



Delegated Powers and Law Reform Committee

Rt Hon Chris Heaton-Harris MP
Secretary of State for Northern Ireland
By email

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Dear Secretary of State

Northern Ireland Troubles (Legacy and Reconciliation) Bill

I'm writing in relation to the consideration by the Scottish Parliament's Delegated Powers and Law Reform Committee of the [Legislative Consent Memorandum](#) ("LCM") for the Northern Ireland Troubles (Legacy and Reconciliation) Bill.

The remit of the Committee, under [rule 6.11.1\(b\) and \(c\)](#) of the Scottish Parliament's Standing Orders, includes considering and reporting on proposed powers to make subordinate legislation in particular bills or other proposed legislation as well as general questions relating to powers to make subordinate legislation.

The Explanatory Notes set out that the UK Government is seeking the Scottish Parliament's legislative consent for all the clauses of the Bill except for clauses 31, 41, 42 and Part 4. However, the Scottish Government states in the LCM that the UK Government now agrees with it that clauses 31 and 42 also require consent. The Scottish Government also states in the LCM that, in its view, legislative consent is not required for clauses 18-22, because they modify section 48(5) of the Scotland Act 1998, which it would be outwith competence for the Scottish Parliament to do.

The Committee considered the delegated powers in the Bill that are exercisable within devolved competence in the Bill at its meeting on 8 November.

Relevant delegated powers

The Committee is interested in the following clauses of the Bill which contain regulation-making powers that appear to be exercisable within devolved competence:

- clauses 52(2) and clause 57(4), which confer powers concurrently on the Scottish Ministers and UK Ministers, and

- clauses 30(1), 31(1) and 33(1) which confer powers on UK Ministers

The Committee notes that there is no requirement in the Bill that the UK Ministers obtain or seek the consent of the Scottish Parliament or Scottish Ministers before exercising the powers in the Bill within the Scottish Parliament's devolved competence. There does not appear to be any commitment in the accompanying documents that UK Ministers will seek such consent. In the absence of a consent requirement, the Scottish Parliament has no ability to scrutinise the decision to exercise these powers in relation to matters that are within its competence.

The Committee's previous position in relation to powers in UK bills conferred on UK Ministers in devolved areas has been as follows:

1. a. The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
2. b. Where such powers are exercised by the Secretary of State 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.
3. c. Powers conferred on the Secretary of State should be subject to a requirement for the Scottish Ministers' consent when exercised within devolved competence.
4. d. As a minimum, powers when exercised by the Secretary of State in devolved areas should be subject to the process set out in the [SI Protocol 2](#) where the power is within the scope of that protocol.

The Committee [wrote](#) to the UK Government on 12 July 2022 regarding the scrutiny of delegated powers in UK Parliament bills conferred on UK Ministers in devolved areas and the application or otherwise of SI Protocol 2. The Secretary of State for Levelling Up, Housing and Communities [responded](#) on 14 August indicating that the "UK Government takes into account a variety of factors when seeking delegated powers in devolved areas." The Secretary of State also indicated that "[w]hether or not to include statutory consent requirements is considered on a case-by-case basis as each policy area has a different legislative context."

The Committee would be grateful for a specific explanation in relation to each of the powers identified above as to:

1. **The reasons why the UK Government considers it appropriate, in the particular policy context of this Bill, that the power has been conferred so that it is exercisable independently by the Secretary of State in relation to devolved matters; and**
2. **The reasons why the UK Government considers it appropriate, in the particular policy context of this Bill, that when the power is exercised independently by the Secretary of State in relation to devolved matters:**
 - (a) **there is no requirement to obtain the consent of the Scottish Ministers, and separately**
 - (b) **there is no requirement to consult the Scottish Ministers.**

I would be grateful if you were able to provide a response to these questions by **24 November**.

I am copying this letter to the Rt Hon Alister Jack MP, Secretary of State for Scotland; Keith Brown MSP, Cabinet Secretary Justice and Veterans, and to the Convener of the Criminal Justice Committee, which is the Scottish Parliament's lead committee for the LCM.

I look forward to hearing from you.

Yours sincerely

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