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Stuart McMillan MSP
Convener
Delegated Powers and Law Reform Committee
Scottish Parliament
Edinburgh
EH99 1SP

25 November 2025

Dear Stuart,

Evidence Session on 28 October 2025

I am writing in response to your letter of 5 November, following my appearance before the Committee on 28 October. During the session, my officials and I made commitments to follow up with further information on several points. Thank you once again to the Committee for the opportunity to discuss matters within its remit.

The quality assurance process

The Scottish Government takes seriously the quality of secondary legislation and strives to ensure that instruments laid before the Parliament are of a high standard. The process the Scottish Government follows to quality assure secondary legislation was set out by my predecessor in a [letter to the Convener dated 23 October 2024](#) (attached for ease of reference). As discussed at the Committee's meeting on 28 October 2025, we have strengthened those processes in respect of instruments which are addressing errors in previous instruments. This is specifically to respond to the recent issues in which amending instruments did not fully meet previous commitments and which regrettably contained further errors.

The change in process is that when submitting an instrument for checking, drafters are now specifically to include additional information alongside an instrument which is addressing errors in a previous instrument. That information is:

- copies of the questions from the DPLRC on the previous instrument and the Scottish Government response to those questions,
- a copy of the DPLRC's report on the instrument,
- any other relevant information in respect of the error that may assist the person conducting the checks, for example if the instrument is doing a number of things it may be helpful to explain which provision(s) are addressing the error.

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This is with a view to providing context to assist with the quality assurance checks, which I am confident will help prevent this issue recurring.

Secondary legislation training

You asked for information about the further training on secondary legislation that was mentioned.

Learning and development on SSI drafting for Scottish Government lawyers consists of a mix of formal training sessions, support and feedback from line managers and peers, and supported “on the job” experience. Training sessions cover a range of matters, such as SSI process and procedure, drafting, and the software used to draft SSIs. There is also a monthly SSI session, open to all Scottish Government lawyers, which is a forum for sharing learning and reflections on drafting issues, short talks on drafting points, and disseminating feedback on issues raised by the DPLRC.

The lawyers who conduct the fresh pair of eyes check of instruments (meaning the check by a solicitor who has not previously been involved in drafting the instrument) also receive an induction in the form of introductory training on checking SSIs and the opportunity to “shadow” colleagues in checking SSIs. The group also meets monthly to discuss any common issues and drafting points.

The further training stream I mentioned at the meeting on 28 October is that provided by the Statutory Instrument Hub, which is part of the UK Government Legal Department. The SI Hub provides a range of training to UK Government lawyers and we have recently confirmed Scottish Government lawyer access to some of these courses. We are in the process of exploring how this training might usefully supplement the existing in-house training provided within the Scottish Government. While Scottish Government training deals with points of SSI practice, this provides an opportunity for knowledge sharing with counterparts across the civil service. An early example is an SI Hub training session on Checking SIs to supplement the existing training for the lawyers who conduct the fresh pair of eyes check of instruments.

Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019

Following official level agreement and the Scottish Government sending the in-principle Ministerial agreement letter, discussions are ongoing with the UK Government regarding the timescales for the section 93 Scotland Act Order to correct the error in the previous Order. I have asked for this Order to be progressed as quickly as possible and will provide a further update to the Committee on timescales once these have been agreed.

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Discussions with UK Government regarding LCM timetabling

The current UK Government has improved the engagement on forthcoming legislation and to date has not breached the Sewel convention. There are still, however, difficulties associated with ensuring devolution issues are fully bottomed out before a Bill is introduced and when amendments are tabled in the later stages of a Bill's parliamentary passage. In a recent example a late amendment to the Planning and Infrastructure Bill, resulted in Parliament debating a Motion on Legislative Consent only 4 days after the LCM had been lodged. In this case the Bill had already reached the last amending stage. In such circumstances the Scottish Government is put in a very difficult position of having to react to developments at Westminster knowing that there will either be limited time for Parliament to consider or that the vote on the Motion on Legislative Consent will happen at a point where the Bill could not be amended to reflect Parliament's view. My officials and I take every opportunity to remind the UK Government of the importance of developing their legislative plans in a way that takes account of the role of the Scottish Parliament.

I recently wrote to the Leader of the House of Commons to seek a discussion on the planning and timetabling of legislation with a particular focus on how that will be managed during the pre-election period and directly after the Scottish election to avoid any breaches of the Sewel convention. I will be happy to provide an update when those discussions have taken place.

Powers to make UK secondary legislation within devolved competence

The Scottish Government position remains that, as a matter of principle, the Scottish Parliament should have oversight of the use by UK Ministers of delegated powers in devolved areas. The Scottish Government also believes that the UK Government should seek the consent of Scottish Ministers in exercising powers in devolved areas, whether that is required by the statute or not.

As you will be aware proposals for secondary legislation powers in UK Government Bills are considered on a case by case basis and there can be circumstances when such delegated powers are appropriate. However, the Scottish Ministers would expect that the current UK Government would not propose such powers without proper safeguards for devolved interests, such as a statutory requirement for Scottish Ministers' to consent to their exercise, and would continue to not proceed with any such powers if legislative consent is refused by the Scottish Parliament.

Most recently we have been considering the pending legislative activity that will be needed to underpin the EU-UK Strategic Alliance. Although the volume and nature of that legislation is currently unclear and dependent on live negotiations, its anticipated nature will likely warrant the review, with UKG and SP, of how we ensure sufficient and proportionate oversight of all UKSIs in devolved areas.

You might also want to note the most recent Scottish Government report on the Retained EU Law (Revocation and Reform) Act 2023, sent to the Parliament on 4 September. That report confirmed that, for the first time, there were no instruments to be reported to the Parliament for the period of the report. While the equivalent UK Government report does not give wholesale reassurance as to possible UK reform proposals beyond December 2025, the relevant powers under the Act will expire in June 2026. The Cabinet Secretary for Constitution and External Affairs wrote on 4 September to Justin Madders MP, the then

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relevant Minister at the UK Department for Business and Trade highlighting the impact of the Scottish Parliament pre-election dissolution early next year and the need for any consent processes for final UK Statutory Instruments to be completed in good time ahead of then.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Graeme Deay', enclosed within a thin black rectangular border.

GRAEME DEY

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