

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

2 March 2023

Dear Stuart

Thank you for your letter of 10 February 2023 requesting information relating to three items discussed by the Delegated Powers and Law Reform Committee and certain further information I had agreed to provide at your meeting held on 7 February 2023.

Legislative consent – delegated powers conferred on UK ministers in devolved areas

The approach taken on delegated powers conferred on UK ministers in devolved areas is on a case by case basis. It has however been the case in recent times that after engagement with UK Government and careful consideration that our position has been to request a consent lock or concurrent powers. This is particularly the case when the UK legislation has provided for a consult clause rather than the consent of the Scottish Ministers. An example of this is the Professional Qualifications Bill.

Historical commitments

1. Scottish Government officials have engaged with UK Government colleagues with a view to progressing an amendment to correct the drafting errors identified in the Scotland Act 1998 (Specification of Functions and Transfer of Property etc.) Order 2019 (SI 2019/183) at a suitable opportunity. An SI made under the Scotland Act 1998 is needed and this type of instrument can only be taken forward by the UK Government. So the Scottish Government and UK Government need to identify a suitable instrument that the amendment can be included in and discussions about this are on-going.
2. The Committee previously identified a minor drafting error in article 4(1) of SI 2019/964, the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2019 (the “Order”). Article 4(1) of the Order refers to section 117 of “the 1998 Act”, when it should instead have specified “the Scotland Act 1998”.

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The Scottish Government undertook to work with the UK Government in the future to correct this error, if the Order required to be amended. However, the Order currently has no practical application as a consequence of the UK's withdrawal from the EU (and the resultant repeal of the European Communities Act 1972), and there are no plans in place to amend the Order at present.

The purpose of the Order was to confirm that the Scottish Ministers had the power to make regulations under section 2(2) of the European Communities Act 1972 in respect of the environmental impact assessment process for the construction etc. of generating stations consented under section 36 of the Electricity Act 1989 within the Scottish part of the UK's Renewable Energy Zone. As a result of the UK's withdrawal from the EU and the consequent repeal of the European Communities Act 1972, Scottish Ministers have lost the regulation making powers conferred within the Order. We are presently seeking replacement powers from the UK Government (via the legislative vehicle of the UK Levelling-up and Regeneration Bill).

Retained EU Law (Revocation and Reform) Bill

I am pleased that the Parliament has accepted the Constitution, Europe, External Affairs and Culture Committee's recommendation to withhold legislative consent for the Bill. The only way to eradicate the dangers posed by this Bill is for it to be scrapped. The amendments to the Bill that the Scottish Government have proposed to the Secretary of State for Business and Trade would ensure that the Parliament is given its proper scrutinising role, and we continue to urge her to consider these amendments.

The point the Committee has enquired on remains an acute one if the Bill is to pass in its current form, in breach of the legislative consent convention. Per the Cabinet Secretary for Constitution and External Affairs' letter to this Committee of 12 December 2022, the Bill provides that laws are lost unless Ministers bring forward legislation, without any mechanism for scrutiny of the laws that are going to be lost. This remains a significant flaw in the Bill which our proposed amendments seek to remove, and I repeat the Cabinet Secretary's commitment that we will discuss with the Parliament how best to ensure appropriate scrutiny. Our officials are pressing their UK Government counterparts to confirm what Retained EU Law UK Ministers propose to "sunset".

SLC Bills

With regards the Committee's request that the Scottish Government consider undertaking further consultation in advance of introducing SLC Bills, I note that this issue was raised in the Committee's Stage 1 Report on the Moveable Transactions (Scotland) Bill. I understand that the Minister for Public Finance, Planning and Community Wealth indicated that he would pass the query to the Minister for Community Safety and I can confirm that Ms Whitham will write to the Committee on this matter shortly.

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SSIs:

The Scottish Child Payment (Ancillary Provision) Regulations 2022 (SSI 2022/326)

The review of processes for developing and quality assuring social security regulations is currently being undertaken with a view to avoiding these issues reoccurring as far as possible.

The Building (Scotland) Amendment (Amendment) (No 2) Regulations 2022 (SSI 2022/340)

In respect of the Building (Scotland) Amendment (Amendment) (No 2) Regulations 2022 the Scottish Government accepts that there should have been better management of the risks associated with these particular Regulations and that a longer lead in time was needed between the laying of the Regulations and their coming into force date.

Forward Look of SSIs

In addition to the items above, the Deputy Convener suggested that it would be helpful if the Committee were provided with a forward look up to Summer recess of anticipated forthcoming SSIs. I have included this information in a table at Annex A.

I can also confirm that my officials currently provide clerks with details of packages of SSIs in the two week Forward Look document that is issued every Friday (except during any recess periods).

I hope that this response has been helpful.

Yours sincerely

GEORGE ADAM

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Committees	Made Affirmative	Affirmative	Negative	LNP	TOTAL
COVID-19	0	0	0	0	0
CJ	0	3	2	5	10
CTTEA	0	0	0	0	0
DPLRC	0	1	0	0	1
ECYP	0	1	2	2	5
EFW	0	3	0	2	5
EHRCJ	0	3	3	0	6
FPA	1	1	0	0	2
HSCS	0	4	3	0	7
LGHP	0	0	5	0	5
NZET	0	1	4	1	6
RAI	0	2	4	0	6
SJSS	0	1	0	0	1
SPPCA	0	0	1	0	1
TOTAL	1	20	24	10	55

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