

Stuart McMillan MSP  
Convener of the Delegated Powers and Law  
Reform Committee

By email: [DPLR.Committee@parliament.scot](mailto:DPLR.Committee@parliament.scot)

22 May 2024

Dear Stuart

Thank you for your letter of 15 May 2024, where you request further information to support the Delegated Powers and Law Reform Committee's consideration of the Legislative Consent Memorandum ("the LCM") lodged on 1 May in relation to the UK Renters (Reform) Bill.

The Committee specifically seek information in relation to the following clauses within the LCM:

- **Clause 50: Power of the Scottish Ministers to protect others** – the Committee ask about the Scottish Government's plans for consultation on any exercise of this power given it enables the extension of criminal offences, and what consideration it has given to asking the UK Government to add any such requirement on the face of the Bill.
- **Clause 135: Power of the Secretary of State to make consequential provision** – the Committee asks the Scottish Government whether it agrees that clause 135 enables the Secretary of State to make provision within the legislative competence of the Scottish Parliament which could also be made by the Scottish Ministers under clause 134, meaning that the two powers are exercisable concurrently; and why it considers this to be appropriate, noting that the substantive powers in Chapter 5 of Part 1, insofar as exercisable within the Scottish Parliament's legislative competence, are exercisable by the Scottish Ministers alone.

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## Clause 50: Power of the Scottish Ministers to protect others

While there is no requirement to consult set out on the face of the Bill in relation to this particular power, I agree that effective consultation with a range of relevant stakeholders in advance of the Scottish Government making use of it, is crucial.

It is also important to note that the procedure for any such regulations would be affirmative, and therefore approval of the Parliament is required before any extension could come into force. If Parliament felt that consultation had not taken place, or had been inadequate, MSPs could of course vote not to approve them. Similarly, the Scottish Ministers would have to consider the impact of the regulations on the Convention rights of those who would become subject to the criminal offence. As part of this impact assessment the Scottish Ministers could seek to consult those affected.

## Clause 135: Power of the Secretary of State to make consequential provision

We agree with your assessment that Clause 135 overlaps with Clause 134 to a certain degree, however we believe this to be justified. If consequential provision were to be required in connection with clause 48 or 49 (the provisions regarding standard securities and insurance contracts), we would assume that the provision being made in that regard would be provision which would fall outwith the legislative competence of the Scottish Parliament and, accordingly, outwith the vires of the regulation making power bestowed by clause 134 (as limited by subsection (5)). Therefore it appears helpful that the Secretary of State would be able to make consequential provision in that area if needed.

The inclusion of provision relating to Scotland has been done so at the Scottish Government's request and so the understanding is that similarly any consequential provision would not be made in relation to Scotland other than at the Scottish Government's express request. There would be limited interest in the Secretary of State making provision which is merely consequential in relation to statutory provisions which only apply in a devolved area in Scotland. It should be noted that the Bill adopts the same approach to the powers conferred on the Welsh Government in clause 133.

It is also important to note that the Secretary of State's power in clause 135 is only to make provision which is consequential on the Bill. Clause 135 does not confer a power on the Secretary of State to make wide-ranging, substantive changes to the law in Scotland.

Finally, there is further indication of the intention behind the powers being created in Clause 135 in that the power does not allow the Secretary of State to make textual modifications of Acts of the Scottish Parliament. The Secretary of State's powers under clause 135 are therefore limited to UK legislation passed before this Bill or later in the same parliamentary session as this Bill.

I trust the Committee find this information helpful.

**SHIRLEY-ANNE SOMERVILLE**

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St Andrew's House, Regent Road, Edinburgh EH1 3DG  
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