



The Scottish Parliament
Pàrlamaid na h-Alba

Published 12 December 2024
SP Paper 707
77th Report, 2024 (Session 6)

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

Delegated powers in the Scottish Elections (Representation and Reform) Bill (as amended at Stage 2)



Published in Scotland by the Scottish Parliamentary Corporate Body.

All documents are available on the Scottish
Parliament website at:
[http://www.parliament.scot/abouttheparliament/
91279.aspx](http://www.parliament.scot/abouttheparliament/91279.aspx)

For information on the Scottish Parliament contact
Public Information on:
Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

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.



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



Daniel Johnson
Scottish Labour



Roz McCall
Scottish Conservative
and Unionist Party

Introduction

1. At its meeting on 3 December 2024, the Committee considered the delegated powers contained in the Scottish Elections (Representation and Reform) Bill (“the Bill”) following [amendments made at Stage 2](#).
2. This Scottish Government Bill was introduced on 23 January 2024 and completed Stage 2 on 14 November 2024. The lead committee was the Standards, Procedures and Public Appointments Committee.
3. The Bill deals with a wide range of issues associated with the reform of Scottish Parliament and local government elections in Scotland.
 - Part 1 extends candidacy rights at devolved elections to foreign nationals with limited leave to remain.
 - Part 2 extends disqualification criteria for MSPs and councillors and provides that disqualification from membership of the House of Commons will no longer automatically mean that a person is also disqualified from being an MSP.
 - Part 3 lays down rules about campaign finance and expenditure at devolved Scottish elections.
 - Part 4 makes provision for the rescheduling of elections.
 - Part 5 adjusts existing powers to pilot electoral process and provides the Scottish Ministers with financial assistance powers for the purpose of increasing democratic engagement.
 - Part 6 requires certain unpaid-for digital campaigning material for Scottish elections published by relevant third-party campaigners to display a digital imprint with the name and address of the promoter.
 - Part 7 revises the deadline for Boundaries Scotland to submit its first report on the electoral arrangements for a local government area to April 2031.
 - Part 8 requires the Electoral Commission to prepare a separate 5-year plan in respect of its devolved functions, which is to be scrutinised by the Scottish Parliament Corporate Body.
 - Part 9 adjusts the constitution of the Electoral Management Board for Scotland, most significantly by giving it a separate legal personality as a body corporate and by providing for the post of deputy convener.
 - Part 10 contain the usual ancillary, commencement, and short title provisions.

Delegated Powers

4. The delegated powers in the Bill at Stage 1 were considered by the Committee at its meeting on 12 March 2024. The Committee's [report on the delegated powers at Stage 1](#) was published on 18 March 2024.
5. Following Stage 2, four new powers have been added and two have been revised. The Scottish Government has therefore prepared a [Supplementary Delegated Powers Memorandum](#) (“Supplementary DPM”).
6. 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 2B – power to amend section 31(3C) and (3D) of the Local Government (Scotland) Act 1973 relating to amendment, repeal or re-enactment of Channel Islands or Isle of Man legislation

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

New or revised power: new

Provision

7. Section 31 of the Local Government (Scotland) Act 1973 (the “1973 Act”), outlines the circumstances in which individuals are automatically disqualified for nomination, election and holding office as member of local authority. Section 2B of the Bill amends section 31 so that a person who is subject to “relevant notification requirements” or “a relevant sexual harm or risk order” (as defined in section 31) is disqualified from nomination, election and holding office as member of a local authority.
8. Section 2B(3) inserts a regulation-making power into section 31(3E) of the 1973 Act, enabling Scottish Ministers to update references to the Channel Islands and Isle of Man legislation listed in the definitions.

Committee consideration

9. This power will allow the references to the Channel Islands and Isle of Man legislation which appear in section 31 of the 1973 Act to be kept up to date without the need for primary legislation. As this power allows for the textual amendment of the 1973 Act, the Committee considers the affirmative procedure provides an appropriate degree of scrutiny.

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

Section 15 – modification to power to make regulations to add description of third parties who can incur controlled expenditure

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

New or revised power: revised

Provision

11. Section 15 amends the Political Parties, Elections and Referendums Act 2000 (“PPERA”) to allow the Scottish Ministers to amend by regulations the list (contained in section 88(2) of that Act) of third parties who can incur controlled expenditure during a Scottish devolved regulated period. The Scottish devolved regulated period is defined as the period (normally 4 months) before a Scottish Parliament election for which campaign limits are applied in terms of paragraph 5 of schedule 10 of PERA. Section 88 of PERA (as amended) allows Scottish Ministers to add, remove, or vary the types of third party which are able to campaign during Scottish Parliament regulated periods (known as “recognised third parties”).
12. Section 15 was amended at Stage 2 so that a change to the types of third party listed in section 88(2) can only be made following a recommendation by the Electoral Commission. Prior to the Stage 2 amendment, a recommendation from the Electoral Commission was only required in order to remove or vary an existing category.

Committee consideration

13. This change reflects a recommendation from the [Standards, Procedures and Public Appointments Committee Stage 1 Report on the Bill](#) (see paragraph 11 of the summary of recommendations). As this power allows for the textual amendment of PERA, the Committee considers the affirmative procedure provides an appropriate level of parliamentary oversight.

14. **The Committee is content with the power, as revisedⁱ.**

Section 28 – modification to existing order-making power in relation to pilot schemes for local elections

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: No procedure to initiate pilot, affirmative procedure to make any change resulting from a pilot permanent

New or revised power: revised

Provision

15. Section 5 of the Scottish Local Government (Elections) Act 2002 (“2002 Act”) allows the Scottish Ministers to make orders enabling local authorities in Scotland to run

ⁱ Daniel Johnson MSP stated that he considered Section 15 of the Bill could have a significant impact on how political parties and other organisations organise themselves at elections. In particular, he considered that a decision to change the types of third parties which can incur controlled expenditure could affect prior and longstanding relationships that parties have with other organisations and other political parties in Scotland or elsewhere. Given the potential impact of such a change, Mr Johnson was of the view that the use of secondary legislation might not provide an appropriate level of parliamentary oversight.

pilot schemes of innovative electoral procedures at particular local government elections. Section 28 of the Bill adjusts section 5 so that the Scottish Ministers, the Electoral Management Board for Scotland (“EMB”) and electoral registration officers may also propose pilots.

16. This section of the Bill was amended at Stage 2 to add the Electoral Commission as a required consultee for electoral innovation pilots. This means that persons proposing an electoral pilot must consult the Electoral Commission before making such a proposal. The amendments also mean that the Scottish Ministers will be obliged to consult with the Electoral Commission and the EMB before implementing permanent changes in light of a pilot scheme under section 6 of the 2002 Act.

Committee consideration

17. This is a minor change to a power with which the Committee was content at Stage 1. The amendment strengthens the consultation requirements which apply to pilot schemes and to permanent changes made in consequence of pilot schemes.

18. **The Committee is content with the power, as revised.**

Section 28A – power to make regulations with temporary provision about the registration of electors

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: negative

New or revised power: new

Provision

19. Section 28A enables the Scottish Ministers to make regulations to make temporary provision about the registration of electors (“registration of electors pilot provision”) in relation to the registration of persons in Scottish local government registers (i.e. the registers used for both local government and Scottish Parliament elections).
20. A non-exhaustive list of the matters which a pilot may cover is provided. This includes provision about the processing of information for and in connection with any matter as regards registration. The amendment makes it clear that regulations made under this section may not include provision about a person’s entitlement to be registered (i.e. they cannot change the franchise).
21. The Scottish Ministers will only be able to make regulations under this section where a proposal for a pilot has been made and approved in accordance with section 28B. That section provides that pilots can be proposed by the Scottish Ministers, the Electoral Management Board for Scotland, a local authority, or an electoral registration officer.
22. Where a proposal is made by the Scottish Ministers, a local authority, or an electoral registration officer, the EMB and the Electoral Commission must be consulted. Where the EMB makes a proposal, it must consult the Electoral

Commission. The Scottish Ministers may only make registration of electors pilot provision where (in their view) it is likely to facilitate registration or encourage more people to register.

Committee consideration

23. Section 5 of the 2002 Act allows the Scottish Ministers to make orders enabling local authorities in Scotland to run pilot schemes of innovative electoral procedures at particular local government elections. However, this power does not extend to holding pilots of registration measures. Section 28A expressly allows for such pilots to be run. Under the 2002 Act, pilots are not subject to any parliamentary procedure, but if the changes which are piloted are to become permanent, the instrument which gives effect to those changes will be subject to the affirmative procedure. Under this new power, pilots will be subject to the negative procedure, which represents a higher level of scrutiny than applies to pilots under the 2002 Act. The Committee considers this is appropriate given that, as stated in the Supplementary DPM, registration pilots have the potential to be “substantial undertakings requiring significant levels of funding.”

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

Section 28D – power to make regulations with permanent provision about the registration of electors

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

New or revised power: new

Provision

25. Section 28D of the Bill provides Scottish Ministers with the power to permanently modify electoral law if, following the Electoral Commission’s report on a pilot conducted under section 28A, they decide that the piloted provisions or similar provisions should apply generally and on a permanent basis. The power is contingent on an Electoral Commission report (issued under section 28C) recommending that the change should be made generally and permanently. Before laying a draft of the SSI containing the regulations, the Scottish Ministers must consult the EMB and such other persons they consider appropriate. The Scottish Ministers must lay a copy of the Electoral Commission’s report on the operation of the pilot at the same time as laying a draft of the SSI.

Committee consideration

26. This power will allow for permanent changes to be made to registration procedures following a pilot run under section 28A. Use of the affirmative procedure is consistent with existing powers to make permanent changes following pilots.

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

Section 29A – sub-delegation of statutory guidance at local government elections

Power conferred on: the Scottish Ministers

Power exercisable by: order made by Scottish statutory instrument

Parliamentary procedure: affirmative

New or revised power: new in this Bill but amends an exiting power in the Local Governance (Scotland) Act 2004

Provision

28. Section 3 of the Local Governance (Scotland) Act 2004 gives Scottish Ministers power to make Orders about the conduct of local government elections. Section 29A of the Bill amends that power to allow such Orders to refer to documents (such as guidance or forms) prepared by other organisations and provide that those documents form part of the rules in relation to local government elections.
29. Paragraph (a) of new subsection (3A) provides that references are ambulatory. This means that the most recently published version of a document referred to will automatically become the authoritative one. For example, Ministers will not need to make a new Order every time that the Electoral Commission updates its accessibility guidance. However, paragraph (b) of this subsection helps Ministers retain control by giving them the power to specify other requirements which a document must meet before it is considered authoritative.

Committee consideration

30. Unlike the equivalent power in relation to Scottish Parliament elections (section 12 of the Scotland Act 1998, as read with section 113(7)) the power to make Orders in relation to local government elections does not allow Scottish Ministers to sub-delegate tasks to other bodies. Legislative sub-delegation occurs when a person who has been given the power to legislate confers a further power to legislate on someone else. As a general rule, legislative sub-delegation is prohibited unless it is expressly provided for in the parent Act.
31. Scottish Ministers currently have powers, exercisable in relation to Scottish Parliament elections, which allow them to sub-delegate certain responsibilities to other persons. This allows, for example, Scottish Ministers to require the Electoral Commission to provide guidance on Scottish Parliament elections. Section 29A will give Scottish Ministers powers of sub-delegation in relation to local government elections, which are equivalent to those which they already exercise in relation to Scottish parliamentary elections.

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

