

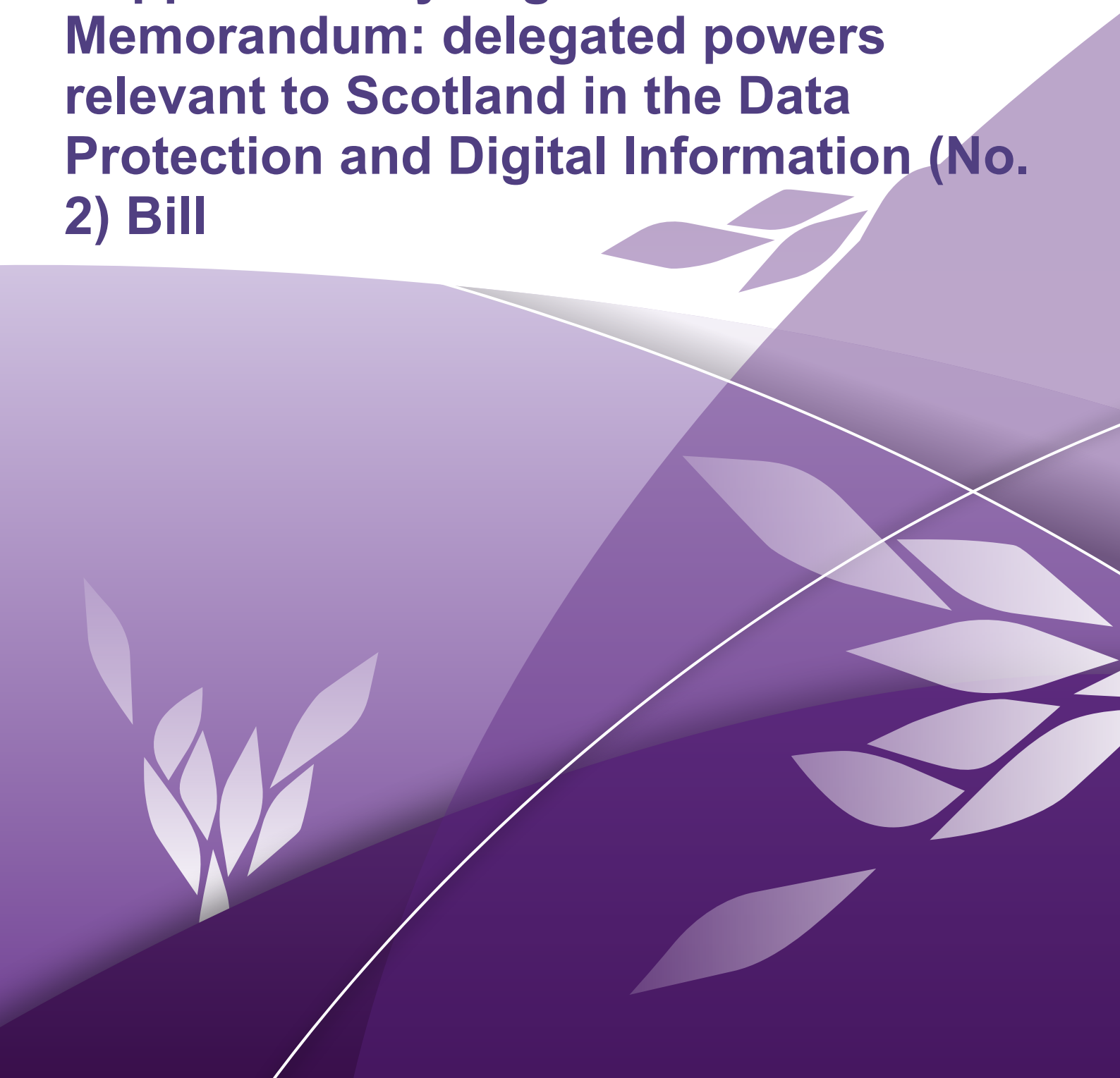


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Pàrlamaid na h-Alba

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Delegated Powers and Law Reform Committee

Supplementary Legislative Consent Memorandum: delegated powers relevant to Scotland in the Data Protection and Digital Information (No. 2) Bill



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

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

(ii) [deleted]

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

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

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

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

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

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

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

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

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



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Committee Membership



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Stuart McMillan
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Scottish National Party



Jeremy Balfour
Scottish Conservative
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Oliver Mundell
Scottish Conservative
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Mercedes Villalba
Scottish Labour

Introduction

1. At its meetings on 6 and 27 June 2023, the Delegated Powers and Law Reform Committee considered the delegated powers that are exercisable within devolved competence in the [Data Protection and Digital Information \(No. 2\) Bill](#) (“the Bill”). The Committee published its [report](#) on 29 June 2023.
2. This is the second iteration of the UK Government Bill, which was initially introduced in Westminster on 18 July 2022. The Bill was paused and then subsequently introduced again in the House of Commons on 8 March 2023. The Scottish Government lodged an [LCM](#) on 15 May 2023 with the Bill subsequently being amended, and a [Supplementary LCM](#) was lodged on 14 September 2023.
3. The lead committee is the Economy and Fair Work Committee.

Background to the Bill

4. This is a substantial Bill containing 121 clauses and 13 schedules. The stated purpose of the Bill is to update and simplify the UK's data protection framework with a view to reducing burdens on organisations while maintaining high data protection standards. The UK Government states that the privacy frameworks within the Bill are necessary, pro-growth reforms to enable data driven innovation, reduce data protection-associated burdens on businesses, and empower people to take control of their data, within a trusted data regime. The Scottish Government states that the proposed changes to data protection law represent a dilution rather than a radical change.

Legislative consent

5. The provisions in the Bill relate principally to reserved matters, however, a few aspects of the Bill relate to matters that are devolved in Scotland. One such provision is the subject of the Supplementary LCM: clause 99, which is a power to make regulations in secondary legislation to implement future international agreements as they relate to the sharing of information for law enforcement purposes. Whilst entering into international agreements is a reserved matter, their implementation in devolved areas is not, with current Scottish legislation making provision in relation to policing and law enforcement in Scotland. Following amendments being made to clause 99 of the Bill, the Scottish Government now recommends that the Scottish Parliament gives legislative consent to the Bill.

Previous Committee consideration

6. The Committee was content with the Bill's delegated powers that are exercisable within devolved competence when it initially considered the LCM on 6 June 2023, with the exception of clause 99. The Committee agreed to [write](#) to the Scottish Government on the delegated power in clause 99 allowing the Secretary of State to make regulations to implement future international agreements as they relate to the sharing of information for law enforcement purposes. The Committee received [correspondence](#) explaining that amendments had recently been made to the power so it was now able to be exercised by either the Secretary of State or the Scottish Ministers and consent was to be recommended on that basis.
7. On 27 June 2023, the Committee considered the correspondence and reported, as noted below, in relation to clause 99.

8. **The Committee accepts the delegated power in principle and is content that its exercise would be subject to the negative procedure.**
9. **The Committee notes that amendments have been made to the Bill giving the Scottish Ministers a concurrent power under clause 99 which, it considers, enables appropriate scrutiny by the Scottish Parliament.**
10. **The Committee highlights that it remains the case that the Secretary of State may make regulations within devolved competence, acting alone.**

There is no requirement for the Secretary of State to obtain consent or to consult with the Scottish Ministers before exercising the power. The Committee's position, as agreed by the Committee in November 2022, in relation to delegated powers in UK Bills exercised in devolved areas is, in general terms, that:

- a) The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.**
- b) Where such powers are exercised by UK Ministers in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.**
- c) If such powers contain a requirement for the Scottish Ministers' consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers' consent decision.**

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

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

- 11. The Committee draws the lead Committee's attention to the fact that SI Protocol 2 will not apply to the exercise of this power. In order to have oversight as to how the power is exercised by the UK Government within the Scottish Parliament's legislative competence, or of the Scottish Ministers' position if consulted, the Scottish Parliament will be reliant on information provided by the governments.**

Committee consideration: 3 October 2023

12. The Committeeⁱ has, therefore, already considered the delegated power in clause 99 of the Bill as it has been amended in advance of the Supplementary LCM being received, following correspondence from the Scottish Government. The content of the Supplementary LCM and the amendments which it addresses are those which were addressed and outlined in the correspondence to the Committee and reported on.
13. There have been no other significant amendments to the power in clause 99 of the Bill which would necessitate the Committee revisiting its previous recommendation on the power, which remains unchanged since the Committee's consideration of it on 27 June 2023.
14. **The Committee therefore wishes to reiterate the position it agreed at its meeting on 27 June 2023, as outlined at paragraphs 8 to 11 above.**

ⁱ On 3 October 2023, Rona Mackay MSP substituted for Stuart McMillan MSP

