

Community Wealth Building (Scotland) Bill

Delegated Powers Memorandum

Introduction

1. This Delegated Powers Memorandum has been prepared by the Scottish Government in accordance with Rule 9.3.3B of the Parliament's Standing Orders in relation to the Community Wealth Building (Scotland) Bill ("the Bill"). It describes the purpose of each of the subordinate legislation provisions in the Bill and outlines the reasons for seeking the proposed powers.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 62–EN);
 - a Financial Memorandum (SP Bill 62–FM);
 - a Policy Memorandum (SP Bill 62–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 62–LC).
3. This Memorandum has been prepared by the Scottish Government in order to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Parliament.

Outline of Bill provisions

4. As introduced, the Bill contains new duties for certain public sector bodies and the Scottish Ministers. The duties aim to introduce a consistent framework to support implementation of community wealth building (CWB). In summary, the Bill includes the following provisions:

Duties on Scottish Ministers

5. The Scottish Ministers will be required to lay in Parliament a CWB statement, which will set out measures that the Scottish Ministers are taking or intend to take to:
 - reduce economic and wealth inequality between individuals and communities in and across Scotland, and
 - support economic growth in and across Scotland,

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by facilitating and supporting the generation, circulation and retention of wealth in local and regional economies.

6. The Scottish Ministers will be required to issue guidance to assist CWB partnerships, created by the Bill, to produce CWB action plans and to assist the specified public bodies in embedding CWB principles when developing their corporate plans and associated strategies.

Duties on Local Authorities and Relevant Public Bodies

7. Local authorities and relevant public bodies, including Territorial Health Boards, Regional Colleges, Scottish Enterprise, South of Scotland Enterprise, Highlands and Islands Enterprise, Skills Development Scotland, and Regional Transport Partnerships, will form CWB partnerships. The CWB partnerships will be required to prepare and implement a CWB action plan to outline the measures they plan to take to facilitate and support the generation, circulation and retention of wealth in the local economy.

8. Local authorities and the relevant public bodies will be required to have due regard to guidance produced by the Scottish Ministers while developing their CWB action plan.

Duties on Specified Public Bodies

9. The specified public bodies listed in the schedule to the Bill will be required to have due regard to CWB guidance produced by the Scottish Ministers when developing their corporate plan and associated delivery strategies.

Rationale for subordinate legislation

10. The Scottish Government has had regard, when deciding where and how provisions should be set out in subordinate legislation rather than on the face of the Bill, to the need to:

- strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances;
- make proper use of valuable parliamentary time;
- take account of the likely frequency of amendment;
- allow detailed administrative arrangements to be kept up to date within the basic structures and principles set out in the primary legislation; and
- anticipate unexpected issues arising which might otherwise frustrate the purpose of provisions in primary legislation approved by the Parliament.

11. The delegated powers provisions are listed below, with a short explanation of what each power allows, why the power was taken in the Bill and, where relevant, why the selected form of parliamentary procedure has been considered appropriate.

Delegated powers

Section 5(9): Community wealth building action plan

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

12. Section 5(9) allows the Scottish Ministers to modify the list of “relevant public bodies” set out in section 5(8) in order to add a person or description of a person; remove an entry listed; or amend an entry listed. The list of “relevant public bodies” are those required to work with the local authority in the preparation and implementation of the CWB action plans, forming CWB partnerships.

Reason for taking power

13. The “relevant public bodies” will take a key role in the preparation and implementation of CWB action plans in the local area. It is important therefore that the public bodies included in the list are in a position to exercise the duties required by the Bill. Key influential public sector anchor organisations are initially listed, however, over time, it may become clear that other public bodies should be added or that some should be removed. This power allows for the amendment of the list to ensure the duty only applies to bodies to which it is relevant and appropriate and also to allow for the addition of new bodies.

Choice of procedure

14. It is considered appropriate that this power should be subject to affirmative procedure in order to allow the Parliament a high level of scrutiny if there are to be any changes as to which bodies are subject to the duty, as the question of to whom the duty applies is central to its operation and effect. In addition, the duties imposed on the “relevant public bodies” in preparing and implementing the action plans are relatively onerous and it is therefore appropriate that any imposition of this duty on additional (or substitute) organisations should be given full consideration by Parliament.

Section 10(3): Duty to have regard to guidance

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative

Provision

15. Section 10(3) allows the Scottish Ministers to amend the list of “specified public bodies” contained in the schedule to the Bill. These public bodies are subject to a duty

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to have due regard to guidance produced by the Scottish Ministers when developing their corporate plans and associated delivery strategies. The guidance will assist the “specified public bodies” to ensure that CWB is consistently represented in their key operating plans, economic strategies and impact measures. The power in section 10(3) will allow the Scottish Ministers to add a person or description of a person to this list; remove an entry from the list; or amend an entry.

Reason for taking power

16. This power will allow the Scottish Ministers to make changes to the list of “specified public bodies” subject to this duty. This could be exercised in circumstances when a new public body is created, or it is appropriate to remove a body from the list, for example if it has been dissolved or replaced. This will ensure that the duty only applies to bodies to which it is relevant.

Choice of procedure

17. It is again considered appropriate that this power should be subject to affirmative procedure in order to allow the Parliament a high level of scrutiny if there are to be any changes as to which bodies are subject to the duty. The duties imposed on the “specified public bodies”, by the Bill, while not overly onerous, will require a level of commitment and awareness from the bodies and it is therefore important that careful consideration is given to imposing the duty on any further bodies or removing any from the list.

Section 11: Ancillary Provision

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Affirmative if amending primary legislation, otherwise negative

Provision

18. This provision enables the Scottish Ministers to make any incidental, supplementary or consequential provision as they consider appropriate for the purposes of or in connection with the Bill, or for giving full effect to it. The regulations may make different provision for different purposes and modify any enactment.

Reason for taking power

19. As with any new body of law, the Bill may give rise to a need for a range of ancillary provisions. The power is needed to ensure that the policy intentions of the Bill are achieved if further changes are found to be necessary as a result of provisions in the Bill. Such provision is common in Bills to provide flexibility to make any adjustments that may arise in light of experience in relation to the operation of the Act as timeously as possible.

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20. The power will also allow the Scottish Ministers to make further changes should there be any unforeseen issues with the operation of the new legislation. Without the power, it may be necessary to make further primary legislation to deal with a technical, operational or implementation matter which is clearly within the scope and policy intentions of the Bill. The Scottish Government considers that this would not be an effective use of resources by the Scottish Parliament or the Scottish Government.

21. The Scottish Government recognises the potentially broad application of this power, which includes the power to modify primary legislation, and to alter the provisions of the Bill. However, it is limited to the extent that it can only be exercised by the Scottish Ministers for the purposes of, in connection with, or for giving full effect to any provisions of the Bill.

Choice of procedure

22. Section 11(3) requires that regulations under section 11 are subject to the affirmative procedure if they add to, replace or omit any part of the text of an Act but otherwise are subject to negative procedure. These procedures are typical for ancillary powers.

Section 13: Commencement

Power conferred on: Scottish Ministers

Power exercisable by: Regulations made by Scottish statutory instrument

Parliamentary procedure: Laid no procedure

Provision

23. Section 13 allows the Scottish Ministers to commence provisions in this Bill (other than sections 11 (ancillary provisions), 12 (interpretation), 13 (commencement) and 14 (short title) which come into force on the day after Royal Assent) on such day as they may appoint by regulations. The regulations may make different provision for different purposes.

Reason for taking power

24. It is standard practice for the Scottish Ministers to have control over the commencement of a Bill so that it can be brought into force at a suitable time. For example, it will be necessary to ensure that the various duties and obligations are commenced at an appropriate time, allowing for the bodies subject to these duties to have advance notice of what they will be required to do.

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Choice of procedure

25. As is usual for commencement regulations, the default laying requirement applies (as provided for by section 30(2) of the Interpretation and Legislative Reform (Scotland) Act 2010). This is considered appropriate because the policy behind the provisions will have already been considered by the Parliament during the passage of the Bill.

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