

# Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill

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## Delegated Powers Memorandum

### Introduction

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 Fuel Poverty (Target, Definition and Strategy) (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.

### Outline of Bill Provisions

3. The Bill sets out a statutory framework to underpin the Scottish Government's ambition to eradicate fuel poverty in Scotland.
4. Specifically, the Bill:
  - sets out a target that by the year 2040, no more than 5% of households in Scotland are in fuel poverty;
  - provides a definition of fuel poverty;
  - requires Scottish Ministers to consult on, and publish, a fuel poverty strategy;
  - requires Minister to consult on, and publish, five-yearly reports on progress towards the fuel poverty target, as well as a final report;

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

- repeals the existing statutory provisions on fuel poverty in the Housing (Scotland) Act 2001.

## Rationale for Delegated Powers

5. The Bill contains a number of delegated powers. Those powers relate to key concepts which contribute to the framework the Bill creates, and those concepts are required to be accurate and effective throughout the lengthy lifespan of the legislation up to and including 2042. As described below, changing external factors such as scientific findings may affect how those concepts should be defined. The Scottish Government feels that taking powers to specify these concepts by subordinate legislation is preferable to putting definitions on the face of the Bill which may become out of date very quickly and are certain to become out of date over time. Separately, the commencement provision is standard for all Bills.

## Delegated Powers

**Section 2(4) – Power to Specify the Types of Households for which Enhanced Heating is Appropriate for the Purposes of the Bill’s Calculations**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: affirmative**

## Provision

6. Section 2 of the Bill sets out the definition of when a household is determined to be in fuel poverty. This is calculated with reference to, among other things, the cost to a household of heating rooms of the house to certain temperatures. The temperature required by that definition varies in subsection (3) according to whether the household is one for which enhanced heating is appropriate. Section 2(4) enables the Scottish Ministers to specify those types of households. Section 11(1) of the Bill provides that regulations made under section 2(4) are subject to the affirmative procedure, and section 11(2) requires the Scottish Ministers to consult before making the regulations. This must include consultation with individuals who are living, or who have lived, in fuel poverty.

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

## **Reason for taking power**

7. It is important that the meaning of all terms which are part of the definition of fuel poverty are enshrined in legislation so that they are interpreted consistently. This enables fuel poverty and progress towards the target to be measured accurately. However, it is also important to have the flexibility to define and potentially amend the meaning of these terms to take into account emerging scientific findings over the lengthy lifespan of this legislation.

8. The households for whom this should be the measurement will be identified in discussion with experts. This is therefore a fairly technical matter which it is considered appropriate to leave to regulations. The level of detail which may be required may mean that it would be disproportionate to include this in the Bill.

9. Scientific changes over the time may also alter the types of households for which enhanced heating is appropriate. This may occur, for example, as part of the developing understanding of some medical conditions and research into the effect of old age. Having the ability to specify types of households by regulations provides the necessary flexibility in this regard. The consultation requirement ensures that the views of those who have experience of fuel poverty are taken into account by the Scottish Ministers.

## **Choice of procedure**

10. The power under this section is a power to amend the effect of primary legislation. It is therefore considered appropriate that any regulations made under this power should be subject to the increased level of scrutiny that the affirmative procedure provides. The Parliament is able to consider the instrument in draft and either approve or reject it.

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

## Section 10(A) – Power to Amend Section 2(3) as to Modify the Requisite Temperatures and Requisite Number of Hours

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** affirmative

### Provision

11. The definition of fuel poverty in section 2 makes reference to, amongst other factors, the recommended temperatures for homes and the number of hours those homes should be at those temperatures. The requisite temperatures and hours are set out in section 2(3). Section 10(a) allows the Scottish Ministers to make regulations amending the requisite temperatures and requisite number of hours. Section 11(1) states that these regulations are subject to the affirmative procedure and section 11(2) requires the Scottish Ministers to consult before making such regulations. This must include consultation with individuals who are living, or who have lived, in fuel poverty. Section 11(1)(b) allows such regulations to make different provision for different purposes.

### Reason for taking power

12. It is important to have the flexibility to amend these temperatures and the number of hours to take into account any scientific findings which emerge over the long lifespan of this legislation. It is also important to have flexibility to allow findings to be applied for different purposes in case this is ever needed. The consultation requirement ensures that the views of those who have experience of fuel poverty are taken into account by the Scottish Ministers.

### Choice of procedure

13. The power under this section is a power to amend primary legislation. It is therefore considered appropriate that any regulations made under these provisions should be subject to the level of scrutiny that the affirmative procedure provides. The Parliament is able to consider the instrument in draft and either approve or reject it.

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## Section 10(B) – Power to Amend the Definitions in Section 2(6)

**Power conferred on:** the Scottish Ministers  
**Power exercisable by:** regulations made by Scottish statutory instrument  
**Parliamentary procedure:** affirmative

### Provision

14. Section 2 of the Bill sets out the definition of when a household is determined to be in fuel poverty. the calculation embedded in that definition includes taking into account costs incurred by the household and the household's income. the terms defined by these definitions - "adjusted", "childcare costs", "household", "housing costs", "minimum income standard" and "net income" - are part of the details of the calculation. Section 10(b) enables the Scottish Ministers to amend the definitions of these terms in section 2(6). Section 11(1) states that these regulations are subject to the affirmative procedure and section 11(2) requires the Scottish Ministers to consult before making such regulations. This must include consultation with individuals who are living, or who have lived, in fuel poverty. Section 11(1)(b) allows such regulations to make different provision for different purposes.

### Reason for taking power

15. It is important that the meaning of these terms are enshrined in legislation so that they are interpreted consistently when assessing fuel poverty. However, it is important to have the flexibility to amend the meaning of these terms to take account of changing economic circumstances without requiring new primary legislation over the lengthy lifespan of the legislation.

16. For example, housing costs may change over the next twenty years with the introduction of different or new local and national taxes. Net income may change if a new UK-wide tax on income is introduced to fund social care. In addition, "childcare costs" is defined in order to tie-in with what is assessed as a childcare cost under the UK's minimum income standard. In order to compare like with like, it is important that these definitions are consistent, so if childcare costs under the minimum income standard began to be assessed differently, then an adjustment to section

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11(6)(b) may be required. In addition, Ministers may decide to use a different source for a minimum income standard if the currently produced standard (which is not on a statutory footing to guarantee its continued production) were to suddenly be discontinued or change radically.

17. The consultation requirement ensures that the views of those who have experience of fuel poverty are taken into account by the Scottish Ministers. It is possible that different definitions may be considered appropriate in the future for different purposes.

### **Choice of procedure**

18. The power under this section is a power to amend primary legislation. It is therefore considered appropriate that any Regulations made under these provisions should be subject to the higher level of scrutiny that the affirmative procedure provides. The Parliament is able to consider the instrument in draft and either approve or reject it.

### **Section 10(C) – Power to Make Different Provision In Section 2(5) as to a Household’s Sufficient/Insufficient Remaining Net Income**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: affirmative**

### **Provision**

19. Section 10(c) enables the Scottish Ministers to make different provision in regulations about what is sufficient or insufficient remaining net income for a household. The current provision is set out in section 2(5). Section 11(1) requires that these regulations are subject to the affirmative procedure and section 11(2) requires the Scottish Ministers to consult before making such regulations. This must include consultation with individuals who are living, or who have lived, in fuel poverty. Section 11(1)(b) allows such regulations to make different provision for different purposes.

This document relates to the Fuel Poverty (Target, Definition and Strategy) (Scotland) Bill (SP Bill 37) as introduced in the Scottish Parliament on 26 June 2018

## **Reason for taking power**

20. It may become necessary to make different provision if the minimum income standard ceases to allocate, or changes the way it allocates, notional costs to the items of expenditure currently listed in section 2(5). It is also possible that different definitions may be considered appropriate in the future for different purposes (for example, the UK minimum income standard differs based on the characteristics of a household, but there may be rare cases where there is no UK minimum income standard applicable to a particular household).

## **Choice of procedure**

21. This power allows the Scottish Ministers to make regulations that amend primary legislation. It is therefore considered appropriate that any regulations made under these provisions should be subject to the level of scrutiny that the affirmative procedure provides. The Parliament is able to consider the instrument in draft and either approve or reject it.

## **Section 13 - Commencement**

**Power conferred on:** the Scottish Ministers

**Power exercisable by:** regulations made by Scottish statutory instrument

**Parliamentary procedure:** laid, no procedure

## **Provision**

22. Section 13 of the Bill provides that sections 13 (commencement) and 14 (short title) of the Bill come into force on the day after Royal Assent. Section 13(2) enables the Scottish Ministers to provide by regulations that other provisions of the Act come into force as appointed in regulations. Section 13(3) allows such commencement regulations to make different provision for different purpose and to include transitional, transitory or saving provision.

## **Reason for taking power**

23. It is standard for the Scottish Ministers to have control over the date of commencement.

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24. The Bill replaces the existing statutory reporting framework. the Bill also contains the power to define some key terms by regulations. It is important for Scottish Ministers to have power to allow for the planning of orderly implementation and commence the substantive provisions of the Bill when they consider it is appropriate to do so. It is preferable to ensure there is flexibility in commencement power in case it transpires that there is a need for staged commencement of the Bill's provisions. the Scottish Ministers, therefore, consider that, in accordance with the usual practice, the regulations should be capable of making different provision for different purposes.

25. There may be some need to make transitional provision on commencement and the Scottish Ministers consider that, in accordance with the usual practice, there should be flexibility to include such transitional provision in the commencement regulations.

### **Choice of procedure**

26. As is now usual for commencement regulations, the default laying requirement applies, as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010. This is considered appropriate because the policy behind the provisions will have already been considered by the Parliament during the passage of the Bill.



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