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Stuart McMillan MSP
Convener of the Delegated Powers and Law
Reform Committee
Scottish Parliament
EDINBURGH
EH99 1SP

30 May 2022

Dear Convener,

SCOTTISH LOCAL GOVERNMENT ELECTIONS (CANDIDACY RIGHTS OF FOREIGN NATIONALS) BILL – STAGE 3

Thank you for your letter of [23 May 2022](#) in relation to the power set out in section 1(3) of the above Bill to remove a country from the list of countries referred to in the definition of “schedule 6A national”. This was in response to my letter of [3 May 2022](#), which set out the Scottish Government’s reasons for not bringing forward, at Stage 2, an amendment to that provision in line with the Committee’s recommendation in its report at Stage 1 (as supported by the Standards, Procedures and Public Appointments Committee).

I note from your letter that the majority of the Committee still considers that the power to remove a country 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 Committee, therefore, calls upon the Scottish Government to bring forward an amendment to that effect ahead of Stage 3.

I am grateful for the further consideration of this issue by the Committee. I agree that the amendment suggested by Committee members would not pose a difficulty in avoiding any adverse impact on a serving councillor or an ongoing election at the time of a treaty being cancelled. This is because the Bill enables the Scottish Ministers to make transitional arrangements in any regulations removing candidacy rights conferred as a result of the Bill. But the power to make transitional or saving provision would not be likely to prove sufficient in the event of a treaty being suspended rather than cancelled.

Indeed, I outlined in my letter of 3 May that there would be a risk that modifying the provision (for example, to replace “may” with “must”) would deprive the Scottish Ministers of necessary discretion in the event of a suspension of treaty rights. In the case of a short-

term suspension of a relevant treaty, it may not be appropriate to automatically require the Scottish Ministers to remove a country from the list whilst the UK Government seeks to negotiate a resolution with the country concerned. Accordingly, as I also highlighted in my letter, the UK Government considers that it would be preferable to maintain consistency between the provisions in this Bill and the equivalent provisions in the UK [Elections Act 2022](#), and that converting the power into a duty would take away some flexibility in responding to any potential suspension of a candidacy rights treaty.

As a result, I regret that I am not persuaded that such a change should be made to the Bill.

I have copied this letter to the Convener of the Standards, Procedures and Public Appointments Committee.

Yours sincerely,

George Adam MSP
Minister for Parliamentary Business