INTRODUCTION

1. This memorandum has been prepared by the Scottish Government to assist the Delegated Powers and Law Reform Committee in its consideration of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Bill. This memorandum describes provisions in the Bill conferring power to make subordinate legislation which were introduced, amended or removed from 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.

DELEGATED POWERS

Section 10A(3) – Availability of civil legal aid

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish statutory instrument
Parliamentary procedure: negative
Change at Stage 2: new power

Provision

3. Section 10A(3) inserts new subsections (2A) to (2C) into section 15 of the Legal Aid (Scotland) Act 1986 (financial conditions). Subsection (2B) places a duty on the Scottish Ministers to make regulations providing for special financial conditions to be applied to specified types of family member applying for civil legal aid in order to participate in a fatal accident inquiry (“FAI”) into the circumstances of the death of their relative. The family members (for example spouses or civil partners) are those referred to in new section 14 (1ZB) of the Legal Aid (Scotland) Act 1986 (availability of civil legal aid), inserted by section 10A(2) of the Bill. New section 15(2C) requires the Scottish Ministers to ensure that civil legal aid is made available under regulations to allow persons to participate fully in the fatal accident inquiry proceedings.

Reason for taking power

4. This power allows the Scottish Ministers to provide for the financial conditions which a family member must meet to be set out in regulations.
Choice of procedure

5. By virtue of section 37(1) of the Legal Aid (Scotland) Act 1986 the regulations would be subject to the negative procedure. The new section 10A would disapply the financial test in section 15(1) of the 1986 Act, so any regulations under section 36(2)(b) of the 1986 Act amending the amounts specified in section 15 would not bite on legal aid for participation in FAIs for the specified relatives. Since the new power to make regulations for financial conditions is in a new section, and not listed in section 37(2) as subject to affirmative procedure, it would be subject to negative procedure. Regulations affecting financial conditions in the Legal Aid (Scotland) Act 1986 (for example regulations under section 36(2)(b) referred to) are usually subject to affirmative procedure.