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Delegated Powers and Law Reform Committee  
T1.01  
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Edinburgh  
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2<sup>nd</sup> October 2019

Dear Convenor,

Thank you for your letter dated 1 October 2019. We addressed your recommendations regarding sections 51 to 58N of the Bill in our letter to you dated 1 October 2019. This letter will consider the remaining request for further information.

### **Section 58Z12(1) – Power to modify aspects of Part 4B on recovery of unpaid parking charges**

Section 58Z12(1)(b) provides Scottish Ministers with the power to modify this Part for the purpose of adding, removing or amendment “any of the” conditions in that Part. The conditions referred to are specified in sections 58Z1, 58Z2, 58Z7 and 58Z8. The use of the term “any of the conditions” as opposed to “the conditions” or “any conditions” shows that the power is to be used to amend particular conditions (or remove them). It is not a power that is to be used to add brand new and wholly distinct conditions to the set. It is necessary to take a power to amend all of the conditions as an amendment to one could have a knock-on effect to other conditions.

The power is considered necessary as maximum flexibility is required to enable the new keeper liability regime to be able to respond as industry practices for ticketing on private land rapidly develop. There is an equivalent power in the Protection of Freedoms Act 2012 (“the 2012 Act”) and, as a large part of the industry operates car parks across the United Kingdom, there is a need for our legislation to be flexible enough to keep pace with changes in England and Wales and we therefore require the same flexibility that exists in the 2012 Act.

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Subsection (2)(a) confers what is essentially a consequential power to make changes to sections 58Z3, 58Z4, 58Z5 and 58Z6 (including by removing them entirely if any of the corresponding conditions are left out) and any other provisions from time to time applicable for the purposes of a condition. Subsection (2)(b) is also, essentially, a consequential power as it is an aspect of the power in subsection (1)(b) as conditions cannot be added to, removed or amended in the abstract. It is expressly said to be capable of use only for the purposes of any power to prescribe anything for the purposes of a condition. It could be used narrowly – for example to remove a power if the corresponding condition were removed – or more widely – for example to add a new limb to a power where the condition is added to. An example might be to adjust the powers around the detail of the notice to be given to the keeper, and the manner in which it is given.

Further, the Scottish Government is of the view that the power in section 58Z12(2)(b) is necessary, as it would be problematic for the Scottish Ministers to have the power to amend the conditions if any associated changes that would otherwise be contained in regulations made under the amended powers had to be contained in the primary legislation. For example, if a new notice was required in respect of any of the conditions, without the power in subsection (2)(b), the detailed specification of the form and content would be required to be set out in the Act. This could make the Act, and those regulations that could still be made under it, less accessible and could result in Parliamentary time being expended on scrutinising the kind of technical detail that is more usually done under the negative procedure.

The Scottish Government believes that the affirmative resolution procedure for this power provides sufficient protection whilst affording a degree of necessary flexibility to respond to changes in England and Wales and in industry practice.

  
**MICHAEL MATHESON**

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