CERTIFICATION OF DEATH (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government to assist the Subordinate Legislation Committee in its consideration of the Certification of Death (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION INTRODUCED OR AMENDED AT STAGE 2

Section 2 – Power to suspend the referral of certificates during emergencies

New section 24A of the Registration of Births, Deaths and Marriages (Scotland) Act 1965

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Power exercisable by:</td>
<td>Order</td>
</tr>
<tr>
<td>Parliamentary procedure:</td>
<td>Amended to emergency affirmative procedure</td>
</tr>
</tbody>
</table>

Amendment

2. The provision has been amended to replace negative resolution with emergency affirmative procedure. The amendment provides that the order ceases to have effect unless approved by the Scottish Parliament within 28 days of being made. It provides that in counting the period of 28 days, no account is to be taken of time when Parliament is dissolved or in recess for more than 4 days.

Reason for amendment

3. Emergency affirmative procedure has been suggested by the Subordinate Legislation Committee. The Scottish Government agrees that this is appropriate where the operation of primary legislation is sought to be suspended at short notice. The provision for discounting certain periods is necessary, so that in a continuing emergency, an order will not cease to have effect at a time when Parliament is dissolved or in recess.
Section 23(3) – Power to make provision about fees

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Amended to negative resolution

Amendment

4. Section 28 (2) has been amended with the effect that affirmative procedure has been replaced by negative resolution in respect of section 23(3).

Reason for amendment

5. The Scottish Government accepts the comment of the Subordinate Legislation Committee that the setting of application fees and arrangements for collection are more usually subject to negative resolution procedure.

Section 28(1A) – Power to suspend the application of section 4 during emergencies

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Amended to emergency affirmative procedure

Amendment

6. The provision has been amended so that negative resolution has been replaced by emergency affirmative procedure. The amendment provides that the order ceases to have effect unless approved by the Scottish Parliament within 28 days of being made. It provides that in counting the period of 28 days, no account is to be taken of time when Parliament is dissolved or in recess for more than 4 days.

Reason for amendment

7. Emergency affirmative procedure has been recommended by the Subordinate Legislation Committee. The Scottish Government agrees that this is appropriate where the operation of primary legislation is sought to be suspended at short notice. The provision for discounting certain periods is necessary, so that in a continuing emergency, an order will not cease to have effect at a time when Parliament is dissolved or in recess.

Schedule 2 – Power to make provision about documentation for cremation

Power conferred on: Scottish Ministers
Power exercisable by: Regulations
Parliamentary procedure: Negative resolution

Amendment

8. Schedule 2 amends section 7 (regulations as to burning) of the Cremation Act 1902 to repeal some wording contained in the power to make regulations about the documentation required before the burning of human remains takes place. Some of that wording is replaced in a
new section 7A and the procedure for any regulations is set out in a new section 7B. There is a consequential amendment of section 2(2) of the Cremation Act 1952, which sets out the current procedure for these regulations.

Reason for amendment

9. The power in section 7 obliges the Scottish Ministers to make regulations about forms of notices, certificates and applications that are required before cremation can take place. However, the Bill provides in section 24 (in an insertion into the Registration of Births, Deaths and Marriages (Scotland) Act 1965) that the documentation required for a disposal of a body, whether by burial, cremation or other means, may be prescribed by the Scottish Ministers. There is therefore no further need for mandatory regulations under the 1902 provision.

10. Instead, the replacement wording in the new section 7A is permissive. Many of the documents currently prescribed in regulations made under section 7 will no longer be required under the new system, which, in general, aims to have the same documentation for all types of disposal. There may, however, continue to be a need for some documents, for example an application form to the cremation authority, to comply with the registration requirements that are specific to the Cremation Acts. The replacement wording allows for this.

11. The procedure required for exercise of the power in section 7 of the 1902 Act is provided for in section 2(2) of the Cremation Act 1952. Since it is more helpful to have the procedure in the same Act as the power to make regulations, this part of the 1952 Act has been repealed and the 1902 Act has been amended to insert the new section 7B which provides for negative resolution procedure.

12. The current regulations are subject to negative resolution procedure and the replacement wording maintains this position. This allows for an appropriate level of scrutiny where the power will be used to prescribe documentation such as application forms and is therefore essentially administrative in character.
CERTIFICATION OF DEATH (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM