



The Scottish Parliament
Pàrlamaid na h-Alba

Published 17 March 2026
SP Paper 1076
36th Report, 2026 (Session 6)

Delegated Powers and Law Reform Committee

Second Supplementary Legislative Consent Memorandum: delegated powers exercisable within devolved competence in the Tobacco and Vapes Bill (UK Parliament legislation)

Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
<https://www.parliament.scot/documents>

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: info@parliament.scot

Contents

Introduction	1
Review of relevant powers	2

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.



DPLR.Committee@parliament.scot



0131 348 5974

Committee Membership



Convener
Stuart McMillan
Scottish National Party



Deputy Convener
Bill Kidd
Scottish National Party



Jeremy Balfour
Independent



Katy Clark
Scottish Labour



Roz McCall
Scottish Conservative
and Unionist Party

Introduction

1. At its meeting on 17 March 2026, the Committee considered the [Second Supplementary Legislative Consent Memorandum](#) (“2nd sLCM”) lodged by the Scottish Government on 27 February 2026 in relation to the [Tobacco and Vapes Bill](#) (“the Bill”).
2. The Committee considered the 2nd sLCM 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 Committee also considered the 2nd sLCM in terms of its wider remit contained in Rule 6.11.1(b) of the Standing Orders which provide 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 previously considered a [Legislative Consent Memorandum](#) (“LCM”) for the relevant delegated powers relevant to Scotland in the Bill at its meetings on 28 January and 25 February 2025. The Committee subsequently reported on [28 February 2025](#), with this report also setting out a fuller overview of the Bill’s background and aims.
5. The Committee also considered the [Supplementary Legislative Consent Memorandum](#) (“sLCM”) on 29 April 2025. The Committee subsequently reported on [6 May 2025](#).
6. The lead committee for the 2nd LCM is the Health, Social Care and Sport Committee.

Review of relevant powers

Clause 66: Alignment of definition of “filter” etc

Powers conferred on: Scottish Ministers

Powers exercisable by: Order

Parliamentary procedure: Affirmative

New or amended Power: New provision amending existing power

Provision

7. Section 35 of the Tobacco and Primary Medical Services (Scotland) Act 2010 (“2010 Act”) contains the interpretation provisions for Part 1 of the 2010 Act making provision in respect of tobacco and nicotine vapour products. Section 35(2) lists smoking related products to which the provisions of the 2010 Act apply. That list may be modified by the Scottish Ministers by order. Clause 66 amends section 35.
8. Clause 66 of the Bill, following amendment, now inserts a definition of “filters” into section 35(1) and amends the list of smoking related products in section 35(2) to include “filters that do not form part of a tobacco product or herbal smoking product”. The existing power in section 35(3) of the 2010 Act to modify the list in section 35(2) is broadened by the amendments made to the Bill. The Bill now extends the power of the Scottish Ministers to, by order, amend the section (section 35 - interpretation) so as to modify the list of smoking related products in subsection (2) as they consider appropriate.
9. An order made under this provision is subject to the affirmative procedure.

Committee consideration

10. The Bill is making changes to an existing power conferred on the Scottish Ministers in the 2010 Act. The Scottish Government states in the 2nd sLCM that the amendments made to the power “*could, for example, insert a new subsection that defines a term used in section 35(2).*” Whilst the power is being broadened from being able to modify the list of smoking related products in section 35(2) only, to being able to amend the interpretation section to modify that list, the power is still very limited in how it can be exercised. There are limited policy changes that may be made in the exercise of this power and it is narrow in scope. It is also subject to the affirmative procedure affording a high level of parliamentary procedure, which is appropriate given it does permit the amendment of primary legislation. For these reasons the Committee is content with the power as amended.

11. **The Committee is content with the power, as amended, conferred on the Scottish Ministers in principle and that it is subject to the affirmative procedure.**

Clause 71 (previously 67): Power to extend 2010 Act to other products – Inserting

powers in section 34A(1), (3) and (4) of the Tobacco and Primary Medical Services (Scotland) Act 2010

Powers conferred on: Scottish Ministers

Powers exercisable by: Regulations

Parliamentary procedure: Affirmative

New or amended Power: Amended

Provision

12. Clause 71 provides the Scottish Ministers with a power, in new section 34A(1) of the 2010 Act, to amend Part 1 of that Act to extend any provision which applies in relation to a tobacco product to any device that enables a tobacco product to be consumed other than by being smoked (such as a heated tobacco device).
13. Additionally, it provides the Scottish Ministers with a power, in new section 34A(3), to amend Part 1 of that Act to extend any provision which applies in relation to a tobacco product to some or all smoking related products. This power has been amended to now also extend any provision which applies to, if not a smoking related product, a filter that does not form part of a tobacco product or herbal smoking product.
14. A new power is also now conferred on the Scottish Ministers, in new section 34A(4), to amend Part 1 for the purpose of extending to filters any provision made by sections 9A to 9C in relation to a relevant oral tobacco product.
15. The clause requires the Scottish Ministers to consult before exercising these powers.

Committee consideration

16. The Committee was content with the powers in sections 34A(1) and (3), as introduced. It considered that there were detailed explanations for them, they were narrow in scope, they were subject to a consultation requirement, and they were subject to a high level of parliamentary procedure given they were Henry VIII powers.
17. The newly inserted power is conferring on the Scottish Ministers the power to amend Part 1 of the 2010 Act so as to extend to filters provision made by sections 9A (ban on manufacture of Snus etc), 9B (ban on sales of Snus etc) and 9C (possession of Snus etc with intent to supply). It is limited in scope and subject to the same requirements and procedures as the powers the Committee was previously content with. It is also not conferring powers to make any new requirements, but to extend requirements already provided for in the 2010 Act to other related products. Therefore, the Committee is similarly content with the amended powers in this clause.

18. **The Committee is content with the powers, as amended, conferred on the Scottish Ministers in clause 71 in principle and that they are subject to the**

affirmative procedure.

Clauses 94 - 96 (previously 90 - 92): Powers to regulate packaging, features of products, and contents and flavour

Clauses 97, 98, 100 (previously 93, 94, 96): Powers to regulate substances released into human body and emissions, non-compliant images, and information

Clauses 101, 102, 103, 105 (previously 97 - 99, 101): Powers to regulate studies, responsible persons, testing and matters dealt with by the Tobacco and Related Products Regulations 2016

Clause 139 (previously 133): Power to extend Part 6 and the Communications Act 2003 to other Products

Powers conferred on: Secretary of State and where the provision to be made is within the legislative competence of the Scottish Parliament, with the consent of the Scottish Ministers

Powers exercisable by: Regulations

Parliamentary procedure: Affirmative

New or amended powers: Amended

Provision

19. All of these provisions have been subject to amendments that extend the provisions to filters, with the powers otherwise generally remaining unchanged. Clause 95, relating to features of products, has also been subject to amendment to make provision about any technological features of a tobacco related device or vaping product (as well as the addition of filters). Regulations under clause 95 may include provision about software for use in relation to technological features.
20. Clauses 94-96 deal with powers conferred on the Secretary of State to regulate retail packaging, features, contents and flavours of tobacco products, herbal smoking products, cigarette papers, filters, vaping products and nicotine products. Regulations made under these clauses may impose prohibitions, requirements or limitations in relation to the production, importation, or supply of such products. This would have the effect that any individual or organisation involved in the supply chain would be required to ensure products they deal with adhere to the regulations.
21. In relation to clauses 97, 98 and 100 (previously 93, 94 and 96): Powers to regulate substances released into human body and emissions, non-compliant images, and information—
 - Clause 97 provides the Secretary of State with a power to make regulations about the nature and amount of substances and emissions that may be released by tobacco products, tobacco related devices, herbal smoking products, cigarette papers, filters vaping or nicotine products.
 - Clause 98 provides the Secretary of State with regulation making powers to prohibit a person from publishing a “non-compliant” image of tobacco products,

tobacco related devices, herbal smoking products, cigarette papers, filters, vaping products, nicotine products or of their packaging.

- Clause 100 provides a power enabling the Secretary of State to make regulations to place a requirement on producers or importers of tobacco products, tobacco related devices, herbal smoking products, cigarette papers, filters, vaping products and nicotine products, to provide information about a product or its producer.
22. In relation to clauses 101, 102, 103 and 105 (previously 97 – 99 and 101): Powers to regulate studies, responsible persons, testing and matters dealt with by the Tobacco and Related Products Regulations 2016—
- Clause 101 provides the Secretary of State with a power to require a producer of a tobacco product, tobacco related device, herbal smoking product, cigarette papers, filters, vaping product or nicotine product to carry out a study and submit the results in relation to the product or an ingredient in the product.
 - Clause 102 provides the Secretary of State with a power to require a producer of a tobacco product, tobacco related device, herbal smoking product, cigarette papers, filters, vaping product or nicotine product to nominate an individual to be responsible for information that has to be provided in accordance with regulations.
 - Clause 103 provides the Secretary of State with a power to introduce regulations that require a person to test products to determine whether a product complies with requirements imposed in regulations made under this part (Part 5) of the Bill.
 - Clause 105 enables the Secretary of State to make provision in regulations that are similar to or correspond to any provision of the Tobacco and Related Products Regulations 2016 in so far as not enabled by the other provisions of this Part of the Bill.
23. Clause 139 provides the Secretary of State with powers to amend Part 6 of the Bill (Advertising and sponsorship) and any provision of the Communications Act 2003, by extending the scope of those provisions to any device that enables a tobacco product to be consumed (such as a heated tobacco device), or an item which is intended to form part of such a device. This provision has been amended to also now include extending the provision to a filter that does not form part of a tobacco product or herbal smoking product.

Committee consideration

24. At its meeting on 28 January 2025, the Committee noted that the Secretary of State may make provision under these powers which falls within the Scottish Parliament's legislative competence, with the consent of the Scottish Ministers. These powers are only exercisable by the Secretary of State; the Bill does not confer equivalent powers on the Scottish Ministers.
25. The Committee reported on these powers when it considered the LCM (without the provisions extending to filters) as follows:

- ” The Committee is content with the powers conferred on the Secretary of State in principle and that they are subject to the affirmative procedure.

Insofar as scrutiny by the Scottish Parliament is concerned, the Committee:

- notes the Scottish Government’s view that the joint procedure would not be appropriate for the powers in this Bill;
 - notes the Scottish Government’s view that SI Protocol 2 will not apply to the exercise of these powers;
 - notes that as matters currently stand, there is no formal process for scrutiny of the Scottish Ministers’ decisions to consent to the making of UK regulations under the powers;
 - notes the Scottish Government’s intention to consider with the UK Government the possibility of extension of SIP2 beyond Brexit related powers, or alternative arrangements to govern notification to the Parliament of the exercise of powers in devolved areas by UK Ministers, and its suggestion that more flexible and proportionate arrangements (than SI Protocol 2) may be more appropriate in the future;
 - urges both the UK and Scottish governments to propose potential suitable arrangements for consideration by Parliament, as a matter of priority; and
 - notes the Scottish Government’s commitment to keeping the lead committee informed of consultations and decisions regarding future regulations under these powers which contain devolved provision, and to engage with the Committee should it have any questions on those regulations.
26. The amendments made to all of these provisions are very limited. The powers remain generally the same but are being extended to cover filters in addition to a tobacco product, tobacco related device, herbal smoking product, cigarette papers, vaping product or nicotine product. Clause 95 also has other minor amendments made which are highlighted above.
27. When the Committee considered the LCM, its report noted that SI Protocol 2 (“SIP2”) did not apply to any of these powers. It also noted that the Scottish Government was intending to consider with the UK Government the possibility of extension of SIP2 beyond Brexit related powers, or alternative arrangements to govern notification to the Parliament of the exercise of powers in devolved areas by UK Ministers, and its suggestion that more flexible and proportionate arrangements (than SIP2) may be more appropriate in the future. The Committee urged both the UK and Scottish governments to propose potential suitable arrangements for consideration by Parliament, as a matter of priority.
28. The Committee did not hear further on this particular Bill. The last update from the Minister for Parliamentary Business on [25 November 2025](#) indicated that the matter of ensuring sufficient and proportionate oversight of all UK SIs in devolved areas was still under consideration from the Scottish Government’s perspective, with a review likely warranted in light of anticipated legislation to underpin the proposed new EU-UK Strategic Alliance.

29. The Committee's view is that these remain potentially quite significant powers in the Tobacco and Vapes Bill, in terms of the provision they might make within legislative competence. The Committee therefore repeats its main recommendations about these powers from its report on the first LCM, and calls on the Scottish Government to keep the lead committee informed as the discussions within the UK nations on the need for regulations evolve, with follow-up notification once any regulations are made.

30. **The Committee is content with these powers, as amended, conferred on the Secretary of State in principle and that they are subject to the affirmative procedure.**

31. **Insofar as scrutiny by the Scottish Parliament is concerned, the Committee:**

- **notes the Scottish Government's previous view that the joint procedure would not be appropriate for the powers in this Bill;**
- **notes the Scottish Government's previous view that SI Protocol 2 will not apply to the exercise of these powers;**
- **notes that as matters currently stand, there is no formal process for scrutiny of the Scottish Ministers' decisions to consent to the making of UK regulations under the powers;**
- **notes the Scottish Government's previous commitment to keeping the lead committee informed of consultations and decisions regarding future regulations under these powers which contain devolved provision, and to engage with the Committee should it have any questions on those regulations; and**
- **calls on the Scottish Government to restate that commitment to keeping the lead committee informed as these discussions within the UK nations on the need for regulations evolve, with follow-up notification once any regulations are made.**

