

APOLOGIES (SCOTLAND) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Non-Government Bills Unit on behalf of Margaret Mitchell MSP. Its purpose is to assist consideration by the Delegated Powers and Law Reform Committee, in accordance with Rule 9.6.2 of the Parliament's Standing Orders, of the provision in the Apologies (Scotland) Bill conferring power to make subordinate legislation. It describes the purpose of the (single) subordinate legislation provision in the Bill and outlines the reasons for seeking the proposed power. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. This short Bill makes provision concerning the effect of an apology in legal proceedings. It applies to certain civil legal proceedings, only (and does not apply to criminal proceedings). Broadly, a 'qualifying' apology is not admissible in evidence in those proceedings, and cannot be used in any other way. The Bill sets out the proceedings covered, along with exceptions. The list of exceptions can be modified by regulations made by the Scottish Ministers. The Bill defines what is meant by an 'apology' for the purposes of the legislation, and sets out those elements which may qualify as part of the apology.

Rationale for subordinate legislation

3. The Bill contains one power to make subordinate legislation, which is delegated to the Scottish Ministers. The Bill is of a "stand-alone" nature - it does not amend existing legislation, and the power contained in it is new, with no existing power being amended or repealed. The power itself is explained more fully in the following paragraphs, but in providing for it the member has had regard to the potential requirement to make further provision at a later date, as the new legislation establishes itself. That is, so as to ensure that if a need should arise to make changes, so that the list of proceedings excepted by the new legislation remains relevant and appropriate, and is correctly referred to, then this can be readily be taken forwards by means of subordinate legislation.

Delegated powers

Section 2(3) – modifying list of exceptions to the legal proceedings covered by Bill

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

Provision

4. The Bill makes provision about the effect of an apology in civil proceedings, subject to the two exceptions (fatal accident inquiries and defamation proceedings) listed within section 2(1). Section 2(3) enables that list of exceptions to be modified, by means of regulations made by the Scottish Ministers. That would enable the existing list to be amended, by adding to it, or removing or adjusting one of the exceptions referred to there.

Reason for taking power

5. The existing list of exceptions is a short one. It is conceivable that, over time, as the new legislation establishes itself, a need might be identified to adjust the existing list. This might involve adding to it, should other exceptions be identified, removing one of the exceptions mentioned, or otherwise adjusting an entry to take account, for example, of any legislative change. Subordinate legislation is considered to provide a suitable means of doing so, and of course in making provision for this within the Bill it means that primary legislation is not necessary to ensure that any changes of that nature can be made.

Choice of procedure

6. In the event of the Scottish Ministers wishing to modify the list of exceptions then the relevant regulations are to be subject to the affirmative procedure. That procedure is considered appropriate given this would involve a change being made to the primary legislation itself. Further, any amendment to the existing list of exceptions is likely to represent a significant matter, especially for a short Bill which is concerned with the effect of an apology in legal proceedings. Section 2 is one of the Bill's core provisions and it is proper that any change to the list of exceptions should be subject to robust Parliamentary scrutiny. That is ensured, with the power to amend the list being exercisable by means of regulations subject to the affirmative procedure.

This document relates to the Apologies (Scotland) Bill (SP Bill 60) as introduced in the Scottish Parliament on 3 March 2015

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