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

Delegated powers in the Children (Care, Care Experience and Services Planning) (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 [Children \(Care, Care Experience and Services Planning\) \(Scotland\) Bill](#) ("the Bill") as amended at Stage 2.
2. The Committee previously considered the delegated powers in the Bill at Stage 1 at its meetings on 9 September and 7 October 2025. Thereafter, it published a [report](#) on 8 October 2025 indicating that it was content with the seven powers in the Bill.
3. The Bill is colloquially known as the "Promise Bill". In 2020 the Scottish Government promised that "all children in Scotland will grow up feeling loved, safe and respected", and the Government promised to achieve this by implementing the conclusions of the Independent Care Review by 2030.
4. The Policy Memorandum to the Bill states that the Bill has been informed by findings of the Independent Care Review, and by the Scottish Government's response to the Hearings for Children report. It states that this is in combination with a wide range of engagement and consultation work that has been underway throughout 2024 and 2025.

Delegated Powers

5. At Stage 1, the Bill conferred six powers to make subordinate legislation and one power to issue guidance on the Scottish Ministers.
6. At Stage 2, three new powers to make subordinate legislation, and two new powers to issue guidance, have been added. One power that was in the Bill at Stage 1 has been revised. In addition, six existing powers in other primary legislation have also been revised. The Scottish Government has produced a [Supplementary Delegated Powers Memorandum](#) (“SDPM”) which sets out the reasons for revising and adding powers.
7. 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 A1 – inserting section 71A and amending section 73(3) of the Children and Young People (Scotland) Act 2014 – Kinship care assistance: comprehensive needs assessment

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: New (revising pre-existing power from another Act)

Provision

8. Section A1 amends section 73(3) of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) and inserts new section 71A.
9. New section 71A provides that a local authority must offer to assess a person’s kinship care assistance needs where that person falls within one of the categories provided for in section 71(3). Provision is also made in order that a person falling within section 71(3) may apply to the authority to request an assessment of their kinship care assistance needs or a review of an existing assessment.
10. The amendment to section 73(3) expands an existing delegated power, which currently provides that the Scottish Ministers may make further provision about kinship care assistance needs. The expansion of the power means that it will now include the power to make provision about when or how a local authority is to assess a person’s kinship care assistance needs, and when or how a local authority is to review an assessment of a person’s kinship care assistance needs.
11. Orders made under this power are subject to the negative procedure. As stated, this is a pre-existing power, and this aspect has not been changed.

Committee consideration

12. The Scottish Government states in its SDPM that the detailed processes for assessment and review are operational in nature and may require adjustment over time in light of implementation experience, workforce practice, or evolving standards. It states that providing for these matters in regulations, rather than on the face of the Bill, allows appropriate flexibility while ensuring that the overarching duty to assess is clearly set out in primary legislation.
13. The Committee agrees that it is appropriate to expand the existing delegated power in this way. The power has been exercised once, to make the Kinship Care Assistance (Scotland) Order 2016. That Order contains a level of detail that is typically found in secondary legislation. It also appears appropriate that such operational and procedural detail can be updated from time to time in light of changing circumstances without the need for further primary legislation.

- 14. The Committee accepts the power, as amended, in principle and is content that it is subject to the negative procedure.**

Section A2 – inserting section 73A into the Children and Young People (Scotland) Act 2014 – Guidance in relation to kinship care assistance functions

Power conferred on: Scottish Ministers

Power exercisable by: Guidance

Parliamentary procedure: Laid only

Revised or new power: New

Provision

15. Section A2 of the Bill inserts a new section 73A to the 2014 Act. It places a duty on local authorities to have regard to guidance issued by the Scottish Ministers about the discharge of their functions under Part 13 of the 2014 Act, which covers support for kinship care, and matters arising in connection with those functions.
16. Section 73A also requires the Scottish Ministers, before issuing or revising such guidance, to consult such persons as they consider appropriate, and to lay a copy of the guidance before the Scottish Parliament as soon as reasonably practicable after it is issued or revised.
17. Guidance issued under this power will be laid before the Parliament but will not be subject to any further procedure.

Committee consideration

18. The Scottish Government states in its SDPM that the provision ensures that Ministers can issue guidance to support consistent implementation of kinship care assistance functions across Scotland. It states that the statutory duty to have regard to such guidance provides a clear framework for local authorities whilst enabling operational discretion in individual cases.
19. The Committee carefully considers powers to publish guidance, especially where there is a requirement to “have regard” to such guidance. In particular, it considers whether those powers should be subject to some form of parliamentary procedure where it appears that guidance may make provision which is legislative in character.
20. In this instance, it appears to the Committee that the intention is to provide local authorities supplementary advice on the exercise of their functions rather than to place any further substantive obligations on them. This type of advice is better placed in guidance, which can offer more narrative than legislation.
21. Therefore, the Committee accepts the power to issue guidance in principle and is content that it will be laid before the Parliament but will not be subject to further parliamentary procedure.

- 22. The Committee accepts the power to issue guidance in principle and is content that such guidance will be laid before the Parliament but will not be subject to any further procedure.**

Section A3 – inserting new section 73B into the Children and Young People (Scotland) Act 2014 – Power to require information-sharing by local authority

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: New

Provision

23. Section A3 inserts a new section 73B into the 2014 Act to provide that the Scottish Ministers may make regulations requiring a local authority to provide them with information relating to functions conferred by Part 13 (support for kinship care).
24. Such information may include anonymised or aggregated information about the number of kinship care assistance arrangements supported by the authority, the types of assistance provided by the authority and the effect of the assistance provided in terms of outcomes for children and their kinship carers.
25. Regulations made under this power are subject to the negative procedure.

Committee consideration

26. The Scottish Government states in its SDPM that the power is necessary to enable Ministers to obtain consistent and comparable information across Scotland about the operation and impact of kinship care support.
27. It states that the detail of information to be provided, including technical specifications of datasets and reporting formats, may require adjustment over time in light of implementation experience and evolving policy needs. As such, it considers that the power will allow appropriate flexibility without the need for further primary legislation. It also states that the power does not permit the collection of personal data about identifiable individuals.
28. The Committee considers that it is appropriate to have a power to make such detailed provision about the information to be provided by local authorities. It also acknowledges that it is likely that such requirements will change from time to time. The Committee also considers it appropriate that any such adjustments can be made by regulations rather than requiring primary legislation. The negative procedure also appears appropriate in the circumstances, given that no substantial policy decision is likely to be implemented by such regulations.

- 29. The Committee accepts the power in principle and is content that it is subject to the negative procedure.**

Section 1A – repeal and re-enacts section 29 of the Children (Scotland) Act 1995 – Aftercare**Power conferred on: Scottish Ministers****Power exercisable by: Order****Parliamentary procedure: Affirmative****Revised or new power: New (revising pre-existing power from another Act)****Provision**

30. Section 1A repeals and re-enacts section 29 of the Children (Scotland) Act 1995 (“the 1995 Act”) relating to Aftercare, which is the guidance, advice and assistance provided to young people who have left care.
31. The purpose of doing so is to bring provisions within the scope of the United Nations Convention of the Rights of the Child (Incorporation) (Scotland) Act 2024 (“UNCRC Act”), which does not apply to the 1995 Act on account of the fact that it originated in the UK Parliament.
32. Section 1A(1)(b) states that the Scottish Ministers may by order, for the purpose of requiring local authorities to provide aftercare to specified individuals, specify a description of a person formerly by no longer looked after by a local authority. Section 1A(13) also enables the Scottish Ministers to make an order specifying what is meant by “eligible needs” for the purpose of the section.
33. Orders made under this power are subject to the affirmative procedure.

Committee consideration

34. The Scottish Government states in its SDPM that these are powers in existing law that are being re-stated, which allow the Scottish Ministers to expand eligibility for Aftercare and specify what is meant by “eligible needs” for the purposes of Aftercare. The provisions are being restated in order to bring them within the scope of the UNCRC Act.
35. The Committee does not have any further comment to make, given that these are existing powers which are being restated in the same form as currently appears in the 1995 Act.

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

Section 3 – amends section 63 of the Children and Young People (Scotland) Act 2014 – Corporate Parenting**Power conferred on: Scottish Ministers****Power exercisable by: Guidance****Parliamentary procedure: Laid only**

Revised or new power: New (revised power in another Act)

Provision

37. Section 3 amends section 63 of the Children and Young People (Scotland) Act 2014 to require the Scottish Ministers to issue guidance about corporate parenting.
38. It is currently the case that a corporate parent must have regard to any guidance about corporate parenting issued by the Scottish Ministers, however there is no requirement that such guidance is issued. Guidance was issued under the power in 2015.
39. A further amendment is made to require that such guidance contains advice and information about training, including renewal of training, in relation to corporate parent responsibilities.

Committee consideration

40. The Scottish Government states in its SDPM that the amendment will place a duty on the Scottish Ministers to issue the corporate parenting guidance that corporate parents must have regard to, and will require that guidance to include advice and information about certain matters, including training in relation to corporate parent responsibilities.
41. This is a minor amendment to an existing power to make the issuing of guidance mandatory rather than discretionary. The Committee is content with such a change.

42. **The Committee accepts the amended power to issue guidance in principle and is content that, as is currently the case, it will be laid before the Parliament but will not be subject to any further procedure.**

Section 8 – inserting a new section 78E to the Public Services Reform (Scotland) Act 2010 - Profit limitation in children’s residential care services

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision

43. Section 8 inserts a new section 78E to the Public Service Reform (Scotland) Act 2010 (“the 2010 Act”) which requires that Scottish Ministers make regulations to impose an initial information requirement on residential childcare providers and in light of that to enable the Scottish Ministers to make regulations to limit the profits of the providers of those services.
44. Amendment at Stage 2 brings secure accommodation service providers within the scope of those regulation-making provisions and provides power to specify further

persons to be treated as falling within the scope.

45. Regulations made under this power are subject to the affirmative procedure.

Committee consideration

46. The Scottish Government states in its SDPM that the required information will allow the Scottish Government to understand the range of different types of care support offered, in order to build clarity around how that translates into fees charged and subsequently determine whether or not excessive profit is being made. It states that any future limiting of excessive profit would ensure that such levels of profit are not made from local authorities.
47. The Committee was content with the power at Stage 1. The Committee considers that regulations made under the amended power could make potentially significant provision by specifying further persons to fall within the scope of the information requirement. However, the affirmative procedure provides an opportunity to scrutinise any such policy decision.

- 48. The Committee accepts the power in principle and is content that it is subject to the affirmative procedure.**

Section 10H - amending section 110 of the Adoption and Children (Scotland) 2007 Act – Allowances and other payments for care of certain children

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: New (revising a pre-existing power from another Act)

Provision

49. Section 10H amends section 110 of the Adoption and Children (Scotland) Act 2007 (“the 2007 Act”) to expand the existing regulation-making power relating to allowances for the care of certain children. Subsection (1) of that section enables the Scottish Ministers to make provision about payments which may be paid by a local authority in respect of certain care-experienced children.
50. The provision broadens subsection (1) to include “other payments by a local authority to foster carers”. It also extends the list of matters in subsection (3) (which regulations under subsection (1) may provide for) to include a requirement on local authorities to publish the rates they pay.
51. Regulations made under this power are subject to the negative procedure.

Committee consideration

52. The Scottish Government states in its SDPM that the amendment to the power will enable the Scottish Ministers to provide for a consistent, transparent national framework for all forms of financial payments made to foster and kinship carers

under section 110 of the 2007 Act. It states that the types of payments covered, and the manner and timing of publication, may require adjustment over time, and that providing for these matters in secondary legislation allows appropriate flexibility and technical specification.

53. The Committee considers this to be a minor amendment to an existing power to enable the Scottish Ministers to make provision about payments by local authorities to foster carers, in the same way that they are currently able to make provision about payments in respect of certain care-experienced children. As such, the Committee is content with the amendment to the existing power.

54. The Committee accepts the amended power in principle and is content that, as is currently the case, it is subject to the negative procedure.

Section 10I – inserting section 110(3A) into the 2007 Act – allowances for care of certain children

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: New (revising pre-existing powers from another Act)

Provision

55. This amendment inserts a new subsection (3A) into section 110 of the Adoption and Children (Scotland) Act 2007 to apply sections 86A and 86B of the Social Security (Scotland) Act 2018 (“the 2018 Act”) to any rate of payment set in regulations made under section 110(1)(a). This is to provide a statutory mechanism for annual uprating of foster and kinship care allowances paid in respect of a child.
56. Regulations made under section 110(1) will attract the affirmative procedure where they specify rates (to which the uprating mechanism will apply).

Committee consideration

57. The Scottish Government states in its SDPM that the power ensures that allowance rates in respect of a child that are set in regulations will be subject to a statutory uprating mechanism which is aligned with the framework established under the 2018 Act. The mechanism also supports consistency between foster care and kinship care payment arrangements.
58. The Committee considers that this is an appropriate amendment of an existing power, for the purpose of alignment with the framework of the 2018 Act.

59. The Committee accepts the power in principle and is content that it is subject to the affirmative procedure.

Section 10I – inserting sections 73(2A) and 73(2B) into the 2014 Act – kinship care

assistance: further provision**Power conferred on: Scottish Ministers****Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure:Affirmative****Revised or new power: New (revised pre-existing powers from another Act)****Provision**

60. This amendment inserts subsections (2A) and (2B) into section 73 of the Children and Young People (Scotland) Act 2014 (“the 2014 Act”) to apply sections 86A and 86B of the Social Security (Scotland) Act 2018 (“the 2018 Act”) to kinship-care payment rates set in regulations made under section 71(2) of the 2014 Act. This is to provide a statutory mechanism for annual uprating of foster and kinship care allowances paid in respect of a child.
61. This means that while regulations made under section 71(2) will generally attract the negative procedure, where regulations specify rates (to which the uprating mechanism will apply) the affirmative procedure will apply.

Committee consideration

62. The Scottish Government states in its SDPM that the power ensures that allowance rates in respect of a child that are set in regulations will be subject to a statutory uprating mechanism which is aligned with the framework established under the 2018 Act. The mechanism also supports consistency between foster care and kinship care payment arrangements.
63. As above, the Committee considers that this is an appropriate amendment of an existing power, for the purpose of alignment with the framework of the 2018 Act.

- 64. The Committee accepts the power in principle and is content that it is subject to the affirmative procedure.**

Section 21C – Guidance on Family Group Decision-Making**Power conferred on: Scottish Ministers****Power exercisable by: Guidance****Parliamentary procedure:None****Revised or new power: New****Provision**

65. Section 21C places a duty on the Scottish Ministers to issue guidance about family group decision-making (“FGDM”).
66. There is no requirement to lay guidance issued and published under this section

before the Parliament.

Committee consideration

67. The Scottish Government states in its SDPM that it is intended that the power to issue guidance will be used to set out underpinning principles and expectations for proportionate application in practice, including matters such as participation of the child having regard to age and maturity, recording of decisions, accessibility and connections with related child protection and care processes. It states that it would not be appropriate to include these matters in legislation, as they concern operational detail and practice development which may require updating in light of experience, evaluation and stakeholder engagement.
68. It also states that the use of guidance avoids imposing rigid or prescriptive requirements on local authorities, whilst promoting national coherence in accordance with the existing legal framework.
69. As outlined earlier in this report, the Committee considers whether powers to issue guidance should be subject to any parliamentary procedure or indeed whether the matters it is likely to cover should be contained in subordinate legislation. The Scottish Government's argument in respect of this guidance issuing power not being subject to parliamentary procedure is compelling. However, the Committee notes that there does not actually appear to be any mechanism in the Bill which places a duty on local authorities to have regard to the guidance, despite the SDPM stating that there is. The Committee therefore highlights this to the Scottish Government.
70. **The Committee accepts the power to issue guidance in principle but highlights to the Scottish Government that there is currently no duty to have regard to that guidance which appears contrary to the policy intention, as set out in the SDPM.**

Section 22A – inserting new section 9(2)(a)(v) and (vi) into the 2014 Act (aims of children's services plan)

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: New

Provision

71. Section 22A of the Bill amends the statutory aims of children's services planning listed in section 9(2) (a) of the Children and Young People (Scotland) Act 2014 ("the 2014 Act") by inserting two additional aims. The additional aims are to provide services in a way:
- which supports the delivery of local outcomes and of such national outcomes, priorities and activities as the Scottish Ministers may prescribe, and

- which promotes such outcomes in relation to the wellbeing of children in the area as the Scottish Ministers may by regulations prescribe

72. Regulations under this power are subject to the negative procedure.

Committee consideration

73. The Scottish Government states in its SDPM that the power seeks to ensure that, alongside addressing priorities set locally, as is current practice, each children's services plan should also set out how services will be planned and delivered to support attainment of national outcomes and priorities prescribed by the Scottish Ministers, as well as promoting prescribed outcomes in relation to the wellbeing of children. Its intention is that the regulation making powers would be exercised ahead of each 3-year planning cycle to prescribe matters to be included in the plan and yearly reports.

74. The Committee considers that the negative procedure appears appropriate in the circumstances, given the frequency at which the regulations are likely to be updated.

75. The Committee accepts the power in principle and is content that it is subject to the negative procedure.

Section 22C – inserting new section 13(1A) into the 2014 Act – reporting on children's services plan)

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Negative

Revised or new power: New

Provision

76. Section 22C inserts a new section 13(1A) into the 2014 Act, giving the Scottish Ministers the power to make regulations prescribing other matters to be included in the annual reports that lead children's services planning bodies must prepare in relation to the provision of children's services in accordance with the children's services and its achievement of the aims listed in section 9(2) of the 2014 Act.

77. Regulations made under this power are subject to the negative procedure.

Committee consideration

78. This Scottish Government states in its DPM that the power could be used to require that statistical information requested by Scottish Ministers is included in the annual reports.

79. It also states that the intention is that the Scottish Government would exercise the new power ahead of each 3 year planning cycle to prescribe matters to be included

in the plan and yearly reports, subject to consultation and engagement on those.

80. The Committee considers it appropriate to have such a power to prescribe other matters, and as above, also considers that the negative procedure is appropriate in the circumstances, given the frequency at which such regulations are likely to be updated.

81. The Committee accepts the power in principle and is content that it is subject to the negative procedure.

