



The Scottish Parliament
Pàrlamaid na h-Alba

Clerk to the Delegated Powers and Law Reform Committee
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James Hynd
Head of Cabinet, Parliament and Governance Division
Scottish Government

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Dear James

Referendums (Scotland) Bill at Stage 1: Delegated Powers Memorandum

At its meeting on 25 June, the Delegated Powers and Law Reform Committee considered the Delegated Powers Memorandum (DPM) in relation to the Referendums (Scotland) Bill at Stage 1. The Committee is aware of the tight legislative timetable for considering this Bill and has taken this into account when considering its approach to the DPM.

Section 1 – Power to provide for referendums

Power conferred on: the Scottish Ministers
Power exercisable by: regulations made by Scottish Statutory Instrument
Parliamentary procedure: affirmative

(a) Delegation of Power: The Committee discussed the appropriateness of the delegation of the power to hold a referendum and agreed to seek clarification on the undernoted matters:

(i) why the Bill proposes to proceed by way of future referendums being established in subordinate legislation and not primary legislation; and

(ii) why the Government accepts, at paragraph 9 of the DPM, that the approach of Part 7 of the Political Parties, elections and Referendums Act 2000 is appropriate for the rules of a referendum but that it does not follow the same process set out in that Act for establishing future referendums through Acts of the Scottish Parliament.

(b) Procedure: The Committee also discussed the procedure, and therefore the scrutiny, to which regulations under section 1 of the Bill will be subject and agreed to seek clarification on the undernoted matters:

(i) why the Bill does not make provision for the Parliament to be consulted prior to the laying of draft regulations;

(ii) why it is considered necessary to consult with the Electoral Commission but not with the Parliament;

(iii) why does the Bill only specify that the Scottish Ministers are to consult with the Electoral Commission rather than consult with the Commission on draft regulations; and

(iv) does the Government consider that a form of super-affirmative procedure, which involves a draft of any regulations to be provided to the Parliament for a consultation period before being formally laid, would be appropriate for a significant power such as section 1.

(c) Referendum Questions: Furthermore, the Committee noted that as part of the process for laying regulations under section 1, section 3 of the Bill requires the Scottish Ministers to lay a report before the Parliament on the views expressed by the Electoral Commission on the intelligibility of any questions to be put in a referendum. Where a question is specified in a bill introduced into the Parliament, section 3 requires the Electoral Commission to publish a statement of its views on the intelligibility rather than the Scottish Ministers.

The Committee seeks to understand why the statement of the Electoral Commission, rather than the Scottish Ministers, is not required when regulations are laid?

Section 2 – Application of this Act

Power conferred on: the Scottish Ministers

Power exercisable by: regulations made by Scottish Statutory Instrument

Parliamentary procedure: affirmative

The Committee noted that section 2 applies the provisions contained in the Bill to referendums proposed under section 1(1). The Scottish Ministers are required to consult with the Electoral Commission before laying draft regulations before the Parliament. The Committee would like some clarification on the undernoted matters in relation to this delegated power:

(a) why there is no requirement to consult with the Parliament before draft regulations are laid;

(b) why the power has not been more narrowly drawn; for example, why the power has not been restricted to being available only where the modifications are recommended by the Electoral Commission; and

(c) why it is necessary to have the delegated power in section 2; specifically, why the delegated power in section 37 is not sufficient to address any recommendations of the Electoral Commission.

I would be grateful if you would be able to respond to these questions to the Delegated Powers and Law Reform Committee e-mail address above by **5pm** on **Tuesday 13 August**.

The Committee has also agreed to invite the Cabinet Secretary for Government Business and Constitutional Relations to a meeting in early September to give evidence on the DPM. I will be in touch with the Cabinet Secretary's office separately to arrange this session.

Thank you.

Andrew Proudfoot

Clerk to the Delegated Powers and Law Reform Committee