



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Rt Hon Ken Macintosh MSP
Presiding Officer

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Dear Presiding Officer,

At its meeting this morning the Committee undertook further consideration of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

In so doing, the Committee agreed to lodge amendments to the Bill in relation to section 14A and the amendment (amendment 44) proposing to replace that section.

The Committee also agreed to write to you ahead of Stage 3 to explain the Committee's intention behind these amendments and to draw the Parliament's attention to issues arising in relation to other delegated powers in the Bill and amendments lodged at Stage 3.

Amendments lodged by the Committee

Section 14A of the Bill provides that regulations under sections 11, 12 and 13 should be subject to a pre-laying "sifting process" of 15 days during which time a committee of the Parliament can decide that the procedure attached to regulations should be different from the one proposed by the Scottish Ministers. Subsection (7) of section 14A provides that the Scottish Ministers are required to change the procedure attached to the regulations if a committee has made such a recommendation.

An amendment has been lodged at Stage 3 by Ross Greer (amendment 44) which replaces section 14A and puts in place a new "sifting process". The crucial difference in approach is that the sifting process now takes place once the instrument has been laid. This means that if an instrument is laid as a negative, it can change to an affirmative if that is recommended by the Delegated Powers and Law Reform

Committee within 20 days of laying. The amendment also establishes a new process at subsection (10) allowing amendments to be categorised as urgent and therefore not subject to this process.

The Committee accepts that there might be a need for such an urgent procedure, but is not otherwise persuaded by the new approach taken in amendment 44. Specifically, the Committee is concerned about the loss of the pre-laying period for scrutiny which is provided for in section 14A of the Bill. The Committee is concerned that undertaking this process in the course of the normal scrutiny of an instrument will have a deleterious effect on the quality of parliamentary scrutiny in that members will be using the first 20 days of scrutiny to consider whether the right procedure has been attached to an instrument rather than considering the actual content of the instrument.

The Committee is also concerned about the effect of subsections (6) and (8) of amendment 44. They provide, respectively, that the resolution of the DPLR Committee changing the procedure attached to a negative instrument implies that the instrument has been revoked and that nothing further may be done under the regulations. The Committee is concerned about the absence of public notice in regard to such a revocation and the impact that this might have on those affected by the relevant law.

With these concerns in mind, the Committee considers that section 14A in the Bill as amended at Stage 2 is preferable, subject to the addition of the urgent procedure, and would encourage the Parliament to retain this approach. The Committee believes that this approach does not have the potentially negative impact on parliamentary scrutiny and public awareness that could arise from the approach taken in amendment 44.

The Committee has also lodged amendments to both section 14A and to amendment 44 in order to provide for the sift process to apply to regulations under section 19.

Section 19 of the Bill provides the Scottish Ministers with a power in relation to fees and charges.

The Bill provides that the first exercise of this power is subject to the affirmative procedure. Subsequent exercises of the power are subject to the negative procedure although there is no limit on what those subsequent exercises of the power can do.

The Committee is of the view that if the affirmative procedure is appropriate for the first use of the power then it should also be applied to future exercises of the power. It is quite conceivable that future exercises of the power will provide for significant and material increases in fees and charges and it would seem appropriate for regulations providing for such increases to be subject to the affirmative procedure.

As the Committee has consistently recognised, the scrutiny applied to regulations should be proportionate. Therefore, the Committee considers that regulations that provide for less significant increases in fees and charges are more appropriately subject to the negative procedure.

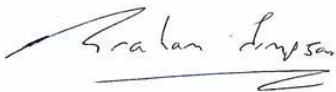
Accordingly, the Committee has lodged an amendment at Stage 3 to apply the sifting process to regulations under section 19, so that the Parliament can take an informed view of the appropriate scrutiny procedure to attach to the instrument based on the content of that instrument.

Amendment 60

Amendment 60 makes a change to the ancillary power in section 32. Ancillary powers in Bills are provided to Ministers by Parliament to allow for incidental, supplementary, consequential, transitional and saving provisions to be made to give full effect to the Bill when it has been passed. Such powers are not to be used to make significant changes to legislation. Amendment 60 appears to provide a wide power to Ministers to make regulations in consequence of the European Union (Withdrawal) Bill or any other enactment which makes provision for any of the purposes set out in section 1(1) of this Bill. The Committee is concerned that the proposed amendment is a wide power and may be inappropriate in the ancillary powers of this Bill. The Committee would wish to draw the Parliament's attention to the amendment and to its potential wide scope and would welcome a detailed explanation of the intent of this amendment in the course of Stage 3 proceedings.

I am copying this letter to the Minister for UK Negotiations on Scotland's Place in Europe.

Yours,

A handwritten signature in black ink, appearing to read "Graham Dwyer", with a horizontal line underneath.

Convener of the Delegated Powers and Law Reform Committee