

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In section 16, page 9, line 32

leave out <12 months> and insert < 2 years>

Effect

This amendment extends the custodial sentence on indictment to two years.

Reason

Numerous offences are created under the bill and each has a penalty attached according to whether the offence is prosecuted on complaint or on indictment. These offences include offences under section 16 relating to the campaign rules, schedule 3 relating to referendum expenses, control of donations, control of loans and donations, schedule 4 failure to comply with any requirement of the investigatory powers of the Electoral Commission, and schedule 6 which deals with general offences.

At the moment, for these offences the bill typically provides that a person who commits “an offence ...is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both)”.

This formulation is found in previous referendum legislation such as the Scottish Independence Referendum Act 2013 but not in the Political Parties, Elections and Referendums Act 2003 where there is often a differentiated imprisonment period. Notwithstanding that, we have examined the bill carefully and have come to the conclusion that maintaining the same period of imprisonment for convictions both on summary complaint and on indictment is inappropriate.

Under the bill as currently drafted both these formulations would be subject to the presumption against short sentences. The Presumption Against Short Periods of Imprisonment (Scotland) Order 2019 affects cases where the offence was

committed on or after 4 July 2019. It extended the presumption against short sentences from three to 12 months in relation to prison sentences. The legislation is not a ban on short sentences of less than 12 months nor are they completely abolished — the legal change creates a presumption against such sentences unless the court considers that there is no other method of dealing with the person.

Referendum offences which are prosecuted on indictment may be thought to be of greater seriousness than offences prosecuted on complaint and therefore conviction on indictment should reflect the seriousness of the offence and carry a longer sentence than conviction following prosecution on complaint.

We also have identified that there is already a differentiation in the periods of penalty in Schedule 5 paragraph 17(2) and Schedule 6(3) at paragraph 15(b)(i) which provide for two year sentences on indictment. Extending other similar penalty provisions to two years would have the merit of consistency.

We have also noted schedule 3, paragraph 20(8) (the expenses expenditure offence) where there is an indictable offence but on conviction the penalty is an unlimited fine and there is no custodial sentence for either conviction following indictment or summary complaint (for which the fine is limited to the statutory maximum). It would be appropriate for the Government to explain why the penalty is restricted to a fine when it relates to such an important offence as overspending expenses.

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In schedule 3, page 86, line 43

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 90, line 3

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 90, line 15

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 95, line 26

leave out <12 months> and insert <2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 96, line 17

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 97, line 6

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 97, line 39

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page100, line 32

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 106, line 11

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 107, line 10

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 109, line 3

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 112, line 1

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 112, line 19

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 119, line 38

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 120, line 1

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 123, line 37

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 124, line 13

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 132, line 27

leave out <12 months> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 3, page 143, line 6

leave out <2 years> and insert < 2
years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In schedule 6, page 155,

line 24 leave out <2 years> and
insert < 2 years>

Reason

Consequential Amendment.

Referendums (Scotland) Bill

Amendments to be moved at Stage 3

In Schedule 6, page 160,

line 29 leave out <in the case of a
corrupt practice under paragraph 1 or
4>

Effect

This amendment ensures that all corrupt practices under this schedule are subject to a penalty of imprisonment for a term not exceeding 2 years or to a fine (or both).

Reason

This amendment (and the one that follows) change the terms of schedule 6 by ensuring that all corrupt practices under that schedule 6 when prosecuted on indictment are subject to a penalty of imprisonment for a term not exceeding 2 years or to a fine (or both).

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Amendments to be moved at Stage 3

In Schedule 6, page 160,

line 31 leave out sub-paragraph
(6)(ii)

Effect

Consequential Amendment.