



The Scottish Parliament
Pàrlamaid na h-Alba

Published 30 September 2026
SP Paper 14
9th Report, 2026 (Session 7)

Delegated Powers and Law Reform Committee

Public Office (Accountability) Bill (UK Parliament legislation) - delegated powers exercisable within devolved competence, with reference to LCM-S6-66, LCM-S6-66a and LCM-S7-10.

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
The Bill	2
Delegated Powers	4
Review of relevant powers	6

Delegated Powers and Law Reform Committee

To consider and report on the following —

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

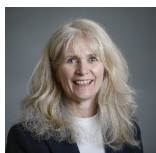
Committee Membership



Convener
Calum Kerr
Scottish National Party



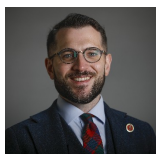
Deputy Convener
Q Manivannan
Scottish Green Party



Amanda Lindsay
Reform UK



Colm Merrick
Scottish National Party



Paul Sweeney
Scottish Labour

Introduction

1. This report considers the delegated powers that are exercisable within devolved competence in the [Public Office \(Accountability\) Bill](#) (“the Bill”).ⁱ
2. At its meeting on 15 September the Committee agreed to write to the Scottish Government and UK Government regarding some of the powers in the Bill, in the context of the [second supplementary Legislative Consent Memorandum](#) (“SSLCM”) lodged by the Scottish Government on 28 July 2026. Those lettersⁱⁱ were sent on 16 September. Replies were requested by 21 September. The UK Government responded by [letter dated 24 September 2026](#). The [Scottish Government responded by letter dated 25 September 2026](#).
3. The lead committee is the Finance and Public Administration Committee.

ⁱ As brought from the Commons, 16 July 2026.

ⁱⁱ [letter to the Scottish Government](#) and [letter to the UK Government](#)

The Bill

Procedural history of the Bill

4. The Bill was originally introduced by the UK Government on 16 September 2025, and has been carried over into the current session of the UK Parliament. It was reintroduced at Report stage in the Commons (first House) on 14 May 2026. Report Stage in the House of Commons and first reading in the House of Lords both took place on 16 July 2026. The Bill had its second reading in the House of Lords (second House) on 1 September 2026, and Committee stage is expected to begin on 12 October 2026. The Bill is still subject to amendment in the UK Parliament.

Previous consideration in the Scottish Parliament

5. In the previous parliamentary session, the Session 6 DPLRC (“S6 DPLRC”) considered the initial LCM for the bill on 25 November 2025 and produced a [report on 27 November 2025](#).ⁱⁱⁱ That Committee was, on the whole, content with the powers conferred on the Scottish Ministers in those parts of the Bill at that stage. However, it raised a number of questions, particularly in relation to UK Ministers exercising powers to make subordinate legislation within devolved competence, which it called upon the Scottish Government to address before reaching a conclusion on some of the powers.
6. The Scottish Government lodged the [\(first\) supplementary LCM](#) (“SLCM”) on 4 February 2026, in which it responded to some of these questions. The SLCM related to amendments which were tabled on 12 January 2026. The S6 DPLRC considered the SLCM on 24 February 2026. At that point, it was expected that the Bill would carry over into the next Scottish and UK parliamentary sessions and that a further supplementary LCM would be required. For this reason, instead of reporting, the S6 DPLRC sent a [letter](#) to the S6 Finance and Public Administration Committee, on 25 February 2026.
7. After the Bill was last considered by the S6 DPLRC, amendments were made to the original powers and an additional power was inserted by amendment. There has not been a vote in the Chamber on any of the LCMs for this Bill (neither in the present session nor in session 6).

Outline of the Bill

8. [The Bill](#), as brought to the Lords from the Commons (16 July 2026) consists of 28 clauses, in 5 parts, and 6 schedules. Its overall purpose is to introduce measures relating to ethical conduct, transparency and accountability by public authorities and public officials, to avoid the repetition of past injustices experienced by bereaved families in the aftermath of the Hillsborough disaster. As a result of amendments, the whole of the Bill now extends to Scotland.^{iv} The content of the Bill, as at 29 September 2026, is as follows:

iii The initial LCM covered the provisions regarding a duty of candour and assistance, and standards of ethical conduct (Part 1, and Part 2 chapters 1 and 2).

iv At introduction, only the following parts of the Bill extended to Scotland: Part 1; chapters 1 and 2 of part

9. **Part 1** sets out the Bill's main purpose, which is to ensure that public authorities and public officials perform their functions with candour, transparency and frankness, and in the public interest.
10. In **Part 2**:
 - Chapter 1 places a duty of candour and assistance on public authorities and public officials, requiring them to act with candour, transparency and frankness in their dealings with inquiries and specified investigations, and to assist inquiries and investigations to achieve their objectives, with criminal sanctions for breach of that duty.
 - Chapter 2 places a duty on public authorities to promote and take steps to maintain high standards of ethical conduct by people who work for them. This includes an obligation to adopt a code of ethical conduct which sets the standards of conduct expected of people who work for the authority. The Bill sets out various minimum criteria that a code must satisfy.
 - Chapter 3 creates an offence of misleading the public: where a public authority or public official acts with the intention of misleading the public (or is reckless as to that possibility) and they know, or ought to know, that their act is seriously improper.
11. Schedules 1 to 3 relate to Part 2 of the Bill:
 - **Schedule 1** sets out which inquests and inquiries the duty of candour and assistance applies to, and makes the necessary changes to other legislation to achieve that.
 - **Schedule 2** sets out the meaning of “public authority” and “public official” for the purposes of Part 2 of the Bill.^v
 - **Schedule 3** makes further detailed provision about the criminal offences in the Bill.
12. **Part 3** creates two new offences relating to misconduct in public office: (i) using the office to obtain a benefit (for yourself or another person) or causing another person to suffer a detriment, while knowing that doing so is a seriously improper act; and (ii) breach of duty to prevent death or serious injury.
13. **Schedules 4 and 5** relate to Part 3 of the Bill. Schedule 4 lists the holders of public office who are subject to the new offences. Schedule 5 makes amendments that are consequential on Part 3.
14. **Part 4** concerns “parity of arms”, and the participation of persons at public inquiries and investigations. The Scottish devolved content in this Part is in Schedule 6, Part 5.
15. **Schedule 6**, Part 5 would enable Scottish Ministers to make regulations allowing a person to access legal aid in order to participate in an inquiry into a fatal accident or

2; part 5 and Schedules 1 to 3.

^v Part 2 of the Schedule defines the terms for the purposes of Chapters 1 and 3 of Part 2 of the Bill. Part 3 of the Schedule defines “public authority” for the purposes of Chapter 2 of Part 2 of the Bill.

sudden death (commonly known as a Fatal Accident Inquiry, for short). The other parts of Schedule 6 make (reserved) provision in relation to UK inquiries (being inquiries for which a UK Government Minister is responsible), regarding the conduct of public authorities at those inquiries, and the participation of affected persons, including access to legal aid.

16. **Part 5** contains miscellaneous and final provisions, for example on consequential provision, interpretation, extent and commencement.

SSLCM

17. The [SSLCM](#), lodged on 28 July 2026, deals with additional amendments which were tabled by the UK Government and which the UK Parliament agreed on 13 July 2026. It does not cover the provisions of the Bill which were discussed in the LCM and the SLCM. All three memorandums therefore need to be read together. In the LCM, the Scottish Government recommended withholding consent until amendments were secured. In the SLCM, no recommendation on consent was made.

18. In the SSLCM, however, the Scottish Government now recommends that the Scottish Parliament gives consent to the whole of the Bill. The draft motion states:

” “That the Parliament, noting that the Public Office (Accountability) Bill, re-introduced in the House of Commons on 14 May 2026 makes provision that falls with the legislative competence of the Parliament and alters the executive competence of the Scottish Ministers, agrees to give consent to such provision as is made by Parts 1 to 5 of the Bill.”

Delegated Powers

19. The Committee considered the SSLCM under Rule 9B.3.6 of the Standing Orders. It provides that, where the Bill that is the subject of a LCM contains provisions conferring powers on Scottish Ministers to make subordinate legislation, the Delegated Powers and Law Reform Committee shall consider and may report to the lead committee on those provisions.
20. The SSLCM is also being considered in terms of the Committee’s wider remit in Rule 6.11.1(b) of the Standing Orders, which includes considering and reporting on proposed powers to make subordinate legislation in particular bills or other proposed legislation. This definition encompasses powers to make subordinate legislation in UK Bills, where exercisable within devolved competence.
21. As noted above, some of the powers in the Bill were considered by the S6 DPLRC during the previous session of Parliament. The views of that Committee are set out below, for information, but given that the Parliament did not vote on either of the LCMs in the previous session, and given that we are now in a new parliamentary session, the Session 7 Committee has considered all of the powers anew.
22. The UK Government has published an updated [Delegated Powers Memorandum](#) (“DPM”) to accompany the Bill (dated 21 July 2026). It explains in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected.

23. As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. Where the Scottish Government has expressed a view on the powers discussed below, it is set out in the LCM, SLCM or SSLCM.

Review of relevant powers

Consent requirement: note on the requirement that the Secretary of State obtains the consent of Scottish Ministers before exercising certain powers within Scottish devolved competence – clause 24(2) (formerly numbered clause 22)

24. This subsection has not changed since introduction. Under clause 24(2), when exercising a power to make regulations under the Act in relation to devolved matters, the Secretary of State must first obtain the consent of the Scottish Ministers. Under clause 11(4), this consent requirement also applies when the Secretary of State is exercising a power to issue guidance for the purpose of Part 2, Chapter 2 (standards of ethical conduct).
25. This consent requirement does not apply to the power to make consequential provision (clause 23(1)^{vi}) and the power to commence provisions of the Act (clause 27^{vii}).
26. The S6 DPLRC noted that this consent requirement was not discussed in any detail in either the UK Government's DPM or in the Scottish Government's LCM. However, that Committee considered that it was important to draw this consent requirement to the attention of the lead committee.
27. In its report,^{viii} the S6 DPLRC:
- called upon the Scottish Government to set out in its supplementary LCM how it will facilitate scrutiny by the Scottish Parliament of:
 1. any proposals by the Secretary of State to make regulations/guidance under these powers containing provision which relate to a devolved matter, and
 2. the Scottish Ministers' response in respect of such proposals and obtaining their consent.
 - asked the Scottish Government to raise with the UK Government the absence of a consent requirement for the power to make consequential provision (discussed under the heading for that provision, further below).
28. In response, the Session 6 Scottish Government stated in the SLCM:
- ”In terms of how the Scottish Government will facilitate scrutiny by the Scottish Parliament of any proposals by the Secretary of State to make regulations under the powers noted above, the Scottish Government commits to keeping the lead committee informed of any decisions regarding future regulations, and to engage with the committee should it have any questions on those regulations which contain devolved provision.”^{ix}

vi Formerly numbered 21(1).

vii Formerly numbered 25.

viii [S6 DPLRC Report](#) of 27 November 2025 on the original LCM, at paragraphs 24 and 50.

ix [SLCM](#) February 2026, paragraph 79.

29. This commitment applied to the following regulation-making powers:
- clause 16(3) (power to amend the list of **holders of public office**)[[]
 - Schedule 1, Part 7, paragraph 8 (power to **extend the duty** of candour and assistance to other investigations)[[]
 - Schedule 2, Part 3, paragraph 4(4) (power to **specify “public functions”**).
30. In its [letter of 16 September 2026](#), the present Committee asked the current Scottish Government to renew the commitment made by the Session 6 Scottish Government in respect of these powers. The Scottish Government did so in its letter of 25 September 2026.
31. In its letter, the Scottish Government also acknowledged that these powers would fall under the new SI Protocol with the Parliament regarding notification of UK secondary legislation in devolved areas.
32. Finally, in relation to such powers in general, the Scottish Government said in its letter:
- “The Scottish Government’s preference is for Scottish Ministers to have powers to act in devolved areas, to ensure the Scottish Parliament approves secondary legislation. That is also in keeping with the new Prime Minister’s approach to Devolution and specifically his position that the UK Government will not act in any way to override the powers of the Scottish Parliament. The Scottish Government also recognises that Committees of the Scottish Parliament have indicated concern about UK Ministers having powers to act in devolved areas.”

Clause 11: Guidance (formerly numbered clause 10)

Power conferred on: Secretary of State, Scottish Ministers

Power exercised by: Guidance

Parliamentary procedure: None

Provision

33. Clause 11 provides that the “appropriate national authority” may issue guidance for the purposes of clause 10, and that public authorities must have regard to that guidance. Clause 10 requires public authorities to promote and take steps to maintain high standards of ethical behaviour at all times by those who work for the authority, and includes a requirement on public authorities to adopt a “code of ethical conduct”, containing matters specified in that clause.
34. “Appropriate national authority” is defined for the purposes of the Bill^x as:
- the Secretary of State;
 - the Scottish Ministers (in relation to Scottish devolved matters);
 - the Welsh Ministers (in relation to Welsh devolved matters);

- a Northern Ireland department (in relation to Northern Ireland devolved matters).

35. The Secretary of State can only make guidance containing provision which relates to a Scottish devolved matter if the Scottish Ministers have consented (clauses 11(4) and 24(2)).

Justification given for taking the power

36. The UK Government has stated in its DPM that the reason for taking the power is to enable the appropriate national authority to issue guidance to assist public authorities in complying with their duties under clause 10, in particular drafting and adopting a code of ethical conduct. According to the DPM, it is intended that the guidance will provide clear and accessible advice on how a code can be best structured and promoted to workers, and this will require detailed practical guidance which the UK Government considers would not be appropriate to include in legislation.

37. The DPM states that, since the clause 10 duties apply to a broad range of public authorities discharging a variety of functions, it necessarily allows authorities a degree of flexibility. The DPM notes that authorities will be different sizes and have different functions; some will have existing relevant policies or procedures. Nonetheless, the UK Government considers that consistency in some aspects of implementation is desirable. It considers that guidance is an appropriate and important way of ensuring that there is consistency in the approach that public authorities take when considering how to comply with their duties under clause 10.

38. The UK Government considers that parliamentary oversight is not required for this guidance, as the guidance will primarily contain technical and operational details, assisting authorities in the implementation of the legal duty.

Session 6 DPLRC view

39. The S6 DPLRC considered this power acceptable.^{xi} It considered that there was sufficient detail in the Bill and in the DPM as to how this power is to be exercised. It agreed with the UK Government that the issuing of guidance is a suitable vehicle to assist public authorities in complying with their duties under clause 10 (then numbered clause 9) and that it provided for an element of consistency of approach while acknowledging that some authorities already have existing relevant policies or procedures in place. It noted that guidance allows for flexibility and can be issued and updated easily.

40. The S6 DPLRC considered it appropriate that the power is being delegated to Scottish Ministers to exercise in respect of devolved matters and that the consent of Scottish Ministers is required if exercised by the Secretary of State (subject to clarification as to how the Scottish Government will facilitate scrutiny by the Scottish Parliament).

41. The S6 DPLRC also agreed that because the guidance is intended to be of assistance and to provide advice, it is appropriate that there is no requirement for

x see clauses 24 and 35.

xi The S6 DPLRC's consideration of this power is at paragraphs 26 – 39 of its [report](#).

parliamentary oversight.

Committee consideration

42. In response to the S6 DPLRC's report, the former Scottish Government made the following statement in the SLCM regarding how it will facilitate Scottish Parliament scrutiny of any proposals by the Secretary of State to make guidance under this power in devolved areas:

” “[T]he Scottish Government notes that it is in discussion with the UK Government about the process for obtaining the Scottish Ministers' consent to any guidance containing provision which relates to a devolved matter.”
43. In the Committee's letter of 16 September 2026, it asked the Scottish Government for an update on those discussions regarding guidance containing devolved provision which the Secretary of State proposes to make under this power.
44. The Scottish Government responded (in its letter of 25 September 2026):

” “[E]ngagement between Scottish Government and UK Government officials is ongoing on a range of matters in relation to the Bill and its subsequent implementation. The UK Government's plans for guidance and associated consent process are part of those discussions, but no final decisions have been reached.”
45. It appears, therefore, that the Scottish Government is not in a position at present to give any commitment regarding Scottish Parliament scrutiny of the use of this power because discussions with the UK Government about how the consent process will work are still ongoing.
46. **The Committee is content with delegation of power to the Scottish Ministers in principle, and content that it is not subject to any parliamentary procedure.**
47. **As regards the delegation of power to the Secretary of State within devolved competence, the Committee notes that:**
 - **Either the Secretary of State or the Scottish Ministers can exercise the power within the Scottish Parliament's legislative competence.**
 - **The choice of which government should exercise the power is a matter for the governments alone, with no role for Parliament.**
 - **Where the power is exercised by the Secretary of State, the guidance will be laid before the United Kingdom Parliament only.**
 - **The Secretary of State must obtain the Scottish Ministers' consent before making the guidance.**
 - **The guidance will not be notified to the Scottish Parliament under the UKSI Protocol (because it is not a statutory instrument).**
48. **In relation to the Scottish Government's discussions with the UK**

Government, the Committee asks the Scottish Government to copy its response to the lead Committee, the Finance and Public Administration Committee. The Committee invites the lead Committee to seek an update.

Clause 16: Holders of public office

Power conferred on: Secretary of State, Scottish Ministers

Power exercised by: Regulations

Parliamentary procedure: Affirmative

Provision

49. At introduction this clause did not extend to Scotland so was not considered by the S6 DPLRC. It was extended to Scotland by amendments agreed at Report stage in the House of Commons in July 2026.
50. The power relates to the two new statutory offences of misconduct in public office which the Bill creates:
 - (i) using the office to obtain a benefit or causing another person to suffer a detriment, while knowing that doing so is a seriously improper act (clause 13); and
 - (ii) breach of duty to prevent death or serious injury (clause 14).
51. Clause 16 defines who “holds public office” for the purposes of these offences. A person “holds public office” for this purpose if they are listed in Schedule 4 of the Bill.
52. In relation to Scottish devolved matters the list in Schedule 4 includes, among others, Scottish Ministers and those who work for them, MSPs, Scottish Parliament staff members, those working in the emergency services, prisons, the judiciary, local government, and other persons who exercise functions of a public nature.
53. The delegated power in clause 16(3) enables the appropriate national authority to amend this list by regulations for the following purposes:
 - (a) to specify further holders of public office, or
 - (b) to omit or modify the description of a holder of public office.
54. Within devolved competence the power is exercisable by either the Scottish Ministers or the Secretary of State. When exercised by the Secretary of State, it is subject to the consent requirement in clause 24(2).

Justification given for taking the power and for the procedure

55. The UK Government’s DPM states that the power is considered necessary because the list in the Schedule provides the exhaustive definition of what will constitute a “public office” for the purpose of the offences. This addresses the key criticism of the (England & Wales) common-law offence,^{xii} that it is insufficiently clear as to who

comes within the offence's scope. However, an exhaustive definition is inflexible, and will likely require amendment in the future to reflect changes in the roles and functions of public office.

56. The DPM states that the content of the Schedule is also very detailed and technical, that it is likely to be impractical to require every such change to wait for an appropriate primary legislative vehicle, and taking that approach would not be an efficient use of Parliament's time. The UK Government considers that the scope of the power is appropriately limited in that it only extends to additions to, modifications to, or removals from, the list at Schedule 4. The nature of the offence, and the specific reference in the power as drafted to "holders of public office", means that the delegated power cannot be used to add any category of individual to the Schedule, and therefore bring them within scope of the offences. They may only be added if they are "holders of public office". Changes to the core elements of the offences, their defences, penalties, and other definitions, are not within the *vires* of the proposed power. The scope of the offences is settled and set out on the face of the Bill, and the power cannot be used with retrospective effect.
57. The DPM states that the affirmative procedure is considered appropriate because this is a delegated power to amend primary legislation, and that Parliament should have the opportunity to debate and approve any changes to the offices which fall within scope of the new offences before they take effect, given the impact that this could have on those who hold such offices.

Committee consideration

58. The Committee considers that it is reasonable, in principle, to have a power to amend the list in the Schedule, as otherwise primary legislation would have to be brought forward in order to update the list, which would not be a good use of parliamentary time.
59. However, the Committee noted at its meeting on 15 September 2026 that no information is available in the SLCM or SSLCM as to why the power is being conferred on both the Scottish Ministers and Secretary of State within devolved competence.
60. The Committee therefore asked the Scottish Government and the UK Government, in its letters of 16 September 2026:

” “why it is considered appropriate that the Secretary of State should be able to exercise this power within devolved competence for Scotland rather than the Scottish Ministers alone.

The Committee asks this question in the context that it considers this is a significant power, which can be used within devolved competence for Scotland to change which office holders are subject to the new offences relating to misconduct in public office, and noting that, if exercised within devolved competence by the Secretary of State, the regulations will not be laid in or subject to scrutiny by the Scottish Parliament.”

xii The Bill would abolish the common law offence of misconduct in public office in England and Wales and in Northern Ireland. There is no directly equivalent offence in Scotland, so the new offences would be in addition to, rather than replacing, existing offences in Scots law. Further explanation is given in the [SLCM](#), paragraph 49- 61, and in the UK Government's [Explanatory Notes, 16 July 2026](#).

61. The Committee considers that the UK Government Minister's response provides helpful general background but, like the Scottish Government's response further below, does not answer the question.

62. The UK Government Minister's response states:

” “I understand the Committee has expressed concern that amendments made by the Secretary of State affecting Scottish public office holders may not receive appropriate scrutiny, particularly by the Scottish Parliament. I can assure the Committee that the Bill includes safeguards in relation to devolved matters. Clause 24(2)(a) makes clear that the Secretary of State may not make regulations under the Act containing provision “which relates to a Scottish devolved matter unless the Scottish Ministers have consented to that provision”. This means that the Secretary of State could not make changes relating to Scottish devolved matters without the consent of Scottish Ministers. **Where a change relates entirely to Scottish devolved matters, Scottish Ministers may exercise the power themselves, subject to the relevant scrutiny procedures in the Scottish Parliament.**” (emphasis added)

63. The Committee considers that the highlighted sentence begs the question why it is necessary or appropriate for the Secretary of State to have the power to make a change that relates entirely to Scottish devolved matters.

64. The Scottish Government's response of 25 September 2026 was:

” “In relation to clause 16, I am aware the Committee has also written to the Lord Chancellor in relation to this clause, to ask the UK Government why it is considered appropriate that the Secretary of State should be able to exercise this power within devolved competence for Scotland rather than the Scottish Ministers alone. I look forward to hearing the UK Government's response on this point.

Clause 16 enables both the Secretary of State and Scottish Ministers to take forward Regulations in relation to Scottish devolved matters. Where Scottish Ministers take forward such Regulations, it would then fall to the Scottish Parliament to scrutinise them. To the extent that the Secretary of State takes forward Regulations in relation to Scottish devolved matters, there is specific provision in the Bill to ensure such provision is subject to the agreement of Scottish Ministers. This will also bind future UK Governments and will sit alongside the Scottish Government's commitment to keep the lead Committee informed of decisions regarding such future Regulations and to engage with the Committee should it have any questions.”

65. The Committee considers that, in the absence of an explanation, it is not content with this aspect of the power.

66. Finally, the Scottish Government's renewed commitment to facilitate Scottish Parliament scrutiny applies to this power.

67. **The Committee is content with delegation of power to the Scottish Ministers in principle, and content with the choice of the affirmative procedure.**

68. As regards the delegation of power to the Secretary of State within devolved competence, the Committee notes that:

- **Either the Secretary of State or the Scottish Ministers can exercise the power within the Scottish Parliament’s legislative competence.**
- **The choice of which government should exercise the power is a matter for the governments alone, with no role for Parliament.**
- **Where the power is exercised by the Secretary of State, regulations will be laid before and scrutinised by the United Kingdom Parliament only.**
- **The Secretary of State must obtain the Scottish Ministers’ consent before making the regulations.**
- **The regulations will fall within the scope of the UKSI Protocol and will be notified to the Parliament only after becoming law.**
- **The Scottish Government has renewed its commitment in relation to facilitating Scottish Parliament scrutiny of any decisions regarding future regulations to be made by the Secretary of State under this power.**

69. In the absence of an explanation as to why it is considered appropriate that the Secretary of State should be able to exercise this power within devolved competence for Scotland rather than the Scottish Ministers alone, the Committee considers that the power, in so far as exercisable within devolved competence for Scotland, should be conferred on the Scottish Ministers alone. The Committee invites the lead Committee to pursue these points.

Clause 23: Power to make consequential provision (formerly numbered clause 21)

Power conferred on: Secretary of State, Scottish Ministers

Power exercised by: Regulations

Parliamentary procedure: Affirmative if amending, repealing or revoking primary legislation; otherwise negative

Provision

- 70. Clause 23 confers power to make provision which is consequential upon other provisions of the Bill. This may include repealing, revoking or otherwise amending primary and secondary legislation passed or made before the end of the UK parliamentary session in which the Bill becomes law.
- 71. Clause 23(1) confers power on the Secretary of State to make provision that is consequential on this Act or on regulations made under it.
- 72. Clause 23(2) confers power on Scottish Ministers to make provision that is consequential on Part 5 of Schedule 1 - inquiries into fatal accidents and sudden

deaths – and on regulations made under this Act by Scottish Ministers.

Justification given for taking the power

73. The UK Government states in its DPM that this power will enable the relevant authority to make any minor or technical changes which are necessary in consequence of the Bill's provisions, and that the power allows for efficient implementation of the Bill measures.
74. The UK Government considers that the power is appropriately limited in scope. It can only be used to make changes that are consequential on the Bill or on regulations made under it. It cannot be used to expand or change duties or obligations. By virtue of subsection (5) the power can only be used to amend primary legislation passed or made before the end of the UK Parliament session in which the Bill is passed.
75. As regards parliamentary procedure: regulations made under this power which do not amend or repeal primary legislation will be subject to the negative procedure; if regulations amend or repeal provision in primary legislation, they will be subject the affirmative procedure. The UK Government considers that this is the standard approach for powers of this type and provides the appropriate level of parliamentary scrutiny.

Session 6 DPLRC view

76. The S6 DPLRC's view was as follows.
77. As regards the power conferred on the Scottish Ministers, the S6 DPLRC considered that this power was similar in terms to other consequential powers that the Committee had scrutinised. It noted that the extent of the power is restricted as it can only be used for the purposes of making provision that is consequential on Part 5 of Schedule 1 and on regulations made under the Act by Scottish Ministers. The power also allows issues of a consequential nature which may arise to be dealt with effectively by Scottish Ministers. Without such a power, any consequential changes to primary legislation would require to be made by primary legislation, which the Committee considered would not be an effective use of either the Parliament's time or the Scottish Government's resources.
78. With regard to the power conferred on the Secretary of State, the S6 DPLRC considered that this was limited in scope as it can only be used to make changes that are consequential on the Act or on regulations made under it; and can only be used to amend primary legislation passed or made before the end of the Session in which this Bill is passed. Nevertheless, the Committee asked the Scottish Government to raise, in their discussions with the UK Government, the lack of a consent or consultation provision if the Secretary of State were to exercise this power within devolved competence. Further, if a consent or consultation provision was to be included the Committee also asked how the Scottish Government will facilitate scrutiny of this by the Scottish Parliament.

Committee consideration

79. The Scottish Government responded to the S6 DPLRC's recommendations in the SLCM, as follows:

” “As part of [the discussions between the Scottish Government and UK Government], the UK Government has noted that the powers to make consequential provisions are technical powers and it does not consider it necessary to include a consent provision on minor and technical changes to UK law which may be needed.

Whilst it might be preferable for the power under clause [23](1) to be subject to at least a consultation requirement, given the limited scope of the power and that a consequential amendment power is available to the Scottish Ministers (albeit not as wide as the power available to the Secretary of State) in clause [23](2), the Scottish Government does not consider that legislative consent should be withheld for the lack of consent or consultation. The Scottish Government is reassured by non-statutory commitments which the UK Government has given in this regard.”

80. The Committee considers that this is a standard power to make consequential provision. If the Parliament is content to give its consent for the substantive provisions in the Bill, it would be reasonable and appropriate for it also to consent to the taking of standard ancillary powers to give effect to the Bill. As such, the Committee is content.

The Committee is content with delegation of power in principle, and content with the proposed procedures.

Clause 27: Commencement (formerly numbered clause 25)

Power conferred on: Secretary of State, Scottish Ministers

Power exercised by: Regulations/Order

Parliamentary procedure: None

Provision

81. For present purposes this clause has changed since introduction only in that it has been extended to enabling the Scottish Ministers to commence provisions which have been added to the Bill by amendment.
82. Clause 27 contains a standard power for the appropriate authority to bring certain provisions of the Bill into force by commencement instrument. Such instruments may appoint different days for different purposes or areas.
83. The appropriate authority is:
- the Scottish Ministers in relation to regulations that bring into force:
 - Schedule 1, Part 5 (Scottish Fatal Accident Inquiries – duty of candour and assistance), or
 - Schedule 6, Part 5 (Legal Aid at Scottish Fatal Accident Inquiries) (this Part was added by amendment).

- the Secretary of State for all other relevant provisions.^{xiii}

84. This clause also allows the appropriate authority to make transitional or saving provision in connection with the commencement of any of the Bill's provisions, and this also includes the power to make different provision for different purposes or areas.

Session 6 DPLRC view

85. The S6 DPLRC noted in its report that this is a standard commencement provision. The S6 DPLRC considered that, if the Parliament is content to give its consent for the substantive provisions in the Bill, it would be reasonable and appropriate for it also to consent to the taking of standard commencement powers to give effect to the Bill.

Committee consideration

86. The Committee adopts the S6 DPLRC's reasoning and conclusion in relation to this power.

87. The Committee is content with the delegation of the power in principle and that it is not subject to any parliamentary procedure.

Schedule 1, Part 7, paragraph 8:^{xiv} power to extend the duty of candour and assistance to other investigations

Power conferred on: Secretary of State, Scottish Ministers

Power exercised by: Regulations

Parliamentary procedure: Affirmative / made affirmative in urgent cases.

Provision

88. This paragraph has been subject to amendments covered by the SSLCM.

89. This paragraph enables the duty of candour and assistance to be extended to a public authority, public official, or a person who had a relevant public responsibility for an incident, in respect of certain sorts of investigation (defined to include any form of examination, inquiry or inquest) that are specified in regulations. The investigations that may be specified are: a criminal investigation, a regulatory or supervisory investigation, or an investigation into the provision of public services or exercise of public functions.

90. Any regulations must include provision to ensure that restrictions and protections apply: for example that a person is not required to do anything under the duty of candour and assistance that they could not be required to do in civil court

^{xiii}]That is, the Secretary of State is given power to commence all the provisions of the Bill other than those which the Scottish Ministers are given power to commence, and schedule 1, part 6, relating to the Coroners Act (Northern Ireland) 1959, which is to be commenced by the Department of Justice in Northern Ireland.

^{xiv} **Formerly numbered Schedule 1, Part 6, paragraph 7.**

proceedings with regard to legal professional privilege, public interest immunity and providing national security/protected information (see further below).

91. Regulations may amend, repeal or revoke an enactment.

Procedure

92. Regulations made under this power are subject to the affirmative procedure unless the conditions in paragraph 9(1) are satisfied in which case the made affirmative procedure applies. The conditions in paragraph 9(1) are that the regulations specify a particular investigation, and contain a statement that, by reason of urgency, it is necessary to make the regulations without a draft of the regulations first being laid and approved. Such regulations must be approved by the relevant legislature within 40 days of being made if they are to remain in force. In accordance with clause 24(2), where the Secretary of State makes regulations containing Scottish devolved provision, they must have the consent of the Scottish Ministers.

Amendments covered by the SSLCM

93. Two of the amendments covered by the SSLCM are to this clause:^{xv}
94. These amendments are made in consequence of a broader change to how the duty of candour and assistance applies to security and intelligence information. At introduction, the duty did not apply where it would require the official to provide security or intelligence information.^{xvi} The Bill has now been amended so that the Chair of an inquiry can give a compliance direction to an official in relation to "protected information", but before doing so the Chair must consult the relevant authority for the purpose of ensuring that compliance with the obligations imposed by virtue of the direction will assist the inquiry to meet its objectives.^{xvii} This provision is inserted into the Inquiries Act 2005, as section 23A(11).^{xviii}
95. The effect of these amendments on the delegated power relates to the requirement (above) that regulations made under the power must include provision to secure that restrictions and protections apply to investigations which are specified by regulations. The amendments reflect the broader change mentioned above (so the power now refers to new section 23A(11)).

Justification given for taking the power

96. The UK Government considers this power to be necessary because there may be investigations other than inquiries and inquests in respect of which it is appropriate

xv [Amendment Paper for Report Stage in the House of Commons](#), 14 July 2026, Government amendments 91 and 198.

xvi Within the meaning of section 1(9) of the Official Secrets Act 1989.

xvii "Protected information is defined in clause 9(1) to include security, intelligence and also criminal intelligence information. The relevant authorities for this purpose are an intelligence service, Defence Intelligence, the National Crime Agency or a policy force in the exercise of its counter-terrorism and other national security functions (also clause 9(1)).

xviii Government amendment 178 in the Amendment Paper above.

to enable the duty of candour and assistance to be applied. There are many different types of investigation conducted by a wide range of persons, and the relevant legislation varies from investigation to investigation. Taking this power would enable the appropriate national authority to make bespoke provision for different types of investigation to ensure that the duty can be applied effectively.

97. The UK Government considers that the power is subject to appropriate limitations as it can only be exercised in respect of investigations which fall within one of the categories set out in Schedule 1 paragraph 8(2). Broadly, these are investigations that are likely to be concerned with matters that involve the public or are of public interest. The Bill also requires that regulations provide certain protections, such as not requiring someone to do anything which could not be required of them in civil proceedings (discussed above).
98. The justification given for the choice of procedure is as follows. The UK Government considers the affirmative procedure appropriate because this is a Henry VIII power; and the power will enable the duty to be applied to persons where failure to comply is punishable by criminal prosecution. Parliament should therefore have the opportunity to scrutinise the application of the duty. The exception to this is where the regulations specify a particular investigation and the appropriate national authority considers, due to urgency, it is necessary to make the regulations without waiting for a draft to be approved. This faster route may be needed where an investigation is set up immediately after a major incident. It is important that the duty of candour and assistance can be applied in respect of that investigation immediately after it is established. The UK Government considers that in these circumstances it is reasonable to use the made affirmative procedure, under which the regulations will lapse after 40 days if not approved.

Session 6 DPLRC view

99. The S6 DPLRC considered this power acceptable. It considered that there was sufficient detail in the provision and in the DPM as to how this power is to be exercised. The Committee also considered it appropriate that the power is being delegated to Scottish Ministers to exercise in respect of devolved matters and that consent of Scottish Ministers is required if exercised by the Secretary of State (subject to clarification as to how the Scottish Government will facilitate scrutiny by the Scottish Parliament). It considered that the power is clearly drafted, will operate in a balanced and a proportionate manner, and goes no further than necessary. Further, as the regulations will contain the details of the obligations to be placed on authorities, that Committee considered it appropriate that they receive the Parliamentary scrutiny provided by the affirmative procedure, subject to the urgency exception.

Committee consideration

100. The Committee considers that the amendments do not affect the appropriateness or clarity of the power.
101. The Committee adopts the S6 DPLRC's conclusion as regards the appropriateness of the power in principle.
102. The Scottish Government's renewed commitment to facilitate Scottish Parliament scrutiny applies to this power.

103. **The Committee is content with the delegation of power to the Scottish Ministers in principle and that its exercise would be subject to the affirmative procedure, subject to the urgency exception whereby the made affirmative procedure will apply.**
104. **As regards the delegation of power to the Secretary of State within devolved competence, the Committee notes:**
- **Either the Secretary of State or the Scottish Ministers can exercise the power within the Scottish Parliament’s legislative competence.**
 - **The choice of which government should exercise the power is a matter for the governments alone, with no role for Parliament.**
 - **Where the power is exercised by the Secretary of State, regulations will be laid before and scrutinised by the United Kingdom Parliament only.**
 - **The Secretary of State must obtain the Scottish Ministers’ consent before making the regulations.**
 - **The regulations will fall within the scope of the UKSI Protocol and will be notified to the Parliament only after becoming law.**
 - **The Scottish Government has renewed its commitment in relation to facilitating Scottish Parliament scrutiny of any decisions regarding future regulations to be made by the Secretary of State under this power.**

Schedule 2, Part 3, paragraph 4(4): Power to specify public functions

Power conferred on: Secretary of State, Scottish Ministers

Power exercised by: Regulations

Parliamentary procedure: Affirmative

Provision

105. Chapter 2 of Part 2 of the Bill, on standards of ethical conduct, places an obligation on public authorities to promote and uphold ethical conduct amongst all those who work for the authority. It requires public authorities to adopt a code of ethics setting out the standards of conduct expected of those who work for the authority. The Bill sets out various requirements that a code must meet and requires the publication of the code, subject to limited exceptions.
106. The requirement to adopt a code of ethical conduct will apply to “public authorities” defined under Schedule 2, Part 3 of the Bill. For this purpose, public authorities are:
- UK government departments;
 - the Scottish Ministers and Ministers of devolved administrations /authorities;
 - the armed forces and reserves, police forces or policing bodies

- local authorities;
- NHS bodies;
- schools or further education providers; and
- any other body (parliaments and courts excluded) which either:
 - exercises functions of a public nature (to be specified in regulations - see below); or
 - is established by Royal prerogative, by an enactment, by a UK government department or by the devolved administrations; and is wholly or mainly constituted by appointment made by the Crown or a government.

107. The delegated power in paragraph 4(4) enables the appropriate national authority, by regulations, to specify “functions of a public nature”, to bring other bodies within the definition of “public authority” and therefore subject to the ethical standards obligations.
108. The Secretary of State can only make regulations containing provision which relates to a Scottish devolved matter if the Scottish Ministers have consented (clause 24(2)).

Justification given for taking the power and for the procedure

109. The UK Government states in its DPM that the reason for taking the power is because functions of a public nature may sometimes be discharged by private bodies on behalf of a public authority, for example a private company may operate a prison under contract. Functions of this nature can vary widely, both in terms of the content of the function and the sector where they arise. It would not, in the UK Government’s view, be proportionate to subject all such bodies to the duty to adopt a code of ethical conduct nor to list individually private bodies on the face of the legislation. The UK Government considers that this power allows the appropriate national authority to target sectors where it is appropriate to apply the duty. These will change over time, and the power allows for the list of relevant functions to be amended as needed. The power is limited in that it can only be used to specify functions of a public nature - wholly commercial functions cannot be specified. This ensures that the duty to adopt a code can only be imposed on bodies which perform public acts. As the regulations will impose a requirement on bodies that would not otherwise be considered to be a public authority, the UK Government considers that the affirmative procedure is appropriate to ensure that the imposition of the duty is appropriately scrutinised.

Session 6 DPLRC view

110. The S6 DPLRC considered this power acceptable. It considered that there is sufficient detail in the provision and in the DPM as to how this power is to be exercised. The Committee also considered it appropriate that the power is being delegated to Scottish Ministers to exercise in respect of devolved matters and that consent of Scottish Ministers is required if exercised by the Secretary of State (subject to clarification as to how the Scottish Government will facilitate scrutiny by the Scottish Parliament). It considered that the power is clearly drafted, will operate

in a balanced and a proportionate manner, and goes no further than necessary. It considered that the affirmative procedure was appropriate.

Committee consideration

111. The Committee adopts the S6 DPLRC's conclusion as regards the appropriateness of the power in principle.
112. The Committee considers that the greater level of scrutiny afforded by the affirmative procedure is appropriate given that the regulations will impose ethical standards requirements on bodies other than those on the face of the Bill, which are not otherwise public bodies.
113. The Scottish Government's renewed commitment to facilitate Scottish Parliament scrutiny applies to this power.

114. **The Committee is content with delegation of the power to the Scottish Ministers in principle and with the choice of the affirmative procedure.**
115. **As regards the delegation of power to the Secretary of State within devolved competence, the Committee notes:**
 - **Either the Secretary of State or the Scottish Ministers can exercise the power within the Scottish Parliament's legislative competence.**
 - **The choice of which government should exercise the power is a matter for the governments alone, with no role for Parliament.**
 - **Where the power is exercised by the Secretary of State, regulations will be laid before and scrutinised by the United Kingdom Parliament only.**
 - **The Secretary of State must obtain the Scottish Ministers' consent before making the regulations.**
 - **The regulations will fall within the scope of the UKSI Protocol and will be notified to the Parliament only after becoming law.**
 - **The Scottish Government has renewed its commitment in relation to facilitating Scottish Parliament scrutiny of any decisions regarding future regulations to be made by the Secretary of State under this power.**

Schedule 6, paragraph 7: Amendment to power in the Legal Aid (Scotland) Act 1986 to make regulations which modify the provisions of the Act as necessary to meet special circumstances

Power conferred on: Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: Negative

Provision

116. This provision was inserted by amendment agreed at Report stage in July 2026.
117. This provision amends [section 36](#) of the Legal Aid (Scotland) Act 1986, which is a power for the Scottish Ministers to make regulations about legal aid. Section 36 allows the Scottish Ministers to make such regulations as appear to them to be necessary or desirable for giving effect to, or for preventing abuses of, that Act. Subsection (2)(h) of section 36 provides that such regulations may modify any provision of that Act so far as appears to the Scottish Ministers necessary to meet any of the special circumstances mentioned in subsection (3).
118. The provision would add a new category of “special circumstances” into subsection (3), being circumstances where a person seeking or receiving legal aid is participating, or seeking to participate, in an Fatal Accident Inquiry (“FAI”) (Being any inquiry proceedings under the Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016). The DPM and SSLCM indicate that the policy intention is to allow the Scottish Ministers to make regulations to extend legal aid to bereaved family members where a public authority is a participant in the FAI, with the objective of aligning the availability of legal aid in Scotland for FAIs with that in England and Wales for coroners’ inquests.

Justification given for taking the power and for the procedure

119. The DPM states that it is important for the Scottish Government to have the time to consider the necessary amendments to their own legislation to achieve the policy objective, in what is a complex and technical legislative and policy area.

Procedure

120. This provision amends an existing power which is subject to the negative procedure, and the negative procedure would apply to the power as amended.

Committee consideration

121. The Committee considers that the amendment would give the Scottish Ministers wide discretion as to the provision it could make for the availability of legal aid for participation in FAIs, and amendment does not oblige the Scottish Ministers to exercise the power so as to make legal aid available in the way described in the SSLCM.
122. Nonetheless, the Committee considers that the provision is reasonably limited and sufficiently contained that the power may be considered acceptable in principle. It is exercisable by the Scottish Ministers (only).
123. The type of provision that may be made under the power as amended is similar to that which can be made under existing categories of “special circumstances”, which is subject to the negative procedure. The Committee therefore considers the negative procedure is appropriate for the scrutiny of regulations made under this relatively limited extension of the power.

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

