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Committee
Scottish Parliament
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Dear Convener,

UK WITHDRAWAL FROM THE EUROPEAN UNION (LEGAL CONTINUITY) (SCOTLAND) BILL

Thank you for your letter of 13 March, responding to mine of 6 March, on the Continuity Bill.

You raise two issues:

- the scope of the power in section 7 of the Bill for Ministers to provide for or describe the kinds of challenges that may be made after exit day to retained (devolved) EU law on the grounds that the underlying EU instrument was invalid.
- the procedure for imposing or increasing fees and charges, in particular which exercises of such powers should be subject to affirmative procedures

Challenges to the validity of retained (devolved) EU law

I am pleased the Committee found my amendments 108 and 109 helpful; these were agreed at Stage 2 of the Bill yesterday.

You ask whether the Government would agree to put on the face of the Bill the circumstances set out in my letter in which the power might be used. I would prefer not to make such an amendment. The purpose of the power is to provide exceptions to the provision in the Bill which removes the right to challenge the validity of an EU instrument. The exact circumstances in which the issues outlined in my letter may arise cannot be easily predicted. I do not think it would be prudent to constrain the type of disapplication of section 7(1) that might be covered beyond what we have already set out in enabling a challenge to

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be brought against a Scottish public authority instead of an EU institution. Flexibility is needed to ensure that any relevant rights are protected.

The equivalent provision in the UK Bill has no such specific statutory limitation. As I said in my letter, our current expectation is that we will be looking to make similar provision for Scotland as is made by UK Ministers and they have also emphasised the precautionary nature of the power.

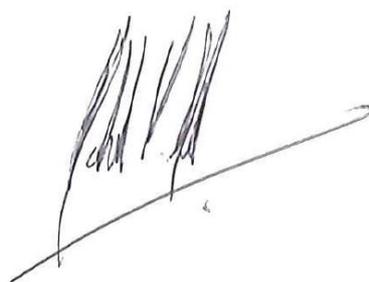
Fees and charges

I note your proposal that the affirmative procedure should apply to regulations that propose to “materially and significantly” increase fees and charges.

The model for procedures for fees and charges in the Bill is the normal pattern for such powers: initial use being subject to affirmative procedures and subsequent adjustments being subject to negative procedures. The Financial Memorandum on the Bill sets out (at paragraphs 20 – 22) the guidance for calculating fees and charges. In particular it notes that bodies sponsored by the Scottish Government comply with guidance on fees and charges set out in the Scottish Public Finance Manual (SPFM). It also notes that the standard approach to setting charges for public services (including services supplied by one public sector organisation to another) is full cost recovery, which normally means recovering 3.5% return on capital.

I have considered the procedures again in light of the Committee’s representations, also bearing in mind the Committee’s point about proportionality. As the fees and charges regime set out in the Bill builds on standard forms, and fees and charges levied will be calculated in the standard way in accordance with the approach set out above, the Government’s view is that we would not support changes to sections 19 – 21.

However, these sections of the Bill have yet to be debated at Stage 2, and I will, of course, reflect on any views on these matters expressed during that consideration.



MICHAEL RUSSELL

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