

STANDARDS, PROCEDURES AND PUBLIC APPOINTMENTS COMMITTEE

INQUIRY INTO THE PROCEDURES FOR CONSIDERING LEGISLATION

WRITTEN SUBMISSION RECEIVED FROM DELEGATED POWERS AND LAW REFORM COMMITTEE

Further to my letter of 30 January, I am writing to re-emphasise the concerns of the Delegated Powers and Law Reform Committee expressed in that letter about the timescales between stages 2 and 3.

I have been motivated to write to you again in order to reinforce these concerns in light of the Committee's recent experience of the Children and Young People (Scotland) Bill.

This was a Bill that was significantly amended at stage 2, in particular in terms of the delegated powers contained within the Bill. As a consequence of amendments agreed to at stage 2, the Committee was obliged to consider 22 powers to make subordinate legislation which were either new or amended as well as matters pertaining to guidance and directions.

Stage 2 consideration of the Bill concluded on 21 January. Stage 3 of the Bill was initially due to take place on 6 February. This met the Standing Orders requirement that there must be a minimum of 10 days between stages 2 and 3. The supplementary delegated powers memorandum was due on Friday 24 January. This was the day on which the papers for the following week's meeting were due to be issued and given the significance of the changes to the Bill it would not have been possible for the Committee's legal advisers to prepare advice to issue with the papers for that meeting. As such, the Committee would not be able to consider the Bill until the week thereafter and therefore would have only had one meeting in which to consider the Bill.

As you will be aware, the stage 3 was latterly moved to 19 February. This meant that the deadline for amendments was 6 February.

The Committee's practice is to seek to report ahead of the stage 3 deadline for amendments in order to inform Parliament's consideration of the Bill. This also ensures that the Committee can pursue any amendments it might wish to lodge too.

The extra time between stages 2 and 3 gave the Committee a little more time to scrutinise the Bill, but as the Committee had to write to the Scottish Government seeking further information, it meant the Committee was still considering the Bill the day before the stage 3 and as such, the Committee was not in a position to have a final view on the Bill until after the deadline for amendments had passed.

If the minimum time period had been observed, the Committee would not have been able to effectively scrutinise the Bill. As it was, the size and significance of the changes made to the delegated powers provisions made within the Bill meant that the Committee was still in the position of considering the Bill the day before the stage.

Regardless of whether or not the minimum time period had been observed, this experience exemplified the problems associated with the time period in which the supplementary delegated powers memorandum is to be provided. Rule 9.7.10 of standing orders requires the member in charge of the Bill, where it is a Government bill, to lodge a revised or supplementary delegated powers memorandum not later than the end of the second week before the week on which the stage 3 is due to start. This in reality only allows the Committee one meeting before the deadline for amendments in which to scrutinise the Bill. This is simply not enough time in which to consider changes of the significance of those made to the Children and Young People Bill.

Where the Committee is not in a position to report before the stage 3 amendment deadline, this undermines the effectiveness of the Committee and the process more generally as members outwith the Committee are not informed about the Committee's view of the delegated powers provisions within the Bill as amended.

This is a particularly stark example of the issues this Committee encounters between stages 2 and 3, but the concerns I highlight here are far from isolated. It is inevitable that similar issues will arise again and I would welcome the views of your Committee on what can be done to resolve these problems.

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