

# Standards, Procedures and Public Appointments Committee

## 7th Meeting 2022 (Session 6), Thursday 3 March 2022

### Correspondence – Letter from the Delegated Powers and Law Reform Committee concerning its inquiry into the use of the made affirmative procedure during the coronavirus pandemic

#### Background

1. The Convener of the Delegated Powers and Law Reform Committee (DPLRC) has written to the Committee to highlight the [DPLRC's report on the use of the made affirmative procedure during the coronavirus pandemic](#).
2. The report makes a number of recommendations relating to how the Scottish Government brings forward made affirmative instruments using current available powers. It also outlines a set of principles that should underpin the Scottish Government's approach when it is contemplating including provisions for the made affirmative procedure in future legislation.
3. The letter from the Convener of the DPLRC invited the SPPA Committee "to explore options for further debate in cases where the Committee considers that the Scottish Government has not sufficiently justified its choice of the made affirmative procedure". The DPLRC suggests that this could be considered as part of the SPPA Committee's inquiry into shaping parliamentary procedures and practices for the future.

#### Decision

4. The Committee is invited to consider the letter from the Convener of the DPLRC.

SPPA Committee clerks  
February 2022

## Annexe – Letter from the Convener of the Delegated Powers and Law Reform Committee

### Delegated Powers and Law Reform Committee

Martin Whitfield MSP  
Convener  
Standards, Procedures and Public  
Appointments Committee  
*Via email*

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16 February 2022

Dear Martin,

As you may know, the Delegated Powers and Law Reform Committee has held an inquiry into the use of the made affirmative procedure during the coronavirus pandemic. I am delighted to say that the Committee has now [published its report](#).

The report makes a number of recommendations relating to how the Scottish Government brings forward made affirmative instruments using current available powers. It also outlines a set of principles that should underpin the Scottish Government's approach when it is contemplating including provisions for the made affirmative procedure in future legislation.

One particular series of the Committee's recommendations focus on the need for the Scottish Government to provide further justification when it decides to apply the made affirmative procedure to an instrument on the grounds of urgency. The Committee considered that if the Scottish Government has not sufficiently justified its choice of the made affirmative procedure, it reserves the right to seek to raise the matter in the Chamber.

While the report outlines possibly parliamentary processes to highlight any such concerns, there is no obvious current parliamentary process by which Members could debate the issue with sufficient speed.

The Committee goes on to recommend in paragraph 77 that:

“The Committee acknowledges that using these current Chamber options would mainly serve to highlight the Committee's concerns but that there would be limited opportunities for other Members to contribute. The Committee considers that any discussion of this issue should not be confined to contributions from the Convener of the Committee and the Minister. The Committee will therefore write to the Standards, Procedures and Public Appointments (SPPA) Committee to invite it to explore options for further

debate in cases where the Committee considers that the Scottish Government has not sufficiently justified its choice of the made affirmative procedure as part of the SPPA Committee's inquiry into 'shaping parliamentary procedures and practices for the future'."

The Committee appreciates that your inquiry will likely cover a range of issues and you may not wish to broaden out your investigations any further. However, if this could form part of your work, I would be delighted to share the Committee's findings with you in more detail.

Yours sincerely

A handwritten signature in black ink that reads "Stuart". The letters are cursive and fluid, with a prominent 'S' at the beginning.

Stuart McMillan MSP

Convener of the Delegated Powers and Law Reform Committee