Subordinate Legislation Committee

19th Report, 2013 (Session 4)

Scottish Independence Referendum (Franchise) Bill

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Subordinate Legislation Committee

Remit and membership

Remit:

The remit of the Subordinate Legislation Committee is to consider and report on—

(a)  
   (i)  subordinate legislation laid before the Parliament;
   
       (ii) any Scottish Statutory Instrument not laid before the Parliament but
            classed as general according to its subject matter;

   and, in particular, to determine whether the attention of Parliament should be
drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other
    proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

*(Standing Orders of the Scottish Parliament, Rule 6.11)*

Membership:

Nigel Don (Convener)
Jim Eadie
Mike MacKenzie
Hanzala Malik
John Pentland
John Scott
Stewart Stevenson (Deputy Convener)

Committee Clerking Team:

Clerk to the Committee
Euan Donald
Assistant Clerk
Elizabeth White

Support Manager
Daren Pratt
Subordinate Legislation Committee

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The Committee reports to the Parliament as follows—

INTRODUCTION

1. At its meeting on 19 March 2013, the Subordinate Legislation Committee considered the delegated powers provision in the Scottish Independence Referendum (Franchise) Bill (“the Bill”) at Stage 1. The Committee submits this report to the Referendum (Scotland) Bill Committee as lead committee for the Bill under Rule 9.6.2 of Standing Orders.

OVERVIEW OF THE BILL

2. The Scottish Independence Referendum (Franchise) Bill\(^1\) is a Scottish Government Bill which was introduced to Parliament on 11 March 2013.

3. The Bill is the first of two Bills which will provide for a referendum to be held on the independence of Scotland from the rest of the United Kingdom. This Bill provides the rules for who will be entitled to vote in an independence referendum. The second Bill will provide for the holding of an independence referendum.

4. Section 2 of the Bill provides that a person is entitled to vote in an independence referendum if the person is:

   - aged 16 or over;
   - registered in either
     - the register of local government electors for any area in Scotland or
     - the register of young voters which the Bill establishes under section 4;
   - not subject to any legal incapacity to vote (other than on account of their age); and

\(^1\) Scottish Independence Referendum (Franchise) Bill is available here: [http://www.scottish.parliament.uk/S4_Bills/Scottish%20Independence%20Referendum%20Franchise%20Bill/b24s4-introd.pdf](http://www.scottish.parliament.uk/S4_Bills/Scottish%20Independence%20Referendum%20Franchise%20Bill/b24s4-introd.pdf)
• a citizen of the Commonwealth, the Republic of Ireland (RoI) or a citizen of the European Union (other than a Commonwealth or RoI citizen).

5. Section 3 provides that convicted persons who are detained in prison (or who are unlawfully at large when they should be detained) are not entitled to vote.

6. The remaining provisions of the Bill provide for the preparation and maintenance of a register of young voters (RYV). The RYV will contain the names of those persons who are too young to be registered in the register of local government electors but who meet the requirements for registration and have attained the age of 16 or will attain that age on or before the date on which the poll at an independence referendum is to be held.

7. There is one delegated power in the Bill. The Scottish Government has provided a Delegated Powers Memorandum (“DPM”)² setting out the need for the delegated power, how it may be exercised and the choice of procedure applicable to its exercise.

**Section 11: Power to make supplementary etc. provision and modifications.**

<table>
<thead>
<tr>
<th>Power conferred on:</th>
<th>Scottish Ministers</th>
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<tr>
<td>Power exercised by:</td>
<td>Order</td>
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<tr>
<td>Parliamentary procedure:</td>
<td>Affirmative</td>
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8. Subsection (1) empowers the Scottish Ministers to make supplementary, incidental or consequential provision for the purposes of, in consequence of, or for giving full effect to, any provision made by the Bill. Subsection (2) provides that this includes power to make provision in consequence of, or in connection with, any provision in an Act (or proposed to be made in an Act) for the holding of an independence referendum. Such consequential or connected provision can also be made relating to any modification, or proposed modification, of legislation relating to electoral registration. Subsection (3) provides that such an order may modify any enactment, including the provision made by the Bill itself. It also provides that an order may apply, with or without modifications, any provision of any enactment, and may include supplementary, incidental, consequential, transitory or transitional provision or savings. Subsection (4) requires that any such order must be laid in draft before the Scottish Parliament for approval.

9. While the powers have considerable scope, the Committee considers that it is sensible to be able to make any necessary modifications to ensure the Bill operates effectively together with the referendum Bill. It will also be necessary to take into account any changes to the provisions concerning the electoral register on which part of the franchise is to be based. Accordingly, the Committee considers that the power is acceptable in principle.

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² Scottish Independence Referendum (Franchise) Bill Delegated Powers Memorandum is available here: [http://www.scottish.parliament.uk/S4_Bills/Scottish_Independence_Referendum_Franchise_Bill_-_DPM.pdf](http://www.scottish.parliament.uk/S4_Bills/Scottish_Independence_Referendum_Franchise_Bill_-_DPM.pdf)
10. As the power would allow textual amendment to primary legislation and having regard to the high degree of political significance of the subject matter, the Committee considers that the affirmative procedure is the correct level of scrutiny.

11. The Committee finds the proposed power acceptable in principle and is content that it is subject to the affirmative procedure.
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