Mr Graham Simpson  
Convener  
Delegated Powers and Law Reform Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

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Dear Graham,

Thank you for your letter of 06 October regarding the Delegated Powers and Law Reform Committee’s Annual Report for the 2016-17 parliamentary year. This reply covers both the issues raised in the report and the points raised during my attendance at Committee on 5 December.

I would like to take this opportunity to reiterate my appreciation of the role the Committee fulfils in scrutinising the new and existing delegated powers.

Response to report

Number of instruments laid

As I said on 5 December in response to the Committee’s concerns about why the number of instruments in the 2016-17 reporting period had fallen compared with the previous reporting period, annual variation in the number of instruments laid in reporting years is normal. This can be the result of a range of factors including the number and complexity of Acts which need to be implemented; how many packages of instruments are required in a given year; and the point we are at in a parliamentary session.

I would like to emphasise that the 252 instruments which were laid in the last reporting year represents the totality of the Scottish Government’s planned secondary legislation for that period and that no part of our programme was deliberately delayed or held back.

I do expect that the subordinate legislation required to give effect to EU withdrawal will increase the overall volume of instruments which the Government lays over the next few years. There remains a high degree of uncertainty about precisely how much additional subordinate legislation will be needed and I am working closely with the Minister for UK Negotiations on Scotland’s Place in Europe to develop an accurate picture of that. It is my
intention to share that information with the Parliament as soon as I am in a position to do so, and to work with this Committee and others to determine how best to manage the scrutiny of the overall programme of instruments.

Number of instruments reported

I am pleased that the Committee recognises that the number of instruments being reported for issues and errors remains historically low and that members have recognised the improvements made over the reporting year.

I am not complacent about this issue, and the Government is committed to bringing forward legislation that is of the highest quality. That is why the Government’s Legal Directorate is taking steps to strengthen the already robust procedures which are in place to quality assure the subordinate legislation we produce. Where any errors in instruments do arise the Government will act promptly to ensure these are addressed.

Historical commitments

I am committed to making progress in reducing the number of historical commitments to correct minor errors in subordinate legislation, and I welcome the Committee’s letter of 30 November 2017 which commended the Government for the speed in which we are taking forward amending instruments.

I am pleased that the number of outstanding commitments referenced in the Committee’s report has fallen to 14. I would like to reduce that number further, and I will write to the Committee in the New Year setting out the action I intended to take in each case.

Withdrawal and revocation of instruments

I am also pleased that the annual number of instruments which the Government has had to withdraw and relay has fallen to 8 in this reporting year, and I can assure the Committee this is a trend I would like to see continue. As I emphasised on 5 December, I believe the action which the Government Legal Directorate is taking to strengthen its quality assurance processes will help ensure that is the case and in particular will help avoid a reoccurrence of the issues related to the package of tribunals instruments.

Packages of instruments

In terms of the programming of packages of instruments, the Government’s starting position is that instruments in a package will be laid together so that committees are able to consider them in context. If it is not possible to do that it is my intention that the Government will make clear why that is the case, and how the package of instruments will be managed to ensure the Parliament can carry out appropriate scrutiny.

More generally, I believe that the Government is getting better at drawing packages of instruments to the Parliament’s attention at an early stage, and I would like that to continue. That is why I have asked my officials to ensure that when a package of instruments is identified they facilitate a meeting between clerks and relevant policy officials to discuss the timescales and overall policy intention of the package.
Consolidation

I recognise the Committee's desire to see progress made in consolidating the Council Tax Reduction regulations. As I said on 5 December, this consolidation exercise will be a significant piece of work and the Cabinet Secretary for Finance and the Constitution has now written to the Committee setting out the Scottish Government's views on this.

Framework Bills

I note the concerns of the Committee about the "framework" nature of some of the Bills which the Government brings forward and I accept that the Committee will wish to constructively challenge why the Government has taken powers in such Bills and how it intends to use them. However, I would emphasise that I believe that it will be appropriate in some cases for a Bill to take a range of delegated powers in order to provide for flexibility in implementation and to avoid the need to have to repeatedly bring forward primary legislation to make relatively minor changes to delivery mechanisms.

My principal concern is to ensure that the Government provides a clear analysis for its proposed use of any delegated powers. As I said on 5 December, where I identify a Bill which I believe will be of particular interest to the Committee I will ensure that the Minister in charge and their officials proactively engage with the Committee to explain the Government's approach. I believe this approach worked to good effect on the Social Security Bill. I note the suggestion made by Ms McNeill that extra time should be provided for the scrutiny of Bills which contain a range of delegated powers. I have been working closely with Committee Conveners in this session to agree the allocation and timetabling of Government Bills to strike a balance between our respective interests in delivering and scrutinising the Government's legislative programme, and I would be happy to take into account this Committee's views as part of that process.

Scottish Law Commission Bills

I note the Committee's suggestion that, in order to further increase the rate of implementation of Scottish Law Commission Reports, the Government should consider bringing forward multi-topic Bills. While I am happy to keep this recommendation under review, I anticipate that opportunities to combine related policy topics into a single Bill which will satisfy the criteria for referral to the Committee will be limited. An alternative approach would be to reconsider the referral criteria to determine whether any changes might be made which would enable a broader range of topics to be referred to the Committee, particularly where the subject Committee which would ordinarily lead on scrutiny was happy for that to happen. I would be happy to consider this further with you if that would be helpful.

I hope that you find this response helpful and I look forward to working with you and the Committee in the New Year.

Yours for Scotland.

JF

JOE FITZPATRICK

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