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

## **Delegated powers in the Social Security (Amendment) (Scotland) Bill (as amended at Stage 2)**



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# Contents

<b>Introduction</b>	<b>1</b>
<b>Delegated Powers</b>	<b>2</b>
<b>Review of powers</b>	<b>3</b>

# 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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# Committee Membership



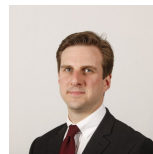
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# Introduction

1. At its meeting on 12 November 2024, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers contained in the Social Security (Amendment) (Scotland) Bill ("the Bill") following amendments made at Stage 2.
2. This Scottish Government Bill was introduced on 31 October 2023. The lead committee was the Social Justice and Social Security Committee.
3. The Bill makes amendments to the Social Security (Scotland) Act 2018 ("the 2018 Act") to create further Scottish benefits and make changes to the way the Scottish social security system operates.
4. The Bill includes provisions intended to improve the experience of people using the services provided by the delivery organisation, Social Security Scotland, as well as provisions designed to deliver increased efficiency and value for money. The Bill also implements the findings of an independent review into the remit and operation of the Scottish Commission on Social Security. It revokes emergency provision in the 2018 Act for late applications arising from the coronavirus pandemic and replaces this provision with a power to accept late applications for assistance in a wider range of circumstances.

# Delegated Powers

5. On introduction, the Bill conferred 31 powers to make subordinate legislation on the Scottish Ministers. The Committee considered the delegated powers in the Bill at Stage 1 at its meetings on 6 February and 19 March 2024 and issued its [report](#) on 26 March 2024.
6. The Bill completed Stage 2 on 4 October 2024. The Scottish Government has lodged a [Supplementary Delegated Powers Memorandum](#) (“supplementary DPM”) covering the delegated powers in the Bill as amended at Stage 2. One new power has been added and seven powers have been revised.
7. The Committee is required by Rule 9.7.9(b) of the Standing Orders to consider and report to the Parliament on new or substantially altered delegated powers after Stage 2.

# Review of powers

## Section 1(3): Childhood assistance

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: Affirmative**

**Revised or new power: Revised**

### Provision

8. Section 1(3) inserts section 32A(1) into the 2018 Act to deliver a new scheme of childhood assistance which will provide payments to an individual to help meet some of the costs associated with having a child in the family. Section 32A(2) gives the Scottish Ministers the power to make regulations for childhood assistance.

### Committee consideration

9. The Committee was content with this power at Stage 1. Stage 2 amendments extended eligibility for childhood assistance. Schedule 6A (as amended) extended the list of eligibility criteria for childhood assistance that the Scottish Ministers must make provision for within regulations to include individuals in receipt of Best Start Grants including Pregnancy and Baby Payment, Early Learning Payment and School Age Payment. The power will cover these matters but the power has not changed in any other way.

10. **The Committee is content with the minor amendment made to section 1(3) of the Bill.**

## Section 2(2): Power to provide for care experience assistance in regulations

**Power conferred on: The Scottish Ministers**

**Power exercisable by: Regulations made by Scottish Statutory Instrument**

**Parliamentary procedure: Affirmative**

**Revised or new power: Unchanged, though subject to additional pre-laying requirements**

### Provision

11. Section 2 of the Bill inserts a new Part 5A (care experience assistance) which inserts section 93A (scheme to provide care experience assistance) into the 2018 Act. Section 93A(1) grants the Scottish Ministers the power to establish by regulations one or more schemes of financial assistance to individuals with care system experience. The detail of the scheme is to be set out in regulations.



**Committee consideration**

12. At Stage 1, the Committee recommended that the exercise of this power should be subject to additional parliamentary scrutiny. In [response](#) to correspondence [from the Committee](#), the Scottish Government advised that it intends to consult further on this in 2025 before laying regulations.
13. The lead committee welcomed the Scottish Government's commitment to consider bringing forward amendments to section 93A(1) at Stage 2.
14. At Stage 2, section 18 was amended so that section 97 (further procedure for regulations about assistance) of the 2018 Act now includes regulations made under section 93A(1). Under section 97 (as amended by section 18 of the Bill), when the Scottish Ministers propose to make regulations for care experience assistance they must, before laying that instrument in Parliament, inform the Commission of the proposals in the form of draft regulations.
15. The Commission then must prepare a report to Parliament setting out its observations and recommendations in relation to the proposals. This is the same as the process required for other delegated powers in the 2018 Act which make provision for assistance. The amendment made at Stage 2, to include regulations made under new section 93A in the section 97 reporting requirements therefore provides for enhanced scrutiny of regulations.

16. **The Committee is content that regulations made under new section 93A will be subject to scrutiny by the Scottish Commission on Social Security under the amended section 97 of the 2018 Act.**

**Section 8A(2)(e): Liability for assistance given in error****Power conferred on: the Scottish Ministers****Power exercisable by: Regulations made by Scottish statutory instrument****Parliamentary procedure: Affirmative****Revised or new power: Revised****Provision**

17. At Stage 1 this power was introduced as section 9(4)(d). In cases of social security assistance given in error, the Scottish Ministers have the power to specify the meaning of an “individual’s representative”.

**Committee consideration**

18. The Committee was content with the power at Stage 1. Section 8A as amended effectively replaces sections 9 – 11 as introduced to make more succinct provision for instances of assistance given in error. No changes have been made to the power in section 8A.

**19. The Committee notes the revision to section 8A(2)(e).**

**Section 13A: Assistance given in error: deductions from other assistance**

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: Affirmative**

**Revised or new power: New in this Bill, but revising an existing power in the 2018 Act**

**Provision**

20. Section 13A amends the delegated powers in schedules 2, 5, 7 and 9 of the 2018 Act which allow Scottish Ministers to make provisions in regulations that assistance may be given by way of deductions where the individual has been in receipt of overpayments. This amendment adds overpayments of assistance paid under section 79 (power to provide for top up) of the 2018 Act so that recovery can be made from assistance provided under section 79 as well as those under section 63 (as currently provided for under the 2018 Act).

**Committee consideration**

21. The Supplementary DPM provides that the reason for taking this power is to allow for the same approach to be taken in respect of how individuals may repay an overpayment for which they are liable under regulations made under section 79 (top up social security assistance) as for overpayments for assistance given under Part 2, Chapter 2 (Types of assistance to be given by the Scottish Ministers) of the 2018 Act.

22. The Committee considers that the affirmative procedure affords an appropriate level of scrutiny of proposals which are expected to be consistent with the power to provide for top up.

**23. The Committee finds the power acceptable in principle and is content that it is subject to the affirmative procedure.**

**Section 16(2): Information for audit of the social security system**

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: Affirmative**

**Revised or new power: Revised**

**Provision**

24. Section 87B(5) enables the Scottish Ministers to prescribe by regulations categories

of individuals who are not to be requested to provide information for audit purposes.

### Committee consideration

25. This power enables the Scottish Ministers to exempt categories of individuals from the requirement to provide information about their benefits for audit purposes. The categories of individuals who cannot be requested to provide information for audit may include, for example, people with terminal illness.
26. At Stage 1, the Committee recommended that a consultation requirement be added before exercise of this power and the Scottish Government committed to doing so. This has been introduced by amendment at Stage 2.

**27. The Committee welcomes that the exercise of this power will now be subject to a consultation requirement.**

### Section 17(2): Recovery of value of assistance from compensation payments

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: Affirmative**

**Revised or new power: Revised**

### Section 94H(4) – Power to make provision about the liability of insurers

#### Provision

28. Section 94H(1) provides that where a compensation payment is made and is covered by an insurance policy, that policy will be deemed also to cover the recoverable assistance payment due to the Scottish Ministers under section 94E. Section 94H(4) provides the Scottish Ministers with a delegated power to make provision about the liability imposed on insurers by subsection (1).

### Committee consideration

29. At Stage 1, the Committee questioned why the power as introduced was wider in its discretion than the equivalent UK provision. The Scottish Government committed to amend the power at Stage 2 to narrow the terms of the delegated power in section 94H(4). The amendment made at Stage 2 has narrowed the discretion to allow the Scottish Ministers to limit the liability placed on insurance providers. This means that the amended power cannot extend the liability of insurers now.

**30. The Committee welcomes the amendment to section 94H(4) of the Bill.**

### Section 94O (6) and (11) – Power to make provision about medical evidence

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: Affirmative**

**Revised or new power: Revised (removed)**

**Provision**

31. Section 17 inserts a new Part 6A (Recovery of value of assistance from compensation payments) into the 2018 Act including sections 94O (6) and (11).
32. Section 94O(6) as introduced provided the Scottish Government with the power to set out when an appeal request is to be treated as a request for a reconsideration.
33. Section 94O(11) as introduced conferred a regulation making power on the Scottish Ministers to provide for the non-disclosure of medical evidence given or submitted in connection with an appeal.

**Committee consideration**

34. The Committee was content with the power contained in subsection 6 at Stage 1. However, the Committee questioned whether the delegated power in subsection 11 to make provision about the non-disclosure of medical evidence was necessary and in response, the Scottish Government committed to remove the power at Stage 2.
35. The Scottish Government has identified that the powers at sections 94O(6) and (11) are not required as the Tribunals (Scotland) Act 2014 expressly gives the Tribunals to make provision about how medical evidence is managed.

36. **The Committee welcomes the removal of the delegated powers at sections 94O(6) and 94O(11).**

**Section 25: Commencement**

**Power conferred on: the Scottish Ministers**

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

**Parliamentary procedure: Laid, no procedure**

**Revised or new power: Revised**

**Provision**

37. Section 25(2) provides that the Scottish Ministers may by regulations appoint days on which provisions of the Bill will come into force other than sections 22, 23, 25 and 26 which come into force on the day after Royal Assent. Regulations under section 25 may include transitional, transitory or saving provision and may make different provision for different purposes.

**Committee consideration**

38. The Committee was content with this power at Stage 1. Following amendment of the Bill at Stage 2, section 25 was amended so that section 24 will now come into force on the day after Royal Assent and not by subsequent regulations.

39. Section 24 of the Bill amends the list of regulation powers in section 96 of the 2018 Act. The Supplementary DPM states that having to lay commencement regulations for section 24 would be disproportionate given that the provision relates solely to Parliamentary procedure.

40. **The Committee notes the minor adjustment to the delegated power in section 25 of the Bill.**

