LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) BILL

MEMORANDUM ON DELEGATED POWERS

PURPOSE

This Memorandum has been prepared by the Scottish Executive in accordance with Rule 9.4A of the Scottish Parliament’s Standing Orders.

The contents of this Memorandum are entirely the responsibility of the Scottish Executive and have not been endorsed by the Scottish Parliament.

This Memorandum describes each of the provisions of the Local Electoral Administration and Registration Services (Scotland) Bill which confer power to make subordinate legislation. It sets out:

- the purpose of each power to make subordinate legislation
- the persons upon whom, or the body upon which, power to make subordinate legislation is conferred and the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power to subordinate legislation;
- the Parliamentary procedure to which the exercise of the power to make subordinate legislation is to be subject, if any, and why it was considered appropriate to make it subject to that procedure (or not to make it subject to any such procedure).

Outline and scope of the Local Electoral Administration and Registration Services (Scotland) Bill

Electoral administration

The overall objectives of the electoral administration provisions of the Local Government (Electoral Administration and Registration Services) (Scotland) Bill and related secondary legislation are to improve access to and participation at elections, enhance security and improve administrative effectiveness. The provisions will mirror some of the changes set out in the UK Electoral Administration Bill which was introduced on 11 October this year and which makes a number of amendments to the legislation governing the administration of elections. These changes also link into the wider policy objective of reforming voting arrangements in order to increase participation as set out in the Partnership Agreement.
This document relates to the Local Electoral Administration and Registration Services (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 19 December 2005

The UK Bill includes subjects that are reserved and apply to all statutory elections and subjects that are considered as devolved as they relate to the conduct of elections. Ministers agreed that the UK Bill should not extend to local government elections in Scotland in relation to devolved areas of responsibility and that separate legislation should be brought forward for this purpose. The provisions to be covered in legislation will be dealt with partly through primary legislation in the form of the Bill and partly in secondary legislation.

Registration services

The measures in the Bill concerning registration services deal with modernising and improving the registration service in Scotland. Registration services are a devolved matter.

Outline

The following paragraphs outline the main provisions of the Bill. Further information about the Bill's provisions is offered in the Explanatory Notes, Policy Memorandum and Financial Memorandum, all of which are available on the Scottish Parliament website.

Part 1 of the Bill deals with a number of changes to electoral administration. These cover

- performance standards for returning officers
- the correction of minor procedural errors
- the inspection and supply of local government election documents
- the attendance of observers at elections
- new electoral offences and the strengthening of existing offences
- election expenses

There are also a number of miscellaneous changes involving

- the procedures at elections involving voters who are registered anonymously
- piloting the use of personal identifiers at local government elections
- tendered votes
- election publications
- the timetable for local government elections
- providing election documents in different formats and languages

Part 2 of the Bill deals with modernising and improving the registration service in Scotland. These provisions

- bring registration district boundaries into line with council boundaries and allow more flexible opening hours for registration offices
- allow births and deaths to be registered anywhere in Scotland and allow registrars, as well as the Registrar General, to handle applications for the re-registration of births
• pave the way for wider use of electronic processes, including allowing registrations to be initiated on-line, for the registers to be held electronically rather than in paper form and for contemporaneous electronic checking of the registers by GROS instead of the current annual physical examination

• allow the registration service, at the request of the citizen, to notify registered events to third parties such as solicitors, insurance and pension firms (and to notify deaths at others’ request)

• make it easier to correct certain errors in the registers and allow an official change of name to take place at an earlier stage provide that only persons with parental responsibilities may apply to the Registrar General to change the name of a child

• introduce a new offence of giving false information to the Registrar General

• simplify the arrangements for registering marriages and civil partnerships

• establish a “Book of Scottish Connections” in which people throughout the world with a Scottish connection can arrange for a birth, death or marriage to be recorded, as part of their family history records in Scotland

• allow the Registrar General to provide registration information to any public body or office holder, to keep a central population register for NHS and Local Authority purposes and to clarify the powers of district registrars to release records held by the Registrar General

Part 3 of the Bill deals with orders and regulations to be made under the Act, ancillary provision, the short title of the Act and commencement of its provisions.

PART 1 – LOCAL GOVERNMENT ELECTIONS

Direction-making powers

In addition to the powers described below, Part 1 of the Bill also confers powers on Ministers to make directions and issue codes of conduct which are not subject to Parliamentary procedure. These powers and the reasons for their conferral are listed for information in the annex.

Delegated powers

The Bill confers powers on the Scottish Ministers to make orders and regulations in relation to a range of matters dealt with in the Bill. As these matters are mainly of a technical and procedural nature and require, because of their nature, a flexible approach to accommodate change and improvement, it is regarded as appropriate that they be dealt with by subordinate legislation.
This document relates to the Local Electoral Administration and Registration Services (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 19 December 2005

Description of Delegated Powers

Section 4 – Access to election documents

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Affirmative resolution procedure

This section provides for access to election documents and gives Ministers powers to make regulations relating to the supply of documents, the form in which they are supplied, subsequent use of the information provided in the documents and payments of fees. Providing for these matters in secondary legislation will allow flexibility in setting up any scheme for dealing with the supply of documents and accommodating future change. Regulations made under this section are subject to affirmative resolution procedure in line with the procedure adopted for parallel regulations for Parliamentary elections.

Section 6 – Access to election documents: supplementary

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

This section defines some of the terms used in section 4 which lists the documents that must be supplied where requested by either a registered party or a candidate at the relevant election. Subsections (6) to (9) specify that the marked copies of the register, postal voters list or proxy postal voters list and the corresponding number list are to be marked or prepared and completed in the prescribed manner. Subsection (10) provides that “prescribed” means prescribed by an order under section 3(1) of the Local Governance (Scotland) Act 2004 which makes provision as to the conduct of elections of councillors. Orders made under section 3(1) are, in terms of section 16 of the 2004 Act subject to negative procedure unless they contain certain types of provisions notably where the order amends primary legislation in which case the order would be subject to affirmative resolution procedure. It is considered that if exercised separately from other powers in section 3(1) of the 2004 Act an order would be likely to be subject to negative resolution procedure and that this would be appropriate given that the order would set out an administrative process.

Section 17 – Return as to election expenses

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Affirmative resolution procedure

This section amends existing legislation dealing with returns on candidates’ election expenses and subsection (2) inserts a new subsection (4A) which requires the return to contain statements relating to expenses, claims and other matters as the Scottish Ministers prescribe in regulations. The overall purpose of the section is to introduce a greater degree of flexibility in prescribing the way in which information on election expenses should be presented without reducing the amount of information that has to be provided. As the conditions applying to election expenses may be
subject to review, this can best be achieved through secondary legislation thereby maintaining the aim of introducing a greater degree of flexibility. Regulations made under this section are subject to affirmative resolution procedure in line with the procedure adopted for parallel regulations for Parliamentary elections.

Section 19 – Personal identifiers: piloting

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Not laid

Section 19(2) amends section 5 of the Scottish Local Government (Elections) Act 2002 dealing with election pilots so that personal identifiers can be piloted at Scottish local government elections. Section 19(2)(b) defines personal identifiers as meaning the person’s signature, date of birth or such other information as Scottish Ministers made prescribe by order made by statutory instrument. As the conditions applying to personal identifiers may be subject to review, this can best be achieved through secondary legislation thereby maintaining the aim of flexibility. Orders made under the 2002 Act are not subject to any Parliamentary procedure on the grounds that the orders deal with one-off, local pilots. The 2002 Act provides that any roll-out of pilot schemes across Scotland would require the making of an order which would be subject to affirmative resolution procedure.

Section 22 – Details to appear on election publications

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

This section replaces existing legislation on the details to appear on election material and widens the scope of the legislation by extending the details of those persons which are to be provided on the material.

Subsections (7) and (8) of the new section 110A of the Representation of the People Act 1983 gives Ministers powers to require the inclusion in election material of

(a) details relating to the name and address of the promoter of the material and the person on whose behalf the material is published
(b) the way in which these details are to be included in the material
(c) the circumstances in which compliance with the regulations is not required and in which a breach of the requirements is not to result in an offence being committed
(d) the circumstances in which election material is or is not to be considered as published or published by a person as specified.

Providing for these matters in secondary legislation will allow flexibility if change is required in the future. The regulation-making powers included in the new section 110A inserted by section 22 of the Bill will be subject to negative resolution procedure in line with the procedure for regulations set out in section 201 of the 1983 Act.
Section 25 – Miscellaneous amendments

Power conferred on: The Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Affirmative resolution procedure

Subsection (3) amends Schedule 2 of the Representation of the People Act 1983 to provide that regulations made under the existing order-making powers set out in section 53 of that Act which make provision in relation to Scottish local government elections may also make provision about the cancellation or removal of ballot papers at such an election in any prescribed circumstances. Regulations made under section 53 of the 1983 Act are subject to affirmative resolution procedure in line with section 201 of that Act.

Schedule – Meaning of election expenses

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Affirmative resolution procedure

The Schedule lists those items qualifying as election expenses (Part 1) and those that are excluded (Part 2). The section itself provides that "election expenses" in relation to a candidate at an election means any expenses incurred at any time in respect of any matter specified in Part 1 of the Schedule, which is used for the purposes of the candidate's election during the relevant period. Part 3 of the Schedule includes order-making powers to amend Parts 1 and 2 as Scottish Ministers consider appropriate. As the conditions applying to election expenses may be subject to review, this can best be achieved through secondary legislation. As the Schedule will be inserted in the Representation of the People Act 1983 by section 15 of the Bill, the procedure for regulations made under Part 3 of the Schedule will therefore be subject to negative resolution procedure in line with the procedure for regulations set out in section 201 of that Act.

PART 2 – REGISTRATION SERVICES

Delegated powers

Part 2 of the Bill confers powers on the Scottish Ministers to make orders and regulations in relation to a range of matters dealt with in the Bill. As these matters are either of a technical, detailed nature or create procedural and administrative rules, or require - because of their nature - a flexible approach to accommodate change in the future and improvement, it is regarded as appropriate that they be dealt with by subordinate legislation. They include for instance powers to set the form of documents or the specific detail of information which are required to be submitted to the Registrar General for Scotland under Part 2, or matters prescribing the internal operation of the registration service in Scotland between the district registrars and the Registrar General. Part 2 also creates powers to set the rates of fees, which may have to be varied over time, and hence are appropriate for delegated powers, but subject to Parliamentary scrutiny. Negative procedure for such fee powers balances the need for administrative flexibility and proper Parliamentary scrutiny.
Subordinate legislation procedure

Generally, Part 2 of the Bill contains certain freestanding delegated powers, which are generally prescribed in regulations contained in a Scottish statutory instrument (SSI) subject to negative resolution procedure in the Scottish Parliament, for the reasons described below.

However, Part 2 also amends the Registration of Births, Deaths and Marriages (Scotland) Act 1965 (c.49) (“the 1965 Act”), the Marriage (Scotland) Act 1977 (“the 1977 Act”) and the Civil Partnership Act 2004 (“the 2004 Act”), to make the delegated powers added by amendment subject to the procedure contained in each Act. Each Act contains delegated powers at present for the reasons noted at paragraph 18 above, and the Bill powers mirror the existing procedures in each case. The first 2 of these 3 Acts have regulations in an SSI made by the Registrar General for Scotland (“the Registrar General”) subject to the approval of the Scottish Ministers. The instruments are subject to Subordinate Legislation Committee scrutiny - as with all general instruments - but not laid before the Parliament subject to annulment, except where they provide for the charging of fees (see section 54 of the 1965 Act and section 25 of the 1977 Act). This is considered appropriate given the particularly minor and technical nature of the provision required as set out below and the need for operational flexibility and efficiency. The relevant 2004 Act SSI powers are generally subject to negative resolution procedure in the Scottish Parliament (see section 126 of the 2004 Act).

Sections 29 and 30 - Registration of births and still-births

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<tr>
<th>Power conferred on:</th>
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<tr>
<td>Power exercisable by:</td>
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<td>Parliamentary procedure:</td>
<td>Not laid</td>
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The provisions in sections 29 and 30 amend sections 13 to 18 and section 21 of the 1965 Act and confer power on the Registrar General, with the approval of the Scottish Ministers, to make regulations prescribing the administrative detail of the particulars of a birth or a still-birth that require to be registered, the form on which the particulars are to be recorded, the means and manner of submitting the information, and the form of attestation. Provision is also made to prescribe particulars of births that are to be provided by NHS Health Boards.

The provisions replace and mirror, under the same procedures, the existing regulation- making powers contained in the 1965 Act (see section 54 of the 1965 Act). Providing for the birth and still-birth particulars and the form to be prescribed in this way affords the registration service the flexibility it needs to take advantage of advances in information technology. In addition, there are new provisions to prescribe the manner in which the form is to be attested, rather than the current requirement for the form to be signed, and the means by which it is to be submitted to the registrar. The provisions also add new sections 16A and 16B to the 1965 Act that obliges NHS Health Boards to provide to the Registrar General prescribed particulars of a birth, for every birth that occurs in the Health Boards area, to be used to corroborate the fact of a birth, mirroring an existing requirement under section 50 of the 1965 Act for hospitals etc to provide this information. These new provisions pave the way for registration to be initiated electronically, and the flexibility provided by delegated legislation under the 1965 Act procedure as discussed at paragraphs 18 to 20 above is essential to do this.
Section 31 - Re-registration of births and still-birth

**Power conferred on:** The Registrar General with the approval of the Scottish Ministers  
**Power exercisable by:** Regulations made by Statutory Instrument  
**Parliamentary procedure:** Negative resolution procedure

Section 31 amends sections 20 and 54 of the 1965 Act. These new provisions confer power on the Registrar General, with the approval of the Scottish Ministers, to prescribe the circumstances in which registrars may handle applications to re-register births and still-births – currently done centrally by the General Register Office for Scotland. This provision will make the re-registration process easier and more convenient for the public. The operational detail of the workings of the distribution of functions within the registration service under new rules is suitable for delegated legislation under negative resolution procedure and will allow the flexibility to change as required.

Section 32 - Registration of deaths

**Power conferred on:** The Registrar General with the approval of the Scottish Ministers  
**Power exercisable by:** Regulations made by Statutory Instrument  
**Parliamentary procedure:** Not laid

The provisions in section 32 amend sections 22 to 27 of the 1965 Act and confer power on the Registrar General, with the approval of the Scottish Ministers, to make regulations prescribing the particulars of a death that require to be registered, the form on which the particulars are to be recorded, the means and manner of submitting the information, and the form of attestation. Provision is also made to prescribe particulars of deaths that are to be provided by NHS Health Boards.

The provisions replace and mirror, under the same procedures, the existing regulation-making powers contained in the 1965 Act. Providing for the death particulars and the form to be prescribed in this way affords the registration service the flexibility it needs to keep pace with changes in society. In addition, there are new provisions to prescribe the manner in which the form is to be attested, rather than the current requirement for the form to be signed, and the means by which it is to be submitted to the registrar. The provisions also add new sections 25A and 25B to the 1965 Act that obliges NHS Health Boards to provide to the Registrar General prescribed particulars of a death to be used to corroborate the fact of a death (for every death in each of the Health Board areas mirroring an existing requirement under section 50 of the 1965 Act for hospitals etc to provide this information). These new provisions pave the way for registration to be initiated electronically, and provide flexibility partly by way of regulations under the 1965 Act procedure as discussed at paragraphs 18 to 20 above which are essential to enable registration processes to take advantage of advances in information technology.
Section 34 - Indexing of Registers and provision of registration information

Power conferred on: The Registrar General with the approval of the Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Negative resolution of the Scottish Parliament (fees)/Not laid

The provisions in section 34 add new sections 39A to 39E, 41 and 41A of the 1965 Act and confer power on the Registrar General, with the approval of the Scottish Ministers, to make regulations prescribing:

- the application form and fee for giving official notification of a birth, marriage, death or change of name to nominated private sector bodies
- the application form and fee enabling third parties to apply to the Registrar General to notify them of a death
- the fee for searching indexes and issuing extracts
- the particulars to be contained in an abbreviated extract and the fee for issuing it
- how extracts are to be authenticated

Delegated powers appear in the inserted section 39A(1)(b) and (c) and (6)(a), section 39B(1)(b) and (c) and (2)(a), section 39D, section 39E(3) and (4) and section 41(1)(a) and (b).

These provisions improve existing arrangements and offer new facilities for providing publicly available information. Notifying private sector bodies of births, deaths and marriages etc. is a new service enabling the public to request such notifications to be sent on their behalf to save them the trouble of having to interact individually with each of those bodies (and perhaps having to send an extract to that body). Notification of deaths to third parties by the Registrar General makes the existing process, which is open to any member of the public, more automatic. Prescribing the form of abbreviated extracts allows for the introduction of a new abbreviated death extract that would, in particular, not disclose (possibly embarrassing) details of the cause of death. Provision for the authentication of extracts is consequential upon electronic registration. The procedures under which the delegated powers are exercised match the 1965 Act – in general not laid subject to the approval of the Scottish Ministers and Subordinate Legislation Committee scrutiny only at the Parliament, but subject to negative resolution Parliamentary procedure for all fee charging powers. This administrative provision is appropriate for delegated powers under those procedures respectively, which will allow the flexibility to change as required.

Section 35 - Correction of errors in registers

Power conferred on: The Registrar General with the approval of the Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Not laid

The provisions in section 35 re-cast the existing provisions in section 42 of the 1965 Act that confer power on the Registrar General, with the approval of the Scottish Ministers, to enable the
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Registrar General to prescribe certain errors in the statutory registers that may be corrected by registrars. This continues the existing arrangements for prescribing the type of correction that may be made. This administrative provision is appropriate for delegated powers under the 1965 Act procedure described at paragraphs 18 to 20 above, which provides the flexibility needed for the internal operation of the registration service in Scotland between the district registrars and the Registrar General.

Section 36 - Recording change of name or surname

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The provisions in section 36 re-cast the provisions in section 43 of the 1965 Act that confer power on the Registrar General, with the approval of the Scottish Ministers, to enable the Registrar General to prescribe the change of name application form. This continues the existing arrangements for prescribing the change of name application form. Setting the form is appropriate for delegated powers under the 1965 Act procedure described at paragraphs 18 to 20 above which will allow the flexibility to change as required.

Section 37 - Other amendments of the 1965 Act

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The provision in section 37 adds a new section 54A of the 1965 Act and confers power on the Registrar General, with the approval of the Scottish Ministers, to enable documents to be prescribed in electronic form and for the manner of attestation of documents to be prescribed. This provides the registration service with the flexibility it needs to conduct its business electronically, and allows for the attestation of documents to take different forms depending on the particular circumstances. This administrative provision is appropriate for delegated powers under the 1965 Act procedure described at paragraphs 18 to 20 above which provides the flexibility needed for the internal operation of the registration service in Scotland between the district registrars and the Registrar General.

Section 38 - Marriage procedure: marriages at sea

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<td>Negative resolution procedure</td>
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The provision in section 38 amends section 18A of the 1977 Act to extend the current powers of the Scottish Ministers to make arrangements for the purpose of solemnisation of civil marriages within a registration district or in Scottish waters. The amendment expressly covers approving
vessels as part of the provision to clarify the procedure for the registration of such a marriage (in particular where a vessel is in motion). This administrative provision is appropriate for negative resolution procedure under the scheme which was established by the Marriage (Scotland) Act 2002 (asp 8) for the approval of such places. Providing for these matters of detail of the arrangements to be put in place by negative resolution procedure is appropriate and will allow the flexibility to change as required.

**Section 39 - Marriage procedure: miscellaneous amendments**

**Power conferred on:** The Registrar General with the approval of the Scottish Ministers  
**Power exercisable by:** Regulations made by Statutory Instrument  
**Parliamentary procedure:** Not laid  

The provision in section 39 amends section 4 of the 1977 Act and adds a new subsection (4). Section 4 currently provides for the particulars of a marriage that are to be entered in the marriage notice book to be prescribed, and requires a list to be made giving the names of the parties to and the proposed date of that marriage. The new subsection (4) confers power on the Registrar General, with the approval of the Scottish Ministers, to prescribe the particulars extracted from the marriage notice book that are to be displayed in the marriage list. It is considered that the very detailed matters to be contained in the marriage list are best done by way of specifying those details in regulations under the 1977 Act procedure as described at paragraphs 18 to 20 above rather than in primary legislation. This will also allow the flexibility to change as required.

**Section 40 - Marriage procedure: electronic communication**

**Power conferred on:** The Registrar General with the approval of the Scottish Ministers  
**Power exercisable by:** Regulations made by Statutory Instrument  
**Parliamentary procedure:** Not laid  

The provision in section 40 amends sections 3 (adding a new subsection (3A)) and 5 of the 1977 Act, and adds a new section 24A. Section 3 deals with the submission of notice of intention to marry and new subsection (3A) confers power on the Registrar General, with the approval of the Scottish Ministers, to prescribe the manner of attestation of the marriage notice form to enable it to be submitted electronically. Section 5 is amended to enable an objection to a marriage to be attested to rather than signed, thus enabling the objection to be sent electronically. New section 24A deals with the form and attestation of documents - the provisions enable marriage documents to be in electronic form and for the manner of attestation of the documents to be prescribed. These administrative matters are appropriate for delegated powers under the 1977 Act procedure described at paragraphs 18 to 20 above which provides the flexibility needed for the internal operation of the registration service in Scotland between the district registrars and the Registrar General.
Section 42 - Civil partnership registration procedure

Power conferred on: The Registrar General with the approval of the Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

The provisions in section 42 amend section 88 of the 2004 Act, to enable the notice of proposed civil partnership to be submitted and attested to in electronic form, in the same way that section 40 applies to marriage, but under the negative resolution procedure used in the 2004 Act. In doing so, they also replace the existing provision which confers power on the Registrar General, with the approval of the Scottish Ministers, to prescribe a fee associated with submitting a notice of proposed civil partnership. These fee-setting and administrative matters are appropriate for delegated powers under negative resolution procedure in relation to fees or which fit the procedures used in the 2004 Act which allow the flexibility to change as required.

Section 43 - Provision of information about civil partnerships for certain purposes: fees

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Section 43 amends Schedule 3 to the Public Expenditure and Receipts Act 1968 (c.14) allowing rates of fees which would be added by section 42(1) and (2) of the Bill to be increased by the Scottish Ministers by order under negative resolution procedure. Such an increase would need to be justified under the 1968 Act by correspondence to the relative costs of what is provided. The fees relate to

- section 10B(2) of the Savings Bank Act 1887 (c.40) concerning the provision of a certificate of the formation of a civil partnership
- section 124B(1) of the Social Security Administration Act 1992 (c.5) concerning the provision of certified copies of registration of civil partnership

Those sections were inserted in those Acts by S.I. 2005/3129, Schedule 1. The Scottish Ministers have such appropriate negative resolution procedure order-making powers at present to increase fee rates for provision of the equivalent marriage documents. These fee-setting matters are appropriate for delegated powers under negative resolution procedure which will allow the flexibility to change as required but subject to the appropriate degree of Parliamentary scrutiny (see paragraph 18 above).
Section 44 - Recording of certain events in the Book of Scottish Connections

Power conferred on: The Registrar General with the approval of the Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Section 44 makes provision for a new register to be kept by the Registrar General for Scotland known as the “Book of Scottish Connections” (BSC). The BSC will offer, for an appropriate fee, the facility for a person to apply directly to the Registrar General to add to the records held in Edinburgh a copy of a suitably-authenticated entry in a statutory register of births, deaths and marriages etc. outwith Scotland, where the subject of the entry has or had a connection with Scotland, to be preserved as part of the family history record. Subsection (6) confers a power on the Registrar General, with the approval of the Scottish Ministers, to prescribe the application form containing the particulars of the event, the supporting documents and the fee associated with registering an event. Providing for these fee-setting and administrative matters by negative resolution procedure will allow the flexibility to change as required. Negative procedure provides effective scrutiny of new rules for such matters.

Section 45 - Keeping of, and access to, the Book of Scottish Connections

Power conferred on: The Registrar General with the approval of the Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Section 45, subsections (2), (6) and (9) confer power on the Registrar General, with the approval of the Scottish Ministers, to prescribe the form of entry in the BSC, the fees associated with searching the BSC index and for issuing copies of entries contained in it, either centrally at the General Register Office or locally at the district registration office, in the same way as the other registers. Providing for these fee-setting and administrative matters by negative resolution procedure will allow the flexibility to change as required. Negative procedure provides effective scrutiny of new rules for such matters.

Section 47 - Keeping of central register for health and local authority purposes

Power conferred on: The Registrar General with the approval of the Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

The Registrar General already runs the National Health Service Central Register (NHSCR) on behalf of the NHS in Scotland. Section 47, subsection (4) gives access to the register for Health Boards, the Common Services Agency, and local authorities. Subsections (3), (4), (5) and (6) confer power on the Registrar General, with the approval of the Scottish Ministers, to prescribe in regulations such other information about a person, in addition to the basic information set out in subsection (3), such other persons, or persons of a certain description, who may have access to the information, and what information may be, or must not be, so provided to them. This would...
cover cases such as medical researchers. It is considered that making such provisions by negative resolution procedure provides the flexibility needed to make best use of the information now, and in the future, while at the same time ensuring that access to it is safeguarded by proper Parliamentary scrutiny.

Section 48 - Issuing of other material kept or held by Registrar General

Power conferred on: The Registrar General with the approval of the Scottish Ministers
Power exercisable by: Regulations made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure

Section 48 codifies the arrangements for issuing to the public and to the district registrar other information held by the Registrar General. These include the register of neglected entries (events recorded between 1801 and 1854 not recorded in the old parish records); other registers of births, deaths and marriages in foreign countries and already publicly available census records. Section 48, subsections (3) and (6) confer power on the Registrar General, with the approval of the Scottish Ministers, to prescribe the fees associated with searching the index of these records and for issuing copies, either centrally at the General Register Office or locally at the district registration office, in the same way as the other registers. Providing for fee-setting matters by negative resolution procedure will allow the flexibility to change as required.

PART 3 - GENERAL

Section 52 - Ancillary provision

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Negative resolution procedure / Affirmative if it amends an Act

Section 52 allows the Scottish Ministers to make provision which is supplemental, incidental or consequential for the purposes of, for giving full effect to, or in consequence of, any provision of the Bill. Such orders may be made by affirmative or negative resolution procedure. Section 51(4) provides that an order made under section 52 is subject to affirmative procedure where it contains provisions which add to, replace or omit any part of the text of an Act. Otherwise the order is made subject to negative resolution.

Such powers are commonly found in primary legislation which amend existing complex bodies of law, as is the case here. It is included because it is difficult to predict the precise transitional and other arrangements that will be needed over time. The provision is to deal with matters on which the Parliament would not expect to be burdened with further primary legislation, but with the Parliament's ability to scrutinise the provisions made under the power concerned retained – in addition the provision is restricted in that it has to be interpreted with regard to its context in the Act. The forms of Parliamentary procedure employed are appropriate for these reasons to provide the necessary safeguards with regard to the type of legislation made.
Section 53 - Commencement orders

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by Statutory Instrument
Parliamentary procedure: Not laid

Section 53 provides that, except for sections 51, 52 and 53, the provisions of the Bill come into force on a date or dates set by the Scottish Ministers by order. Section 51(2)(a) provides that different provision may be made for different purposes.

This is a standard order-making power. As is usual for commencement orders, no provision is made for Parliamentary scrutiny, as the power is simply to commence provisions that the Parliament has already fully scrutinised.
ANNEX

DIRECTION MAKING POWERS OF THE SCOTTISH MINISTERS AND CODES OF PRACTICE

Direction making powers

Section 2 – Directions concerning provision of performance reports

Reason for conferral of direction-making powers not subject to Parliamentary scrutiny

This section allows Ministers to issue directions to returning officers to submit reports on their level of performance against any standards set in accordance with section 1 of the Bill. Whilst taking account of different circumstances, the directions will ensure consistency in the form in which the reports are to be provided to allow Ministers to prepare and publish assessments of performance levels.

Code of practice

Section 9 – Power to make a code of practice on the attendance of observers at elections

Reason for conferral of powers to make code of practice not subject to Parliamentary scrutiny

The Code will assist returning officers in judging whether to permit access to individuals or organisations as observers at local government elections and whether to revoke that permission. It will also provide guidance on other issues relating to the attendance of observers and is intended as a statement of accepted good practice. Although not subject to Parliamentary scrutiny, the code will be laid before the Parliament.
This document relates to the Local Electoral Administration and Registration Services (Scotland) Bill (SP Bill 52) as introduced in the Scottish Parliament on 19 December 2005

LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) BILL

MEMORANDUM ON DELEGATED POWERS


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