Scotland: inquiry on framework legislation and Henry VIII powers

General Features



18 November 2024

The CIOT, LITRG and the ATT submitted a joint response to the inquiry into framework legislation and Henry VIII powers published by the Delegated Powers and Law Reform Committee of the Scottish Parliament.

The committee launched the inquiry with a view to finding out more about how framework bills affect parliamentary scrutiny and stakeholders engaging with the Scottish Parliament on legislation. It also wished to hear stakeholders' thoughts on how Henry VIII powers are used. The inquiry can be found on the Scottish Parliament's website at: tinyurl.com/4w87y62j.

Framework legislation sets out principles for a policy but does not provide substantial detail on the face of the bill as to how that policy will be given practical effect. Instead, it provides broad powers to fill in the detail at a later point, often by ministers through secondary legislation. Henry VIII powers allow ministers to amend acts of parliament by secondary legislation. The joint CIOT, LITRG and ATT response

focuses on tax legislation.

We state our view that tax law should be set out in primary legislation, particularly where it relates to the exercise of powers setting out what is subject to tax and imposing obligations or burdens on citizens. Similarly, changes to that primary legislation should be made by primary legislation. Secondary legislation should ideally be used only for administrative matters. We do not think the use of Henry VIII powers is appropriate in respect of tax law.

Questions have been raised as to why this should be the case, and why the current process of using Scottish Statutory Instruments is not sufficient for changing tax law. In our response, we explain that it is difficult to scrutinise framework legislation, because by its very nature, the full import of measures that can result from it are unknown at the time given over to its scrutiny.

In addition, there are significant challenges in relation to the accompanying secondary legislation. This is because a Scottish Statutory Instrument, once laid, has to be adopted in its entirety. It cannot be amended and must stand or fall as drafted.

We note the tension between introducing a tax change quickly and ensuring adequate scrutiny, so that the legislation is effective. While Henry VIII powers offer the ability to make changes quickly, they do not offer the space for consultation and scrutiny that tax legislation, which can often be complex, requires.

We use our response to set out why we think it would be helpful if there was an annual finance or tax bill process in Scotland. In particular, we think this would offer an appropriate and timely opportunity to make changes to tax legislation, while ensuring the need for robust scrutiny is met. This would mean there is no need to wait for a parliamentary slot and would allow inequities to be alleviated more quickly. This would help to ensure the tax system is viewed as fair, building trust in the tax system. Having to await the next piece of primary tax legislation, as is currently the case, means a lack of certainty for taxpayers, stakeholders and policymakers as to when necessary changes are likely to be made.

The full joint CIOT, LITRG and ATT submission is available here: www.tax.org.uk/ref1394.

Joanne Walker *jwalker@litrg.org.uk*