



The Scottish Parliament
Pàrlamaid na h-Alba

Published 19 February 2026
SP Paper 1016
20th Report, 2026 (Session 6)

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

Delegated powers in the Scottish Parliament (Recall and Removal of Members) 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 and overview of the Bill

1. This report considers the delegated powers in the [Scottish Parliament \(Recall and Removal of Members\) Bill](#) ("the Bill") as amended at Stage 2.
2. This Member's Bill was introduced by Graham Simpson, MSP on 17 December 2024. The lead committee was the Standards, Procedures and Public Appointments Committee.

Background

3. The Bill contains three provisions which confer delegated powers. The Committee considered the delegated powers in the Bill at its meetings on 25 March, 20 May and 3 June 2025. The Committee published its [Stage 1 report on the delegated powers in the Bill](#) on 10 June 2025. The Committee was content with all of the powers in principle, subject to the removal of a power to legislatively sub-delegate in section 21.
4. Following Stage 2, one of the powers has been revised and one new power has been added. The Member has therefore lodged a [Supplementary Delegated Powers Memorandum](#) (“sDPM”) which explains the revisions.
5. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.

Review of the additional and revised delegated powers

Section 21: Power to make further provision about processes, etc.

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision

6. Section 21(1) provides that the Scottish Ministers may by regulations make provision about:
 - the conduct of the recall processes
 - campaigning to promote a particular outcome of a recall process, including expenditure incurred in relation to such campaigning (“campaign expenditure”),
 - the questioning of such a process and the consequences of irregularities.
7. Section 21(2) provides that regulations made under subsection (1) may modify any enactments and create criminal offences.

Committee consideration

Removal of the power to sub-delegate

8. The Committee’s principal concern at Stage 1 related to the express power in section 21(2)(c) which allowed the Scottish Ministers to confer powers to make subordinate legislation. That provision has now been removed. The Bill also inserts a new section 21(1A), which makes clear that regulations under section 21(1) cannot confer further powers to make subordinate legislation. Whilst the removal of 21(2)(c) was sufficient to resolve the issue, the Committee is satisfied that amendments address its earlier concerns.

Further amendments to section 21 (regulation-making powers on the recall process)

9. Minor changes have been made to section 21(1)(a) and (c) which are consequential on the structural changes to the recall process (moving from a “petition plus poll” model for regional MSPs to a single recall poll). These amendments ensure that the regulation-making powers continue to apply coherently to both recall petitions and recall polls, now collectively defined as “recall processes”.
10. Section 21(3)(a) has been amended to provide, that, in addition to the legislation already cited, regulations made under section 21 may also apply, with or without modification or exceptions, any provision made under the Elections Act 2022 and the Scottish Elections (Representation and Reform) Act 2025. The Committee is

content that this will permit the named statutes to be adapted and applied to the recall process.

11. Section 21(3) has also been revised to update the illustrative list of matters about which regulations may make provision. These additions are largely clarificatory and include, for example, delegation of functions by returning officers, and the ability to specify days or locations for signing or voting. These changes do not broaden the fundamental scope of the power.
12. A further amendment makes explicit that regulations may make provision about campaigning and campaign expenditure in connection with a recall process. The Member previously considered such provision to be within the existing scope of section 21, but the amendments now place this beyond doubt. This clarification responds to issues raised during Stage 1 regarding transparency and accountability within the recall process.
13. Finally, a new section 21A was inserted at Stage 2, which provides that regulations under section 21 will be subject to a requirement to consult the Electoral Commission. The Committee welcomes this.
14. None of these changes alter the Committee's Stage 1 conclusion that the broad conduct-of-process power is acceptable in principle (subject to the removal of sub-delegation, which has now been addressed).

15. The Committee:

- **welcomes the removal of the power to legislatively sub-delegate;**
- **welcomes the addition of a statutory requirement to consult the Electoral Commission; and**
- **is content with the power, as revised.**

Section 31: Power to make commencement provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Laid only

Revised or new power: New

Provision

16. Section 31(2) to (3) enables the Scottish Ministers, by regulations, to appoint the day or days on which the provisions of the Bill (other than sections 29, 30, 31 and 32) come into force. Regulations made under this section may make different provision for different purposes and may include transitional, transitory or saving provision.

Committee consideration

17. The Bill was amended at Stage 2 to remove the provision in Section 31 that would have brought Parts 1 and 2 of the Bill into force at the end of the period of 6 months from Royal Assent. It has been replaced with provision that all provisions of the Bill other than the sections in the final provisions part of the Bill (sections 29 - 32) are brought into force by regulations.
18. These adjustments are standard and reflect the fact that further subordinate legislation will require to be put in place before recall processes can operate in practice.
19. **The Committee is content with the commencement power and that it will not be subject to any parliament procedure.**

