7 August 2019

The Representation of the People Act 1983 Remedial (Scotland) Order 2019

Dear Mike,

Thank you for your letter of 1 August 2019, informing me of the above remedial Order to allow prisoner voting in the Shetland by-election.

As you know, the Delegated Powers and Law Reform Committee does not concern itself with policy matters but it is our role to scrutinise the use of powers by government. In this case, the Scottish Government has used a power available to it that has been rarely used.

You wrote to me on the day the remedial Order was made and laid, which was the day before it came into effect. The Committee has not had an opportunity to express a view on whether the use of a remedial Order was appropriate in this case. While the Parliament could choose not to approve the Order, as you know this would only take effect after 120 days, which is well beyond the date of the by-election. There is therefore little point in the Committee meeting during recess to consider this further.

Clearly, governments have to act swiftly, for example in times of national emergency. However, I would be grateful if you could explain to the Committee why the Government chose not to give more advance notice of what it was intending to do so that the Committee could have had at least some chance to express a view. I have to say that I find this most frustrating.

In terms of the necessity for the instrument, the Scottish Government has clearly taken a different approach to the UK Government in relation to prisoner voting in recent by-elections. Can you explain why this is the case?
In relation to the remedial Order itself, I would also be grateful if you were able to respond to the following questions:

- In the light of the fact that the Scottish Elections (Franchise and Representation) Bill has just started its parliamentary journey, was there an option of leaving things as they were until that Bill has completed its passage?

- We understand from reports that fewer than five prisoners are affected by the Order. While the numbers are irrelevant, did the government assess the risk of action being taken against it by these individuals?

- Media reports have suggested that the Scottish Government intends to revoke the remedial Order following the by-election. Is this your intention and if so, when might the revoking instrument be laid?

I would be grateful for a response to these questions by **Friday 23 August**.

Finally, given the significance of the remedial Order and the requirement for proper parliamentary scrutiny, I would like to invite you to give evidence to Committee on the instrument. As you are appearing before the Committee on **Tuesday 10 September** to give evidence on the delegated powers in the Referendums (Scotland) Bill, I’d like to also use this opportunity to allow you to more fully explain the need for the remedial Order.

Yours sincerely,

[Signature]

Graham Simpson
Convener of the Delegated Powers and Law Reform Committee