

## Delegated Powers and Law Reform Committee

Minister for Parliamentary Business

Via email

**26 March 2025**

Dear Minister,

### **Expedited scrutiny process for affirmative instruments made under certain Acts**

As you will be aware, in Winter 2021-22, the DPLR Committee carried out [an inquiry into the use of the made affirmative procedure during the coronavirus pandemic](#).

This inquiry was a response to the very significant increase in the use of the made affirmative procedure during the pandemic – from one or two made affirmative SSIs per year, to over 120 being laid in around 18 months.

In its [report](#), the Committee concluded that there might be occasions where Parliament would prefer to scrutinise an instrument under an expedited timetable before it comes into force (using the draft affirmative procedure), rather than scrutinising after it comes into force (following the made affirmative procedure).

As such, one of the Committee's recommendations was:

“The Committee would be happy to consider with the Scottish Government, alongside the COVID-19 Committee (or relevant lead committee) and the Parliamentary Bureau (which manages the business in the Chamber), on a case-by-case basis for when the use of an expedited affirmative procedure as an alternative to the use of the made affirmative procedure might be appropriate and the parliamentary timescales for such scrutiny.

**“The Committee considers that, in the meantime, it may be helpful for the Parliament and Scottish Government to agree the process (perhaps in the form of a protocol) that should be followed to aid the decision making in such cases.**

“The Committee considers that any such expedited affirmative procedure must allow for robust scrutiny. The desire to consider legislation prior to it coming into force should not come at any cost, nor should it become habitual.”

[Emphasis added to middle paragraph]

Contact: Delegated Powers and Law Reform Committee, The Scottish Parliament, Edinburgh, EH99 1SP.

Email: [dplr.committee@parliament.scot](mailto:dplr.committee@parliament.scot).

We welcome calls through Relay UK and in BSL through Contact Scotland BSL.

The DPLR Committee and Conveners' Group have now approved a formalised process for situations where the Scottish Government wishes to request expediting an affirmative instrument which could otherwise be made affirmative under the Public Health etc. (Scotland) Act 2008, the Coronavirus (Scotland) Act 2020 or the Coronavirus (Recovery and Reform) (Scotland) Act 2022. This process has been developed in collaboration with Scottish Government officials.

That process is set out below. I would be grateful if you could confirm, by responding to this letter, that the Scottish Government agrees to the below process.

### **Process for requesting expedition of certain draft affirmative Scottish Statutory Instruments (SSIs) which could otherwise be made affirmative SSIs**

1. Certain Acts allow Ministers a choice between making regulations under the draft affirmative or made affirmative process. Usually, the option to use the made affirmative process can only be used in situations where this is considered necessary by Ministers.
2. In response to the Delegated Powers and Law Reform (DPLR) Committee's report into use of the made affirmative procedure during the coronavirus pandemic, the Scottish Government and the Scottish Parliament have agreed the below process to be followed to aid decision making in relation to whether use of an expedited affirmative procedure (which would allow for parliamentary scrutiny and decision-making before any changes come into force) should be used as an alternative to the use of the made affirmative procedure (where such a choice exists). The process covers regulations made under the following parent Acts:
  - Public Health etc. (Scotland) Act 2008,
  - Coronavirus (Scotland) Act 2020 and
  - Coronavirus (Recovery and Reform) (Scotland) Act 2022
3. In such instances where the Scottish Government wishes to request to use an expedited draft affirmative process, its officials will, as soon as is practicable, alert parliamentary officials (clerks to the DPLR Committee and anticipated lead committee) that it plans on requesting such a process.
4. The Scottish Government will subsequently write to the DPLR Committee and anticipated lead committee, setting out:
  - The rationale for the Scottish Government's decision to seek an expedited draft affirmative procedure;
  - The intended policy effect;

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- The suggested dates on which the instrument is to be laid, requires approval by, is to be made and will come into force; and
  - When the Scottish Government is seeking a response to its request.
5. The Scottish Parliament (through the DPLR Committee and anticipated lead committee's clerks) will respond to the Scottish Government as quickly as possible, endeavouring to respond within the timescale set out in the Scottish Government's written request.
  6. When an expedited timetable is agreed, to aid transparency, on laying the relevant SSI the Scottish Government will ensure that its rationale for the expedited timetable (as previously outlined to the Parliament) is incorporated on the face of the relevant Policy Note.
  7. Where the terms of an expedited timetable are not agreed, Ministers will reflect on any issues raised by the Parliament and then decide on what action should be taken.
  8. This process will be reviewed as deemed necessary, by the Scottish Government and Scottish Parliament.

I look forward to hearing from you.

Yours sincerely,

A handwritten signature in black ink that reads "Stuart". The letters are cursive and fluid, with a long tail on the 't'.

**Stuart McMillan MSP**  
**Convener**