

This document relates to the Post-mortem Examinations (Defence Time Limit) (Scotland) Bill (SP Bill 73) as introduced in the Scottish Parliament on 21 May 2020

Post-Mortem Examinations (Defence Time Limit) (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by Scottish Parliament officials in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Post-mortem Examinations (Defence Time Limit) (Scotland) Bill. It describes the purpose of the subordinate legislation provision in the Bill and outlines the reasons for seeking the proposed power. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. The purpose of the Post-mortem Examinations (Defence Time Limit) (Scotland) Bill is to make the right of the defence to instruct a further post-mortem examination, where a person has been charged with an offence in connection with causing or contributing to a death, subject to an extendable time limit.

3. The Bill is made up of five sections. Section 1 inserts a sequence of three new sections into the Criminal Procedure (Scotland) Act 1995, whilst the remaining sections of the Bill deal with consequential amendments, ancillary provision, commencement and the Bill's short title.

4. Further information about the Bill's provisions is contained in the Explanatory Notes, Policy Memorandum and Financial Memorandum.

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Delegated Power

Section 3 – Ancillary Provision

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative if modifying primary legislation, otherwise negative

Provision

5. Section 3 allows Scottish Ministers, by regulations, to make any incidental, supplementary, consequential, transitional, transitory, or saving provision they consider appropriate for the purposes of, in connection with or for giving full effect to the Bill. This might include, for example, correcting references to “autopsies” in other enactments so that (for consistency with the Bill) they become references to “post-mortem examinations”, or making provision as to how the new procedure created under the Bill is to apply in relation to criminal proceedings that are already in progress at the time the Bill’s main provisions come into force.

6. Section 3(2) confirms that whilst the power can be used to modify any other enactment, it cannot be used to modify the Bill itself.

Reason for taking power

7. As with any new law, this Bill may give rise to a need for ancillary provision. For example, consequential provisions may be needed to make necessary changes to related legislation. This is particularly so with the current Bill. In creating an extendable time limit for instructing defence post-mortem examinations, it puts into statute for the first time one specific element of a process that is currently governed largely by convention and guidance. This context makes it difficult to identify all the possible consequences of the Bill. Without the power to make incidental, supplementary and consequential provision, the need for further primary

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legislation might arise to deal with technical, operational or other matters that would otherwise be within the scope of this Bill. That would not be an efficient use of Parliamentary time. The power is limited to the extent that it can only be used if the Scottish Ministers consider it appropriate to do so, for purposes that are in connection with or for giving full effect to the Bill as enacted.

Choice of procedure

8. Section 3(3) of the Bill provides that regulations which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure. This is the appropriate procedure for such amendments, enabling the Parliament to scrutinise changes to legislation that it has enacted or has competence to amend. In all other cases, regulations are subject to the negative procedure. Again, that is the typical procedure for ancillary powers that do not amend primary legislation. In this way, a higher level of Parliamentary scrutiny is required where primary legislation is amended, but a more streamlined procedure is used where it is not.

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