



Delegated Powers and Law Reform Committee

George Adam MSP
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Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill

Dear George,

Thank you for your letter of [Tuesday 3 May 2022](#) to the Convener of the Standards, Procedures and Public Appointments Committee, copied to myself as Convener of the Delegated Powers and Law Reform Committee. This was in response to both Committees' Stage 1 reports on the Scottish Local Government Elections (Candidacy Rights of Foreign Nationals) Bill.

The Committee considered your response at its meeting on Tuesday 17 May.

In its correspondence with you at Stage 1, the Committee sought clarification as to why the power in section 1(3) of the Bill to remove a country from the list of countries referred to in the definition of "schedule 6A national" is framed as a discretionary power, whereas the provision relating to the addition of a country to the list requires the Scottish Ministers to make regulations. While welcoming your subsequent [response](#), the Committee recommended in its [report at Stage 1](#) that the Scottish Government should bring forward an amendment to this effect at Stage 2. This would require the Scottish Ministers to remove a country from the list of countries referred to in the definition of "schedule 6A national". The Standards, Procedures and Public Appointments Committee supported this recommendation.

In your letter of 3 May you outlined your reasoning for not lodging an amendment at Stage 2 in line with both Committees' recommendations. Your view was that the Bill does not provide the Scottish Ministers with a discretionary power, and that the Scottish Ministers would be required to exercise the power to remove a country from the list in schedule 6A should a candidacy rights treaty cease to have effect. You nevertheless added that the purpose of the framing of the provision in this way is to provide the Scottish Ministers with "some limited discretion" in how and when to exercise the power.

The Committee also noted in your letter that you considered the importance of ensuring parity with the functions being conferred on UK Ministers in this regard, given the UK-wide application of candidacy rights treaties. You quoted the equivalent provision in the recently passed Elections Act 2022 which you considered is written in “very similar terms” to the Bill:

“The Secretary of State may by regulations remove a country from the list in Schedule 6A where the country ceases to be a party to a relevant treaty to which the United Kingdom is also a party.”

You added that you had asked that your officials to discuss the provision in the Bill with their counterparts in the UK Government and that “the UK Government considers that it would be preferable to maintain consistency between the Scottish and UK Bill provisions, and that converting the power into a duty would take away some flexibility in responding to any potential suspension of a candidacy rights treaty.”

While I was persuaded by the outcome of the recent discussions between the Scottish and UK Governments, **the majority of the Committee¹ considers that the power should be changed to a duty and that there** remains a level of discretion for the Government to fulfil this duty at the time most appropriate even if the Bill was amended to this effect. **The majority of the Committee² therefore calls on the Scottish Government to bring forward an amendment to the power in section 1(3) ahead of Stage 3.**

I am copying this letter to the Convener of the Standards, Procedures and Public Appointments Committee.

Yours sincerely,

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

¹ Craig Hoy MSP, Bill Kidd MSP, Graham Simpson MSP and Paul Sweeney MSP.

² Craig Hoy MSP, Bill Kidd MSP, Graham Simpson MSP and Paul Sweeney MSP.