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

## **Delegated powers in the Non-surgical Procedures and Functions of Medical Reviewers (Scotland) Bill (as amended at Stage 2)**

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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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# Introduction and overview of the Bill

1. At its meeting on 10 March 2026, the Delegated Powers and Law Reform Committee considered the delegated powers in the [Non-surgical Procedures and Functions of Medical Reviewers \(Scotland\) Bill](#) ("the Bill") as amended at Stage 2.
2. This Bill was introduced by the Scottish Government on 8 October 2025. The lead committee was the Health, Social Care and Sport Committee. As this report is after Stage 2, it is addressed to the Parliament.
3. The Bill proposes to regulate certain non-surgical procedures which pierce or penetrate the skin. Generally speaking, these procedures are sought for cosmetic or wellbeing reasons. Procedures which are undertaken for health care treatment purposes are not covered.

# Delegated Powers

4. The Committee considered the delegated powers in the Bill at Stage 1 at its meetings on 28 October, 25 November and 9 December 2025. The Committee published its [Stage 1 report on the delegated powers in the Bill](#) on 10 December 2025. The Committee was content with all of the powers in principle with the exception of the power in section 5, which the Committee highlighted to the lead committee on account of its breadth. The Committee recommended that the lead committee consider whether the power could be limited, for instance, by adding statutory consultation requirements or guiding principles to ensure its use is evidence-based and compatible with public health.
5. Following Stage 2, two new delegated powers have been added to the Bill and two have been revised. The Member has therefore lodged a [Supplementary Delegated Powers Memorandum](#) (“sDPM”) which explains the additional and revised delegated powers.
6. 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 relevant powers

## Section 2(3): Power to specify steps that may be taken to establish a person's age

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Negative**

**Revised or new power: Revised**

### Provision

7. At introduction, the Bill included a statutory list of acceptable documents that could be used to demonstrate that reasonable steps had been taken to verify that a person receiving a non-surgical procedure was aged 18 or over. Scottish Ministers also had a power to amend that list.
8. Following Stage 2 amendments, the statutory list has been removed. Instead, Scottish Ministers have been given the power to specify, in regulations, the steps that may be taken to establish a person's age for the purpose of the statutory defence in section 2.

### Committee consideration

9. The amendment is intended to reflect the Scottish Government's plan to develop a digital age-verification system, announced in late 2025. In this context, replacing the list of documents with a power to specify, in regulations, the steps that may be taken to verify age represents a reasonable and sensible approach. It future-proofs the legislation and ensures that new methods, such as digital proof-of-age systems, can be incorporated without the need for further primary legislation.
10. The sDPM notes that this approach aligns with the proposed changes to sections 4 and 4A of the Tobacco and Primary Medical Services (Scotland) Act 2010 by the Tobacco and Vapes Bill, where similar provision is being made to support recognised digital age-verification processes.

**11. The Committee is content with the power, as revised.**

## Section 5: Power to make further provision about nonsurgical procedures

**Power conferred on: Scottish Ministers Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Affirmative**

**Revised or new power: Revised**

### Provision

12. Section 5 contains a power which enables the Scottish Ministers to make further provision about nonsurgical procedures, including imposing restrictions or requirements, specifying who may provide or supervise procedures, and creating offences.
13. At Stage 2, amendments were made in 3 respects.
14. **Amendments to section 5(3):** additional illustrative matters have been added to the list of topics on which regulations may make provision, including requirements relating to individual client risk factors, medical history assessments and enhanced consent procedures. Subsection (3) continues to operate as an illustrative, not prescriptive, list of what may be included in regulations made under this section.
15. **Increase in the maximum penalties:** the maximum penalty that may be provided for in respect of offences created in regulations made under section 5(1) has been increased. On summary conviction, the fine may not exceed £20,000; on conviction on indictment, it is unlimited.
16. **Insertion of new subsections (5) and (6):** subsection (5) places a duty on Ministers to lay draft regulations specifying training or qualification requirements for those providing nonsurgical procedures within three years of section 3 coming into force. Subsection (6) provides that if it is not practicable to do so, Ministers must lay a statement explaining why.

### Committee consideration

17. The amendments to section 5(3) appear sensible and do not expand the power in a substantive way. Subsection (3) is an illustrative list, and the additional matters simply clarify the types of operational, risk-based requirements that may be included in regulations. They do not alter the scope of the enabling power itself.
18. The amendment increasing the maximum penalties is a policy decision. Regulations made under section 5(1) may create offences, but the maximum penalties available are set out on the face of the Bill.
19. The new subsection (5) is more unusual in that it imposes a statutory duty on Ministers to make regulations within a specified timeframe (3 years beginning with the day on which section 3 comes into force). However, the duty is expressly qualified by subsection (6), which allows Scottish Ministers to lay a statement explaining why such regulations have not been brought forward within the timeframe. This fallback ensures that Scottish Ministers are not legally compelled to act where it is not practicable/possible. On balance, the approach appears acceptable.
20. The Committee previously highlighted the breadth of the power in section 5 during Stage 1 and invited the lead committee to consider whether additional safeguards or “guardrails” should be added. The Scottish Government has responded to that recommendation through the introduction of section 19A at Stage 2, which creates a statutory consultation requirement for all powers exercised under the affirmative procedure. Section 19A is addressed later in this report but provides an appropriate procedural safeguard in light of the Committee’s Stage 1 comments.
21. Given the breadth of the power, including the ability to modify primary legislation and create offences, the affirmative procedure remains appropriate.

**22. The Committee is content with the power, as revised.**

**Section 13A: Power to establish an individual assessment process under the UK Internal Market Act 2020**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: First regulations affirmative; subsequent regulations negative**

**Revised or new power: New**

**Provision**

23. Section 13A, inserted at Stage 2, enables the Scottish Ministers to establish by regulations an individual assessment process to which section 26 of the UK Internal Market Act 2020 (“UKIMA”) would apply. Under such a process, an individual may apply to have their qualifications, training, experience or skills assessed for equivalence to any standards which may be set in Scotland.
24. Regulations may designate one or more regulatory bodies to run the process, set the application and assessment procedures, provide for fees, and create an offence of providing false or misleading information.
25. The first regulations are subject to the affirmative procedure; any subsequent regulations are subject to the negative procedure.

**Committee consideration**

26. This power is intended to operate within the framework of sections 24 and 26 of the UKIMA. It would allow the Scottish Ministers to make regulations establishing an individual assessment process under section 26, enabling individuals from elsewhere in the UK to have their qualifications or experience assessed to determine whether they meet any Scottish-specific standards for providing non-surgical procedures.
27. Section 26 of the UKIMA expressly permits a “relevant national authority” (which includes the Scottish Ministers) to establish such an individual assessment process. The scope and purpose of the power are clear: it enables Ministers to create a mechanism that may be required in consequence of UKIMA’s automatic recognition provisions. The power is also framed with express limitations, relating only to the establishment and administration of the assessment process and to associated procedural and offence-related provision.
28. The choice of procedures also appears appropriate. The first set of regulations will establish the system and involve substantive policy choices, justifying the affirmative procedure. Subsequent regulations, likely to concern operational adjustments, are subject to the negative procedure. In addition, the consultation duty in section 19A will apply to the first regulations made under this section, providing an additional safeguard.

29. Overall, therefore, the conferral of the power appears acceptable in principle and the level of scrutiny appropriate.

**30. The Committee is content with the power in principle and with the choice of procedure.**

### **Section 19A: Duty to consult on regulations subject to the affirmative procedure**

**Power conferred on: Scottish Ministers**

**Power exercisable by: Regulations made by Scottish statutory instrument**

**Parliamentary procedure: Affirmative**

**Revised or new power: New**

#### **Provision**

31. Section 19A was added at Stage 2. It requires the Scottish Ministers to “consult such persons, or groups of persons, as they consider appropriate” before making any regulations under the Bill that are subject to the affirmative procedure. This includes regulations made under sections 1(5), 4(4), 5(1), the first regulations under section 13A, and section 18.

#### **Committee consideration**

32. This amendment gives effect to a recommendation made by the Committee at Stage 1, when it highlighted the breadth of the regulation making powers in the Bill, particularly the power in section 5, and invited the lead committee to consider whether additional guardrails, such as statutory consultation requirements, should be introduced.

33. Section 19A goes further than the Committee suggested: the consultation requirement applies not only to section 5 but to all regulation making powers in the Bill that are subject to the affirmative procedure. This introduces an additional safeguard and ensures that substantive policy decisions taken through affirmative regulations will be informed by appropriate engagement with stakeholders.

**34. The Committee welcomes this new provision.**

