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Scottish Parliament
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23 March 2022

Dear Elena,

Scheduled Review of the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020

As you may be aware, the Social Security Assistance (Investigation of Offences) (Scotland) Regulations 2020 were scrutinised by the Scottish Parliament's Social Security Committee on Thursday 19 December 2019.

These regulations, provided for under Section 75 of the Social Security (Scotland) Act 2018, allow Scottish Ministers to make provision regarding information gathering to support investigations into potential cases of fraudulent activity.

The regulations were subject to full public consultation and the Scottish Government worked with stakeholders including the Information Commissioner's Office and the Investigatory Powers Commissioner's Office throughout the development to ensure that they were proportionate, and that all legal obligations were met in relation to privacy.

While the committee and the wider Parliament recognised the need for these regulations, and overwhelmingly supported their introduction, there were some concerns raised by Committee members at that time in relation to the scope of the powers to seek information from individuals and organisations.

To allay these concerns, the then Cabinet Secretary for Social Security and Older People confirmed that a review would be undertaken to assess the efficacy and proportionality of the investigatory powers after a period of two years in operation.

The powers came into force on 24 January 2020 and that review is now due to take place. However, a few short weeks after the powers came into force, the COVID-19 pandemic began and any investigative activity requiring the use of the powers was immediately severely constrained.

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Consequently, the investigatory powers have been used on very few occasions and I do not think it would be of significant benefit to undertake the scheduled review at this time.

Doing so would lead to the review being based on a very limited evidence base and would risk drawing erroneous conclusions around the efficacy and proportionality of the information gathering powers. As a result, I would not be in a position to either allay the concerns raised by previous Committee members or have enough substantive evidence to address the concerns and ensure the appropriate remedial actions are taken.

I propose to the Committee that the review is postponed until February 2024, whereupon I am confident that sufficient data will be available to inform its conclusions.

I trust this proposed revision to the review date is acceptable to the Committee and I would be happy to provide further information on this, should the Committee wish me to do so.

Best regards,



BEN MACPHERSON

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