This document relates to the Prisoners (Control of Release) (Scotland) Bill as amended at Stage 2 (SP Bill 54A)

PRISONERS (CONTROL OF RELEASE) (SCOTLAND) BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

PURPOSE

1. This Memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Prisoners (Control of Release) (Scotland) Bill (“the Bill”). This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or substantially 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 3 – Power to commence provisions of the Bill

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: Laid only

Provision

2. Section 3 of the Bill contains a power for the provisions in the Bill to be commenced by order made by the Scottish Ministers. Any order made under the section will be published as a Scottish statutory instrument.

Change made at Stage 2: section 3(3) removed

3. Section 3(3) of the Bill as introduced would have allowed a commencement order to include transitional, transitory and saving provision. Section 3(3) was removed from the Bill at Stage 2.

4. The only saving provision the Government considers to be necessary in connection with the Bill is in relation to section 1. Another amendment at Stage 2 put the required saving provision onto the face of the Bill in section 1. Thus in the Government’s view there is no longer a need for subordinate legislation to make transitional, transitory or saving provision in connection with the Bill.
5. The removal of section 3(3) from the Bill (and putting the only required saving provision onto the face of the Bill) follows from a concern expressed by the Delegated Powers and Law Reform Committee in its Stage 1 report about the potential inadequacy of the opportunity that the Parliament would have to scrutinise the backward reach of section 1 of the Bill (that is, its effect on prisoners serving sentences at the time of commencement) if the relevant transitional, transitory and saving provision were left to subordinate legislation subject only to a bare laying requirement.

Change made at stage 2: section 3(4) added

6. Section 3 has been further amended at Stage 2 by way of the addition of a new subsection (4). This will give the Scottish Ministers the power to use a commencement order under section 3(2) to amend in a very limited way section 1(1A) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 (“the 1993 Act”). New section 1(1A) of the 1993 Act (which is to be inserted into that Act by section 1 of the Bill) will govern which cases the new early-release rules being introduced by the Bill do and do not apply to. Specifically, it provides that the new rules only apply in the cases of prisoners serving sentences imposed on or after the day that section 1 of the Bill comes into force. New section 3(4) of the Bill will allow an order appointing the date that section 1 of the Bill comes into force to amend section 1(1A) of the 1993 Act by putting the actual commencement date in place of the reference to the day on which section 1 of the Bill comes into force.

New section 3(4): reason for taking power

7. Using new section 3(4) to put the actual date of commencement onto the face of section 1(1A) of the 1993 Act will make that section more readily intelligible to users of the statute. It means anyone looking at an amended version of section 1(1A) will be able to see immediately whether the new or old early-release rules apply to a prisoner sentenced on a particular day. If section 1(1A) were not so amended, anyone trying to understand its effect would have to find the relevant commencement order to decode the words “the day on which section 1 of the Prisoners (Control of Release) (Scotland) Act 2015 comes into force”.

New section 3(4): choice of procedure

8. As is usual, the power to appoint a day (or days) for the Bill’s provisions to come into force is subject only to a requirement that the order doing the appointing is laid before the Parliament. The fact that section 3(4) will allow a commencement order to make an extremely modest change to section 1(1A) of the 1993 Act does not, in the Government’s view, change the analysis that no parliamentary procedure beyond laying the order before the Parliament is required. Substituting an actual date in place of a description of that date is a purely mechanical exercise; section 3(4) gives no policy discretion to the Minister making an order by virtue of it, and there is no technical complexity to the exercise of the power. It would therefore appear to make for a poor use of Parliament’s time to have the exercise of the power section 3(4) will confer subject to a more rigorous parliamentary scrutiny procedure.
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