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Graham Simpson MSP
Convener
Delegated Powers and Law Reform Committee
Scottish Parliament
Edinburgh
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Dear Convener

I am writing to respond to the Delegated Powers and Law Reform Committee's Stage 1 Report on the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill. I would like to thank the Committee for its careful consideration of the Bill.

I am pleased that the Committee was content with the delegated powers in the Bill, subject to its comments on the power in subsection (4) of section 7 (Form, content, etc of success fee agreements) which allows section 7(3) regulations to modify Part 1 of the Bill. I note that the Committee considers that the scope of section 7(4) has not been sufficiently justified and has asked the Government to explain why the modification of Part 1 of the Bill is necessary and proportionate.

The Scottish Government believes that section 7(4) provides a useful power to augment the current provisions of the Bill in relation to success fee agreements in cases where it is considered to be desirable to have future provision about, say, mandatory terms or the unenforceability of success fee agreements. Such future provision would only be brought forward after careful consultation on the regulation of success fee agreements with interested stakeholders and for that reason cannot be included in the Bill at present. The Government's view is that any such provision should be set out in the primary legislation as amended by regulations, rather than set out in entirely freestanding regulations. That would ensure that all of the mandatory terms relating to success fee agreements can be found in the primary legislation. This would deliver the legislative result that is most clear for the readers and users of the legislation. The Government therefore wishes to retain section 7(4).

However, the Government has taken note of the Committee's concerns about the scope of section 7(4). Accordingly, the Government will bring forward amendments at Stage 2 which will limit the scope of section 7(4).

I hope that this response to the issue raised by the Committee is helpful in explaining the reasons why the Government wishes to retain section 7(4) and satisfies the Committee that we will respond to the concerns about the need to limit the scope of the section.

Yours sincerely



Annabelle Ewing