

This document relates to the Gender Representation on Public Boards (Scotland) Bill as amended at Stage 2 (SP Bill 16A)

Gender Representation on Public Boards (Scotland) Bill [As Amended at Stage 2]

Supplementary Delegated Powers Memorandum

Introduction

1. This supplementary memorandum has been prepared by the Scottish Government in accordance with Rule 9.7 of the Parliament's Standing Orders. It describes provisions in the Bill which confer power to make subordinate legislation and which were either amended or introduced at stage 2.

2. The contents of this memorandum are entirely the responsibility of the Scottish Government and have not been endorsed by the Scottish Parliament. This supplementary memorandum should be read in conjunction with the Delegated Powers Memorandum published to accompany the Bill on introduction.

Delegated powers amended at stage 2

Section 7 – Reports on operation of Act

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish
statutory instrument

Parliamentary procedure: negative

Provision

3. Section 7 sets out the duties to report on the operation of the Act. Section 7 has been amended at stage 2 in response to recommendations made by the Equalities and Human Rights Committee at stage 1. In the Bill as introduced, the reporting duty in section 7 applied to specified public authorities only. At stage 2, section 7 was amended so that—

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- the Scottish Ministers are required to lay before the Scottish Parliament reports on the operation of the Act at intervals of no more than two years (subsections (A1) and (A2)),
- the Scottish Ministers (in their role of appointing person) and other specified appointing persons are required to publish reports on their functions under sections 3 to 6 (subsections (A3) and (A4)).

4. The amendments to the regulation making power in section 7(2) allow the Scottish Ministers to—

- specify which appointing persons the reporting duty under subsection (A4) applies to, and
- make further provision about the reports by the Scottish Ministers under subsections (A1) and (A3) and by other appointing persons under subsection (A4).

Reason for taking power

5. Section 7(2) as amended will allow the Scottish Ministers to ensure that the reporting duties are developed in consultation with stakeholders so that the reports under the Act will complement existing reports by listed public authorities under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012, amended in 2016. This is consistent with the approach taken in the Bill as introduced.

Choice of procedure

6. Section 11(3) provides that the regulations under section 7(2) are subject to the negative procedure. The Delegated Powers Memorandum that accompanied the Bill as introduced set out that, as the contents of the reports will be administrative in nature and used to ensure reporting on the operation of the Act, negative procedure is considered appropriate. The extension of the section 7(2) regulation making power does not change that.

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Section 8 – Power to modify schedule 1

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative

Provision

7. This provision allows the Scottish Ministers to modify schedule 1 (Public Authorities), by regulations, so as to add an entry, vary the description of an entry or remove an entry.

Choice of procedure

8. Under section 11(3) of the Bill as introduced, regulations under section 8 were subject to the negative procedure. However, at stage 1 the Equalities and Human Rights Committee and the Delegated Powers and Law Reform Committee recommended, and the Scottish Government accepted, that regulations under section 8 should be subject to the affirmative procedure. Consequently, section 11 has been amended at stage 2 to the effect that regulations under section 8 are subject to the affirmative procedure.

New delegated powers introduced at stage 2

Section 6A – Guidance on operation of Act

Power conferred on: the Scottish Ministers

Power exercisable by: guidance

Parliamentary procedure: not applicable

Provision

9. This provision requires Scottish Ministers to publish guidance on the operation of the Act and specifies certain sections of the Act that guidance must in particular cover. Section 6A also requires an appointing person and a public authority to have regard to guidance published by Scottish Ministers in carrying out functions under the Act.

Reason for taking power

10. At stage 1, the Equalities and Human Rights Committee recommended, and the Scottish Government accepted, that guidance is needed to support the operation of the Act. Using guidance will allow Scottish Ministers to consult with relevant parties, including public authorities. It will also allow Scottish Ministers to publish more detailed guidance on the operation of the Act than would be possible in legislation. Moreover, using

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guidance will provide the Scottish Ministers greater flexibility to amend and update the information as required.

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