March 2018

Dear Clare

Thank you for your letter of 24 January 2018 in relation to recommendations 54 and 55 of the report of the Commission for Parliamentary Reform, both of which relate to the Members' Bill process. You ask that I indicate the position of the Scottish Government on paragraphs 248 to 252 of the Commission's report and in particular recommendation 54. I am grateful for the opportunity to set out the Government’s views, and would be happy to do so in relation to any other recommendations of the Commission’s report which the Committee will consider in due course.

The purpose of recommendation 54 appears to be to remove the provision in Rules 9.14.12 and 13 of Standing Orders that enables the Scottish Government (or UK Government) to take on responsibility for the implementation of a Members' Bill at final proposal stage. The Commission’s report suggests that implementation of its recommendation would give rise to a more collaborative approach to Members' Bills although I would observe that it does not explain why having two continuity bills would make collaboration more likely and does not specify how that could be given practical effect. Nor does the report recognise the collaboration between members and government which currently takes place in relation to members bills whether the government decides to take on responsibility or not.

The Scottish Government considers carefully the policy purpose and legislative impact of every Members’ Bill proposal which is initiated, and our starting assumption is that the Member in charge will be best placed to progress their proposal when it reaches the final proposal stage. That is reflected in the small number of cases where the Government has used the provision in Standing Orders to take on direct responsibility for implementation of a Members’ Bill final proposal. Indeed, that has been the case with previous Administrations.

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achn Côigeachaidh (Alba) 2016. Falcibh www.lobbying.scot

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However, the Government also believes that there is a benefit in retaining the current flexibility that enables it to take on that direct responsibility. The Government will only seek to make use of the provision where it is certain that it can legislate to give effect to the specific policy proposals which the Member has initiated, and that it can do so before the end of the relevant parliamentary session. This provides the Member who initiated the proposal certainty that, subject to the agreement of Parliament, their proposal will reach the statute book, with the Government being able to bring to bear the full legal, policy and drafting resources at its disposal.

This approach has particular advantage where a Members’ Bill proposal deals with complex, technical or cross-cutting policy issues. It has the added benefit of ensuring that the Parliament will not have to deal with two competing Bills on the same topic, with the time and resource implications and potential stakeholder confusion that might entail.

On the basis of the evidence for how this and previous Governments have used this particular provision, the Government is not persuaded that a change of the sort proposed by the Commission is necessary and would best serve the public interest. However, the Government recognises that there are improvements which could be made to the current provision. For example, to provide more certainty to a Member about when their proposal will be implemented, consideration could be given to introducing a clear time limit (e.g. 12 months) within which the Government must indicate the timeline for introducing legislation to give effect to a final proposal.

I hope the Committee will find these views helpful in its deliberations and I would be happy to provide further information if that would be helpful.

Finally, I note that the Commission did not make reference to the comparable provision which Standing Orders make (Rule 9.15.7A) in relation to Committee Bills. I would argue for retention of that provision for the same reasons as I have set out in relation to Members’ Bills and believe that the provision could also be improved in the way I have set out above.

Joe FitzPatrick