



The Scottish Parliament  
Pàrlamaid na h-Alba

Published 12 December 2023  
SP Paper 492  
74th Report, 2023 (Session 6)

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

## **Delegated powers provisions in the Trusts and Succession (Scotland) Bill after Stage 2**



**Published in Scotland by the Scottish Parliamentary Corporate Body.**

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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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**Oliver Mundell**  
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**Colin Smyth**  
Scottish Labour

# Introduction

1. At its meeting on 12 December 2023, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Trusts and Succession \(Scotland\) Bill](#) as amended at Stage 2.
2. The Scottish Government Bill was introduced on 22 November 2022. The lead committee is the Delegated Powers and Law Reform Committee.

# Overview of the Bill

3. The delegated powers in the Bill have previously been considered by the Committee at its meeting on 17 January 2023, with its [report](#) on the delegated powers in the Bill at Stage 1 subsequently being published on 19 January 2023.
4. In its capacity as lead committee for the Bill, the Committee considered and completed Stage 2 on 14 November 2023. Following Stage 2, two new delegated powers have been added to the Bill. The Scottish Government has therefore produced a [Supplementary Delegated Powers Memorandum](#) (“Supplementary DPM”) which sets out its reasons for taking the supplementary delegated powers in the Bill and for the procedure chosen.
5. The Committee is considering the powers under Rule 9.7.9(b) of the Standing Orders, in relation to any new or substantially altered powers provisions in the Bill as amended.

# Review of Supplementary Delegated Powers

## Section 74A (1) – Power to amend jurisdiction in relation to trusts

### Power conferred on: Scottish Ministers

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

### Parliamentary procedure: Affirmative

### Revised or new power: New

#### *Provision*

6. Section 74A (1) confers power on Scottish Ministers, by regulations, to make provision conferring on or removing from the Court of Session or the appropriate sheriff court, the power to decide particular types of cases relating to trusts. In exercising this power the Scottish Ministers may modify the definitions of “the court” and “the appropriate sheriff court” in section 74 and may also make such incidental, supplementary or consequential provision relating to the jurisdiction of the courts in connection with such changes. Regulations under this section may only be made with the consent of the Lord President of the Court of Session.

#### *Committee consideration*

7. The Supplementary DPM states that this power is intended to provide flexibility to amend which types of trust application would be considered by the sheriff court and which would be considered by the Court of Session. It is further explained that trusts is a technical and specialised area that requires expertise by those dealing with them in the courts and over time it may be considered that certain applications should be dealt with in the sheriff court or should be dealt with in the Court of Session. This power would allow such changes to be made.
8. This power has been brought forward following recommendations made by the Committee, in its capacity as lead committee on the Bill, to provide flexibility to alter the types of cases the various courts can consider. It is clear how this power would be exercised and in addition there is also requirement for consent to be obtained from the Lord President of the Court of Session before regulations could be made ensuring engagement with the Courts prior to implementing any changes. The regulations permit the amendment of primary legislation and so the affirmative procedure is appropriate in this instance to provide a high level of parliamentary scrutiny.

9. **The Committee accepts the proposed power in principle and is content that the exercise of the power will be subject to the affirmative procedure.**

## Section 75A (2) – Meaning of incapable and related expressions

### Power conferred on: Scottish Ministers

**Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure: Affirmative****Revised or new power: New***Provision*

10. Section 75A(2) confers power on Scottish Ministers, by regulations, to modify the definition of “incapable” in the Bill and modify the effect of that definition.

*Committee consideration*

11. The Supplementary DPM states that the definition used within the Bill presently aligns with incapacity legislation in Scotland. However, as the Committee pointed out in its capacity as lead committee when providing Stage 1 scrutiny of the Bill, there are significant changes to that legislation recommended and it is not known what that will look like in the future. This power will allow changes to be made to the definition used in the Bill to provide the flexibility to keep pace with the mental health legislation in Scotland as it evolves.
12. This power is limited to modifying the definition of incapable used in the Bill which appears appropriate given there are likely to be changes to that meaning in Scotland in the future. It is clear how this power would be exercised and in what circumstances. The regulations permit the amendment of primary legislation and so the affirmative procedure is appropriate in this instance to provide a high level of parliamentary scrutiny.

13. **The Committee accepts the proposed power in principle and is content that the exercise of the power will be subject to the affirmative procedure.**

