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Pàrlamaid na h-Alba

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

## **Delegated powers in the Budget (Scotland) (No.3) Bill at Stage 1**



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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.



[dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot)



0131 348 5212

# Committee Membership



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party



**Colin Smyth**  
Scottish Labour

# Introduction

1. At its meeting on 16 January 2024, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the [Budget \(Scotland\) \(No.3\) Bill](#) ("the Bill") at Stage 1.
2. The Committee submits this report to the lead Committee for the Bill under Rule 9.6.2 of Standing Orders.

# Overview of the Bill

3. The Bill was introduced by the Deputy First Minister and Cabinet Secretary for Finance on 21 December 2023. The lead committee is the Finance and Public Administration Committee.
4. The Bill makes provision for the financial year 2024-2025. It authorises the use of resources by the Scottish Ministers and bodies whose expenditure is funded directly out of the Scottish Consolidated Fund (“SCF”). The direct-funded bodies are the Scottish Parliamentary Corporate Body (“SPCB”) and Audit Scotland.
5. The approval of the Parliament for the use of resources by the Scottish Ministers and direct-funded bodies is required under section 1 of the Public Finance and Accountability (Scotland) Act 2000 (“the 2000 Act”). Provision is also made for accruing resources separately to non-accruing resources in accordance with the 2000 Act.
6. Schedule 1 of the Bill sets out the purposes for which the Scottish Administration may use its resources, grouped by Ministerial portfolio, up to the overall limits of £59,171,026,458 (non-accruing resources) and £8,644,500,000 (accruing resources). Section 7 allows the purposes and the amounts ascribed to them to be modified.
7. The Bill also provides authorisation for cash expenditure from the SCF, in accordance with section 4 of the 2000 Act. Furthermore, it makes provision for the Scottish Ministers to authorise contingency payments required in the public interest in circumstances where it would not be practicable, for reasons of urgency, to utilise the normal budget revision process.

# Delegated powers

8. The Bill confers one power to make subordinate legislation upon the Scottish Ministers.
9. The Scottish Government has prepared a [Delegated Powers Memorandum](#) (“DPM”). It sets out the reasoning for taking the delegated power and for the procedure chosen.



# Review of relevant powers

## Section 7 – Budget revision regulations

### Power conferred on: the Scottish Ministers

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

### Parliamentary procedure: affirmative

#### *Provision*

10. Section 7(1) of the Bill provides that the Scottish Ministers may by regulations amend the amounts specified in section 4(2) and 4(3) and schedules 1 to 3.
11. Regulations made under section 7(1) will be subject to the affirmative procedure.
12. Section 4(2) and 4(3) of the Bill specify the amounts of overall cash authorisations which can be drawn from the SCF by the Scottish Administration and each of the direct-funded bodies respectively. Schedules 1 and 2 of the Bill specify the authorised purposes and the amount of resources which can be used by the Scottish Administration and the direct-funded bodies respectively for those purposes. Schedule 3 provides the amounts of borrowing available to certain specified statutory bodies under the enactments listed in that schedule.

#### *Committee consideration*

13. The Scottish Government states in its DPM that the power in section 7 of the Bill is necessary to allow the Scottish Ministers to amend the Bill to take account of changes to the Government's spending plans during the 2024-2025 financial year. The Scottish Government considers that there is a need for a mechanism to allow Ministers to seek authorisation for such in-year changes. It further explains that since devolution began, subordinate legislation has been used to revise the Government's spending plans and has become a regular part of the budget process. It states that each of the annual Budget Acts has been subject to at least one revision by subordinate legislation.
14. The Committee agrees that it is appropriate for a Budget Bill to contain a power for Ministers to make amendments to the amounts it specifies. It considers that such a power is standard practice in the budget process and is periodically used by the Government in the form of summer, autumn and spring revisions to the annual budget. It has been accepted in previous years that the taking of a power to revise the amounts specified in the budget is justified. It is not considered that circumstances have changed since previous budget bills were introduced and, accordingly, the Committee also agrees that the taking of a power to make budget revision regulations is similarly justified.
15. The Committee considers that the exercise of the power in section 7 of the Bill is appropriately made subject to the affirmative procedure. Use of the affirmative procedure provides an opportunity for a high level of scrutiny around budgetary issues, which is considered appropriate given the high degree of public and political interest generated by the Government's spending plans. The Committee is

therefore content that this is consistent with the objectives of the 2000 Act.

16. **The Committee finds the power acceptable in principle and is content that its exercise is subject to the affirmative procedure.**

