

## **PARLIAMENTARY BUREAU**

### **LEGISLATIVE CONSENT MEMORANDUM -**

### **POWERS OF ATTORNEY BILL (UK LEGISLATION)**

#### **Introduction**

1. Under Rule 9B.3.5, the Parliamentary Bureau is required to refer any legislative consent memorandum (LCM) that has been lodged with the Parliament to the committee within whose remit the subject matter of the relevant provision falls.

#### **Powers of Attorney Bill**

2. This Bill was introduced in the House of Commons on 15 June 2022.

3. An LCM was lodged by Humza Yousaf MSP, Cabinet Secretary for Health and Social Care, supported by Kevin Stewart MSP, Minister for Mental Wellbeing and Social Care, on 16 March 2023.

4. The Bill is a Private Members' Bill introduced by Stephen Metcalfe MP.

5. The Bill largely extends to England and Wales only. However, some of the provisions extend to Scotland. The clauses which extend to Scotland and, in the Scottish Government's view, require a Legislative Consent Motion are as follows (clause numbers relate to the print of the Bill on introduction):

- Clause 2 – amends section 3 of the Powers of Attorney Act 1971 (“the 1971 Act”). Section 3 of the 1971 Act extends to Scotland and currently provides that the contents of an instrument creating a power of attorney may be proved by means of a copy which is certified in accordance with that section. Clause 2 would amend section 3 to add Chartered Legal Executives to the list of persons who may certify a copy of a power of attorney under that section.
- Paragraph 8(a) and (b) of the schedule extends to Scotland. The schedule makes various amendments of the Mental Capacity Act 2005 (“the 2005 Act”) as regards Lasting Powers of Attorney (LPA), including making provision for the electronic registration of LPAs. LPAs are a form of power of attorney in English and Welsh law. Most of the 2 provisions of the 2005 Act do not extend to Scotland. However, paragraph 16 of schedule 1 of the 2005 Act does extend to Scotland. Paragraph 16 concerns evidence of registration of LPAs and the contents of an instrument creating an LPA.

6. The LCM indicates that the Scottish Government intends to lodge a motion seeking the Scottish Parliament's consent to the relevant provision in this Bill.

#### **Designation of lead committee**

7. The relevant provision in the Bill falls within the remit of the Health, Social Care and Sport Committee. The committee's remit is to consider and report on matters

falling within the responsibility of the Cabinet Secretary for Health and Social Care and matters relating to drugs policy. The Cabinet Secretary is supported by the Minister for Mental Wellbeing and Social Care, who has supported this LCM. The Minister is responsible (amongst other things) for care, support and rights and adult support and protection. The subject matter of the LCM therefore falls within the responsibility of the Cabinet Secretary for Health and Social Care and therefore the remit of the Health and Social Care Committee.

8. The LCM will also be considered by the Delegated Powers and Law Reform Committee in relation to any provisions in the Bill conferring powers on the Scottish Ministers to make subordinate legislation.

### **Recommendation**

9. The Bureau is invited to refer, under Rule 9B.3.5, the LCM to the Health, Social Care and Sport Committee as lead committee.

**Parliamentary Business Team**  
**March 2023**