

BUDGET (SCOTLAND) (NO.3) BILL

MEMORANDUM ON DELEGATED POWERS

PURPOSE

1. This memorandum has been prepared by the Scottish Executive in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Budget (Scotland) (No.3) Bill. It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.

BACKGROUND

2. Rule 9.4A of the Parliament's Standing Orders requires that immediately after introducing an Executive Bill which contains any provision conferring power to make subordinate legislation, the member in charge shall lodge with the Clerk a memorandum setting out, in relation to each such provision of the Bill—

- (a) the person upon whom, or the body upon which, the power is conferred and the form in which the power is to be exercised;
- (b) why it is considered appropriate to delegate the power; and
- (c) the Parliamentary procedure (if any) to which the exercise of the power is to be subject, and why it was considered appropriate to make it subject to that procedure (or not to make it subject to any such procedure).

RELEVANCE TO THE BUDGET (SCOTLAND) (NO.3) BILL

3. Section 7 of the Bill gives the Scottish Ministers the power by order made by statutory instrument to amend—

- (a) the amounts specified in section 3;
- (b) schedules 1 to 5.

No such order may be made unless a draft of it has been laid before, and approved by resolution of, the Scottish Parliament.

REASONS FOR USE OF SUBORDINATE LEGISLATION

4. The Budget Bill is the vehicle through which the Scottish Ministers seek Parliamentary approval of their spending plans for the coming financial year (in this case, 2006-07) – since all

spending, both in terms of overall amounts and the purpose for which resources are to be used, must be subject to prior parliamentary authorisation.

5. It is inevitable that these spending plans will be subject to change during the financial year to which the Bill applies. Such changes might be, for example, to reflect:

- (a) transfers of resources within the Executive, and with Whitehall;
- (b) changes in accounting and classification guidelines; or
- (c) the allocation of resources from central funds including the Contingency Fund and from End Year Flexibility allocations.

There is therefore a need for a mechanism to allow Scottish Ministers to seek authorisation for such changes. The use of affirmative statutory instruments for this purpose was originally introduced to implement the pre-devolution Financial Issues Advisory Group's (FIAG's) recommendations for the process (paragraph 3.40f of their Final Report), and is also covered in the Agreement on the Budget Process between the Parliament and the Executive.

6. Since devolution, the Budget Revision process through the use of secondary legislation has become a regular part of the annual budget process. All of the annual Budget Acts have been subject to at least one revision by secondary legislation, and Budget Acts 2003 and 2004 were both subject to three revisions – colloquially known respectively as the Summer, Autumn and Spring Budget Revisions. The Budget Act and subsequent revisions roughly mirror the UK Parliament's process (since Scotland's drawdown from the UK consolidated fund must also be approved by the UK Parliament) through Main and Supplementary Estimates.

This document relates to the Budget (Scotland) (No.3) Bill (SP Bill 53) as introduced in the Scottish Parliament on 19 January 2006

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