LOCAL ELECTORAL ADMINISTRATION AND REGISTRATION SERVICES (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

INTRODUCTION

Purpose

1. This supplementary Memorandum has been prepared by the Scottish Executive to explain changes to the powers to make subordinate legislation under the Local Electoral Administration and Registration Services (Scotland) Bill which have been made as a consequence of amendments at Stage 2. It describes the purpose of each amended provision conferring powers to make subordinate legislation. This supplementary Memorandum should be read in conjunction with the original memorandum.

Additions and amendments to delegated powers

2. During the Stage 2 proceedings, a number of amendments were made which both added provisions containing new delegated powers and altered delegated powers in existing provisions of the Bill. The rationale for the individual changes is set out below.

PART 1: LOCAL GOVERNMENT ELECTIONS

3. The overall purpose of the new sections added to Part 1 of the Bill is to reflect amendments made to the UK Electoral Administration Bill in respect of the conduct of elections in order to maintain the policy aim of introducing common electoral procedures for Scottish elections.

Direction-making powers

4. In addition to the changes set out below, Part 1 of the Bill confers additional powers on Ministers to make directions which are not subject to Parliamentary procedure. These powers and the reasons for their conferral are set out in the attached annex.
Delegated powers

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 but affirmative resolution procedure where the order is combined with an order attracting affirmative resolution procedure

5. During its scrutiny of the Bill, the Subordinate Legislation Committee commented that the drafting of section 6(10) would benefit from clarification as there was a lack of clarity as to whether the power to make election rules in section 3 of the Local Governance (Scotland) Act 2004 was being modified or whether provisions made under that power were simply being referred to.

6. The amendment to section 6(10) addresses this issue and makes it clear that the purpose of section 6(10) is to create a standalone power to define the lists referred to in sections 6(6) to (9). It is considered desirable that the order under section 6(10) defining the lists should be capable of being combined with an order under section 3 of the 2004 Act containing the local government election rules. Orders under section 3 of the 2004 Act are in certain circumstances subject to affirmative procedure. Under section 51 of the Bill orders under section 6(10) of the Bill would be subject to negative procedure. An amendment has therefore been made to section 51 to insert a new subsection (4A) allowing orders under section 6(10) to be combined with an affirmative order under section 3 of the 2004 Act. Orders under section 6(10) will attract negative procedure if they are not combined with an affirmative order.

Section 18A – Absent vote applications: provision of personal identifiers

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

7. The provisions in section 19 of the Bill as introduced, for piloting the use of personal identifiers, were deleted by amendment at Stage 2. This new section and sections 18B-D replace those provisions and introduce the collection and use of personal identifiers for absent voting only (both postal voting and voting by proxy) at local government elections in Scotland. These changes reflect changes made to the UK Electoral Administration Bill and ensure that these anti-fraud measures also apply to local government elections in Scotland.

8. Section 18A introduces provisions for the collection of identifiers (signature and date of birth) at the point of application for an absent vote. Applications must include these details and registration officers are required not to grant an application if they are not supplied. Registration officers are however given discretion to dispense with the requirement of a signature if they are satisfied that the applicant cannot provide a signature or sign in a consistent way because of illiteracy or disability. Where this is the case, registration officers are required to keep a record of such applications and sub-section (7) requires that
this record must be retained for a period of time to be set out by Ministers in regulations. As this period of time will be subject to review, this can be best achieved through secondary legislation to allow for a greater degree of flexibility. Regulations under this section are subject to negative resolution procedure in line with the procedure adopted for parallel regulations for Parliamentary elections.

Section 18B – Provision of fresh signatures

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

9. This new section deals with the provision of new signatures by absent voters who have already provided a signature. This will cover provision either at the request of the registration officer or voluntarily by the voter – for example where there has been a change of name since the original signature was supplied. Sub-section (3) gives Ministers powers to make regulations which allow registration officers to require electors who vote by post or proxy to provide a fresh signature in certain circumstances. Those circumstances will be set out in regulations along with the consequences for voters who refuse or fail to comply with such a requirement. As both circumstances and consequences are likely to be subject to change and therefore require a flexible approach, this can be best achieved through secondary legislation. Regulations under this section are subject to negative resolution procedure in line with the procedure adopted for parallel regulations for Parliamentary elections.

Section 18C – Disclosure of personal identifiers

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

10. This section deals with the disclosure of personal identifiers and requires registration officers to supply returning officers with a copy of the information on personal identifiers for voters at local government elections to enable them to carry out checks in connection with postal and proxy voting at those elections.

11. Sub-section (2) provides that this information can also be given to other registration officers, people involved in preparing or conducting legal proceedings on the conduct of elections and, in (2)(c), others as set out in regulations to be made by Ministers. This last category will cover people such as candidates and agents who might be present at the opening of postal votes. In practice, this category of persons may require to be changed and this requirement for change can best be accommodated through secondary legislation. Regulations under this section are subject to negative resolution procedure in line with the procedure adopted for parallel regulations for Parliamentary elections.
Section 18D – Power to require existing absent voters to provide personal identifiers

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

12. This section sets out provisions for collecting personal identifier information from existing absent voters and gives Ministers powers to make regulations to enable registration officers to require existing absent voters to provide a signature and date of birth. The circumstances in which this information will be required will be set out in regulations along with the consequences for voters who refuse or fail to comply with such a requirement. As with the provisions in section 18B, both circumstances and consequences are likely to be subject to change and require a flexible approach. This can be best achieved through secondary legislation. Regulations under this section are subject to negative resolution procedure in line with the procedure adopted for parallel regulations for Parliamentary elections.

Section 19A – Photographs on ballot papers: piloting

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

13. A new section 19A has been added which amends section 5 of the Scottish Local Government (Elections) Act 2002 dealing with election pilots. The amendment is to include the use of photographs of candidates on ballot papers as a new procedure that can be piloted at local government elections. The overall purpose of the amendment is to assist electors by making ballot papers more user-friendly and make voting more accessible to electors with literacy and learning difficulties.

14. Orders made under section 5 of the 2002 Act are not subject to any Parliamentary procedure on the grounds that the pilots they provide for are local in application and apply to one election. This is the section that is being amended by section 19A. It is considered appropriate to delegate this power to provide flexibility for Ministers to make orders which reflect differing proposals from local authorities for pilots involving photos on ballot papers. Should a pilot prove successful, section 6 of the 2002 Act provides that a wider roll-out of the scheme would require an order subject to affirmative resolution procedure.

Section 19B – Encouraging electoral participation

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

15. A new section 19B has been inserted into the Bill to give returning officers powers to encourage participation at local government elections. Whilst returning officers can already
carry out this function, some reservation has been expressed by some officers about the extent of their power to do this. The amendment now clarifies the position.

16. The section allows Ministers to reimburse expenditure incurred by returning officers in carrying out this function but sub-section (4) requires that the total amount to be reimbursed must not exceed a fixed sum to be set out in regulations. As the level of this sum will be subject to review, it is felt that secondary legislation would be the optimum means to achieve a greater degree of flexibility. Regulations made under this section are subject to negative resolution procedure in line with the procedure adopted for parallel regulations for Parliamentary elections.

PART 2: REGISTRATION SERVICES

17. Minor amendments concerning powers to make subordinate legislation have been made to sections 34 and 47 in Part 2 of the Bill.

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)

18. A new subsection (2A) has been inserted in section 34 of the Bill. This substitutes a new section 37 of the Registration of Births, Deaths and Marriages (Scotland) Act 1965. This section is intended to provide clear authority for a district registrar to issue, on payment of the prescribed fee, an extract of an entry in the registers currently operated by the registrar. In the Bill as introduced, this power was conferred by new section 39D(b)(ii) of the 1965 Act, but not in relation to registers of still-births and in a way which did not make clear that the registrar could (as at present) issue an extract in a register before it was transmitted to the Registrar General under section 34 of the 1965 Act. Section 39D(b)(ii) has been removed in consequence of the new section. The new section is similar to the existing section 37 of the 1965 Act, except that the requirement on district registrars to keep and search indexes of the current registers is no longer required. The power to prescribe the fees in regulations is exercisable by negative resolution procedure, as for the existing feeing powers. The justification for this is the same as for the other feeing powers in the 1965 Act and the Bill - as noted at paragraphs 18 to 20 of the principal Memorandum.

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

19. As introduced, subsection 47(2)(e) of the Bill made provision to allow the Registrar General to prescribe “such persons” from whom other information to be held on the National
Health Service Central Register (NHSCR) will be obtained. The amendment extends this to also allow a class of persons to be prescribed from whom information will be obtained to be held on the NHSCR. This is to cover such cases as medical researchers engaged in an approved medical research project - as described in the Explanatory Notes and the principal Memorandum - where the individual patient has consented to the release of the information.
ANNEX

DIRECTION MAKING POWERS OF THE SCOTTISH MINISTERS

Section 2A – Directions concerning information about expenditure on elections

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

20. This section allows Ministers to issue directions to returning officers to provide information on expenditure at local government elections. The directions can specify which elections the information is to cover and the form in which and the date by which the information is to be provided. The information to be provided on expenditure will assist in planning and costing future changes to the administration of local government elections.
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