

This document relates to the Referendums (Scotland) Bill (SP Bill 46A) as amended at Stage 2

Referendums (Scotland) Bill

Supplementary Delegated Powers Memorandum

Introduction

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.7 of the Parliament's Standing Orders, in relation to the Referendums (Scotland) Bill. It describes the provisions in the Bill conferring power to make subordinate legislation which were either introduced to the Bill or amended at Stage 2.

2. The contents of the Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Parliament. This supplementary memorandum should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

Revised Delegated Powers

3. The amended or new delegated powers in the Bill at Stage 2 are listed below, with a short explanation of what each power allows, why the power has been taken in the Bill and why the selected form of Parliamentary procedure has been considered appropriate.

3. The delegated powers in section 1 (power to provide for referendums) and section 2 (application of this Act) of the Bill have been removed as agreed at Stage 2 in responding to issue raised by recommendations from the Delegated Powers and Law Reform and Finance and Constitution Committees¹.

¹ By amendments 1 and 3 (27 November 2019).

This document relates to the Referendums (Scotland) Bill (SP Bill 46A) as amended at Stage 2

Delegated Powers

Section 37 – Power to modify this Act

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish Statutory Instrument

Parliamentary Procedure: affirmative

Provision

3. This provision gives the Scottish Ministers the power to make modifications to the provisions of the Bill in consequence of or in connection with legislative changes made to other electoral or referendum legislation about the conduct of, or campaigning in, or entitlement to vote at, referendums or elections, or to give effect to recommendations made by the Electoral Commission.

4. As amended at stage 2 it no longer allows modifications in consequence of or in connection with *proposed* legislative changes² and the Electoral Commission must be consulted before regulations under this section are laid³.

5. The power is a power to amend primary legislation. It includes the power to make incidental, supplementary, consequential, transitional, transitory or saving provision.

Reason for taking power

6. The provisions set out in this Bill are intended to be a framework for future referendums in Scotland. This power allows the Bill framework to be

² amendment 71 (4 December 2019)

³ amendment 72 (4 December 2019)

This document relates to the Referendums (Scotland) Bill (SP Bill 46A) as amended at Stage 2

updated to ensure it is in line with other legislation on the conduct of and campaigning in referendums and elections, entitlement to vote and recommendations made by the Electoral Commission after an electoral event, ensuring it remains up to date and fit for purpose.

Choice of Procedure

7. The conduct of and campaigning in referendums under the provisions in the Bill, and entitlement to vote at such a referendum, are important aspects of any future referendum. As provision is made enabling the amendment of primary legislation, a high level of parliamentary scrutiny is required. The affirmative procedure is, therefore, considered to be appropriate, so changes about these significant matters cannot be made to the framework without parliamentary consent. The Electoral Commission will also be consulted and their views will be provided to the Parliament when laying the regulations.

Schedule 1, paragraph 17(4) - Alterations in the register of local government electors

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish Statutory Instrument

Parliamentary Procedure: negative

Provision

8. This provision allows the Scottish Ministers, after consultation with the Electoral Commission, to extend the deadline for electoral registration in the run up to a referendum under the provisions in the Bill. The provision has been extended at Stage 2⁴ so that it may be used to amend a reference to the appropriate publication date being the 5th day before the

⁴ by amendment 17 (27 November 2019)

This document relates to the Referendums (Scotland) Bill (SP Bill 46A) as amended at Stage 2

date of the referendum. That reference was itself inserted by an amendment at Stage 2⁵, that relates to dates for publication of updated electoral registers.

Reason for taking power

9. Shortly before the deadline for registration before the EU referendum in June 2016, the on-line registration system became unavailable due to a large number of individuals trying to register. Due to the risk that some voters may not have been able to register, and would therefore be denied the right to vote, the UK government extended the registration deadline by two days.

10. Whilst the capacity of the online registration system has been significantly increased since this outage, and has worked well at subsequent elections, it is thought prudent to have the provision to extend the deadline, should it be needed. If the power were used, the appropriate publication date might need to be changed, and therefore the consequential extension to the power is required.

11. The requirement to consult the Electoral Commission is considered to remain appropriate for the extension, to provide independent scrutiny of any proposed use of the power.

Choice of procedure

12. Negative procedure is considered still to be appropriate for this essentially technical and administrative matter, having regard to the likelihood that there will be a need to make any extension without delay.

⁵ amendment 16 (27 November 2019)

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