

SCOTTISH INDEPENDENCE REFERENDUM (FRANCHISE) BILL

DELEGATED POWERS MEMORANDUM

PURPOSE

1. This memorandum has been prepared by the Scottish Government in accordance with Rule 9.4A of the Parliament's Standing Orders, in relation to the Scottish Independence Referendum (Franchise) Bill. It describes the purpose of the 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.
2. The contents of this Memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament.

Outline of Bill provisions

3. The Bill contains 15 sections and two schedules. It defines eligibility to vote in the referendum on Scottish independence to be held in 2014, and puts in place the arrangements necessary to enable those who will be 16 by the date of the referendum, but who will not be registered on the local government electoral register, to register to vote in that referendum. Specifically, it gives Electoral Registration Officers (EROs) a power to collect the information needed to register under-16s who will be 16 or over by the date of the referendum (and therefore eligible to vote in it). The Bill requires each ERO to collate the information on these young people into a Register of Young Voters for their area, and to maintain that Register. The Bill prohibits EROs from publishing the Register of Young Voters and applications to register in it. The forthcoming Scottish Independence Referendum Bill (the "Referendum Bill") will include provision on how that register will be used for the purposes of running the referendum.
4. Further information about the Bill's provisions is contained in the Explanatory Notes and Financial Memorandum published separately as SP Bill 24-EN, and in the Policy Memorandum published separately as SP Bill 24-PN.

Rationale for subordinate legislation

5. In deciding whether legislative provisions should be specified on the face of the Bill or left to subordinate legislation, the Scottish Government has had regard to:

- the need for the legislation, including any subordinate legislation made under section 11, to be in force in sufficient time to allow EROs to carry out the duties the Bill places on them, particularly in relation to preparing for and carrying out the registration of young people during the household canvass which is planned for late 2013/ early 2014;
- the need to provide the flexibility to respond to changing circumstances – for example, any technical issue arising from subordinate legislation made under the UK Parliament’s Electoral Registration and Administration Act 2013 - without the need for further primary legislation;
- the desire to allow adjustments to the technical detail of electoral registration arrangements for the referendum to be made without the need for further primary legislation;
- the fact that the Bill puts in place arrangements for a one-off event, and that the legislation will be in force only for a comparatively short period of time, with a sunset provision at section 14.

6. These considerations have led the Scottish Government to adopt the approach of setting out in the Bill the provision that is needed, rather than taking a power to make more detailed provision after enactment. Much of that provision is effectively identical to material contained in legislation that applies to Parliamentary and local government elections. Schedule 1 to the Bill therefore applies existing legislation with such modifications as are needed to fit it to the context of a referendum and younger voters. There is no need to take a power to set out the detail this existing legislation provides in further subordinate legislation.

7. However, these considerations also point to the need to be able to adjust or supplement provision if necessary. As a result, there is only one delegated powers provision in the Bill, which has been designed to give that ability.

Delegated power

8. The Bill contains the following delegated powers provision:

Section 11: Power to make supplementary etc. provision and modifications

Power conferred on: Scottish Ministers

Power exercisable by: Order

Parliamentary procedure: Affirmative procedure

Provision

9. Subsection (1) empowers the Scottish Ministers to make supplementary, incidental or consequential provision for the purposes of, in consequence of, or for giving full effect to, any provision made by the Bill. Subsection (2) provides that this includes power to make provision in consequence of, or in connection with, any provision in an Act (or proposed to be made in an Act) for the holding of an independence referendum. Such consequential or connected provision can also be made relating to any modification, or proposed modification, of legislation relating to electoral registration. Subsection (3) provides that such an order may modify any enactment, including the provision made by the Bill itself. It also provides that an order may apply, with or

without modifications, any provision of any enactment, and may include supplementary, incidental, consequential, transitory or transitional provision or savings. Subsection (4) requires that any such order must be laid in draft before the Scottish Parliament for approval.

Reason for taking this power

10. The Scottish Government has no specific intention for use of this power. As explained above, the power is being taken to provide the flexibility to make any necessary adjustments to the provision made by the Bill, or contained in legislation that makes relevant provision, that may be needed or desirable. It is important that this can be done swiftly, if needed, as EROs will need to begin to implement the matters covered by the Bill shortly after its enactment.

11. Given the close connections between this Bill and the forthcoming Referendum Bill, and the fact that this Bill is expected to be enacted before the Referendum Bill has completed the amending stages of its Parliamentary passage, it may be necessary to make adjustments to the provision made by this Bill to align it with amendments made to the Referendum Bill. Section 11(2)(a) is intended to address this possibility.

12. A further source of uncertainty is the UK Government's timetable for implementing individual electoral registration. The recently enacted Electoral Registration and Administration Act 2013 provides for a transition from a registration system that relies significantly on an annual household canvass to a system in which each elector must apply individually to be registered to vote. Much of the legislative framework to implement that change will be provided through UK Parliament subordinate legislation, and that may impact on the provision made by the Bill, and the timescales for its implementation. A power to make further provision therefore seems prudent. Section 11(2)(b) is intended to address this possibility.

Choice of procedure

13. The Scottish Government recognises this power's potentially broad application, including the facility to modify primary legislation, and for that reason any use of this power will require the high level of Parliamentary scrutiny attached to the affirmative procedure.

**SCOTTISH INDEPENDENCE REFERENDUM
(FRANCHISE) BILL**

DELEGATED POWERS MEMORANDUM