

Cabinet Secretary for Government Business and
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Graham Simpson MSP
Convener
Delegated Powers and Law Reform Committee
The Scottish Parliament
Edinburgh
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14 November 2019

Dear Graham

REFERENDUMS (SCOTLAND) BILL – STAGE 1 REPORT

I am grateful to the Committee for its scrutiny of the Bill and for the conclusions and recommendations in the Committee's Stage 1 Report.

The Scottish Government has responded to each of your recommendations in the Annex to this letter.

The numbered headings in the Annex refer to the paragraph numbers from the Committee's report.

A handwritten signature in black ink, appearing to read 'Michael Russell', written over a horizontal line.

MICHAEL RUSSELL

27. The Committee considers that the Bill should be amended at Stage 2 to provide clear criteria for whether future referenda should be provided for by either primary or secondary legislation. While the formation of this criteria will require further discussion, the Committee recommends that a question put in a referendum which requires an Order made under the delegated power in section 30 of the Scotland Act 1998, as well as questions about significant moral issues, should require primary legislation.

47. For referenda meeting the criteria for being provided by subordinate legislation rather than primary legislation (as discussed earlier in this report), the Committee recommends that in all instances the super-affirmative procedure is used. The consideration period for any draft regulations should be set at 60 or 90 days to allow the Electoral Commission to come to a view on the proposed question.

52. The Committee therefore recommends that the power in section 2 to make modifications to the Act in respect of a particular referendum should, in all instances, use the super-affirmative procedure. The consideration period for any draft regulations should be set at 60 or 90 days.

The Scottish Government notes the Committee's recommendation that referendums on certain topics, including significant moral issues, should require primary legislation.

The Scottish Government also notes the Committee's recommendations around the use of super-affirmative procedure to allow for a referendum and for modifications to the Act in respect of a particular referendum, particularly the recommendation for minimum 60 day consideration period.

The Finance and Constitution Committee have recommended that a referendum should ordinarily require primary legislation, and that any criteria for using secondary legislation should be brought forward by the Scottish Government as amendments at Stage 2.

As the Cabinet Secretary for Government Business and Constitutional Relations said in his opening remarks at the Stage 1 debate on the Bill on 7 November 2019, the Scottish Government are happy to accept both committees' recommendations that changes should be made to section 1 of the Bill.

The Scottish Government agrees that, normally, a Bill should be the way to trigger a referendum and will reflect on the Finance and Constitution Committee's recommendation on whether it is appropriate for some referendums which do not relate to constitutional issues to be triggered by secondary legislation.

For the avoidance of doubt, the Scottish Government is happy to confirm that it is of the view that primary legislation would be appropriate in the event of an independence referendum.

The Scottish Government will bring forward further details of our approach before Stage 2.

55. The Committee considers that the use of the super-affirmative procedure in section 1 will allow the Electoral Commission to be consulted on the intelligibility of any proposed referendum question, even where they have previously published a report on that question.

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The Scottish Government accepts that it should look at the issue of question testing again in the light of the views and the evidence that the Finance and Constitution Committee received. The Cabinet Secretary for Government Business and Constitutional Relations has therefore agreed to discuss this matter with the Electoral Commission and come back at Stage 2 with any proposals that may arise from those discussions.

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