

DOMESTIC ABUSE (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

INTRODUCTION

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Domestic Abuse (Scotland) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill
2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

OUTLINE OF BILL PROVISIONS

3. The Bill is in two parts.
4. Part 1 of the Bill provides for an offence consisting of a course of abusive behaviour towards a partner or ex-partner, along with related procedural provision (including a statutory aggravation applying where the offence involves a child in a certain way).
5. Part 2 of the Bill introduces a schedule which makes a number of associated reforms to rules of criminal procedure relating to the offence (which also extend to offences subject to the statutory aggravation involving abuse of partners or ex-partners). These reforms are, mainly by amendment to the Criminal Procedure (Scotland) Act 1995 (the 1995 Act):
 - Creating a standard bail condition prohibiting a person accused of a domestic abuse offence from conducting precognition of the complainer other than through a solicitor;
 - Prohibiting an accused person in a domestic abuse case from personally conducting the defence in court;
 - Applying the same rules for the benefit of vulnerable witnesses as apply to other serious offences;
 - Permitting certain expert evidence relating to the behaviour of the complainer in domestic abuse cases;

- Requiring the court, when sentencing a person convicted of a domestic abuse offence, to have regard to the aim of ensuring that the victim is not subject to further abuse by the offender; and
- Placing a duty on the court to automatically consider whether to make a non-harassment order against a person convicted of a domestic abuse offence.

RATIONALE FOR SUBORDINATE LEGISLATION

6. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, we have carefully considered the importance of each matter against the need to:

- achieve the appropriate balance between the importance of the issue and the need to provide flexibility to respond to changing or unforeseen circumstances quickly, in light of experience, without the need for primary legislation; and
- ensure the proper use of parliamentary time is made.

DELEGATED POWERS

Section 12 – Ancillary provision

Power conferred on: the Scottish Ministers

Power exercisable by: regulations

Parliamentary procedure: affirmative if amends primary legislation, otherwise negative

Provision

7. Section 12(1) of the Bill enables the Scottish Ministers to make such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate for the purposes of, in connection with or for giving full effect to the Bill.

Reason for taking power

8. This power is necessary to allow flexibility when it comes to implementation of the Bill or to address issues that may arise in light of experience on the operation of the Act. Several of the Bill's provisions are inserted into or interact with other legislation, in particular the 1995 Act as previously mentioned. While the Scottish Government has given careful consideration to such interaction, there may be unforeseen matters which require the assistance of this ancillary power in order to ensure the proper effect of the Bill is realised. That is particularly so given the technical nature of some of the provisions for rules of criminal procedure under the 1995 Act as relating to domestic abuse cases. The power is framed by reference to what is appropriate for the purposes of, in connection with or for giving full effect to the Bill. It is therefore expressly limited to that extent.

Choice of procedure

9. Regulations made under this section which contain a provision which adds to, omits or replaces any part of an Act are subject to affirmative procedure. Otherwise, regulations made under this section are subject to negative procedure. This approach is typical for ancillary powers of this type.

Section 13 – Commencement

Power conferred on: the Scottish Ministers
Power exercisable by: regulations
Parliamentary procedure: laid only

Provision

10. Section 13 of the Bill enables the Scottish Ministers to make regulations appointing days on which the provisions in the Bill come into force (other than this section, section 12 and section 14, which come in to force on the day after Royal Assent). Regulations may include transitional, transitory or saving provision.

Reason for taking power

11. The power is necessary to enable the Scottish Ministers to commence the provisions in the Bill appropriately by allowing them to take into account the existing law and provide for the smooth transition towards the rules established by those provisions. Although the provisions in the schedule all relate to the creation of the domestic abuse offence, they also relate to the domestic abuse aggravation contained in the Abusive Behaviour and Sexual Harm (Scotland) Act 2016. Accordingly, it is possible albeit unlikely that full or partial commencement of some of the provisions in the schedule may take place ahead of introduction of the new domestic abuse offence in Part 1 of this Bill.

Choice of procedure

12. The power is subject only to the default laying requirement under section 30 of the Interpretation and Legislation Reform (Scotland) Act 2010. This is typical for commencement regulations. The nature of the laying requirement means that the Scottish Government anticipates the use of this power to effect straightforward and obvious transitional, transitory or saving provisions only. The Scottish Government would intend to make use of the powers in section 12, which benefit from a higher degree of scrutiny, in order to give effect to complex transitional, transitory or saving provisions.

This document relates to the Domestic Abuse (Scotland) Bill (SP Bill 8) as introduced in the Scottish Parliament on 17 March 2017

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