

Patient Safety Commissioner for 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 Patient Safety Commissioner for Scotland 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 19–EN);
 - a Financial Memorandum (SP Bill 19–FM);
 - a Policy Memorandum (SP Bill 19–PM);
 - statements on legislative competence made by the Presiding Officer and the Scottish Government (SP Bill 19—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. The purpose of the Patient Safety Commissioner for Scotland Bill is to establish the office of the Patient Safety Commissioner for Scotland and to provide for its purposes in relation to the identification of patient safety issues in the provision of healthcare in Scotland, amplifying the voices of patients in relation to these safety issues and the making of recommendations to remedy the safety issues identified.

Rationale for Subordinate Legislation

5. Section 23 makes general provision about regulation-making powers and in particular makes provision as to whether the powers in the Bill are subject to the affirmative or negative procedure.
6. The Scottish Government has had regard, when deciding whether provisions should be set out in subordinate legislation rather than on the face of the Bill, to the need to:

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- strike the right balance between the importance of the issue and providing flexibility to respond to changing circumstances without the need for primary legislation;
- make proper use of valuable Parliamentary time;
- anticipate the unexpected, which might otherwise frustrate the purpose of provisions in primary legislation approved by the Scottish Parliament;
- allow detailed arrangements to be kept up to date within the basic structures set out in the Bill; and
- take account of the likely frequency of amendment of those arrangements.

7. The delegated powers provisions are listed below. For each provision, the Memorandum sets out:

- the person upon whom, or the body upon which the power is conferred and the form in which the power is to be exercised;
- why it is considered appropriate to delegate the power; and
- the Parliamentary procedure (if any) to which the exercise of the power to make subordinate legislation is to be subject, and why it was considered appropriate to make it subject to that procedure (or not to make it subject to any such procedure).

Delegated Powers

Section 22 – Ancillary provision

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: affirmative if amending primary legislation, otherwise negative

Provision

8. Section 22 provides the Scottish Ministers with the power to make, by regulations, such incidental, supplementary, consequential, transitional, transitory or saving provision as they consider appropriate in connection with or for giving full effect to the Bill, any provision of the Bill or any provision made under it.

Reason for taking power

9. 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. 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. Any incidental or supplementary use of the power would be strictly construed. While the Scottish Government has given careful consideration to the

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provisions of the Bill, this power is considered necessary to ensure that any unexpected issues which require further changes can be dealt with effectively and so that the purpose of the Bill is not inadvertently obstructed.

Choice of procedure

10. Section 23(3) provides that regulations made under section 22 which contain a provision which adds to, replaces or omits any part of the text of an Act are subject to the affirmative procedure. Otherwise, regulations made under this section are subject to the negative procedure. This approach is typical for ancillary powers of this type and is considered to provide an appropriate level of scrutiny where there is a proposal to amend primary legislation.

Section 24 – Commencement

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish statutory instrument

Parliamentary procedure: laid, no procedure

Provision

11. Section 24(3) provides for the Scottish Ministers, by regulations, to appoint a day when the provisions of the Bill come into force. Certain sections are excepted from this power, namely sections 21, 22, 23, 24 itself and 25, as they come into force on the day after Royal Assent. The regulations may include transitional, transitory or saving provision and may make different provision for different purposes.

Reason for taking power

12. The Scottish Ministers consider it appropriate for the provisions of the Bill not coming into effect on Royal Assent to be commenced at such a time as the Scottish Ministers consider to be suitable. It is standard practice for the commencement provisions to be dealt with by subordinate legislation.

Choice of procedure

13. As is usual for commencement regulations, the default laying requirement applies (as provided for by section 30 of the Interpretation and Legislative Reform (Scotland) Act 2010). This is considered appropriate because the policy behind the provisions will already have been considered by Scottish Parliament during the passage of the Bill. Any regulations made under this section will be laid before the Scottish Parliament as soon as practicable after being made.

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Paragraph 21(2), schedule 1 – Accounts and audit

Power conferred on: the Scottish Ministers

Power exercisable by: direction

Parliamentary procedure: none

Provision

14. Paragraph 21 of schedule 1 sets out the accounting and auditing requirements that apply to the Commissioner. Paragraph 21(2) provides that the Commissioner must comply with any directions which the Scottish Ministers give in relation to the matters mentioned in sub-paragraphs (1)(a) and (b) of paragraph 21. The power allows the Scottish Ministers to give directions as to the keeping of accounting records and the preparation of accounts by the Commissioner.

Reason for taking power

15. The Scottish Public Finance Manual (SPFM) requires that where a sponsored body is set up under statute, the founding legislation should normally provide for the sponsored body to prepare accounts in such form as the Scottish Ministers may direct. The SPFM applies to bodies sponsored by the Scottish Parliamentary Corporate Body.

Choice of procedure

16. This provision is not subject to any parliamentary procedure. This is considered appropriate as it is a low-level direction-making power which is of limited extent and will be used simply to ensure compliance with standard accounting practices.

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