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

## **Delegated powers in the Abortion Services (Safe Access Zones) (Scotland) (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.



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



0131 348 5212

# Committee Membership



**Stuart McMillan**  
Scottish National Party



**Bill Kidd**  
Scottish National Party



**Foyso Choudhury**  
Scottish Labour



**Tim Eagle**  
Scottish Conservative  
and Unionist Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 11 June 2024, the Delegated Powers and Law Reform Committee ("the Committee") considered the delegated powers contained in the Abortion Services (Safe Access Zones) (Scotland) Bill following amendments made at Stage 2.
2. This is a Members Bill which was introduced by Gillian Mackay MSP ("Member in Charge") on 5 October 2023. The Lead Committee was the Health, Social Care and Sport Committee.
3. The stated aim of the Bill is to create safe access zones around "protected premises" that provide abortion services. The Bill sets out that a building that is a hospital or forms part of a hospital at which abortion services are provided, or a place that is approved under section 1(3) of the Abortion Act 1967 ("the 1967 Act") for the purposes of that section will be defined as "protected premises". The Bill establishes a "safe access zone" for each protected premises as described above, which includes the public area of the grounds of the protected premises and each public area of land within 200 metres of the edge of the protected premises. In those zones, behaviour which amounts to influencing, preventing access, or causing harassment to those accessing services is an offence.

# Delegated Powers

4. On introduction, the Bill included three powers to make subordinate legislation and one power to issue guidance. The Committee previously considered the delegated powers in this Bill at Stage 1 on 12 December 2023 and published a [report](#) on 20 December 2023, stating that it was content with the delegated powers in the Bill.
5. The Bill completed Stage 2 on 28 May 2024. The Scottish Government has produced a [Supplementary Delegated Powers Memorandum](#) (“sDPM”) on behalf of the Member in Charge, covering the delegated powers in the Bill as amended at Stage 2.
6. No new delegated powers have been added at Stage 2. However, one power that the Committee previously considered has 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 10: Power to modify meaning of “protected premises”

### Power conferred on: Scottish Ministers

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

### Revised or new power: Revised

### Parliamentary procedure: Affirmative

### Provision

8. Section 1 provides that “protected premises” means a building that is or forms part of a hospital at which abortion services are provided, or a place that is approved under section 1(3) of the Abortion Act 1967 (“the 1967 Act”) for the purposes of that section, but does not include a place forming part of a class of place that is so approved under that section. Section 1(3A)(a) of the 1967 Act provides that the power in section 1(3) includes the power to approve a class of places.
9. Section 10(1) enables the Scottish Ministers to amend the definition of “protected premises”. On introduction, section 10(1)(a) provided that Scottish Ministers may, by regulations, include a class of place that is approved under section 1(3) of the 1967 Act in the definition of “protected premises”. As outlined above, classes of places approved under section 1(3) of the 1967 Act are currently excluded from the definition in the Bill. The power in section 10(1)(a) has been revised at Stage 2 so as to enable such regulations to include “a place forming part of a class of place”.
10. Any regulations made under section 10(1) would be subject to the affirmative procedure.
11. Any regulations made under section 10(1) may make incidental, supplementary, consequential, transitional, transitory or saving provision and may make different provision for different purposes.

### Committee consideration

12. Section 1(3) of the 1967 Act enables the Scottish Ministers to approve a place, other than an NHS hospital, for the treatment for the termination of pregnancy. This could be used, for example, to approve a private hospital for this purpose. This has already been done in respect of Rosshall Hospital in Glasgow. This hospital therefore already falls within the definition of “protected premises”. The 1967 Act also enables the Scottish Ministers to approve a class of place. This power was used during the pandemic to approve a “pregnant woman’s home” as a class of place, as a temporary measure. The temporary measure has remained in place with revisions which enable early medical abortions to be carried out at a pregnant woman’s home without reference to the threat of coronavirus. That “class of place” is therefore outwith the definition currently provided for in the Bill.
13. The regulation making power would allow the Scottish Ministers to include a class of place which is approved in the future in the definition. The [Delegated Powers](#)



**Memorandum**, as introduced, explains that the approval power has not yet been used in respect of clinical settings. It is foreseeable that a class of place could be approved in respect of a clinical setting in the future, and it may therefore be appropriate that regulations could be made to include those settings in the definition currently provided in the Bill. The sDPM uses GP surgeries as an example of what could be approved as a class of place.

14. The amendment to the power means that the Scottish Ministers could include a place forming part of a class of place in the definition of protected premises. The sDPM explains that this means that if all GP surgeries were to be approved under section 1(3) of the 1967 Act as places where abortions may be carried out, regulations under this power could specify individual GP surgeries to which a safe access zone would apply, rather than all GP surgeries.
15. It is considered that the revision to this power is appropriate. It is clear why the power is required and is reasonably foreseeable that it will be used. If a class of place is approved under the 1967 Act to provide treatment for the termination of pregnancy, it would seem appropriate that those places can be included in the definition of “protected premises” given the stated purpose of the Bill. This is also true of places forming part of a class of place, as there may be good reasons as to why it may not be necessary or reasonable to establish a safe access zone around every premises within the class of place.
16. It is the Committee's view that the affirmative procedure is appropriate given the potential significance of the measures such regulations could introduce. The affirmative procedure will give the Parliament an opportunity to ensure it is content that such regulations strike the right balance between Convention Rights.

17. **The Committee finds the revised power acceptable in principle and is content that regulations made under it would be subject to the affirmative procedure.**

