

CRIMINAL CASES (PUNISHMENT AND REVIEW) (SCOTLAND) 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 Criminal Cases (Punishment and Review) (Scotland) Bill ('the Bill'). Its purpose is to assist consideration by the Subordinate Legislation Committee, in accordance with Rule 9.6.2 of the Standing Orders, of provisions the Bill conferring powers to make subordinate legislation. It describes the purpose of each provision and explains the reasons for seeking the proposed delegated powers. This memorandum should be read in conjunction with the Explanatory Notes and Policy Memorandum for the Bill.

Outline of Bill provisions

2. The Bill makes provision in two specific areas. The Bill addresses an issue arising from the Appeal Court's judgment in the *Petch and Foye v. HMA* case concerning the time those prisoners given a discretionary life sentence or Order for Lifelong Restriction sentence must serve before they become eligible to apply for parole. The Bill also provides a framework for the Scottish Criminal Cases Review Commission to decide whether it is appropriate to disclose information concerning cases they have referred to the High Court for appeal against conviction where such an appeal has subsequently been abandoned.

Rationale for subordinate legislation

3. In deciding whether provisions should be specified on the face of the Bill or left to subordinate legislation, we have carefully considered the importance of each matter against the need to:

- achieve the appropriate balance between the importance of the issue and the need to provide flexibility to respond to changing circumstances quickly, in light of experience, without the need for primary legislation; and
- ensure the proper use of parliamentary time is made.

Delegated powers

Section 2 – Ancillary provision

Power conferred on: **The Scottish Ministers**
Power exercisable by: **Regulations made by statutory instrument**
Parliamentary procedure: **Affirmative resolution of the Scottish Parliament**

Provision

4. Section 2 of the Bill provides for a regulation-making power for the Scottish Ministers to make such supplemental, incidental, consequential, transitional, transitory or saving provisions as they consider necessary or expedient for the purpose of or in connection with section 1. The power covers modification to Part 1 of the 1993 Act or Part 2 of the 2007 Act for this purpose.

Reason for taking this power

5. Any body of new law may give rise to the need for a range of ancillary provisions. For example, whilst we have included a number of substantive and consequential modifications within the Bill, it may be that the need arises post-commencement for further changes in order to fully and properly implement section 1. We consider the regulation-making power to be necessary to allow for this flexibility in what is in our view an important and complicated area of law.

6. We consider that the power to make such provision should extend to the modification of Part 1 of the 1993 Act and Part 2 of the 2007 Act. Without the power to make provision affecting each of these Acts, it may be necessary to return to Parliament, through subsequent primary legislation, to deal with a matter which is clearly within the scope and policy intentions of the Bill. We believe that this would not be an effective use of resources by Parliament or the Scottish Government.

7. The power, whilst potentially wide on the face of it, is limited to the extent that it can be used only if the Scottish Ministers consider it necessary or expedient for the purposes of or in connection with section 1 of the Bill.

Choice of procedure

8. Any regulations made under the power will be subject to the affirmative resolution procedure. We consider this provides the appropriate level of parliamentary scrutiny for the power, particularly given the ability to amend primary legislation.

Section 5 – Commencement

Provision

9. Section 5(2) of the Bill provides that the Scottish Minister may by order bring Parts 1 and 2 of the Bill into force on an appointed day (with section 8 of the Interpretation and Legislative Reform (Scotland) Act 2010 allowing for different days to be appointed for different purposes). Section 5(3) provides that a commencement order may include transitional, transitory or saving provision. It is common to allow for such provision in conjunction with a commencement order

*This document relates to the Criminal Cases (Punishment and Review) (Scotland) Bill (SP Bill 5)
as introduced in the Scottish Parliament on 30 November 2011*

where (as in this case) rights of individuals are affected. In line with the standard approach to commencement, no procedure is attached to this section.

**CRIMINAL CASES (PUNISHMENT AND REVIEW)
(SCOTLAND) BILL**

DELEGATED POWERS MEMORANDUM