

SCOTTISH INDEPENDENCE REFERENDUM BILL

SUPPLEMENTARY DELEGATED POWERS MEMORANDUM

Purpose

1. This Memorandum has been prepared by the Scottish Government in accordance with Rule 9.7(10) of the Parliament's Standing Orders, in relation to the Scottish Independence Referendum Bill. This Memorandum describes provisions in the Bill conferring power to make subordinate legislation which were amended at Stage 2. The Memorandum supplements the Delegated Powers Memorandum on the Bill as introduced.

PROVISIONS CONFERRING POWER TO MAKE SUBORDINATE LEGISLATION AMENDED AT STAGE 2

Removal of power

Schedule 6, paragraph 16 – power to make supplementary provision by order

Power conferred on: Scottish Ministers
Power exercisable by: Order
Parliamentary procedure: None – power removed

2. The Bill gives the Electoral Commission responsibility for monitoring and ensuring compliance with the regulations which apply to referendum campaigners. A range of powers are available to the Commission to enable it to investigate any alleged breaches of the campaign rules and to sanction those who are suspected of committing a campaign offence or failing to comply with a requirement of the campaign rules. Schedule 6 makes provision for the civil sanctions regime. The Delegated Powers Memorandum on the Bill as introduced noted that paragraph 16 of schedule 6 conferred on Scottish Ministers the main power to make further provision relating to the civil sanctions regime by supplementary order.

3. As indicated in correspondence with the Delegated Powers and Law Reform Committee on 19 August, the Government brought forward amendments at Stage 2 to set out the additional detail regarding the civil sanctions provisions in the Bill itself, rather than by a later supplementary order. Amendments to this effect were agreed by the Referendum (Scotland) Bill Committee at Stage 2 on 10 October 2013. These amendments were based on the Political

Parties, Elections and Referendums (Civil Sanctions) Order 2010¹, which underpins the civil sanctions regime for UK referendums.

4. **The power to make supplementary provision by order is therefore no longer necessary, and paragraph 16, together with the provision in schedule 6 by virtue of which various specific matters could be prescribed in such an order, has been removed from the Bill accordingly.** Likewise, paragraphs 17 to 21 of schedule 6, which made provision for information that could be included in such an order and required that it be consulted on, have also been removed. Some flexibility for any unforeseen eventualities is retained in the powers to amend the Bill in sections 1(7) and 30(2) of the Bill.

Additional power

Section 20A – Code of practice on attendance of observers

Power conferred on:	Electoral Commission
Power exercisable by:	Code of Practice
Parliamentary procedure:	Laid before Scottish Parliament

Provision

5. The Bill gives the Electoral Commission a duty to prepare and publish a code of practice for observers at the referendum. Section 20A sets out what the code should cover and to whom it should apply. Observers are defined as: representatives of the Commission; accredited observers; and nominated members of accredited organisations.

6. The code must specify the manner in which applications for accreditation by individuals or organisations are to be made to the Commission, and the criteria to be taken into account by the Commission when deciding whether to grant or refuse such applications. It should also give guidance to relevant officers as to the exercise of their powers to limit the number of people in attendance at proceedings or to remove a person's entitlement to attend proceedings because of an act of misconduct.

7. The Bill provides that the Commission must consult the Scottish Ministers before preparing the code, and that the Commission must lay the code before the Scottish Parliament. The provisions also allow the Commission to revise the code at any time, subject to the same requirements for consultation and laying before the Scottish Parliament.

Reason for taking this power

8. Provision for the Electoral Commission to issue Codes of Practice on attendance of observers at specified elections and referendums is made by sections 6F and 6G of the Political Parties, Elections and Referendums Act 2000 (c.41); these sections were inserted by the Electoral Administration Act 2006 and the Local Electoral Administration (Scotland) Act 2011, respectively). The Electoral Commission has recommended that the Bill should provide for the Commission to issue a statutory code of practice in line with the approach taken under PPERA

¹ S.I. 2010/2860.

on the grounds that previous codes have been well received and found to be useful by the Commission and observers. In general, the provisions of the Bill will ensure that the Commission is able to carry out its functions in an independent manner. In light of this, the Scottish Government considers that the views of the Commission on this matter should be accepted and that the same approach should apply for the independence referendum.

Procedure

9. Given the views of the Electoral Commission as to the effectiveness of the equivalent PPERA provisions, Scottish Ministers consider that the procedure for this code of practice should follow the approach of sections 6F and 6G of the Political Parties, Elections and Referendums Act 2000, in terms of consultation, laying and revision.

This document relates to the Scottish Independence Referendum Bill as amended at Stage 2 (SP Bill 25A)

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