LOCAL ELECTORAL ADMINISTRATION (SCOTLAND)  
BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

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 Local Electoral Administration (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.

BACKGROUND

3. The Local Electoral Administration (Scotland) Bill has two purposes. First, to establish an Electoral Management Board for Scotland and, secondly, to confer functions on the Electoral Commission in relation to local government elections in Scotland. Both of these purposes are intended to further the process of improving electoral administration in respect of Scottish local government elections, as recommended following the difficulties experienced at the 2007 polls.

OUTLINE OF BILL PROVISIONS

4. The Bill is structured in three Parts:

- **Part 1** establishes an Electoral Management Board for Scotland, which will have a role, independent of the Scottish Ministers, in assisting local authorities and others in running elections. The Board will also promote best practice at local government elections. This Part of the Bill contains no delegated powers.

- **Part 2** extends the statutory remit of the Electoral Commission so that it covers local government elections in Scotland. This will enable the Commission to use its existing powers in relation to these elections, with appropriate adaptations to recognise the role and oversight of the Scottish Ministers and the Scottish Parliament in relation to those polls. The remit will include reporting on the administration of the elections, running public awareness and information campaigns, and providing advice and information to returning officers, candidates and political parties.
This document relates to the Local Electoral Administration (Scotland) Bill (SP Bill 57) as introduced in the Scottish Parliament on 7 October 2010

- Part 3 sets out ancillary and final provisions.

**APPROACH TO USE OF DELEGATED POWERS**

5. When deciding where and how provision should be set out in subordinate legislation rather than on the face of the Bill, the Scottish Government has had regard to:
   - the need to strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
   - the need to make proper use of valuable Parliamentary time; and
   - the need to anticipate the unexpected, which might otherwise frustrate the purpose of the provision in primary legislation approved by the Parliament.

**DELEGATED POWERS**

6. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

**PART 2 - ELECTORAL COMMISSION**

Section 16(3) – Limit on Commission expenditure

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

**Provision**

7. The additional responsibilities being given to the Electoral Commission will incur costs, and section 16 inserts a new section 13A into the Political Parties, Elections and Referendums Act 2000 (“the 2000 Act”) to provide that the Scottish Ministers must reimburse the Commission for these costs. However, it will be for the Commission, as an independent body, to determine what expenditure it incurs. Section 13A of the 2000 Act will allow the Scottish Ministers to prescribe by order a maximum amount that the Commission may incur in carrying out the additional responsibilities.

**Reason for taking power**

8. The costs incurred by the Commission will fluctuate, for example more expenditure will be incurred in the period leading up to a local government election than following it. However, there is a need to ensure that expenditure on the Commission’s activities fits appropriately within wider public spending priorities. These priorities will change, and any maximum expenditure figure will need to be adjusted to take account of the level of activity that is needed, inflation and any general changes to the activities that the Commission requires to undertake. This matter is appropriately dealt with by an order-making power rather than primary legislation.
Choice of procedure

9. The Scottish Government does not consider that the maximum figure for the purposes of this provision should merit a higher degree of Parliamentary scrutiny than negative resolution procedure. By comparison, section 13(8) of the 2000 Act contains a power for Scottish Ministers (which would be repealed by the Bill) to impose a similar maximum figure, should the Scottish Ministers use other powers in the 2000 Act to give the Commission a public awareness role in relation to local government elections, or local government, in Scotland. That existing 2000 Act power is subject to negative resolution procedure. That procedure seems appropriate for the power that is included in the Bill.

PART 3 - GENERAL

Section 19– Ancillary provision

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

Provision

10. Section 19(1) confers on Ministers a power to make by order such incidental, consequential, transitional, transitory or saving provision as they consider necessary or expedient for the purposes of, or in connection with, the Bill. Such an order may modify any enactment.

Reason for taking power

11. Ministers may need to make provision by order to support the implementation of the Bill. This will ensure that the policy intentions of the Bill are achieved. Also, whilst a number of consequential modifications to the 2000 Act have been identified in Part 2 of the Bill, it may be that there are consequences for other legislation that have not been identified. The Scottish Government considers the order making power to be necessary to allow for flexibility to address these issues.

12. Provision may also be needed to ensure a smooth transition from the current law to that in the enacted Bill. Unforeseen issues may arise at the time of implementation which require transitional or transitory provision or the saving of repealed or amended provisions.

13. Without the power, it may be necessary to return to Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions of the original Bill. That would not be an effective use of resources by Parliament or the Scottish Government.

Choice of procedure

14. We consider that most possible uses of the ancillary powers are unlikely to justify affirmative procedure. Where an Order is limited in scope and effect, such as one containing incidental, consequential, transitional, transitory or savings provisions, the negative resolution procedure is considered appropriate. There is no power to make supplementary provision that
could have a wider scope and effect, or a more significant impact. However, where the use of the powers would add to, replace or omit any part of the text of an Act it is appropriate that the Order should attract a higher level of parliamentary scrutiny. This gives a clear dividing line for determining what procedure should be used, and restricts the use of affirmative procedure to uses of the power that justify the higher level of scrutiny.

Section 20 – Commencement

Power conferred on: The Scottish Ministers
Power exercisable by: Order made by statutory instrument
Parliamentary procedure: None

Provision

15. Section 20 of the Bill provides that the provisions of the Bill (except the provisions in Part 3, which come into force on Royal Assent) will come into force on the day determined by Order, made by Ministers. The power includes the ability to make such transitional, transitory or saving provision as the Scottish Ministers consider necessary or expedient in connection with commencement of provisions.

Reason for taking this power

16. It is considered that the Bill should be commenced at such times as Ministers consider appropriate or expedient. It is standard practice for such commencement provisions to be dealt with by subordinate legislation. Commencement may require to make transitional, transitory or saving provision, for example in relation to section 11, where an observer scheme that is currently operated by individual returning officers under the Local Electoral Administration and Registration Services (Scotland) Act 2006 will be replaced by a new scheme operated by the Electoral Commission. It is likely to be expedient to save the current scheme in connection with any by-election arrangements that are ongoing at the time of commencement. It is possible that other circumstances may be identified to make transitional, transitory or saving provision necessary or expedient.

Choice of procedure

17. The procedure is in line with general practice.
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