



Delegated Powers and Law Reform Committee

Rt Hon Michael Ellis MP
Paymaster General and Minister for the
Cabinet Office
By email

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Dear Minister,

The remit of the Scottish Parliament's Delegated Powers and Law Reform Committee includes considering and reporting on proposed powers (within devolved competence) to make subordinate legislation in particular Bills and other proposed legislation, and general questions relating to powers to make subordinate legislation.

In recent years, the Committee has noted that a number of UK Parliament Bills confer delegated powers on UK Ministers which are exercisable for Scotland within the Scottish Parliament's legislative competence.

Within the past year, the Committee has highlighted in its reports on LCMs for the [Professional Qualifications Bill](#), [Police, Crime, Sentencing and Courts Bill](#), [Health and Care Bill](#), [Elections Bill](#) and the [Building Safety Bill](#) that:

- The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
- Where such powers are exercised by UK Ministers in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.
- Powers conferred on UK Ministers should be subject to a requirement for the Scottish Ministers' consent when exercised within devolved competence.
- As a minimum, powers exercisable by UK Ministers in devolved areas should be subject to the process set out in the [SI Protocol 2](#) (this is an agreement between the Scottish Parliament and the Scottish Government which provides the Parliament a role in scrutinising the Scottish Government's proposals to consent to UK SIs which apply to Scotland and would be within the Scottish Parliament's legislative competence).

Many of the powers in UK Parliament Bills considered by the Committee recently contain no statutory requirement for the UK Government to obtain the Scottish Ministers' consent before exercising the powers. This is the case for at least one power in each of the five bills mentioned above.

SI Protocol 2 does not operate effectively in the absence of a statutory consent requirement. It is effective only where the Scottish Parliament is able to influence whether or not the Scottish Ministers give their consent, which in turn depends on there being a legal requirement for the Scottish Government's consent before the subordinate legislation can be made.

Further, several of the new powers are in policy areas that are not formerly within EU competence. SI Protocol 2 only applies to powers in areas formerly within EU competence (this is because the Protocol was designed on the understanding that new powers for UK Ministers in devolved areas were being conferred in the EU Exit context, and would therefore be limited to policy areas formerly within EU competence). This has previously been highlighted by the Committee in its reports on the [Health and Care Bill](#),¹ [Public Services Pensions and Judicial Offices Bill](#)², the [Building Safety Bill](#),³ the [Police, Crime, Sentencing & Courts Bill](#),⁴ and the [Elections Bill](#).⁵

Given the consistent themes highlighted by the Committee in these reports, it agreed to ask you, as the UK Government Minister responsible for devolution issues and strengthening the Union, what the UK Government considers when seeking a delegation of powers to UK Ministers in devolved areas within the competence of the Scottish Parliament and whether it takes into account the points raised by this Committee in its work.

I would be grateful if you were able to provide a response to this question by **Friday 19 August 2022**. The Committee would also welcome a chance to discuss your response at its meeting on the morning of **Tuesday 4 October**. This could be done by video link.

I look forward to hearing from you.

I am copying this letter to the Rt Hon Alister Jack MP, Secretary of State for Scotland.

Yours sincerely

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

¹ paragraph 37

² paragraph 17

³ paragraph 37

⁴ paragraph 30

⁵ paragraph 23