methods, including automatic registration and automatic alteration of registration details, by facilitating greater access to, and sharing of, relevant information and records. The clause also clarifies that electoral registration officers may inspect, access and take copies of records by means other than physical inspection where authorised by regulations.

Committee consideration

31. Clause 37 amends an existing power enabling provision to be made requiring a local authority, or a person providing services to a local authority, to give registration officers access to records for the purposes of carrying out their duties. The clause also introduces a new regulation-making power enabling provision to be made authorising or requiring information to be shared where this would assist a registration officer in carrying out those duties.

32. The Scottish Government states that the powers are exercisable by the Scottish Ministers in relation to registration officers' duties for local government elections in Scotland. It therefore agrees with the UK Government that legislative consent is required as the clause modifies the executive competence of the Scottish Ministers.

33. The Committee notes that the power concerns the detailed administration of electoral registration arrangements and builds on existing data-sharing powers in electoral legislation. The affirmative procedure continues to apply to regulations made under these powers.

34. The Committee therefore considers the delegation of the powers and the application of the affirmative procedure to be acceptable.

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

Clause 38 (previously clause 37) amending paragraph 10 of Schedule 2 of the RPA 1983 - amendment of the power to make provision about the edited register

Power conferred on: Scottish Ministers (in respect of the register of local government electors in Scotland)

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

36. The “edited” register, most commonly referred to as the “open” register operates on an “opt-out” model. Where a person is registered as an elector, that person’s information is included on the “open” register, which is available for purchase by a wide range of entities, unless that person actively opts out either at the point of application for registration or at a later date. The UK Government considers that it is more appropriate for the “open” register to operate on a model whereby a person’s name and address is only included if they actively opt-in to having their data included in this way. Clause 38 provides that the person must opt in themselves and does not allow anyone else to opt in for them. This is achieved by amending the existing regulation-making power in paragraph 10 of Schedule 2 of the RPA 1983.

37. At present paragraph 10(1) of Schedule 2 authorises regulations requiring preparation of an edited register; "...which omits the names and addresses of registered electors by or on behalf of whom requests have been made to have their names and addresses excluded..." That is the current opt-out model.

38. Clause 38 amends paragraph 10(1) so that regulations instead provide for an edited register; "...which includes only the names and addresses of registered persons by whom requests have been made to have their names and addresses included..." That is an opt-in model.

39. The policy change is being made by primary legislation, but it is being made by amending the content of an existing delegated power.

Committee consideration

40. The Committee notes that clause 38 makes a significant policy change to the operation of the edited (open) register. Under the existing provision, the edited register omits the names and addresses of registered electors who request exclusion from that register. Clause 38 amends paragraph 10(1) of Schedule 2 of the RPA so that the edited register instead includes only the names and addresses of registered persons who request inclusion. The effect is to replace the current opt-out model with an opt-in model.

41. This policy change is made by Parliament through amendment of paragraph 10 itself rather than being left to Ministers to determine through regulations. However, the amendment alters the basis upon which the existing delegated power may be exercised.

42. The Committee notes that the provision does not confer a new regulation-making power on the Scottish Ministers. Rather, it modifies an existing power governing the preparation of the edited register. The detailed operation of the edited register will continue to be set out in regulations subject to the affirmative procedure.

43. The Committee further notes that, although the amendment makes a significant policy change to the operation of the edited register, the policy decision itself is contained on the face of the Bill. The Bill does not delegate to the Scottish Ministers the question of whether the edited register should operate on an opt-in or opt-out basis. The delegated power remains concerned with the implementation and administration of the revised statutory scheme.

44. The Committee therefore considers the amendment to the existing power and the

continued application of the affirmative procedure to be acceptable.

45. **The Committee is content with the amendment to the existing power and that it remains subject to the affirmative procedure.**

Clause 49 (previously clause 48) and Schedule 3, paragraph 4(6)(b) inserting paragraph 4(5)(b) into Schedule 4 of the Representation of the People Act 2000 ("RPA 2000") - power to prescribe circumstances in which a person's entry in the absent voters' record should not be removed

Clause 49 (previously clause 48) and Schedule 3, paragraph 4(7) inserting paragraph 3(5A) into Schedule 4 of the RPA 2000 - power to prescribe requirements for an application to have an entry removed from the absent voters' record

Clause 49 (previously clause 48) and Schedule 3, paragraph 5 inserting paragraph 3A(2) into Schedule 4 of RPA 2000 - power to prescribe requirements for an application to make alternative arrangements for a postal vote

Clause 49 (previously clause 48) and Schedule 3, paragraph 7(5) inserting paragraph 5(3D) into Schedule 4 of RPA 2000 - power to prescribe requirements for an application to have an entry removed from the postal voters' list or list of proxies

Clause 49 (previously 48) and Schedule 3, paragraph 8(7) inserting paragraph 6(10A) into Schedule 4 of RPA 2000 - power to prescribe requirements for an application to cancel a proxy appointment

Clause 49 (previously 48) and Schedule 3, paragraph 9(9) inserting paragraph 7(9B) into Schedule 4 of RPA 2000 - power to prescribe requirements for an application to have a proxy postal voting arrangement cancelled

Clause 49 (previously clause 48) and Schedule 3, paragraph 10 inserting paragraph 7ZA(2) into Schedule 4 of RPA 2000 - power to prescribe requirements for applications relating to proxy postal voting arrangements

Clause 49 (previously clause 48) and Schedule 3, paragraph 12 inserting paragraph 7G intoSchedule 4 of RPA 2000 - power to prescribe circumstances in which absent voting applications must be refused or disregarded

Clause 49 (previously clause 48) and Schedule 3, paragraph 23 amending paragraphs 1, 1A, 5ZB and 13(1ZZA) of Schedule 2 of the RPA 1983 - power to make provision in connection with certain absent voting applications

Powers conferred on: Scottish Ministers in relation to local government elections in Scotland

Powers exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

46. Clause 49 and Schedule 3 make a series of amendments relating to absent voting arrangements. The amendments confer a number of powers on the Scottish

Ministers in relation to local government elections in Scotland. These powers enable provision to be made about the detailed administration of absent voting arrangements, including the requirements for applications, the cancellation of absent voting arrangements, alternative voting arrangements for particular elections, the circumstances in which entries should be retained or removed from absent voting records and lists, and the circumstances in which applications may be refused or disregarded. They also extend existing powers relating to absent voting applications so that they apply to the new application types introduced by the Bill.

Committee consideration

47. The Scottish Government states in the LCM that Schedule 3 makes technical changes to absent voting procedures intended to provide clarity and certainty for electoral administrators. It also notes that Schedule 3 confers a number of regulation-making powers on the Scottish Ministers in relation to local government elections in Scotland.

48. The UK Government states that these powers relate largely to procedural and administrative matters. In particular, the powers are intended to allow detailed requirements for applications and absent voting arrangements to be specified in secondary legislation, including requirements relating to identity verification and the administration of absent voting processes. The UK Government considers that such matters may require to be updated over time in response to operational experience, changing technology and developments in electoral administration.

49. The Committee notes that a number of the powers restate, extend or supplement existing delegated powers within the absent voting regime. The powers are concerned with the detailed operation and administration of absent voting arrangements rather than matters of principle. None of the powers enables amendment of primary legislation. All are subject to the affirmative procedure.

50. The Committee therefore considers the powers and the level of parliamentary scrutiny to be acceptable.

51. **The Committee is content with the powers conferred on Scottish Ministers in principle and that they are subject to the affirmative procedure.**

Clause 56 and Schedule 7 paragraph 2(2) amending section 81(10A) of the RPA 1983 - power to prescribe form of return for election expenses

Power conferred on: Electoral Commission

Power exercised by: Regulations

Parliamentary Procedure: None

Provision

52. Clause 56 and Schedule 7 transfer responsibility for certain candidate finance functions to the Electoral Commission. Paragraph 2(2) of Schedule 7 amends section 81(10A) of the RPA 1983, which currently enables the Electoral Commission to prescribe a form of return for election expenses that may be used.

The amendment extends the existing power so that the Electoral Commission may require a prescribed form to be used.

Committee consideration

53. The Committee considers that this power is exercisable within the devolved competence because candidate campaign finance rules for Scottish Parliament and Scottish local government elections fall within devolved competence.

54. The UK Government states that the amendment is required as a consequence of the transfer of candidate finance enforcement functions to the Electoral Commission and is intended to ensure consistency and standardisation in the submission of expense returns.

55. The Committee notes that this is a minor amendment to an existing power. The amendment does not alter the substantive information which must be provided in a return but enables the Electoral Commission to require the use of a prescribed form rather than merely making such a form available for use.

56. The Committee considers the amendment to the existing power and the absence of parliamentary procedure to be acceptable.

57. **The Committee is content with the amendment to the existing power of the Electoral Commission.**

Clause 57(2)(a), (3)(a) and (4)(a) - powers conferred on the EC to make regulations specifying that returns as to campaign expenditure of political parties, controlled expenditure incurred by third parties and referendum expenses of accredited recall campaigners must include a statement of such other matters as the EC prescribes

Clause 57(2)(b), (3)(b) and (4)(b) - amendment of existing powers of the EC to prescribe a form of return that may be used, to also provide that the EC may prescribe a form of return that must be used.

Power conferred on: Electoral Commission

Power exercised by: Regulations

Parliamentary Procedure: No procedure (not a statutory instrument)

Provision

58. These provisions expand existing powers of the Electoral Commission to prescribe the form and content of returns relating to campaign expenditure. The powers enable the Electoral Commission to require the use of specified forms and to prescribe additional statements that must be included in returns.

Committee consideration

59. The powers appear appropriate as they concern administrative and procedural requirements for reporting expenditure and support the Electoral Commission's role in monitoring compliance with spending rules. The powers are limited in scope, being confined to the format and content of returns, and do not permit alteration of

the underlying statutory reporting obligations.

60. Although these powers are capable of operating in relation to devolved matters, they do not give rise to the same scrutiny concerns as some of the other powers in the Bill because they are limited to administrative and procedural requirements and cannot alter the underlying statutory reporting obligations.

61. **The Committee is content with the powers conferred on the Electoral Commission and that regulations made under them are not subject to parliamentary procedure.**

Clause 61 inserts new section 55A(7) into the Political Parties, Elections and Referendums Act 2000 ("PPERA"), empowering the Secretary of State, by regulations subject to the affirmative procedure, to amend the definition of "cryptoasset" in new section 55A(6)

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative procedure

Provision

62. Clause 61 places a restriction on the ability for registered parties to accept cryptoasset donations, by making it so that cryptoasset donations are regarded as being received from someone who is not a permissible donor.

63. The definition of “cryptoasset” appears in new clause 55A(6) that Clause 61 inserts into Part 4 of PPERA. New section 55A(7) provides the Secretary of State with the power to amend that definition by regulations.

Committee consideration

64. The Delegated Powers Memorandum explains that cryptoassets are a relatively recent and rapidly evolving technology and that the power is intended to ensure that the statutory definition can be updated to reflect future developments. The power is a Henry VIII power, as it permits amendment of a definition contained in primary legislation. However, the power is narrowly focused and confined to updating the definition of "cryptoasset". The Committee accepts that a degree of flexibility may be required in this area to ensure that the operation of the prohibition is not undermined by technological developments or changes in terminology.

65. Regulations made under the power will be subject to the affirmative procedure. Given that changes to the definition could materially affect the scope of the prohibition on political donations and related arrangements involving cryptoassets, the Committee accepts that the affirmative procedure provides an appropriate level of parliamentary scrutiny.

66. Amending the definition of "cryptoasset" would affect the operation of the donation regime in relation to devolved elections and referendums. Regulations made by the Secretary of State within devolved competence would fall within the scope of the

UKSI Protocol and would therefore be notified to the Scottish Parliament. However, notification under the Protocol does not provide an opportunity for formal parliamentary scrutiny before the regulations are made or come into force. In addition, there is no requirement for the Secretary of State to consult the Scottish Ministers or obtain their consent before making regulations under the power.

67. **The Committee is content with the power in principle and that it is subject to the affirmative procedure.**

68. **The Committee draws the following to the lead committee's attention:**

- **Only the Secretary of State can exercise the power within the Scottish Parliament's legislative competence.**
- **Regulations will be laid before and scrutinised by the United Kingdom Parliament only.**
- **There is no requirement for the Secretary of State to consult the Scottish Ministers or obtain their consent before making the regulations.**
- **The regulations will fall within the scope of the UKSI Protocol and will be notified to the Parliament only after becoming law.**

Clause 63 and Schedule 13, paragraph 43 (previously clause 58(11) and Schedule 8, paragraph 46 inserting paragraph 6A of Schedule 2A of the RPA 1983 - power to vary threshold sums for risk assessments relating to donations

Power conferred on: Scottish Ministers in relation to local government elections in Scotland

Power exercised by: Regulations

Parliamentary Procedure: Negative

Provision

69. Clause 63 and Schedule 13, paragraph 43 insert new paragraph 6A into Schedule 2A of the RPA 1983. The provision confers a power on the Scottish Ministers, in relation to local government elections in Scotland, to vary the threshold for donations which trigger the requirement to undertake a risk assessment.

Committee consideration

70. The UK Government states that the power is intended to ensure that the statutory monetary thresholds can be adjusted to keep pace with inflation. The power is equivalent to other powers within electoral legislation that permit monetary thresholds to be adjusted.

71. The Committee notes that the power enables amendment of threshold amounts set out in primary legislation and is therefore a Henry VIII power. However, the circumstances in which the power may be exercised are limited. In particular, it may only be used to increase the threshold amounts and only for specified purposes.

72. In light of the limited nature of the power and the restricted circumstances in which it may be exercised, the Committee considers the delegation of the power and the application of the negative procedure to be acceptable.

73. **The Committee is content with the power conferred on Scottish Ministers in principle and that it is subject to the negative procedure.**

Clause 63(3) (previously clause 58(3)) inserting section 54C(3) into the Political Parties, Elections and Referendums Act 2000 ("PPERA") - power to amend the risk assessment factors for donations

Clause 63(11) and Schedule 13 paragraph 10 (previously clause 58(11) and schedule 8 paragraph 11) inserting section 71HZB(3) into PPERA - power to amend the risk assessment factors for regulated transactions

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

74. Clause 63 introduces a statutory list of risk factors to be taken into account when assessing whether a donation or regulated transaction may originate from an impermissible source. The powers in section 54C(3) and section 71HZB(3) enable the Secretary of State to amend those lists of risk factors. The powers may be exercised only following a recommendation from, or consultation with, the Electoral Commission.

Committee consideration

75. The Committee considers that these powers are exercisable within devolved competence because clause 63 will apply to donations at Scottish local government election campaigns, to donations to Scottish councillors and MSPs for political purposes other than election campaigning, and to certain devolved referendums. The Bill provides that the Secretary of State must obtain the consent of the Scottish Ministers before exercising the powers in devolved areas. However, regulations made under these powers would be made by a UK Minister and would not be subject to scrutiny by the Scottish Parliament before being made or coming into force. While such instruments would fall within the scope of the UKSI Protocol and would therefore be notified to the Scottish Parliament, that process does not provide an opportunity for parliamentary scrutiny of the instrument.

76. The UK Government states that the powers are intended to permit the risk assessment factors to be updated where new risks are identified. The powers may be used to add new factors or amend existing factors and are exercisable only following involvement of the Electoral Commission.

77. The Committee notes that the powers permit amendment of factors set out in primary legislation and are therefore Henry VIII powers. However, the powers are limited in scope and are directed towards maintaining the effectiveness of the

statutory risk assessment regime in response to changing risks and circumstances.

78. The second supplementary LCM states:

> "While the Scottish Government welcomes moves to improve the law in this area the Government is in particular considering the case for a power for the Scottish Ministers to make changes in relation to Scottish Parliament elections. It wishes to engage further with the UK Government on these provisions prior to providing a view on legislative consent."

79. In light of this, the Committee asked whether the Scottish Government considered it appropriate that regulations made by the Secretary of State under these powers would not be subject to scrutiny by the Scottish Parliament notwithstanding that they would be exercisable within devolved competence.

80. In response, the Minister indicates that he welcomes the requirement for Scottish Ministers' consent before regulations may apply in relation to devolved Scottish matters. However, he also states that his preference would be for the Scottish Parliament to have a direct role in the process and advises that he is making representations to the UK Government to that effect. As an alternative, he suggests that Scottish Ministers intend to consult the Parliament before deciding whether to provide consent.

81. **The Committee notes the Scottish Government's intention to seek amendments to the Bill. As discussions with the UK Government are ongoing, the Committee intends to consider the matter further once the UK Government's position regarding proposed amendments is known.**

Clause 63 and Schedule 13, paragraph 40 (previously claure 58(11) and schedule 8, paragraph 43(b)) inserting paragraph 11(3A)(d) of Schedule 15 of PPERA - power for the EC to require additional information in a donation report where the donation was refused as a result of the new requirements for a risk assessment

Clause 63 and Schedule 13, paragraph 46 (previously clause 58(11) and schedule 8, paragraph 49(b)) inserting paragraph 12(3A)(d) of Schedule 2A to the RPA 1983 - power for the Electoral Commission to require additional information in a donation report

Power conferred on: Electoral Commission

Power exercised by: Regulations

Parliamentary Procedure: None

Provision

82. Clause 63 and Schedule 13 confer a number of powers on the Electoral Commission to require additional information to be included in reports relating to donations which have been refused as a result of the new risk assessment requirements introduced by the Bill.

Committee consideration

83. The Committee considers that these powers are partly exercisable within the legislative competence of the Scottish Parliament. The reporting requirements form part of the wider risk assessment regime addressed in clause 63, which the Scottish Government considers engages devolved competence in relation to local government elections in Scotland, donations to Scottish councillors and MSPs and certain devolved referendums.

84. The UK Government states that the powers are intended to enable the Electoral Commission, as the body responsible for regulating political finance, to determine whether additional information is required in reports submitted under the new regime. The Government considers that reporting requirements are administrative matters which are appropriately dealt with through delegated legislation rather than on the face of the Bill.

85. The Committee notes that the powers are limited in scope and relate only to the provision of additional information in reports submitted to the Electoral Commission. The core reporting requirements remain set out in primary legislation.

86. The Committee also notes that regulations made by the Electoral Commission under these provisions are not subject to parliamentary procedure. This is consistent with existing reporting powers under PPERA and reflects the Commission's role as the regulator responsible for administering and enforcing the political finance regime.

87. The Committee therefore considers the delegation of these powers and the absence of parliamentary procedure to be acceptable.

88. **The Committee is content with the powers conferred on the Electoral Commission and that regulations made under them are not subject to parliamentary procedure.**

Clause 64 – electronic material promoted third parties – repealing Part 8 of the Scottish Elections (Representation and Reform) Act 2025

Removal of powers previously conferred on Scottish Ministers

Provision

89. Clause 64(2) repeals Part 8 of the Scottish Elections (Representation and Reform) Act 2025, which established additional digital imprint requirements for unregistered third-party campaigners in relation to Scottish Parliament and local government elections in Scotland. Part 8 also conferred powers on the Scottish Ministers to make regulations modifying aspects of that regime.

90. The second supplementary LCM states that legislative consent is required because repeal of Part 8 removes regulation-making powers previously conferred on the Scottish Ministers and therefore alters their executive competence. The Scottish Government notes that these matters will instead be addressed through the UK-wide digital imprint regime in the Elections Act 2022. From a parliamentary scrutiny perspective, the effect of the repeal is that the Scottish Parliament will no longer have the opportunity to scrutinise subordinate legislation made by Scottish Ministers under Part 8 of the 2025 Act. To the extent that equivalent provision may in future

be made through powers exercised by the Secretary of State under the UK-wide regime, scrutiny of those powers would fall to the UK Parliament rather than the Scottish Parliament. The provision therefore reduces the scope for scrutiny by the Scottish Parliament in an area previously subject to devolved regulation-making powers. The second supplementary LCM notes that "discussion remains underway" between the Scottish and UK Governments.

91. **The Committee highlights that clause 64 removes delegated powers previously conferred on the Scottish Ministers and consequently removes an existing role for the Scottish Parliament in scrutinising regulations relating to the digital imprint regime.**

Clause 68(3) (previously clause 58(3)) inserting section 54D into PPERA - power for the Electoral Commission to prepare risk assessment guidance and to appoint the day on which guidance comes into force

Power conferred on: Electoral Commission / Secretary of State

Power exercised by: Guidance / Regulations

Parliamentary Procedure: Draft guidance to be laid before Parliament for 40 days; regulations bringing guidance into force are not subject to parliamentary procedure

Provision

92. Clause 68(3) inserts new section 54D into PPERA. The provision requires the Electoral Commission to prepare and publish guidance concerning the operation of the new risk assessment regime for donations and regulated transactions. The guidance must address specified matters relating to the conduct of risk assessments and may be revised by the Electoral Commission from time to time. The guidance is subject to approval by the Secretary of State before it may be issued.

93. Before approving draft guidance, the Secretary of State must consult the devolved governments in relation to matters within devolved competence. The approved draft guidance is then laid before Parliament for a period of 40 days. Once issued, the guidance comes into force on a day appointed by regulations made by the Secretary of State under section 54D(10)(c).

Committee consideration

94. The Committee considers that these provisions are partly exercisable within devolved competence. The Scottish Government states in its supplementary LCM that the guidance will apply in areas of devolved competence, including aspects of the campaign finance regime relating to Scottish local government elections, MSPs and devolved referendums. It follows that regulations made by UK Ministers bringing the Guidance into force will fall within the scope of the UKSI Protocol and will therefore be notified to the Scottish Parliament. However, this does not amount to formal parliamentary scrutiny prior to the regulations being made or coming into force. The Bill provides that the Secretary of State must consult the Scottish Ministers before exercising the powers within devolved competence. However, regulations made under these powers would be made by a UK Minister and would

not be subject to scrutiny by the Scottish Parliament before being made or coming into force. While such instruments would fall within the scope of the UKSI Protocol and would therefore be notified to the Scottish Parliament, that process does not provide an opportunity for parliamentary scrutiny of the instrument.

95. In its response to the Committee's questions regarding other provisions[CM1] of the Bill, the Scottish Government indicated that it intends to seek provision for the Scottish Parliament to be consulted as part of the Electoral Commission's guidance process, noting that a similar approach already exists elsewhere in PPERA. The Scottish Government also indicated that it intends to propose amendments to the Bill so that commencement regulations bringing the guidance into force would require the consent of the Scottish Ministers insofar as they relate to Scottish devolved donations. While the outcome of discussions between the Scottish and UK Governments is not yet known, the proposed approach would provide a greater degree of parliamentary engagement than is currently provided for on the face of the Bill.

96. The Committee notes that the guidance itself is subject to a bespoke scrutiny process involving approval by the Secretary of State and laying before Parliament for 40 days. Given that the guidance is already subject to parliamentary scrutiny before it is issued, the absence of a parliamentary procedure for regulations appointing the commencement date appears consistent with the approach taken to comparable guidance regimes.

97. **The Committee draws the following to the attention of the lead committee:**

- **Only the Secretary of State can exercise the power within the Scottish Parliament's legislative competence.**
- **Regulations bringing the guidance into force will be laid before and scrutinised by the United Kingdom Parliament only.**
- **The regulations will fall within the scope of the UKSI Protocol and will be notified to the Parliament only after becoming law.**
- **The Scottish Government intends to seek amendments to the Bill.**

Clause 70 (previously clause 63) amending section 155(1A) of the Political Parties, Elections and Referendums Act 2000 ("PPERA") - extension of power for Scottish Ministers to vary sums in Schedule 7 of PPERA

Power conferred on: Scottish Ministers

Power exercised by: Regulations

Parliamentary Procedure: Existing procedure retained (no procedure where exercised to reflect changes in the value of money; negative procedure where exercised to implement an Electoral Commission recommendation)

Provision

98. Section 155(1A) of PPERA currently enables the Scottish Ministers to vary certain

sums contained in Parts 5 and 6 of PPERA within devolved competence, either to reflect changes in the value of money or on the recommendation of the Electoral Commission. Clause 63 extends that existing power so that it also applies to the new threshold amounts inserted into Schedule 7 of PPERA by the Bill in connection with the risk assessment regime for donations.

Committee consideration

99. The UK Government states that the power is required as a consequence of the insertion of new threshold amounts into Schedule 7 of PPERA. The intention is to ensure that those thresholds may be adjusted in the same way as equivalent financial thresholds elsewhere in PPERA, thereby maintaining their effectiveness over time.

100. The Committee notes that this is an extension of an existing power rather than the creation of a wholly new power. While the power permits amendment of sums specified in primary legislation and is therefore a Henry VIII power, its exercise is limited to specified circumstances, namely changes in the value of money or implementation of a recommendation made by the Electoral Commission.

101. The Committee therefore considers the extension of the power and the continuation of the existing parliamentary procedures to be acceptable.

102. **The Committee is content with the extension of the existing power conferred on Scottish Ministers and that the existing parliamentary procedures continue to apply.**

Clause 75(3) (previously clause 67(3) inserting paragraph 17A into Schedule 19C of PPERA - power to prescribe criminal offences for the purposes of the Electoral Commission's civil sanctions regime

Clause 75(4) and Schedule 17 (previously clause 67(4) and schedule 11), paragraph 9(2) and (4) - extension of power to make supplemental provision in relation to civil sanctions

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

103. Clause 75 expands the Electoral Commission's civil sanctions regime under Schedule 19C of PPERA. New paragraph 17A enables regulations to prescribe certain offences in legislation other than PPERA for the purposes of the Commission's civil sanctioning powers. Clause 67 also extends existing powers to make supplemental provision so that specified persons may be sanctioned for offences, restrictions or requirements committed or breached by other persons in prescribed circumstances.

104. The provisions form part of wider changes in the Bill extending the Electoral

Commission's enforcement role to certain offences under the Representation of the People Act 1983, the Electoral Law Act (Northern Ireland) 1962 and the Recall of MPs Act 2015.

Committee consideration

105. The Committee considers that these powers are partly exercisable within the legislative competence of the Scottish Parliament. The powers concern the enforcement of electoral finance and campaign rules which apply, in part, to devolved elections and electoral participants. However, regulations made under these powers would be made by a UK Minister and would not be subject to scrutiny by the Scottish Parliament before being made or coming into force. While such instruments would fall within the scope of the UKSI Protocol and would therefore be notified to the Scottish Parliament, that process does not provide an opportunity for parliamentary scrutiny of the instrument.

106. The UK Government states that the powers are required to enable new categories of offences, restrictions and requirements to be brought within the Electoral Commission's civil sanctions regime and to ensure that appropriate provision may be made regarding responsibility and liability for breaches.

107. The Committee notes that the powers expand existing powers already contained within Schedule 19C of PPERA and are intended to support the operation of an established statutory sanctions regime. The powers do not create a free-standing enforcement framework but enable additional offences and related matters to be brought within the existing regime.

108. Given the significance of prescribing offences and extending the circumstances in which civil sanctions may be imposed, the Committee consider that the affirmative procedure provides an appropriate level of parliamentary scrutiny.

109. The Committee asked the Scottish Government whether it considered the delegation of these powers to the Secretary of State, exercisable within devolved competence, to be appropriate given that regulations made under the powers would not be subject to scrutiny by the Scottish Parliament.

110. The Scottish Government's response clarifies that the powers affected by clause 75 are existing powers under Schedule 19C of PPERA, the exercise of which was transferred to the Scottish Ministers within devolved competence. It explains that clause 75 does not create new standalone powers exercisable by the Secretary of State in devolved areas but instead expands the scope and effect of existing powers exercisable by the Scottish Ministers under schedule 19C of PPERA in relation to devolved electoral matters.

111. The Scottish Government further explains that Scottish Ministers will continue to exercise the relevant powers under Schedule 19C in relation to devolved electoral matters, including Scottish Parliament and local government elections in Scotland. The effect of clause 75 is therefore to extend the operation of an existing regime rather than to confer new powers on the Secretary of State within devolved competence.

112. **The Committee notes the Scottish Government's clarification of the effect**

of clause 75.

113. **The Committee is content with the amendment of the existing delegated powers under Schedule 19C of PPERA and that the existing scrutiny arrangements continue to apply.**

Clause 77 (previously clause 69) inserting paragraph 16A into Schedule 19C of the Political Parties, Elections and Referendums Act 2000 ("PPERA") - power for the Secretary of State to make provision in relation to the Electoral Commission's civil enforcement regime where the provision could be made by the Scottish Ministers or Welsh Ministers

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative or Affirmative procedure, depending on the content of the regulations

Provision

114. Clause 77 inserts new paragraph 16A into Schedule 19C of PPERA. The provision enables the Secretary of State to make regulations containing provision which could otherwise be made by the Scottish Ministers or Welsh Ministers under powers relating to the Electoral Commission's civil sanctions regime. The power is intended to facilitate the creation of a consistent enforcement framework across the United Kingdom. The Secretary of State may not exercise the power without first obtaining the consent of the relevant devolved administration.

Committee consideration

115. The Committee considers that this power is exercisable within the legislative competence of the Scottish Parliament. The purpose of the provision is expressly to enable the Secretary of State to make provision which could otherwise be made by the Scottish Ministers in relation to devolved electoral matters.

116. The Bill provides that the Secretary of State must obtain the consent of the Scottish Ministers before exercising the powers within devolved competence. However, regulations made under these powers would be made by a UK Minister and would not be subject to scrutiny by the Scottish Parliament before being made or coming into force. While such instruments would fall within the scope of the UKSI Protocol and would therefore be notified to the Scottish Parliament, that process does not provide an opportunity for parliamentary scrutiny of the instrument.

117. The UK Government states that the power is intended to facilitate a consistent civil enforcement regime across reserved and devolved electoral finance legislation. The UK Government considers this desirable because of the complexity of political finance regulation and the potential for campaigners to be subject simultaneously to both reserved and devolved regulatory regimes.

118. The Committee further notes that the power does not create any new categories of provision that may be made under Schedule 19C of PPERA. Rather, it enables the

Secretary of State to exercise powers which are already exercisable by devolved ministers, thereby promoting consistency across the civil sanctions regime.

119. Regulations made under the power are subject to the same parliamentary procedure as applies to the underlying powers in Schedule 19C of PPERA. The affirmative procedure applies where offences, restrictions or requirements are prescribed or where maximum penalties are set. In all other cases, the negative procedure applies.

120. The Committee asked the Scottish Government whether it considered the delegation of these powers to the Secretary of State, exercisable within devolved competence subject to Scottish Ministers' consent, to be appropriate given that regulations made under the powers would not be subject to scrutiny by the Scottish Parliament.

121. TheScottish Government acknowledges that the provision enables the Secretary of State to make provision that could otherwise be made by the Scottish Ministers but notes that the power may be exercised only with Scottish Ministers' consent. The Scottish Government states that any exercise of the power would be subject to the UK Statutory Instrument Protocol and that the Scottish Parliament would be notified of any regulations made under the power.

122. The Committee notes that notification under the UK SI Protocol does not provide an opportunity for formal parliamentary scrutiny before an instrument is made or comes into force. The Scottish Government's response therefore addresses the arrangements for notification but does not fully address the Committee's concern regarding opportunities for parliamentary scrutiny of regulations before they are made. Regulations made under this power would continue to be scrutinised by the UK Parliament rather than the Scottish Parliament.

123. Nevertheless, the Scottish Government also advises that, if consent were sought, it would seek to consult the Scottish Parliament and ensure that sufficient time was available for that consultation before any decision on consent was taken. While such consultation would not amount to formal parliamentary scrutiny of the regulations themselves, it would provide the Parliament with an opportunity to express a view before Scottish Ministers decide whether to consent to the exercise of the power.

124. **The Committee notes the Scottish Government's commitment to consult the Scottish Parliament before deciding whether to provide consent to the exercise of the power.**

125. **The Committee draws the following to the attention of the lead committee:**

- **Only the Secretary of State can exercise the power within the Scottish Parliament's legislative competence.**
- **Regulations will be laid before and scrutinised by the United Kingdom Parliament only.**
- **The Secretary of State must obtain the Scottish Ministers' consent before making the regulations.**

- **The regulations will fall within the scope of the UKSI Protocol and will be notified to the Parliament only after becoming law.**
- **The Scottish Ministers have committed to consulting the Parliament before any decision on consent is taken.**

Clause 85 (previously clause 77) - power to make consequential provision

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Negative procedure; affirmative procedure where regulations amend, repeal or revoke primary legislation

Provision

126. Clause 85 confers a power on the Secretary of State to make provision which is consequential on the provisions of the Bill. Regulations made under the power may make different provision for different purposes and may include transitional or saving provision. The power may also be used to amend, repeal or revoke primary or secondary legislation.

Committee consideration

127. The Committee notes that the power is conferred on the Secretary of State and is capable of being exercised within devolved competence. However, it is a standard consequential power, limited to provision that is consequential on the Bill. Regulations amending primary legislation are subject to the affirmative procedure, while regulations amending secondary legislation are subject to the negative procedure. The Committee considers that the power and level of scrutiny are appropriate.

128. **The Committee is content with the power conferred on the Secretary of State and with the parliamentary procedures attached to its exercise.**

Clause 86 (previously clause 78) - power to update references to subordinate legislation in the Bill and in provisions inserted into other Acts

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: Affirmative

Provision

129. Clause 86 confers a power on the Secretary of State to amend references in the Act, and in provisions inserted into other Acts by the Bill, where those references are made to subordinate legislation that is subsequently amended, revoked or

replaced. The power is intended to enable references to subordinate legislation to be updated so that they continue to reflect the relevant legal provisions.

Committee consideration

130. This power is conferred on the Secretary of State and is capable of being exercised within devolved competence to the extent that it may be used to amend provisions operating within devolved competence. However, the power is narrowly drawn and may only be exercised where amendments are required as a consequence of changes made to subordinate legislation.

131. Given the limited nature of the power and the fact that it enables amendment of primary legislation, the Committee considers that the affirmative procedure provides an appropriate level of parliamentary scrutiny.

132. The Committee therefore considers the delegation of the power and the parliamentary procedure to be acceptable.

133. **The Committee is content with the power conferred on the Secretary of State and that it is subject to the affirmative procedure.**

Clause 90(3) (previously clause 82(3)) - power to make transitional and saving provision in connection with commencement

Power conferred on: Secretary of State

Power exercised by: Regulations

Parliamentary Procedure: None

Provision

134. Clause 90 confers a power on the Secretary of State to bring provisions of the Bill into force by regulations. The power also enables the Secretary of State to make transitional or saving provision in connection with commencement and to make different provision for different purposes or areas.

Committee consideration

135. The Committee considers that this power is exercisable within the legislative competence of the Scottish Parliament to the extent that it relates to provisions of the Bill which operate within devolved competence. However, commencement powers are a standard feature of primary legislation and Parliament will already have approved the substantive provisions brought into force under the power. The power to make transitional and saving provision is limited to facilitating the transition from the existing legal position to the new arrangements established by the Bill. It is standard practice for commencement regulations not to be subject to parliamentary procedure.

136. The Committee therefore considers the power and the absence of parliamentary procedure to be acceptable.

137. **The Committee is content with the power conferred on the Secretary of State and that regulations made under it are not subject to parliamentary procedure.**

