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

Delegated powers in the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill (as amended at Stage 2)



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Contents

Introduction	1
Delegated Powers	2
Review of powers	3

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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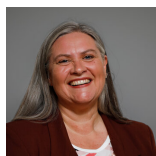
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Scottish Conservative
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Daniel Johnson
Scottish Labour



Roz McCall
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Introduction

1. At its meeting on 26 November 2024ⁱ, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers contained in the Police (Ethics, Conduct and Scrutiny) (Scotland) Bill ("the Bill") following amendments made at Stage 2.
2. This Scottish Government Bill was introduced on [6 June 2023](#) and completed Stage 2 on 2 October 2024. The lead committee was the Criminal Justice Committee.
3. The Bill makes amendments to various aspects of the law regulating the conduct of the police. It makes provision about the ethical standards of the Police Service of Scotland, procedures for dealing with and the consequences of misconduct by constables, and how policing in Scotland is scrutinised.
4. The Bill also implements some of the recommendations contained in the work Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing by Lady Elish Angiolini, which jointly commissioned by the Scottish Government and the Lord Advocate. It makes provision about the ethical standards of the Police Service of Scotland, procedures for dealing with and the consequences of certain conduct by constables, and how policing in Scotland is scrutinised.

ⁱ Stuart McMillan MSP and Jeremy Balfour MSP submitted their apologies. Rona MacKay MSP substituted for Stuart McMillan MSP.

Delegated Powers

5. The delegated powers in the Bill at Stage 1 were considered by the Committee at its meeting on 6 June 2023. The [Committee's report on the delegated powers in the Bill at Stage 1](#) was published on 15 June 2023.
6. Following Stage 2, a new provision has been added to the Bill that revises an existing delegated power in [Police and Fire Reform \(Scotland\) Act 2012 \("2012 Act"\)](#). Additionally, a delegated power provided for in the Bill has been revised in consequence of this. The Scottish Government has therefore produced a [Supplementary Delegated Powers Memorandum](#) ("Supplementary DPM").
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 3B: Procedures for vetting

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations made by Scottish Statutory Instrument

Parliamentary procedure: Negative


Revised or new power: New in this Bill, but revising an existing power in the Police and Fire Reform (Scotland) Act 2012

Provision

8. Section 3B of the Bill is an entirely new section that revises an existing regulation-making power contained in section 48 of the 2012 Act.
9. Section 48 of the 2012 Act requires the Scottish Ministers to make regulations covering the governance, administration and conditions of service of constables and police cadets. Sections 49 – 53 set out in more detail what these regulations may or must cover.
10. Section 3B inserts a new section 50A (ongoing vetting) into this part of the 2012 Act. New section 50A will require the Scottish Ministers to prepare regulations to provide for the ongoing vetting of police constables and their dismissal, should they be unable to maintain a vetting status.

Committee consideration

11. The amendment made by section 3B forms part of a package of amendments made to the Bill concerning the vetting of police officers. The Cabinet Secretary for Justice and Home Affairs wrote to the Convener of the Criminal Justice Committee on 29 October 2024 regarding these amendments, which the Cabinet Secretary had introduced. In the letter, it is explained that four months after the Bill was introduced (3 October 2023), His Majesty's Inspectorate of Constabulary in Scotland (“HMICS”) published their assurance review of vetting within Police Scotland and recommended that:

 “The Scottish Government should place into legislation the requirement for all Police Scotland officers and staff to obtain and maintain a minimum standard of vetting clearance and the provision for the Chief Constable to dispense with the service of an officer or staff member who cannot maintain suitable vetting.”
12. In February 2024, Lady Angiolini published her report on the murder of Sarah Everard by serving Met Police Officer Wayne Couzens, commissioned by the UK Home Secretary in November 2021. In the report, Lady Angiolini raised concerns about the lack of periodic re-vetting of police officers, which, though directed at police forces in England and Wales, were also relevant to Police Scotland.
13. At Stage 1, the lead committee, the Criminal Justice Committee took evidence on vetting and recommended that the Bill should include a power for the Chief Constable to remove someone who is unable to maintain their vetting.

14. The amendments made at Stage 2 are designed to provide a statutory basis for ongoing vetting and the dismissal of constables who fail to maintain vetting standards.
15. The regulations made under section 48 must be consulted upon as per section 54 of the 2012 Act, ensuring input from key stakeholders such as the chief constable, the Scottish Police Authority, and the Police Federation for Scotland. The use of the negative procedure for these regulations is consistent with other regulations made under section 48 of the 2012 Act.

16. The Committee is content with the power, as revised.

Section 7: Scottish police advisory list and Scottish police barred list

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision

17. Section 7 of the Bill has been amended to accommodate dismissal for a failure of vetting, as provided for in section 3A of the Bill, described above. Section 7 inserts a new section into the 2012 Act, section 59A, which grants the power to make regulations for an advisory list and a barred list. These lists will provide information regarding officers who are subject to disciplinary procedures for misconduct, who have been dismissed, or who would have been dismissed had they still been in office. The amendment to section 7 adds a new reason to the list of reasons requiring a person to be entered onto the barred list.

Committee consideration

18. This revision is necessary in consequence of the amendments made to section 48 of the 2012 Act regarding vetting. Individuals who have failed vetting will be entered on the barred list with a view to preventing them from moving to other police forces or bodies, thereby mitigating potential risks to public safety and policing integrity.
19. The use of the affirmative procedure for these regulations provides enhanced parliamentary scrutiny, which is considered appropriate in the circumstances.

20. The Committee is content with the power, as revised.

