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Mr Euan Donald
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Committee
Scottish Parliament

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20 November 2017

Dear Mr Donald,

Housing (Amendment) (Scotland) Bill at Stage 1

In response to your letter to James Hynd of 8 November, I provide responses by the Scottish Government to the matters in relation to the Housing (Amendment) (Scotland) Bill on which the Delegated Powers and Law Reform Committee sought explanations.

Section 8 – power to modify functions of the Regulator

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: affirmative

The Committee asked the Scottish Government to explain why it has considered it appropriate to draw the scope of the power in section 8(1) and (2) in a more general way, and whether the power could be drawn more narrowly while at the same time implementing the policy intentions?

The Scottish Government responds as follows:

ONS cited specific powers that the Regulator, and also local authorities, may exercise over RSLs as the grounds for its decision to classify RSLs to the public sector. The purpose of the Bill is to enable the ONS to reclassify RSLs to the private sector. Sections 1–7 of the Bill are intended to achieve that outcome, in respect of the Regulator, by amending those of the Regulator’s powers cited by the ONS. The Scottish Government is seeking the power at section 8 as a precaution against sections 1-7, for some reason, failing to achieve the intended outcome. Any such failure, and the means of remedying it, would become known only after the Bill had been enacted and commenced, and its provisions reviewed by the ONS. Consequently, the Scottish Government considers it prudent to have a general power that could be exercised flexibly in response to any issue that the ONS might identify. The Scottish Government does not consider that a more narrowly drawn power would provide such flexibility.

The Scottish Government would also draw the Committee's attention to paragraph 28 of the Policy Memorandum and the commitment there to use the power under section 8 only for the purpose of further adjusting the Regulator's functions to the extent necessary to secure reclassification.

The Committee asked the Scottish Government to explain why it is appropriate that section 8(1) enables the modification of the functions of the Regulator which relate to social landlords, which includes local authority landlords and local authorities providing housing services, in addition to RSLs. How is it anticipated the power would be used, in relation to social landlords apart from RSLs?

The Scottish Government responds as follows:

For the most part, sections 1-7 of the Bill amend provisions in the Housing (Scotland) Act 2010 in relation only to the powers that the Regulator may exercise over RSLs. The exception is section 1(2) of the Bill, which amends section 57 of the 2010 Act. That section gives the Regulator powers to appoint a manager to any social landlord – i.e. a RSL or local authority landlord. The Scottish Government concluded, in the interests of maintaining consistency in the regulation of the two classes of social landlord, that the effect of section 1(2) – to reduce the Regulator's power to appoint a manager - should apply equally to all social landlords. In the event of it being necessary to use the power under section 8 to amend section 57, or any other section of the 2010 Act that also touched on the regulation of local authority landlords, the Scottish Government would want to be able to continue this approach by treating RSLs and local authority landlords consistently. Section 8(1) as drafted provides for that.

Section 9 – power to reduce local authority influence over RSLs

Power conferred on: the Scottish Ministers

Power exercisable by: Regulations

Parliamentary procedure: affirmative

The Committee asked why the Scottish Government has considered it appropriate to draw the scope of the powers in section 9 in a more general way, and whether the powers could be drawn more narrowly while at the same time implementing the policy intentions?

The Scottish Government responds as follows:

As described at paragraph 16 of the DPM, the Scottish Government envisages that the power may be required if, once the initial regulations have been made, new instances of local authority control over RSLs were to emerge. In such an eventuality, the power would be used to amend further the powers of local authorities that are described at section 9(1). In this context, therefore, the power is precautionary and needs to be drawn widely if it is to be capable of being used in circumstances that at present are unknown. Consequently, the Scottish Government does not consider that the power could be drawn more narrowly while at the same time serving its precautionary purpose.

The Scottish Government would also draw the Committee's attention to paragraph 30 of the Policy Memorandum. As well as explaining the Scottish Government's initial intentions for using the power at section 9, the paragraph confirms that the Scottish Government envisages using the power only if placing further limits on the influence of local authorities over RSLs became necessary to secure, or subsequently retain, reclassification.

Furthermore, the Committee asked the Scottish Government why has it been considered not appropriate to set out the initial intentions for the exercise of the power on the face of the bill, i.e., that the regulations may specify that local authorities may nominate up to a maximum of 24% of the board members of an RSL, and may not exercise forms of control over RSLs such as the power to veto changes in an RSL's constitution?

The Scottish Government responds as follows:

Section 9(2) specifies the types of limit on the influence of local authorities over RSLs that may be included in regulations made under this section. The Scottish Government considers that it is appropriate to describe these types of limit on the face of the Bill and to provide the detail of its initial policy intentions in the DPM and the Policy Memorandum.

Please let me know if the Committee requires any further information from the Scottish Government on any of these matters.

Yours sincerely,



William Fleming