

Ecocide (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by Non-Government Bills Unit on behalf of Monica Lennon MSP, the Member in Charge of the Bill, in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Ecocide (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.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 70–EN);
 - a Financial Memorandum (SP Bill 70–FM);
 - a Policy Memorandum (SP Bill 70–PM);
 - statements on legislative competence made by the Presiding Officer and the Member in Charge of the Bill (SP Bill 70–LC).
3. This Memorandum has been prepared in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

4. The Bill establishes a statutory offence of ecocide where a person causes severe environmental harm and either intends to cause such harm or is reckless as to whether such harm is caused. The Bill also makes provision for liability, penalties and enforcement.
5. The Explanatory Notes provide a detailed explanation of the Bill's provisions.

Rationale for subordinate legislation

6. The Bill contains three delegated powers provisions. The first is the ability for the Scottish Ministers to modify the list of bodies and persons that they must consult when

preparing a report on the operation of the Act. The second is to enable ancillary provision to be made where the Scottish Ministers consider it appropriate to ensure the Bill can be given its full effect. The third is to enable commencement regulations to be made.

Delegated powers

Section 10(4): Power to modify the list of persons that must be consulted by the Scottish Ministers in preparing the report on the operation of the Act

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

7. Section 10 provides that the Scottish Ministers must, 6 months after the end of the period of 5 years of section 1 (offence of ecocide) coming into force, prepare and publish a report on the operation of the Act and lay a copy before the Scottish Parliament. Subsection (3) provides that, in so doing, Scottish Ministers must consult and share a draft of the report with the bodies listed in that section and such other persons as the Scottish Ministers consider appropriate. Scottish Ministers are then obliged to consider any representations made from them in that process. Subsection (4) provides that the Scottish Ministers can make regulations modifying this list by adding to, removing from or modifying that list.

Reason for taking power

8. The list is intended to capture those with expertise either in the environment or in criminal offending. The intention of the regulation making power is to enable that list to be kept current and to enable any new or other bodies or persons with relevant expertise to be added. This is in addition to the discretion given to the Scottish Ministers in subparagraph (3)(a)(viii) to include such other persons as the Scottish Ministers consider appropriate. As the reporting obligation only occurs once (i.e. after the initial 5 years of operation) any regulations would only have the potential to be made during the period of 5 years and 6 months of section 10 coming into force.

Choice of procedure

9. Section 10(5) provides that any regulations made under section 10(4) would be subject to the affirmative procedure. As the regulations would in effect be amending primary legislation, the use of the affirmative procedure is considered appropriate as it would allow Parliament to debate any changes to the list set out in section 10(4).

Section 11: Ancillary provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if making textual amendments to an Act, but otherwise negative

Provision

10. Section 11 gives the Scottish Ministers power to make 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 or any provision of the Bill.

Reason for taking power

11. The Bill may give rise to a need for further provision to make sure that this new offence can operate effectively in practice. This enabling power is sought to provide flexibility to quickly and effectively make any necessary change that might be needed.

12. Whilst the Member has given careful consideration to the provisions of the Bill, given the complex landscape of Scots criminal law, it is possible that ancillary provision may be needed. Without such a power it would be necessary to return to the Parliament with another Bill to deal with any minor matters to properly give effect to a Bill already passed by the Parliament.

Choice of procedure

13. Regulations made under section 11 which add to, replace or omit any part of the text of an Act are subject to the affirmative procedure. Otherwise, regulations made under this section are subject to the negative procedure. That approach is typical for ancillary powers of this type and reflects the fact that the Parliament should be able to carefully scrutinise any amendments to primary legislation, while ancillary changes to subordinate legislation are likely to be of a more technical nature and so merit a lesser degree of parliamentary scrutiny.

Section 12: Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid, no procedure

Provision

14. Sections 11 to 13 (Final Provisions) will come into force on the day after Royal Assent. Section 12(2) provides that the Scottish Ministers may, by regulations, appoint

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days on which other provisions of the Bill come into force. Subsection (3) provides that regulations may include transitional, transitory or saving provision and make different provision for different purposes.

Reason for taking power

15. This power will enable the Scottish Ministers to bring the provisions of the Bill into force and to manage the effects of their commencement.

Choice of procedure

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

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