



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution
Committee
Senedd Cymru
Via email

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25 November 2021

Dear Mr Irranca-Davies

The Scottish Parliament's Delegated Powers and Law Reform Committee has begun a [short inquiry into the use of the made affirmative procedure during the coronavirus pandemic](#). Given these made affirmative instruments are also used in the Senedd, I wanted to both make you aware of the inquiry and invite any thoughts your Committee might have on this work.

As will likely have been the case in Wales, the public health measures used to try and protect the people of Scotland from the full impact of the coronavirus have chiefly been made using secondary legislation. Many of these measures have been brought into law using the made affirmative procedure. This has allowed the Scottish Government to bring changes into force immediately. The instruments are still considered by both this Committee and the relevant lead committee and must be approved by the Parliament within 28 days for the regulations to stay in force.

Prior to the pandemic, the use of the made affirmative procedure for laying Scottish statutory instruments was relatively unusual; less than five per year. Since March 2020, the Parliament has considered its use on well over 100 occasions.

The Committee has recognised the need to use the procedure during the pandemic. It has allowed the Scottish Government to respond quickly to the ever-changing challenges that the coronavirus presented. The Committee has nevertheless said that substantial changes should be brought into force immediately and before any parliamentary scrutiny only when that is essential, and that it should not become standard practice, particularly when time allows the affirmative procedure to be used.

The purpose of the inquiry is to ensure that the made affirmative procedure continues to be used appropriately and only when necessary. The Committee hopes that its work

might be of benefit to the Parliament when it considers the use of the made affirmative procedure in future legislation. We also want to ensure that there is an appropriate balance between flexibility for the Scottish Government in responding to an emergency, whatever that may be, and ensuring appropriate parliamentary scrutiny and oversight.

While the Committee appreciates that the procedures in the Senedd will be slightly different from those at Holyrood, it would be interested to know if your Committee had considered the use of the made affirmative procedure, particularly during the pandemic, and whether you had any views on how we can ensure that parliamentary scrutiny is not diminished by their use.

Given the Committee is keen to report in time for the February recess, we would be grateful for any views you might have by Wednesday 22 December 2021

Yours sincerely

A handwritten signature in black ink that reads "Stuart". The letters are cursive and fluid, with a long horizontal stroke at the end of the word.

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