



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Angela Constance MSP
Cabinet Secretary for Justice and Home
Affairs
Via 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

27 October 2023

Dear Cabinet Secretary

Victims, Witnesses, and Justice Reform (Scotland) Bill at Stage 1 – Delegated Powers

At its meeting on 24 October 2023, the Delegated Powers and Law Reform Committee considered the delegated powers contained in the above Bill. It agreed to query two of these powers with you.

Section 55(2): Sexual Offence Court procedure

The [Delegated Powers Memorandum](#) (“the DPM”) states that Section 55(1) applies the procedure of the High Court of Justiciary, as set out in Criminal Procedure (Scotland) Act 1995, to proceedings in the Sexual Offences Court, but this will not apply where such procedure is inconsistent with the other provision contained in the Bill or made using a power in the Bill.

Section 55(2) provides that the Scottish Ministers may, by regulations, make further provision for the procedure which applies to proceedings in the Sexual Offences Court. Before making such regulations, the Scottish Ministers must consult the Lord Justice General. Regulations made under this power may modify any enactment, including the Act that flows from this Bill.

The DPM also states that it is possible that unforeseen inconsistencies or ambiguity may arise from the approach taken in section 55(1). It notes that enabling the Scottish Ministers to make further provision on this will ensure that any inconsistencies or ambiguities can be rectified.

The Committee considered that the power being conferred on the Scottish Ministers in relation to section 55(1) appears broad, given that it could be used to modify any enactment, including the Act flowing from this Bill.



The Scottish Parliament
Pàrlamaid na h-Alba

The Committee therefore asks **whether any consideration has been given to alternative drafting which would limit the use of the power to provisions dealing only with ‘inconsistencies and ambiguities’ rather than making any substantive change to procedure?**

Section 65(1): Pilot of single judge rape trials

Turning to section 65(1), the DPM states that this power enables the Scottish Ministers to make regulations to allow a time-limited pilot of single judge rape and attempted rape trials, which meet specified criteria, to be conducted; the specified criteria and the duration of the pilot will be set out in such regulations. However, before making such regulations, the Scottish Ministers must consult with various parties including, but not limited to, the Lord Justice General, the Lord Advocate and the Scottish Courts and Tribunals Service.

The DPM also states the approach, as set out in the Bill, is designed to provide sufficient detail to the Parliament to allow for meaningful scrutiny and consideration of the principle of the proposal to enable a pilot, whilst allowing for operational detail of the pilot to be set out in regulations.

However, the Committee noted that MSPs may consider the power itself too broad, and that more limitations should be set out on the face of the Bill, such as specified criteria and the time period.

Finally, the Committee questioned whether this power had been drafted in such a way that it could be exercised more than once, and whether this had been the intention of the Scottish Government in its drafting.

The Committee therefore asks:

- i. whether the work required to obtain more detail, which could then be set out on the face of the Bill, could be and should be done during the passage of the Bill; and**
- ii. whether it considers that the power is drafted in such a way that would allow it to be exercised more than once, and if this is the intention of such drafting?**

I would be grateful if you could please email your response to dplr.committee@parliament.scot by **Monday, 20 November 2023**. The Committee will then consider your response at a future meeting and report on the delegated powers in the Bill to the lead committee.

Yours sincerely



The Scottish Parliament
Pàrlamaid na h-Alba

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