



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Michael Russell MSP
Cabinet Secretary for Government
Business and Constitutional Relations

Room T1.01
Chamber Office
EDINBURGH
EH99 1SP

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(RNID Typetalk calls welcome)
dplr.committee@parliament.scot

12 May 2020

Coronavirus (Scotland) (No.2) Bill

Dear Cabinet Secretary,

At its meeting earlier today the Committee considered the delegated powers in the Coronavirus (Scotland) (No.2) Bill.

While the Committee is not required to consider an Emergency Bill, given the extent of the delegated powers in the proposed legislation it was keen to consider whether there were any issues which it should highlight to the COVID-19 Committee ahead of its report on the Bill. As you'll see from the attached letter, the Committee subsequently agreed to draw the COVID-19 Committee's attention to subordinate legislation made in response to the coronavirus pandemic but which has not been made under powers in the previous Coronavirus Acts.

The Committee also agreed that I should also write to you to ask whether the Scottish Government will commit to report on all coronavirus related subordinate legislation every 2 months, not just the instruments made under this Bill and the previous Coronavirus Acts.

While you may wish to respond to this point in the course of the Stage 1 debate on the Bill, I would also be grateful for a written response by **Monday 18 May**.

Yours sincerely,



The Scottish Parliament
Pàrlamaid na h-Alba

Bill Bowman

Bill Bowman
Convener of the Delegated Powers and Law Reform Committee

Annex

Delegated Powers and Law Reform Committee

Murdo Fraser MSP
Convener
COVID-19 Committee

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12 May 2020

Coronavirus (Scotland) (No.2) Bill

Dear Convener,

At its meeting this afternoon, the Delegated Powers and Law Reform Committee considered the delegated powers in the Coronavirus (Scotland) (No.2) Bill.

The Committee is aware that your Committee also considered the Bill this morning. However, the Delegated Powers and Law Reform Committee agreed to highlight the following matters to you in advance of your Committee publishing any conclusions it has reached on this Bill.

As the Scottish Government has acknowledged, the Bill contains extraordinary measures required to respond to an emergency situation. The Committee accepts that this is necessary and notes that the Parliament may wish to ensure that the Scottish Government has the toolkit it needs to deliver necessary changes across the statute book, in what are currently uncertain circumstances.

The Committee recognises that this Bill provides safeguards for exercise of the powers contained within it and accepts that the Parliament will have the opportunity

to fully scrutinise the exercise of the powers at the point at which the subordinate legislation is laid.

However, the Committee also notes that most of the subordinate legislation which has been made in response to the coronavirus pandemic has not been made under powers in the Coronavirus Acts (the UK Act and the previous Scottish Act). Instead it is made under existing powers in other legislation. This means that the safeguards offered by the Coronavirus Acts do not necessarily apply. In particular:

- Not all of the instruments made in response to the coronavirus will expire when the emergency provisions of the Coronavirus Acts expire.
- Not all of the instruments are therefore subject to a review or have any reporting requirements. The 2-monthly review and report by Scottish Ministers required under section 15 of the 2020 Act (replicated in section 12 of this Bill) only applies to provisions of those Acts, and instruments made under them.
- Not all of the instruments are only made in connection with the current coronavirus emergency. Some also make provision which applies in relation to “an emergency” more generally.

The Committee agreed to draw this matter to your attention and suggest that **it would be beneficial in the interests of effective scrutiny if the Scottish Government would review and report to the Scottish Parliament on all subordinate legislation made in response to the Coronavirus emergency, as if it were made under provisions of the Scottish Coronavirus Act or this Bill.** This would ensure that the Parliament can be kept informed of the status of all subordinate legislation made in response to the Coronavirus pandemic, and can hold the Scottish Government to account in relation to whether that legislation should remain in force.

Yours sincerely,



Bill Bowman
Convener of the Delegated Powers and Law Reform Committee