

## Referendums (Scotland) Bill

### Amendment to be lodged at stage 2

Section 1, page 1, line 6,

leave out subsection (1) and insert:

<(1) The Scottish Ministers may hold a referendum throughout Scotland on one or more questions.

(2) If the referendum proposed to be held has required an Order in Council under Section 30 of the Scotland Act 1998 or an Act of Parliament to bring its subject matter within the legislative competence of the Scottish Parliament it must be legislated for by an Act of the Scottish Parliament.

(3) If the referendum concerns a matter which without the need for a Section 30 Order or an Act of Parliament is within the legislative competence of the Scottish Parliament or the executive competence of Scottish Ministers, Scottish Ministers may legislate by an Act of the Scottish Parliament or by regulations.>

#### Effect

These amendments amend Section 1 to make provision for some referendums to be conducted under an Act of the Scottish Parliament and others to be legislated for by an Act or by regulations.

#### Reason

Section 1(1) provides that Scottish Ministers “may by regulations provide for a referendum to be held throughout Scotland on one or more questions” The regulations must specify the date on which the poll is to be held, the form of the ballot paper including the wording of the question or questions and possible answers to those questions and the referendum period.

Although these regulations are subject to affirmative resolution and Scottish Ministers must consult the Electoral Commission before laying a draft before Parliament, we are concerned that the Bill will have the effect of reducing the time for parliamentary or public scrutiny of such referendum proposals. Under the bill as currently drafted there is no requirement for Parliamentary or public consultation and the draft regulations would not be amendable or be subject to the level of scrutiny and accountability which should be applied to important constitutional questions

which would affect the whole of Scotland. The amendment requires such referendums to be legislated for by a bill.

Under this amendment and the subsequent two amendments, if a referendum does not require a Section 30 Order or an Act of Parliament because the subject matter is within the devolved competence of the Parliament such a referendum may be conducted under an ASP or a SSI subject to super-affirmative procedure which can be amended during its scrutiny process in the same manner as instruments under section 1 of the Census Act 1920 or section 27 of the Civil Contingencies Act 2004.



Referendums (Scotland) Bill  
Amendment to be lodged at Stage 2

In section 1, page1, line 13

after <the> insert < super->

Effect

Consequential amendment.

Referendums (Scotland) Bill

Amendment to be lodged at Stage 2

In section 1, page 1, line 13

add at end—

<(4) If the Parliament passes a resolution that regulations shall have effect with a specified amendment the regulations shall have effect as amended, with effect from the beginning of the day after that on which the resolution is passed.>

Effect

This amendment ensures that regulations under Section 1 can be amended during their passage through the Parliament.

Reason

Regulations that are subject to super affirmative procedure are not subject to being amended. This amendment is designed to provide that such regulations can be amended during their consideration by the Parliament.

Referendums (Scotland) Bill

Amendment to be lodged at Stage 2

Section 2, page 1, line 25

after <the> insert < super->

Effect

Paving amendment.

## Referendums (Scotland) Bill

### Amendment to be lodged at Stage 2

Section 2, page 2, line 1

add at end < including this Act>

#### Effect

This amendment ensures that regulations under Section 2 will be able to amend this bill.

#### Reason

Section 2 provides that the Act applies to any referendum to be held in pursuance of regulations under section 1(1) subject to any modifications specified in regulations. The modifying regulations are subject to affirmative procedure and Scottish Ministers must consult the Electoral Commission before laying a draft.

Section 2(3)(b) provides that these regulations may modify any enactment. It is not clear whether that would include the Bill itself because sometimes this is expressly stated. We suggest that this should be clarified and this amendment is to probe the Government's interpretation of this section. Furthermore, any such regulations should be subject to super affirmative procedure, particularly if they would be able to modify the provisions of this Bill.

Referendums (Scotland) Bill  
Amendment to be lodged at Stage 2

In section 3, page 2, line 11

leave out <lf>

Effect

Paving amendment.

## Referendums (Scotland) Bill

### Amendment to be lodged at Stage 2

Section 3, page 2, line 11

leave out <is> and insert <must be>

#### Effect

This amendment requires regulations under section 3 to be subject to the super-affirmative procedure.

#### Reason

We consider that any such regulations should be subject to super affirmative procedure to enhance consideration and scrutiny. The Guide to Scottish Statutory Instruments published by the Parliament [http://www.parliament.scot/S5\\_Delegated\\_Powers/Guide\\_to\\_SSIs.pdf](http://www.parliament.scot/S5_Delegated_Powers/Guide_to_SSIs.pdf) provides that such regulations: which require to go through a “pre-legislative scrutiny” period involving formal consultation on a draft (or other additional requirements) followed by approval by a vote in the Chamber before they can be made are known as **super-affirmative SSIs**”.

This procedure will enhance the scrutiny of such regulations.

Referendums (Scotland) Bill  
Amendment to be lodged at Stage 2

Section 3, page 2, line 11

after <the> insert <super->

Effect

Consequential amendment.

Referendums (Scotland) Bill  
Amendment to be lodged at Stage 2

Section 3, page 2, line 11

after <procedure> inset <and>

Effect

Consequential amendment

Referendums (Scotland) Bill

Amendment to be lodged at Stage 2

Section 3, page 2 line 19

leave out subsection (3)

Effect

This amendment deletes section 3 subsection (3)

Reason

This amendment is necessary because preceding amendments require super-affirmative regulations to be used in every instance relating to referendums.

## Referendums (Scotland) Bill

### Amendment to be lodged at Stage 2

In section 3, page 3, line 1

leave out subsection (7)

#### Effect

This amendment deletes section 3 subsection (7)

#### Reason

Section 3 (5) effectively replicates section 104(2) of the Political Parties, Elections and Referendums Act 2000 to require the Electoral Commission to consider the wording of the question and publish a statement as to the intelligibility of the question as soon as reasonably practicable after the bill is introduced and, in such manner, as they may determine.

We have concerns about the lack of a role for the Electoral Commission regarding referendum questions under section 3(7).

Section 3(7) provides:

*This section does not apply in relation to a question or statement if the Electoral Commission have—*

*(a) previously published a report setting out their views as to the intelligibility of the question or statement,*

*or*

*(b) recommended the wording of the question or statement.*

Section 3(7) excludes consideration by the Electoral Commission where they have previously published a report setting out their views as to the intelligibility of the question or statement or recommended the wording of the question or statement. Section 3(7) therefore excludes the Electoral Commission if at any time in the past they have carried out these actions. We take the view that this approach precludes the Commission from scrutinising the question in the light of conditions as they are at the time the question is to be posed. The assumption in the Bill is that, once approved, the wording of the question is suitable forever. In other words that there are right and wrong answers to questions of intelligibility rather than judgements to be made in context.

This amendment will ensure that the Electoral Commission will be able to consider any referendum question even if it has been asked before.

## Referendums (Scotland) Bill

### Amendment to be lodged at Stage 2

Section 7, page 4, line 13

after <is> insert <for any reason>

#### Effect

This probing amendment brings section 7 (5) into line with section 8 (4). Section 7(5) allows Scottish Ministers to remove the Chief Counting Officer for, amongst other things, any physical or mental illness or disability.

#### Reason

Section 7(5) allows Scottish Ministers to remove the Chief Counting Officer for, amongst other things, any physical or mental illness or disability.

These limitations do not apply to the power of the Chief Counting Officer who can remove a counting officer if that officer is "*for any reason unable to perform the...functions*" - section 8(4)(a). The Government should explain why this distinction in powers of removal is needed and this probing amendment is designed to elicit the Government's reasoning.

Referendums (Scotland) Bill

Amendment to be lodged at Stage 2

Section 7, page 4, line 14

leave out <by reason of any physical  
or mental illness.>

Effect

Consequential amendment