



Delegated Powers and Law Reform Committee

Maureen Watt MSP
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Burial and Cremation (Scotland) Bill

Dear Maureen,

At its meeting on 15 March the Committee considered the delegated powers in the Burial and Cremation (Scotland) Bill as amended at Stage 2.

The Committee welcomed the changes to the Bill in response to the Committee's earlier comments and as a result the Committee was content with most of the new or substantially revised delegated powers.

Thank you for taking on board the Committee's comments at Stage 1, by clarifying that the power in section 66 will enable the Scottish Ministers to make regulations for, or in connection with, a licensing scheme for funeral directors' businesses rather than premises.

Notwithstanding this clarification the Committee continues to have concerns about the power in section 66, as expressed at Stage 1.

The Committee considers that licensing regimes ought, as a matter of principle, to be set out substantially in primary legislation rather than delegated entirely to regulations. The Committee accepts that some matters of technical or administrative detail relating to such schemes could appropriately be set out in regulations, however the Committee is of the view that the delegation of power to create an

entirely new licensing scheme in subordinate legislation does not strike an acceptable balance between primary and secondary legislation.

The Committee is concerned that the creation of a licensing scheme for funeral directors' businesses could have a significant impact on individuals operating as funeral directors however it is not possible for Parliament to assess that impact as part of its scrutiny of the Bill, as the creation of the licensing scheme is delegated to regulations.

Given the potential impact that the scheme could have on individuals, the Committee continues to consider that matters relating to the licensing of funeral directors' businesses should be set out more fully on the face of the Bill.

In the event that this is not possible due to time constraints, the Committee recommends that an enhanced form of affirmative procedure should apply to the power when it comes to be exercised. In order to enable the Parliament to properly scrutinise and influence the development of the proposals, the Committee would welcome an enhanced form of affirmative procedure which includes requirements for:

- i. consultation on draft regulations;
- ii. consultation responses to be had regard to and the draft regulations modified as appropriate; and
- iii. publication of a summary of the consultation responses and any changes which have been made to the draft regulations, together with the reasons for making those changes, prior to final draft regulations being laid before the Parliament.

Remedial orders made under the Convention Rights (Compliance) (Scotland) Act 2001 are subject to such a procedure, and it is suggested that an analogous approach might be appropriate here given the significance of this power and the Committee's concerns as outlined above.

The Committee encourages the Scottish Government to bring forward an appropriate amendment at Stage 3 to include an enhanced form of affirmative procedure for the power in section 66, in similar terms as suggested above. In the event that an amendment is not lodged by the Scottish Government, the Committee has agreed that I should lodge an amendment on its behalf, to enable Parliament to discuss this matter further at Stage 3.

I would be very grateful for a reply to this letter by noon Wednesday 16 March.

Yours sincerely,



Nigel Don MSP
Convener