



Delegated Powers and Law Reform Committee

The Rt Hon Nadhim Zahawi MP
Chancellor of the Duchy of Lancaster,
Minister for Intergovernmental Relations
and Minister for Equalities
By email

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Dear Mr Zahawi,

The remit of the Scottish Parliament's Delegated Powers and Law Reform Committee includes considering and reporting on proposed powers (within devolved competence) to make subordinate legislation in particular Bills and other proposed legislation, and general questions relating to powers to make subordinate legislation.

In July of this year, [I wrote to the Paymaster General and Minister for the Cabinet Office](#) to ask what the UK Government considers when seeking a delegation of powers to UK Ministers in devolved areas within the competence of the Scottish Parliament and whether it takes into account the points raised by this Committee in its work.

This question stemmed from themes the Committee had identified within a number of UK Parliament Bills since the UK left the EU. These are Bills which have conferred delegated powers on UK Ministers which are exercisable for Scotland within the Scottish Parliament's legislative competence. Several of the Bills are in policy areas that are not formerly within EU competence.

Within the past year, the Committee has highlighted these themes in its reports on LCMs for the [Professional Qualifications Bill](#), [Police, Crime, Sentencing and Courts Bill](#), [Health and Care Bill](#), [Elections Bill](#), [Building Safety Bill](#) and most recently the Procurement Bill and the Trade (Australia and New Zealand) Bill. These include:

- The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
- Where such powers are exercised by UK Ministers in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.

- Powers conferred on UK Ministers should be subject to a requirement for the Scottish Ministers' consent when exercised within devolved competence.
- As a minimum, powers exercisable by UK Ministers in devolved areas should be subject to the process set out in the [SI Protocol 2](#) (this is an agreement between the Scottish Parliament and the Scottish Government which provides the Parliament a role in scrutinising the Scottish Government's proposals to consent to UK SIs which apply to Scotland and would be within the Scottish Parliament's legislative competence).

In relation to each of these UK Parliament Bills the Committee has highlighted the lack of a statutory requirement that the UK Government obtains the Scottish Ministers' consent before exercising a power within devolved competence. Absent a consent requirement, the Scottish Parliament has limited ability to scrutinise the decision to legislate on matters that are within its competence.

The then Secretary of State for Levelling Up, Housing and Communities, the Rt Hon Greg Clark MP, [responded on 14 August 2022](#) and said:

“The UK Government already seeks the consent of Scottish Ministers for SIS in devolved areas both when there is a statutory requirement or an existing political commitment to do so. Whether or not to include statutory consent requirements is considered on a case-by-case basis as each policy area has a different legislative context.

“This approach to secondary legislation is consistent with long standing practice. It has worked well for over 20 years and continues to do so. The only change to our approach has been to facilitate further scrutiny in some areas in line with the commitments and statutory requirements mentioned above. Imposing a blanket consent procedure and lengthy process on future secondary legislation is unnecessary, creating additional administrative burdens and risks delaying the making of legislation in the future.”

While the Committee acknowledges that each UK Parliament Bill will have specific statutory requirements, the prevalence of delegated powers on UK Ministers within UK legislation has grown more pronounced in recent years.

The [Convener of the Constitution, Europe, External Affairs and Culture Committee](#) highlighted to you in their recent letter on its [Impact of Brexit on Devolution](#) report that:

“It is also our view that the extent of UK Ministers' new delegated powers in devolved areas amounts to a significant constitutional change. We have considerable concerns that this has happened and is continuing to happen on an ad hoc and iterative basis without any overarching consideration of the impact on how devolution works.”

In my own letter in July, I said that the Delegated Powers and Law Reform Committee would welcome the chance to discuss these emerging themes with the Paymaster General and Minister for the Cabinet Office. In response, the Rt Hon Greg Clark MP thanked the Committee for its invitation but said “I am sure you will understand that I need to defer a substantive response on this point until September.”

As the new Minister for Intergovernmental Relations, the Committee would like to repeat this invitation to you, in this instance for **Tuesday 6 December 2022**. While the Committee would very like to welcome you in person at the Scottish Parliament, this could also be done by video link if that was more helpful for diary purposes.

I would be grateful for a response by **Friday 4 November** and I look forward to hearing from you.

I am copying this letter to the Rt Hon Alister Jack MP, Secretary of State for Scotland and the Convener of the Constitution, Europe, External Affairs and Culture.

Yours sincerely

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