CUSTODIAL SENTENCES AND WEAPONS
(SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This supplementary Memorandum has been prepared by the Scottish Executive to accompany the Custodial Sentences and Weapons (Scotland) Bill following Stage 2 consideration of that Bill, which concluded on 2 March 2007. It has been produced in accordance with Rule 9.7.10 of the Parliament’s Standing Orders to assist consideration by the Subordinate Legislation Committee in accordance with Rule 9.7.9.

2. It explains changes to the powers to make subordinate legislation under the Custodial Sentences and Weapons (Scotland) Bill made as a consequence of amendments at Stage 2 where these add new powers to make subordinate legislation or substantially alter powers which were already in the Bill. It describes the persons upon whom these powers are conferred, the form in which the powers are to be exercised, the Parliamentary procedure to which the powers are to be subject and, in respect of new powers, why it is considered necessary to delegate the powers. It does not form part of the Bill and has not been endorsed by the Parliament. This supplementary Memorandum should be read in conjunction with the original Memorandum and the Explanatory Notes, as revised after Stage 2.

FURTHER AND AMENDED DELEGATED POWERS

Section 6

Section 6B Power to amend section 6(3)

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

3. A number of amendments were made to section 6 at Stage 2 in order to provide further clarity to the provisions dealing with the setting of the custody part. One of those was to remove section 6(10) and to place it in section 6B on its own. The provision has not been altered in any way.
Section 6C Judge’s Report

Power conferred on: The High Court of Justiciary
Power exercisable by: Act of Adjournal

Provision

4. A further consequence of the amendments made to section 6 is the requirement for judges to produce reports. Section 6C(1) requires a judge to produce a report as soon as reasonably practicable after imposing a custody and community sentence. Subsection (2) provides that the report must include information about the circumstances of the case and such other information as the court considers appropriate. The report will be submitted to Scottish Ministers. Subsection (3) includes a power for the High Court of Justiciary to prescribe the form of the report by Act of Adjournal.

Reason for taking power

5. Issues emerging during a trial provide vital information about the nature of the offence and the offender. The reports will provide appropriate and proportionate information in relevant cases where a custodial sentence is imposed and the amendment made intends to provide the flexibility to allow just such a proportionate response. Trial judge reports input to the Scottish Prison Service’s offender screening/assessment and provide information for the Parole Board when assessing the offender’s suitability for release on licence.

Choice of procedure

6. As with other reports, it is considered the format is a matter which can appropriately be prescribed by Act of Adjournal.

Section 43 (New section 27A of the Civic Government (Scotland) Act 1982)

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament

Provision

7. Section 43 of the Bill inserts a new section 27A into the Civic Government (Scotland) Act 1982 to provide for the licensing of those who carry on a business as a knife dealer. That section has been amended to add a new power to modify by order the meaning of “knife dealer”. The new power includes power to add descriptions of businesses to those mentioned in section 27A(3). Power is also given to the Scottish Ministers to exclude businesses from the ambit of subsection (3) of section 27A for the purposes of that subsection.

Reason for taking power

8. Section 27A(3) defines the activities which require licensing as a knife dealer as: selling; hiring; offering for sale or hire; exposing for sale or hire; lending; or giving - whether or not these activities are carried out incidentally to a business which would not otherwise require a knife dealer’s licence. The consequence would be that, e.g. a fencing coach who operated on a professional basis would require a knife dealer’s licence to lend a sword to a pupil for use during
This document relates to the Custodial Sentences and Weapons (Scotland) Bill as amended at Stage 2 (SP Bill 80A)

a lesson. The amendment to the section provides the ability to alter the definition of “knife dealer” to ensure that such unintended consequences do not arise. The amendment also provides Ministers with greater flexibility to add new activities or businesses to those in subsection (3) should a need be identified in future to control activities which would otherwise fall outside the licensing regime.

Choice of procedure

9. Orders made under this section will be subject to annulment in pursuance of a resolution of the Scottish Parliament (section 27R(2) as inserted by section 43). The negative resolution procedure is considered appropriate given the limited nature of the power and the need for flexibility in the use of the new power. The power is likely to be used to refine the provisions in the Bill in certain limited circumstances, but not departing substantially from the definition of “dealer” set out in the Bill.
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