

Delegated Powers and Law Reform Committee

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Parliamentary Reform

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Dear John

I am writing to you on behalf of the Delegated Powers and Law Reform Committee in response to your letter of 24 November inviting the Committee to submit evidence to the Commission on Parliamentary Reform.

The twin core roles of a Parliament are to pass legislation and to hold the Government to account.

Robust and thorough scrutiny of legislation is essential to the making of good law. The role of the DPLR Committee is critical in ensuring effective scrutiny.

The DPLR Committee undertakes rigorous scrutiny of all legislation passing before it, endeavouring to ensure that the Parliament passes legislation that is operable, accessible and fit for purpose.

The DPLR Committee is ambitious about the quality of legislation that the Parliament should be passing and wants to ensure that the Parliament has the appropriate structures and processes in place to enable the kind of thorough scrutiny that can lead to good legislation. As well as its own experience of the early part of session 5, the Committee has drawn on its predecessor committee's legacy report in preparing this submission. A link to that report can be found below.

<http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/97858.aspx>

The issues highlighted in the legacy report reflect the experience of five years of scrutinising Scottish Statutory Instruments (SSIs) and delegated powers within primary legislation. The report provides an informed impression of the challenges that the Parliament faces in scrutinising these matters.

The Committee agreed to draw the following specific matters in the report to the Commission's attention.

Timetabling of SSIs

When the Scottish Government lays significant numbers of instruments at the same time it makes it more difficult for the Parliament to scrutinise all of the instruments effectively. To ensure good scrutiny, and in turn good law, it is essential that the Scottish Government lays instruments in a managed way. Toward the end of last session and to date this session, the laying of instruments has been well managed by the Scottish Government, but this has not always been the case. It is a matter to which the Committee pays close regard and one which it draws to the attention of the Commission.

Committee recommendation on delegated powers

The legacy report highlights the good working relationship the Committee developed with the Scottish Government last session. This is evidenced in the willingness of the Scottish Government to meet the Committee's recommendations. In the last two years of last session 77% of the Committee's recommendations on bills at Stage 1 were met by the Scottish Government. These recommendations ranged from seeking an enhanced level of parliamentary scrutiny to be applied to the exercise of a power to the narrowing of a broad power. This statistic also points to the critical contribution the Committee makes to the legislative process.

Framework bills

The Committee also wishes to draw the Commission's attention to the concerns expressed in the legacy report about so-called "framework bills".

These are bills where the Parliament is being asked to confer certain wide-ranging powers on the Scottish Ministers in circumstances where the Scottish Government has not informed the Parliament in sufficient detail of its plans for using those powers or of the reasons for taking a particular approach to the framing of certain powers. In most instances they are also bills where it appears that the policy is still to be fully developed. Last session the Committee considered bills such as the Land Reform (Scotland) Bill and the Burial and Cremation (Scotland) Bill to be framework bills that provided insufficient detail on the powers the Parliament was being asked to delegated and therefore could not be scrutinised effectively.

The legacy report encourages the DPLR Committee this session to be particularly watchful for such framework legislation. The Convener has pursued these concerns about framework bills with the First Minister this session. The First Minister

suggested that while there will be times where such legislation is perhaps appropriate it will not become the normal means of legislating.¹

It is difficult to assess whether such bills ultimately make for poorer law, but it could be considered that this approach to legislation makes scrutiny more difficult as members are not in a position to know how the powers are intended to be exercised.

The Committee is yet to encounter such framework legislation this session. Nonetheless, the Committee asks the Commission to take these concerns about framework legislation into account.

Gaps between Stages 2 and 3

Another challenge to the effective scrutiny of delegated powers identified in the legacy report was the limited time between Stage 2 and 3 of the bill process which limited the ability of the committee to scrutinise amendments to delegated powers after Stage 2.

The Scottish Government has indicated that it will endeavour to provide more time than the minimum required by standing orders between Stages 2 and 3 to enable greater scrutiny. With limited time available, there is a challenge to how much scrutiny a committee can undertake and there is the potential for this to have a detrimental effect on the quality of the legislation passed by the Parliament.

Annual Reporting process

Last session the Committee began to produce an annual report as a means of holding the Scottish Government to account. This report was followed by an annual oral evidence session with the Minister for Parliamentary Business, where the Committee asked him to respond to the issues highlighted in the report.

In the legacy report it was suggested that this reporting process may have contributed to an improvement in the quality of legislation submitted by the Scottish Government. The Committee has agreed to maintain the annual reporting process this session.

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The Committee draws this reporting process to the attention of the Commission as an example of an effective means of holding the Scottish Government to account.

Improving public awareness

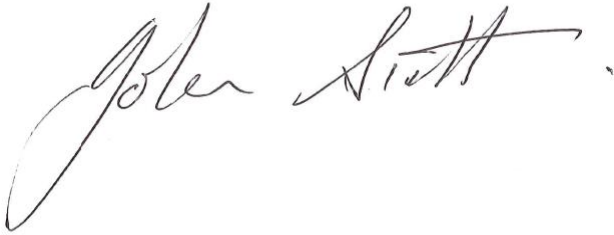
The Committee also wishes to highlight the importance of improving public understanding of secondary legislation as recognised in the legacy report.

The report notes that more informed stakeholders can only help to improve the quality of scrutiny applied to legislation.

¹ [Transcript of Conveners Group Meeting of 16 November 2016](#)

I hope you find these points helpful. The Committee would, of course, be happy to provide any further information or comment that would be of assistance to the Commission.

Yours sincerely,

A handwritten signature in black ink, appearing to read "John Smith". The signature is written in a cursive style with a large, sweeping initial "J" and a long horizontal flourish at the end.

Convener of the Delegated Powers and Law Reform Committee