



Equalities, Human Rights and Civil Justice Committee  
T2.60  
The Scottish Parliament  
Edinburgh  
EH99 1SP

30 January 2023

Dear Convener,

Thank you for your letter of 25 January. I made a section 35 order with regard to the Gender Recognition Reform (Scotland) Bill on 17 January, under the powers granted to the Secretary of State in the Scotland Act 1998. It is my judgement that this was the correct course of action in light of the Bill's adverse impacts on the operation of reserved matters.

After careful consideration of the relevant advice and policy implications, I have concluded that the Bill as it stands would make modifications of the law as it applies to reserved matters and would have an adverse effect on, amongst other things, the operation of GB-wide equality law. Those adverse effects include impacts on the operation of single-sex clubs, associations and schools, protections such as equal pay, and chilling effects on single-sex services. These adverse effects are set out in the published Statement of Reasons and the order laid before the UK Parliament, both of which I attach to this letter.

You refer in your letter to the reasons for the section 35 power being exercised instead of the section 33 power. Every bill that passes the Scottish Parliament is considered in respect of section 33 and section 35 of the Scotland Act 1998. It is clearly set out in the Act that section 33 is concerned with a Scottish Parliament bill, or provisions of such a bill, where there is a question of legislative competence. Section 33 enables the Advocate General, the Lord Advocate or the Attorney General to refer such a bill, or provisions thereof, to the Supreme Court. It is for the Law Officers to make a section 33 referral and they have not done so in this case.

When it created the framework for the Scottish Parliament's legislative powers, the UK Parliament recognised that there might be circumstances in which legislation which was within legislative competence might nonetheless cause problems for reserved matters which were sufficiently serious to warrant intervention. That is why the section 35 step-in power was included in the 1998 Act.

Section 35 requires the Secretary of State to identify the provisions in question, and to state the reasons for making the order to prevent the bill from proceeding to Royal Assent. I have been clear that Section 35 was the appropriate power to exercise due to the adverse effects of the modifications which the Gender Recognition Reform (Scotland) Bill makes on the operation of the law as it applies to reserved matters.

As you know, I met with the Cabinet Secretary for Social Justice, Housing and Local Government on 24 January to discuss these matters. I subsequently wrote to the Cabinet Secretary to restate the UK Government's position. I set out that I fully respect the Scottish Parliament's ability to legislate within its competence. However, neither I nor the UK Government can ignore the adverse effects of the GRR Bill for reserved matters, particularly on the operation of GB-wide equalities legislation. I also set out that it is for the Scottish Government to bring forward a bill that addresses the adverse effects as set out in the Statement of Reasons. The Scotland Act 1998 specifically provides for a reconsideration stage in the Scottish Parliament for these circumstances. I noted that the Scottish Government would need to address the adverse effects on the operation of reserved law in order to bring forward a revised bill. Should the Scottish Government do so, I have set out that I am content for my officials, and officials in the Office of the Advocate General, to provide a view on a revised bill ahead of it going to the Scottish Parliament. This would be without prejudice to the formal processes contained in the Scotland Act 1998 following a Bill's completion of its passage through the Scottish Parliament.

I enclose a copy of my letter to Shona Robison, alongside a copy of the order and the Statement of Reasons.

I am copying this letter to the Minister for Women and Equalities, the Cabinet Secretary for Social Justice, Housing and Local Government, and Claire Adamson MSP, Chair of the Constitution, Europe, External Affairs and Culture Committee.

Yours sincerely,

*Yours sincerely,  
Alister*

**THE RT HON. ALISTER JACK MP  
SECRETARY OF STATE FOR SCOTLAND**