



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Michael Russell MSP
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13 March 2018

Dear Michael

At its meeting today the Committee gave further consideration to the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill.

Specifically the Committee considered your letter to the Committee of 6 March and the amendments lodged at Stage 2 insofar as they related to matters raised by this Committee in its letter to the Presiding Officer of 7 March.

There are two outstanding issues on which the Committee would welcome your further consideration.

Section 7(1) of the Bill prevents a challenge to retained (devolved) EU law after exit day on the ground that the EU instrument was "invalid" before that date. Section 7(2)(b) and (4) of the Bill allows Ministers to make regulations to dis-apply that rule for particular situations.

In your letter to the Committee of 6 March you offered the Committee a clear explanation of when you might seek to dis-apply that rule. While the Committee found that explanation helpful, the power to dis-apply the effect of section 7(1) is not constrained on the face of the Bill to the circumstances you describe. The Committee would welcome you giving further consideration to amending the Bill so as to constrain the exercise of the power to the circumstances you describe in your letter.

The Committee also previously expressed concern about the scrutiny procedure to attach to regulations under section 7(2)(b). The Committee therefore welcomes amendments 108 and 109, which respond to these concerns.

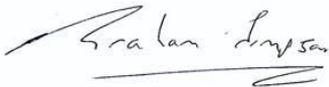
The other outstanding matter relates to section 19 of the Bill. In the Committee's report on the European Union (Withdrawal) Bill, the Committee expressed concern about the scrutiny procedure attached to regulations under schedule 4 of that Bill. Section 19 of this Bill replicates that approach.

In evidence to the Committee you indicated your willingness to listen to suggestions to amend the power. The Committee welcomes this willingness and invites you to consider further the scrutiny procedure to attach to regulations under section 19(1). In particular, the Committee would welcome amendments that apply the affirmative procedure to regulations that propose to materially and significantly increase fees and charges.

The Committee is of the view that the scrutiny applied to regulations should be proportionate. Therefore, the Committee considers that regulations that provide for less significant increases in fees and charges are more appropriately subject to the negative procedure.

The Committee will be meeting on Thursday to consider the Bill after Stage 2. Doing so allows the Committee to consider the Bill ahead of the Stage 3 deadline for lodging amendments. The Committee would welcome a response from you to these points by the close of business tomorrow in order to enable the Committee to consider these matters further at its meeting on Thursday.

Yours,

A handwritten signature in black ink, appearing to read "Graham Lawson". The signature is written in a cursive style and is positioned above a horizontal line.

Convener of the Delegated Powers and Law Reform Committee