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Clerk to the Delegated Powers and Law Reform
Committee
Room T1:01
Scottish Parliament
Edinburgh
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Dear Euan,

Prescription (Scotland) Bill at Stage One

Thank you for your letter of 7 March to James Hynd seeking an explanation of the power conferred on Scottish Ministers by section 15 of the Prescription (Scotland) Bill to make ancillary provisions by regulations. Your letter has been passed to me to reply as this area has responsibility for the Bill.

You have asked two questions. The first is as follows:

(1) The Bill amends the Prescription and Limitation (Scotland) Act 1973, and that Act does not appear to contain any ancillary powers provision.

Please explain (further to the explanation in the DPM) why the ancillary powers are required in addition to the Bill's reforms, when it appears that no such powers have been included within the statutory rules on prescription from 1973 onwards?

In response to the first question, it is standard practice to include this type of ancillary provision power in Bills whereas that might not necessarily have been the case at the time when the Prescription and Limitation (Scotland) Act 1973 was drafted. At that time, it may have been less common to include ancillary provision powers in Bills and more common to include any required ancillary provision in the Bills themselves. However, this does not affect the approach taken in the Prescription (Scotland) Bill as the current practice is to include ancillary provision powers as standard in Bills of the size and complexity of this Bill.

The second question you have asked is as follows:

(2) Please could some examples of how the ancillary powers might be used be provided, in particular how the powers to make incidental and supplemental provision might be exercised?

In response to your second question, we think the ancillary provision power may be used to make incidental and supplemental provisions to deal with matters that have not yet been anticipated. Incidental or supplementary provision might, for example, fill in detail which is consistent with the provisions in the Bill but missing from it, or make changes to other Acts, which represent the exercise of a choice brought about by the provisions in the Bill and which are not necessarily a direct consequence of the Bill.

While the Scottish Law Commission and the Scottish Government have given careful consideration to the content of the Bill, there may be unforeseen matters given, as we say in the Delegated Powers Memorandum, prescription is a technical and longstanding area of Scots private law that has an effect across a wide range of different subject areas. It is therefore very difficult to provide examples as the reason that the power is needed is because those matters currently remain unforeseen and may only come to light once the Bill is enacted and in operation.

Yours sincerely

Jill Clark
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