

# **APOLOGIES (SCOTLAND) BILL**

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## **SUPPLEMENTARY DELEGATED POWERS MEMORANDUM**

### **PURPOSE**

1. This memorandum has been prepared by the Scottish Parliament's Non-Government Bills Unit on behalf of Margaret Mitchell MSP, to assist the Delegated Powers and Law Reform Committee in its consideration of the Apologies (Scotland) Bill as amended at Stage 2.
2. The Bill as introduced contained one power to make subordinate legislation, which has been amended. In addition, a new power has been added. This memorandum describes both powers, and the reasons for the changes sought. It supplements the Delegated Powers Memorandum on the Bill as introduced, and should be read in conjunction with that document, and the revised Explanatory Notes and Policy Memorandum for the Bill.

### **OUTLINE OF BILL PROVISIONS**

3. The Apologies (Scotland) Bill makes provision concerning the effect of an apology in certain civil legal proceedings. A 'qualifying' apology is not admissible as evidence of liability in those proceedings, and cannot be used in any other way to the prejudice of the person who made the apology.
4. The proceedings covered by the Bill are subject to specified exceptions, which have been extended at Stage 2 (see section 2(1)), there also having been added (at section 2(1A)) a further circumstance in which the Bill does not apply. The Scottish Ministers can modify the exceptions in those subsections by regulations.
5. The Bill defines at section 3 what is meant by an 'apology', that definition having also been amended at Stage 2. Section 5 deals with commencement, which in the main is now to be by means of regulations, following amendment at Stage 2.

### **DELEGATED POWERS**

#### **Section 2(3): legal proceedings covered/modification of exceptions**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: affirmative**

#### *Provision*

6. Section 2(3), as contained within the Bill when introduced, enabled the Scottish Ministers by regulations to modify the list of exceptions, relating to the Bill's application, contained in

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(SP Bill 60A)*

section 2(1). The Bill as amended at Stage 2 extends the exceptions detailed there, and inserts a new subsection (1A). This relates to the duty of candour procedure, which is not formally a form of ‘civil proceedings’, and is therefore covered within a separate subsection. The power in section 2(3), as amended, enables the Scottish Ministers by regulations to modify what is now referred to as the exceptions in subsection (1) – including by adding a new exception, adjusting the terms of one of the exceptions provided for or removing one of them entirely. The power also allows Ministers to modify the exception in subsection (1A).

*Reason for amending the existing section 2(1) power*

7. It is conceivable that modification of new subsection (1A), as well as the other exceptions set out in subsection (1), may be required. This amendment was therefore required to ensure that the power to modify covers the new subsection (1A) duty of candour exception, in addition to the other exceptions set out in subsection (1). It does not otherwise extend the Scottish Ministers’ power under section 2(3) to make exceptions by way of regulations.

*Choice of procedure*

8. As before, the power itself remains subject to the affirmative procedure, affording the opportunity for full Parliamentary scrutiny of any regulations made in exercise of this power.

**Section 5(2): commencement**

**Power conferred on: the Scottish Ministers**

**Power exercisable by: regulations made by Scottish statutory instrument**

**Parliamentary procedure: laid, no procedure**

*Provision*

9. As introduced, the Bill provided for commencement to be linked to Royal Assent, with the core provisions coming into force automatically six months after Royal Assent. By virtue of the Stage 2 amendments to section 5, those provisions are now to come into force ‘on such date as the Scottish Ministers may by regulations appoint.’ (section 5(2)). Further, new subsections (3) and (4) enable different days to be appointed for different purposes, and for such regulations to include transitional, transitory or saving provision.

*Reason for taking power*

10. The new regulation making power inserted at section 5 enables flexibility in respect of commencement, so that it does not now take place at a fixed point, tied to Royal Assent. The ability to commence primary legislation by means of regulations is normal practice in Government Bills, and is consistent with Scottish Government policy. Applying it here is an indication of the cooperative approach that has developed between the member in charge of the Bill and the Scottish Government.

11. This will allow flexibility with regards to when the Act is commenced. This may be important if the Scottish Ministers consider making regulations under section 2(3) and given that the Parliament is expected to be dissolved on 24 March 2016, it is important that sufficient time is provided to enable parliamentary scrutiny of any such regulations.

12. The Scottish Government considers it likely that the provisions will be commenced as a whole. However, it considers that it is preferable to ensure there is flexibility in the commencement powers in case it transpires there is any need for staggered commencement. The Scottish Government therefore considered that, in accordance with usual practice, the provisions of the Bill should be capable of being commenced on different days.

*Choice of procedure*

13. No procedure is provided for aside from laying before the Parliament in line with the Interpretation and Legislative Reform (Scotland) Act 2010, which is normal for commencement powers. The power includes the usual ability to make transitional, transitory or saving provision in the commencement regulations. There may be a requirement to make transitory provision to cover the period before the duty of candour procedure under the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act and the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 come into force. It is considered that any such provision, if required, is not likely to be complex.

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