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

Delegated powers in the Housing (Cladding Remediation) (Scotland) Bill, as amended at Stage 2



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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.

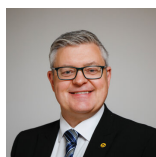


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Introduction

1. At its meeting on 14 May 2024, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers contained in the Housing (Cladding Remediation) (Scotland) Bill following amendments made at Stage 2.
2. The Committee previously considered the delegated powers in this Bill at Stage 1 and published its report, [Delegated powers in the Housing \(Cladding Remediation\) \(Scotland\) Bill at Stage 1](#), on 10 January 2024, stating that it was content with the 4 delegated powers contained in the Bill at that stage.
3. The Bill completed Stage 2 on 23 April 2024. At this point, the Bill was amended to revise one delegated power.

Overview of the Bill

4. This Bill was introduced by the Scottish Government on 1 November 2023. The lead committee was the Local Government, Housing and Planning Committee.
5. The Scottish Government explains in the Bill's [Policy Memorandum](#) that the focus of the Bill is to facilitate the delivery of the Cladding Remediation Programme in Scotland.
6. The Bill also confers a power on the Scottish Ministers to establish a Responsible Developers Scheme.
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 delegated powers

8. The amended Bill revises one delegated power to make subordinate legislation conferred on the Scottish Ministers. The Scottish Government has prepared a [Supplementary Delegated Powers Memorandum](#) (“SDPM”) which sets out the revised power and provides a brief explanation of what the power allows for, why it has been taken and why the Parliamentary procedure has been considered appropriate.

Section 20: To Establish a Responsible Developers Scheme

Power conferred on: The Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Revised or new power: Revised

Provision

9. As the Scottish Government explains in the SDPM, the power delegated by this section is essentially the same as is set out in its original [Delegated Powers Memorandum](#) (“DPM”) accompanying the Bill on introduction and as set out in the Committee’s report at Stage 1.
10. In brief, section 20 gives Scottish Ministers the power to make regulations establishing one or more Responsible Developers Schemes to secure that developers in the building industry address, or contribute towards the costs of addressing, threats to human life created or exacerbated (directly or indirectly) by the external wall cladding systems of buildings that are wholly or partly residential. Regulations are to include who is eligible, the conditions of membership, loss of membership and the consequences of a person who is eligible not being a member.
11. What has changed at Stage 2, is that a consultation requirement has been added to section 20. This requires that, before making regulations under this section, the Scottish Ministers must consult (a) such persons as appear to the Scottish Ministers to represent the interests of persons carrying on, for business purposes, activities connected with the construction or other development of buildings which are wholly or partly residential, and (b) such other persons, as the Scottish Ministers consider appropriate.

Committee consideration

12. The reason for taking the power and the choice of procedure have not changed and remain as set out in the Scottish Government’s original DPM, and as set out in the Committee’s report at Stage 1. The amendment adds a requirement for the Scottish Ministers to consult certain persons before exercising the power to make regulations, which is appropriate as it ensures that the views of such persons inform the development of the Responsible Developers Scheme or Schemes.

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

