



Delegated Powers and Law Reform Committee

Humza Yousaf MSP
Cabinet Secretary for Health and Social
Care
By email

T1.01
Chamber Office
EDINBURGH
EH99 1SP

Direct Tel: 0131-348-5212
(RNID Typetalk calls welcome)
(Central) Textphone: 0131-348-5415
DPLR.Committee@parliament.scot

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Dear Cabinet Secretary

At the meeting on 1 February, the Delegated Powers and Law Reform Committee considered two Supplementary Legislative Consent Memoranda (“Supplementary LCM”) relating to the [Health and Care Bill](#) (“the Bill”).

When the Committee publishes its report, it will be available here:

- [Legislative Consent Memorandum: delegated powers relevant to Scotland in the Health and Care Bill](#)

The Committee reported on the power contained in Clause 120 (now Clause 136) of the Bill following its consideration of the original LCM at its meeting on 28 September 2021. At that point, the power to make regulations for the purpose of giving effect to a healthcare agreement was conferred on the Secretary of State only. The Committee noted its concerns regarding the lack of formal means by which the Scottish Parliament could scrutinise such regulations or be notified that they had been laid before the UK Parliament.

On 18 November 2021, the UK Government tabled amendments in order to additionally confer that power on the Scottish Ministers. It then lodged a [Supplementary Delegated Powers Memorandum on 24 November 2021](#).

The Committee noted at its meeting on 1 February 2022 that the amendment conferring a concurrent power on the Scottish Ministers in the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019 to make regulations giving effect to a healthcare agreement (insofar as within devolved competence) partially addresses the concern the Committee raised when it considered the first LCM. Where the power is exercised by the Scottish Ministers, the regulations will be laid in the Scottish Parliament and will be subject to full scrutiny in the usual way.

However, the Committee also noted that the UK Government retains the power to make regulations on a UK-wide basis. It will then be for the governments to decide between them on a case by case basis which body should exercise the power to implement healthcare agreements for Scotland. If the governments decide that the Secretary of State should exercise the power, the regulations will be laid in the UK Parliament alone. The Bill has not been amended to require the Secretary of State to obtain the Scottish Ministers' consent before making regulations for Scotland.

The Committee agreed to seek clarification from you on—

- whether the UK Government has committed, informally or otherwise, to seeking the Scottish Ministers' consent before exercising the power; and
- whether the Scottish Government agrees that the power remains within the scope of SI Protocol 2, given that section 2 of the Healthcare (European Economic Area and Switzerland Arrangements) Act 2019, as it currently applies, is listed in Annex A to that Protocol.

I understand that the Health and Sport Committee is due to consider this LCM at its meeting on Tuesday, 8 February 2022. I would be grateful therefore if you could respond to this letter by **Monday 7 February and copy your response to the Convener of the Health, Social Care and Sport Committee.**

I am also copying this letter to the Convener of the Health, Social Care and Sport Committee.

Yours sincerely

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee