January 2019

Joan McAlpine MSP
Convener
Culture, Tourism, Europe and External Affairs Committee
Scottish Parliament
Edinburgh
EH99 1SP

THE CREATIVE EUROPE PROGRAMME AND EUROPE FOR CITIZENS PROGRAMME REVOCATION (EU EXIT) REGULATIONS 2019 - EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September setting out the Scottish Government’s views on EU withdrawal. That letter also said that we must respond to the UK Government’s preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach (Annex A) a notification which sets out the details of the SI which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this SI. Please note, we are yet to have sight of the final SI which is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final SI is laid and advise you as to whether it is in keeping with the terms of this notification.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

I look forward to hearing from you within 28 days from the date of this letter.

Kind regards

FIONA HYSLOP

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See www.lobbying.scot

St Andrew’s House, Regent Road, Edinburgh EH1 3DG
www.gov.scot
NOTIFICATION TO THE SCOTTISH PARLIAMENT

ANNEX A

Name of the Statutory Instrument (SI)

The Creative Europe Programme and Europe for Citizens Programme Revocation (EU Exit) Regulations 2019

Summary of law that the proposals amend and aims of the proposals

The proposed SI, brought under the European Union (Withdrawal) Act 2018, will revoke the EU regulations establishing the funding frameworks for the stated direct bid funds. It will create a UK wide spending power that would allow it to, in the event of a no deal scenario, fund UK organisations who have been successful in bidding for funding awarded through the programmes, thus delivering the UK Government Guarantee in respect of these programmes.

Why the change is considered necessary

The Scottish Government’s approach to facilitating delivery of UKG’s Guarantee in areas which cover devolved competence acknowledges that different approaches may be appropriate for different funds. It is the Scottish Government’s view that in relation to the programmes covered by this SI a UK wide approach is most appropriate to ensure continuity for programme participants and delivery of what is a UK Government policy.

Individual UK departments are developing separate plans for the funds for which they are responsible. In relation to these programmes there is no power under current legislation to deliver the guarantee in England and secondary legislation is required to create a power.

Were it to transpire that a more direct Scottish approach was necessary this could be facilitated through existing legislation in Scotland. Section 23 of the National Heritage (Scotland) Act 1985 would allow payments to be made and should Scottish bodies be required to act as the delivery agent for funds under the guarantee in Scotland, this could be done under section 39 of the Public Services Reform (Scotland) Act 2010. It is Ministers’ view however that it is more appropriate for the UK Government to administer its own policy in this instance.

The Creative Europe Programme is the primary area of interest in relation to Scottish participation, although measures to ensure continuity of functionality across both programmes is equally essential. Participation in Europe for Citizens is smaller by comparison. Current analysis for the Creative Europe Programme estimates that at point of exit 12 Scottish projects will be active involving awards of around £118k. Analysis for the Europe for Citizens Programme estimates 2 active projects with awards of around £50k.
Scottish Government categorisation of significance of proposals

Category A – does not involve any changes in policy and seeks to ensure that funding from the UK Government Guarantee can be delivered.

Impact on devolved areas

Culture is devolved. It is necessary therefore to ensure that delivery of the UK Government Guarantee is done in line with devolved competence.

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislating

Scottish Ministers are proposing to consent to Scotland being included in this Statutory Instrument as this will enable the delivery of funds to Scottish organisations under the UK Government Guarantee in the event of a No Deal scenario.

Intended laying date of instruments likely to arise

A negative statutory instrument (“the SI”) will be laid for sifting in the UK parliament with a proposed date of 4 February 2019.

Any significant financial implications

This SI enables delivery of the UK Government Guarantee to avoid the risk of any financial implications for the recipients of funding under the relevant EU programmes as a result of a No Deal scenario.

Summary of EU Law being repealed


(c) Council Regulation (EU) No 390/2014 cf 14 April 2014 establishing the 'Europe for Citizens' programme for the period 2014-2020; and