

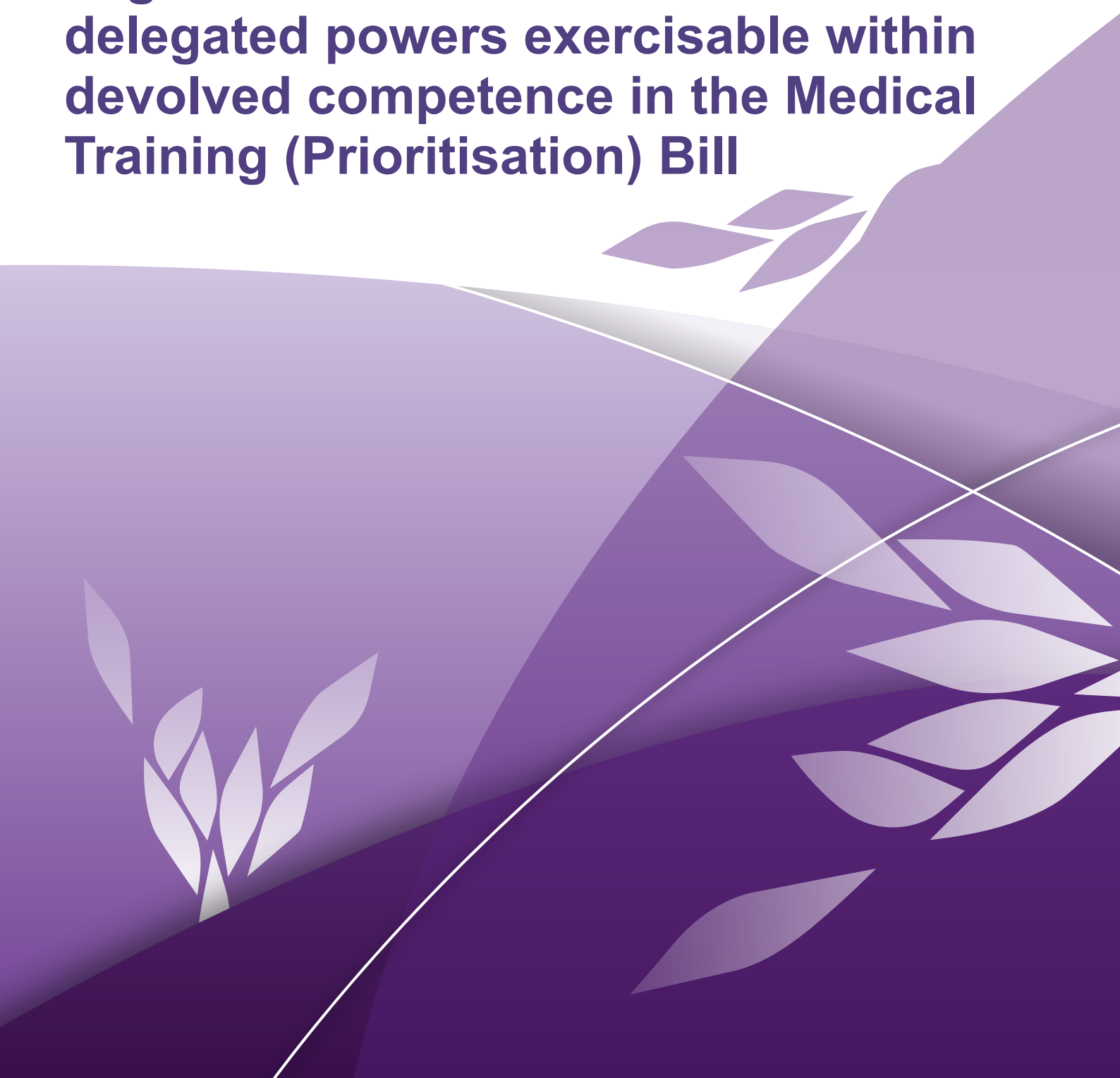


The Scottish Parliament  
Pàrlamaid na h-Alba

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## **Delegated Powers and Law Reform Committee**

# **Legislative Consent Memorandum: delegated powers exercisable within devolved competence in the Medical Training (Prioritisation) Bill**



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# Delegated Powers and Law Reform Committee

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;

(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.

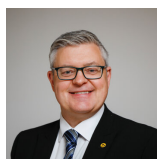


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# Committee Membership



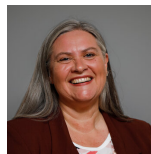
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**Bill Kidd**  
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**Katy Clark**  
Scottish Labour



**Roz McCall**  
Scottish Conservative  
and Unionist Party



**Jeremy Balfour**  
Independent

# Introduction

1. The purpose of this report is to consider the delegated powers that are exercisable within devolved competence in the [Medical Training \(Prioritisation\) Bill](#) (“the Bill”).
2. The Committee considered the [Legislative Consent Memorandum](#) (“LCM”) for the Bill at its meeting on 3 February 2026.
3. The Committee considered the LCM 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”. The Committee and its predecessor Committee have considered powers conferred on UK Ministers in devolved areas in various bills over the course of sessions 5 and 6.
4. The Committee also considered these powers under Rule 9B.3.6 of the Parliament’s Standing Orders. Rule 9B.3.6 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.

## The Bill

5. The Bill introduces a system of prioritisation for allocation of medical training places, which would apply to all Foundation Programme and specialty training recruitment processes across the UK.
6. For Foundation Programme posts, the Bill establishes prioritisation of UK medical graduates or persons in the priority group (including graduates from institutions in Ireland or from some countries with whom existing agreements require the recognition of qualifications and parity in access to the profession). For speciality training posts, the Bill establishes prioritisation of UK graduates, persons in the priority group and individuals who have completed, or are currently undertaking, the UK Foundation Programme or other relevant qualifying UK programme.
7. The Scottish Government's LCM notes that the Bill seeks to address mounting pressures in the UK's medical training pipeline by responding to the sharply rising demand for both Foundation Programme and speciality training places which has led to oversubscription, late allocation processes, and a growing "training bottleneck" that prevents many UK trained doctors from progressing in their careers.
8. This Bill was introduced in the House of Commons on 13 January 2026. It is currently at the stage of a third reading in the House of Commons, which began 27 January 2026. This Bill has been introduced as emergency legislation, subject to an expedited timescale. It is intended that the legislation receives Royal Assent by 5 March 2026 to allow prioritisation to be implemented for training programme recruitment rounds that are currently live and would affect those receiving offers for training posts starting in August 2026. Therefore, according to the current indicative timetable, legislative consent from the Scottish Parliament is anticipated to be required by 13 February 2026 at the latest.
9. As it currently stands, the entirety of the Bill applies to Scotland.
10. The Scottish Government recommends consent for clauses 1 to 8 (the entirety) of the Bill. It sets out in its LCM that the current four-nation approach to recruitment provides benefits for individual trainee doctors and to the respective NHS and health systems across the UK. According to the Scottish Government, this Bill sees the continuation of these arrangements while respecting the devolution settlement and addressing increasing risks to the onward sustainability of the medical workforce pipeline in the UK.
11. The lead committee for the LCM is the Health, Social Care and Sport Committee.

# Delegated Powers

12. The UK Government has published a [Delegated Powers Memorandum](#) (“DPM”). As is normal for UK bills, the Scottish Government has not published a DPM. The Scottish Government’s view on the Bill’s clauses is set out in the LCM.

## Powers exercised by UK Ministers within devolved competence

13. The amended Bill confers some powers on UK Ministers which may be exercisable within devolved competence. The Committee’s position in relation to such powers has been that, in general:

(a) The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.

(b) Where such powers are exercised by the Secretary of State in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.

(c) If such powers contain a requirement for the Scottish Ministers’ consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers’ consent decision.

The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers’ consent and may suggest matters for the lead committee to consider.

(d) As a minimum, powers when exercised by the Secretary of State in devolved areas should be subject to the process set out in the [SI Protocol 2](#) where the powers is within the scope of that protocol.

## Review of relevant powers

**Clause 3(1)(d): Specialty training programmes: offers made from 2027 onwards**

**Power conferred on: Appropriate authority (Secretary of State or Scottish Ministers)**

**Power exercisable by: Regulations**

**Parliamentary procedure: Negative**

### Provision

14. Clause 3 sets out that a person with responsibility for deciding which applicants progress to interview on a UK specialty training programme from 2027 onwards must offer interviews to eligible applicants who are:

- UK medical graduates,
- Persons in the priority group,
- Persons who have completed, or are currently on, a relevant qualifying UK programme, or

- Persons of a description set out in regulations made by the appropriate authority (in this case, the Secretary of State or the Scottish Ministers).
15. The delegated power in clause 3(1)(d) enables the appropriate authority to describe by regulations the persons who should be prioritised by virtue of the fourth bullet point.
  16. Subsection (3) limits this power by providing that these regulations may only set criteria for what is deemed to be a likely indicator of persons that have significant experience of working as a doctor in the NHS in England, Wales or Scotland, or in Health and Social Care in Northern Ireland (“HSCNI”), or otherwise by reference to their immigration status.
  17. Where exercised by the Secretary of State, this power is subject to a consent requirement, in clause 7(3)(b). The requirement provides that where the UK Government exercises this power to make provision within the legislative competence of the Scottish Parliament, it must obtain the consent of the Scottish Ministers.
  18. In the LCM, the Scottish Government commits to inform the Scottish Parliament of any such request for consent with as much time as possible, and where possible adhering to a 28-day notification period. The LCM provides that this framework is in place to ensure that the devolution settlement is respected.

### **Committee consideration**

19. The DPM explains that the taking of this power is justified by the necessity to give the appropriate authority the flexibility to define what constitutes significant NHS experience. This is said in the DPM to best meet the policy aim underlying the Bill. In addition, the DPM notes that a delegated power is necessary to allow the appropriate authority to change this definition in subsequent years, as informed by engagement with stakeholders and real-time monitoring of workforce dynamics to ensure the needs of the NHS are reflected.
20. The DPM considers that the negative procedure provides an appropriate level of scrutiny for regulations made under this power, as the Bill already sets out on its face the groups of people which are to be prioritised and the delegated power is limited in scope to adding to this list by reference to significant NHS or HSCNI experience or immigration status.
21. The Committee is content with delegation of the power in principle. This is a narrow power which is limited to specifying additional indicators of either significant NHS or HSCNI experience, or relevant immigration status, to reflect future workforce changes. The Committee is also content that the choice of negative procedure is appropriate for such regulations.
22. In relation to conferral of the power on the appropriate authority, the Committee notes that it would be within the Scottish Parliament’s legislative competence to legislate so as to describe which applicants should be prioritised for progression to interview, and more widely in relation to medical training. In light of the Committee’s general position on the conferral of devolved delegated powers on UK Government Ministers, and in the absence of an explanation, the Committee agreed to ask both governments why it is considered appropriate to confer the power concerned

concurrently on both the Secretary of State and the Scottish Ministers.

23. The Committee notes that the decision as to who is to exercise the power may impact the ability of the Scottish Parliament to effectively scrutinise regulations made under this power, as such regulations may not be laid in the Scottish Parliament. On this basis, the Committee also agreed to ask both governments how decisions as to who is to exercise this power are to be made.
24. Given this Bill is subject to expedited timescales, the Committee agreed that, when writing to both governments, it would copy in the lead committee to this LCM. The Committee also agreed to ask that both governments copy their responses to the lead committee, so that it can take these into account ahead of its forthcoming evidence session with the Scottish Government.
25. In terms of facilitating scrutiny by the Scottish Parliament where the power is exercised by the Secretary of State, the Committee notes the Scottish Ministers' commitment to seek to inform the Parliament of any request by the UK Government for consent, and to allow a 28-day notification period where circumstances allow.

**26. The Committee is content with delegation of the power in principle, and with the choice of the negative procedure.**

- 27. The Committee has separately written to the Scottish and UK Ministers to ask:**
- **why it is considered appropriate for the power to be exercisable by the Secretary of State within legislative competence; and**
  - **how decisions will be made regarding which authority will exercise the power.**

**28. The Committee also notes the Scottish Ministers' commitment to seek to inform the Parliament of any request by the UK Government for consent to the making of regulations, and to allow a 28-day notification period where circumstances allow. The Committee draws that commitment to the attention of the lead committee.**

**Clause 3(2)(d): Specialty training programmes: offers made from 2027 onwards**

**Power conferred on: Appropriate authority (Secretary of State or Scottish Ministers)**

**Power exercisable by: Regulations**

**Parliamentary procedure: Negative**

**Provision**

29. Clause 3 sets out that a person with responsibility for deciding which applicants are offered places on a UK specialty training programme from 2027 onwards must

prioritise those who are:

- UK medical graduates,
  - Persons in the priority group,
  - Persons who have completed, or are currently on, a relevant qualifying UK programme, or
  - Persons of a description set out in regulations made by the appropriate authority (in this case, the Secretary of State or the Scottish Ministers).
30. The delegated power in clause 3(2)(d) allows the appropriate authority to describe by regulations the persons who should be prioritised for placement offers by virtue of the fourth bullet point.
31. Subsection (3) limits this power by providing that these regulations may only set criteria for what is deemed to be a likely indicator of persons that have significant experience of working as a doctor in the NHS in England, Wales or Scotland, or in HSCNI, or otherwise by reference to their immigration status.
32. As with the power in clause 3(1)(d), where exercised by the Secretary of State to make provision within legislative competence, this power is subject to a requirement to obtain the Scottish Ministers' consent.

### **Committee consideration**

33. The DPM explains that the taking of this power is justified by the necessity to give the appropriate authority the flexibility to define what is deemed to be a likely indicator of significant NHS or HSCNI experience. This is said in the DPM to best meet the policy aim underlying the Bill. In addition, the DPM notes that a delegated power is necessary to allow the appropriate authority to change this definition in subsequent years, as informed by engagement with stakeholders and real-time monitoring of workforce dynamics to ensure the needs of the NHS are reflected.
34. The DPM considers that the negative procedure provides an appropriate level of scrutiny for regulations made under this power, as the Bill already sets out on its face the groups of people which are to be prioritised and the delegated power is limited in scope to adding to this list by reference to significant NHS or HSCNI experience or immigration status.
35. As with the delegated power in clause 3(1)(d), the Committee is content with delegation of the power in principle. This is a narrow power which is limited to specifying additional indicators of either significant NHS or HSCNI experience, or relevant immigration status, to reflect future workforce changes. The Committee is also content that the choice of negative procedure is appropriate for such regulations.
36. In relation to conferral of the power on the appropriate authority, the Committee again notes that it would be within the Scottish Parliament's legislative competence to legislate so as to describe which applicants should be prioritised for offer of placement, and more widely in relation to medical training. In light of the Committee's general position on the conferral of devolved delegated powers on UK Government Ministers, and in the absence of an explanation, the Committee agreed

to ask both governments why it is considered appropriate to confer the power concerned concurrently on both the Secretary of State and the Scottish Ministers.

37. The Committee again notes that the decision as to who is to exercise the power may impact the ability of the Scottish Parliament to effectively scrutinise regulations made under this power. On this basis, the Committee again asked both governments how decisions as to who is to exercise this power are to be made.
38. As with the delegated power in clause 3(1)(d), given this Bill is subject to expedited timescales, the Committee agreed that, when writing to both governments, it would copy in the lead committee to this LCM. The Committee also agreed to ask that both governments copy their responses to the lead committee, so that it can take these into account ahead of its forthcoming evidence session with the Scottish Government.
39. In terms of facilitating scrutiny by the Scottish Parliament where the power is exercised by the Secretary of State, the Committee again notes the Scottish Ministers' commitment to seek to inform the Parliament of any request by the UK Government for consent, and to allow a 28-day notification period where circumstances allow.

**40. The Committee is content with delegation of the power in principle, and with the choice of the negative procedure.**

- 41. The Committee has separately written to the Scottish and UK Ministers to ask:**
- why it is considered appropriate for the power to be exercisable by the Secretary of State within legislative competence; and**
  - how decisions will be made regarding which authority will exercise the power.**

**42. The Committee also notes the Scottish Ministers' commitment to seek to inform the Parliament of any request by the UK Government for consent to the making of regulations, and to allow a 28-day notification period where circumstances allow. The Committee again draws that commitment to the attention of the lead committee.**

**Clause 4(6): "UK medical graduate" and "the priority group"**

**Power conferred on: Appropriate authority (Secretary of State or Scottish Ministers)**

**Power exercisable by: Regulations**

**Parliamentary procedure: Affirmative**

**Provision**

43. Clause 4(6) provides the appropriate authority with the power, by regulations, to amend the list of countries whose graduates will be prioritised in clause 4(4), for the purpose of reflecting an international agreement to which the United Kingdom is a party.
44. The current list of countries whose graduates will be prioritised at clause 4(4) are Iceland, Liechtenstein, Norway and Switzerland. The DPM provides that these countries are prioritised as a result of one [free trade agreement](#) (“FTA”) and one [mutual recognition agreement](#) (“MRA”) the UK has entered. These agreements require the UK to ensure mutual recognition of professional qualifications and offer no less favourable treatment in access to regulated professions.
45. This is a Henry VIII power. It is constrained, however, by the requirement that regulations under the clause are introduced only where considered necessary to reflect an international agreement. The appropriate authority would not be able to bring forward regulations under this power if these requirements are not met.
46. Unlike the concurrent powers above, this power, where exercised by the Secretary of State within legislative competence, is not subject to a requirement to obtain the Scottish Ministers’ consent. Nor is it subject to a requirement to consult the Scottish Ministers.

### Committee consideration

47. The DPM explains that the taking of the power is required to ensure that the appropriate authority can update the list of countries whose graduates should be prioritised. This will in turn ensure that the Bill is reflective of any future UK trade agreements which include the recognition of professional qualifications between nations. On this basis, the DPM considers a Henry VIII power which enables the Bill to be amended to reflect such trade agreements to be necessary in ensuring the UK’s compliance with its international obligations.
48. The DPM considers that the affirmative procedure provides an appropriate level of scrutiny for regulations made under this power as the regulations would amend primary legislation. As such it would be reasonable for regulations to be considered and voted on by the appropriate devolved legislature.
49. As with the powers above, the Committee is content with delegation of the power in principle. This is a narrow power which is limited to amending the list of countries whose graduates will be prioritised in clause 4(4), for the specific purpose of reflecting an international agreement to which the United Kingdom is a party. The Committee is also content that the choice of affirmative procedure is appropriate for such regulations
50. In relation to conferral of the power on the appropriate authority, again the Committee notes that it would be within the Scottish Parliament’s legislative competence to legislate so as to reflect, and comply with, international agreements into which the UK Government has entered. In light of the Committee’s general position on the conferral of devolved delegated powers on UK Government Ministers, and in the absence of an explanation, the Committee agreed to ask both governments why it is considered appropriate to confer the power concerned concurrently on both the Secretary of State and the Scottish Ministers.
51. The Committee again notes that the decision as to who is to exercise the power

may impact the ability of the Scottish Parliament to effectively scrutinise regulations made under this power. On this basis the Committee also agreed to ask both governments how decisions as to who is to exercise this power are to be made.

52. The Committee also notes that this is the only devolved power in the Bill not subject to a requirement for the Scottish Ministers' consent when exercised by the Secretary of State. The Committee therefore also agreed to ask both governments on what basis the decision was made not to extend the consent requirement to the Secretary of State's exercise of this power.
53. As with the powers above, given this Bill is subject to expedited timescales, the Committee agreed that, when writing to both governments, it would copy in the lead committee to this LCM. The Committee also agreed to ask that both governments copy their responses to the lead committee, so that it can take these into account ahead of its forthcoming evidence session with the Scottish Government.

**54. The Committee is content with delegation of the power in principle, and with the choice of the affirmative procedure.**

- 55. The Committee has separately written to the Scottish and UK Ministers to ask:**
- why it is considered appropriate for the power to be exercisable by the Secretary of State within legislative competence;**
  - what consideration has been given to requiring the consent of the Scottish Ministers before the power may be exercised by the Secretary of State within legislative competence; and**
  - how decisions will be made regarding which authority will exercise the power.**

**Clause 5(4)(d): "UK Foundation Programme", "UK Specialty Programme" etc**

**Power conferred on: Appropriate authority (Secretary of State or Scottish Ministers)**

**Power exercisable by: Regulations**

**Parliamentary procedure: Negative**

**Provision**

56. Clause 5 defines terms which are used in clauses 1 to 3 of the Bill. Subsection 4 defines a 'UK specialty programme'.
57. The delegated power in clause 5(4) allows the appropriate authority, by regulations, to specify programmes which would not count as a UK specialty programme for the purposes of the Bill. The effect of this would be to exclude such programmes from the prioritisation provided for in the Bill.
58. As with the power in clause 3(1)(d), where exercised by the Secretary of State

within legislative competence, this power is subject to a requirement to obtain the Scottish Ministers' consent.

### Committee consideration

59. The DPM explains that the taking of this power gives the appropriate authority the ability to remove programmes from being considered UK specialty programmes for the purposes of the Bill. This would give the appropriate authority the necessary flexibility to respond to future changes in recruitment, training and workforce needs.
60. The DPM considers that the negative procedure provides an appropriate level of scrutiny for regulations made under this power, due to the limited scope of the power.
61. As with the powers above, the Committee is content with delegation of the power in principle. This is a narrow power which is limited to specifying programmes which would not count as a UK specialty programme for the purposes of the Bill. The Committee is also content that the choice of negative procedure is appropriate for such regulations
62. In relation to conferral of the power on the appropriate authority, the Committee again notes that it would be within the Scottish Parliament's legislative competence to legislate so as to describe which applicants should be prioritised for placement of offer, and more widely in relation to medical training. In light of the Committee's general position on the conferral of devolved delegated powers on UK Government Ministers, and in the absence of an explanation, the Committee agreed to ask both governments why it is considered appropriate to confer the power concerned concurrently on both the Secretary of State and the Scottish Ministers.
63. The Committee again notes that the decision as to who is to exercise the power may impact the ability of the Scottish Parliament to effectively scrutinise regulations made under this power. On this basis the Committee also agreed to ask both governments how decisions as to who is to exercise this power are to be made.
64. Again, as with the powers above, given this Bill is subject to expedited timescales, the Committee agreed that, when writing to both governments, it would copy in the lead committee to this LCM. The Committee also agreed to ask that both governments copy their responses to the lead committee, so that it can take these into account ahead of its forthcoming evidence session with the Scottish Government.
65. In terms of facilitating scrutiny by the Scottish Parliament where the power is exercised by the Secretary of State, the Committee notes the Scottish Ministers' commitment to seek to inform the Parliament of any request by the UK Government for consent, and to allow a 28-day notification period where circumstances allow.

**66. The Committee is content with delegation of the power in principle, and with the choice of the negative procedure.**

**67. The Committee has separately written to the Scottish and UK Ministers to**

**ask:**

- **why it is considered appropriate for the power to be exercisable by the Secretary of State within legislative competence; and**
- **how decisions will be made regarding which authority will exercise the power.**

68. **The Committee also notes the Scottish Ministers' commitment to seek to inform the Parliament of any request by the UK Government for consent to the making of regulations, and to allow a 28-day notification period where circumstances allow. The Committee again draws that commitment to the attention of the lead committee.**

**Clause 8(2) and (3): Extent, commencement and short title**

**Power conferred on: Secretary of State**

**Power exercisable by: Regulations**

**Parliamentary procedure: No procedure**

**Provision**

69. Clause 8 sets out the extent, commencement and short title of the Bill. Subsection (2) provides that the Secretary of State may by regulations appoint the day or days on which the Act is to come into force.
70. Subsection (3) provides the Secretary of State with the power to make transitional or saving provision in connection with the coming into force of any provision of the Bill.

**Committee consideration**

71. In relation to the power to appoint the date of commencement, the DPM notes that this power has been taken to allow for the provisions to be brought into force at the appropriate time and before deadlines for upcoming recruitment to training programmes.
72. The DPM further provides, in relation to the power to make transitional or saving provision, that the provision of such a power is a standard provision in legislation which is necessary to ensure that the provision in the Bill can be implemented and operate effectively.
73. The Committee notes that it is usual to confer a power to make saving and transitional provisions in connection with the coming into force of an Act, in order to enable provision to be implemented in an orderly and appropriate manner. It is clear at the time of the Committee's consideration of the LCM what provision these powers will be used to make. It is also the Committee's view that these powers cannot be used to make substantive provisions of the sort that might require further scrutiny.

74. Clause 8 is a standard commencement, transitional and saving provision. If the Parliament is content to give its consent for the substantive provision in the Bill, the Committee considers that it would be reasonable and appropriate for it also to consent to the taking of standard commencement and ancillary powers to give effect to the Bill. As such, the Committee is content.

- 75. The Committee is content with the powers conferred on the Secretary of State in principle, and that they are not subject to any parliamentary procedure.**

