

This document relates to the Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill as amended at Stage 2 (SP Bill 37A)

Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill

[As Amended at Stage 2]

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 Fuel Poverty (Targets, Definition and Strategy) (Scotland) Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were introduced to the Bill at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.
2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

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New Delegated Powers

Fuel Poverty Targets

Section 1(1B) – the 2040 target

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Revised or new power: new

Parliamentary procedure: affirmative procedure¹

Provision

3. Section 1(1) of the Bill set the 2040 target in relation to fuel poverty. At stage 2, section 1(1) was amended to add further targets in relation to extreme fuel poverty and the median fuel poverty gap. In addition, section 9A set up the Scottish Fuel Poverty Advisory Panel (“the Panel”) which is under a duty to report to the Scottish Ministers on progress in relation to meeting targets (among other things). Section 1(1B) allows the Scottish Ministers to change the target year by regulations if they receive a report from the Panel advising that the target will not be met.

Reason for taking power

4. In light of the fact that the Panel’s report may inform the Scottish Ministers that the target will not be met, it was decided that it would be sensible to add a power allowing Ministers to react to this report. This would allow Ministers to make regulations to change the target year should the Panel recommend this course of action.

¹ There is a printing error in section 11(1) and it currently refers to section 1(1A) instead of section 1(1B). This will be adjusted as printing following Stage 3.

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Choice of procedure

5. Affirmative procedure allows for a greater level of Parliamentary scrutiny. Given that the setting of the target is one of the fundamental objectives of the Bill, it is the view of the Scottish Government that this procedure is appropriate for the power in section 1(1B).

Section 2(5A)(b) – meaning of fuel poverty

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Revised or new power: new
Parliamentary procedure: affirmative procedure

Provision

6. Section 2 of the Bill provides for the meaning of fuel poverty. Part of the meaning relates to the minimum income standard for the United Kingdom which is to be determined by the Centre for Research in Social Policy at Loughborough University. Section 2(5A) was added at Stage 2 to provide for an additional amount to the minimum income standard for people who live in remote rural areas, remote small towns and island areas. The regulations are to define “remote rural area”, “remote small town” and “island area” as well as specify the person who is to determine the additional amount. The person will be required to make a separate determination for households in island areas.

Reason for taking power

7. Provision for this uplift has been included in the Bill to ensure that any additional cost of living in remote rural areas, remote small towns and island areas is taken into account when calculating whether a household has sufficient remaining adjusted net income to maintain an acceptable standard of living. However, this will require detailed research on costs to be carried out as,

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unlike the UK-wide minimum income standard, there is not an existing remote rural, remote small town and island minimum income standard which can be adopted. Identifying the organisation to undertake the necessary research will require a procurement process. The regulations therefore allow the person to be specified once the appropriate procurement process has taken place. The provisions also allow the detail of the areas to be defined in regulations so that this can keep pace with the categorisation that is adopted in the Scottish Government's urban/rural classification. However, the intention is to define it so as to capture all households in areas covered by categories 4 and 6 of the classification.

Choice of procedure

8. Affirmative procedure allows for a greater level of Parliamentary scrutiny. In light of the importance of this uplift to the determination of whether or not households are in fuel poverty (which will in turn affect whether the target is met), it is the view of the Scottish Government that this procedure is appropriate for the power in section 2(5A).

Section 2B(7) – meaning of fuel poverty gap

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Revised or new power: new

Parliamentary procedure: affirmative procedure

Provision

9. Section 1(1) of the Bill now includes a 2040 target in relation to the median fuel poverty gap, while section 1A similarly now includes an interim median fuel poverty gap target in relation to the year 2030. Section 2B provides the meaning of the fuel poverty gap which is essentially the annual amount by which a household falls into fuel poverty. The target fuel poverty gaps are

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set by reference to 2015 figures but these are to be adjusted in accordance with any increase or decrease in the consumer prices index (“CPI”) in order to ensure that changes in the value of money are taken into account. Section 2B(7) allows the Scottish Ministers to replace references to CPI with references to another prices index.

Reason for taking power

10. The regulation-making power under section 2B(7) is included to enable the Scottish Ministers are able to replace the references to the CPI to another index if that should become necessary or appropriate. Given the life-span of the Bill, it is considered appropriate to future-proof it in this way and this is a relatively standard power to take when including reference to CPI.

Choice of procedure

11. Affirmative procedure allows for a greater level of Parliamentary scrutiny. Although changes from one prices index to another will not always merit such a high level of scrutiny, in this case it could make an important difference to the targets, and the setting of targets is one of the fundamental objectives of the Bill. It is therefore the view of the Scottish Government that this procedure is appropriate for the power in section 2B(7).

Section 9A(6) – Scottish Fuel Advisory Panel

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Revised or new power: new
Parliamentary procedure: affirmative procedure

Provision

12. Section 9A was added at Stage 2 to set up the Scottish Fuel Poverty Advisory Panel. Subsection (6) enables the Scottish

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Ministers to make provision about the governance, remuneration and membership of the Panel.

Reason for taking power

13. The Panel's governance, remuneration and membership will need to be provided for. However, the operation of the Panel is also subject to a financial cap (which subsection (9) sets at £20,000 in any single financial year). In order to successfully operate within this limit, flexibility will be important and adjustments may need to be made to ensure that members can be recruited and retained. In addition, given the life-span of the Bill, it may be necessary to make changes to the Panel to react to changing circumstances. Setting out these matters by regulations will allow this to be done.

Choice of procedure

14. Affirmative procedure allows for a greater level of Parliamentary scrutiny. Given that this will set out a number of matters which will be key to the composition of the Panel, it is the view of the Scottish Government that this procedure is appropriate for the power in section 9A(6).

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