



The Scottish Parliament  
Pàrlamaid na h-Alba

## Delegated Powers and Law Reform Committee

Michael Russell MSP  
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Business and Constitutional Relations

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7 January 2020

### European Union (Withdrawal Agreement) Bill

Dear Cabinet Secretary,

At its meeting earlier today the Committee considered the delegated powers in the European Union (Withdrawal Agreement) Bill. Given the Bill was introduced into the House of Commons on Thursday 19 December and the Scottish Parliament is expected to debate the legislative consent memorandum (LCM) in the Chamber tomorrow, the Committee has not had the opportunity to fully scrutinise the powers conferred by the Bill in devolved areas.

Nevertheless, the Committee agreed that it should write to both yourself and the Rt Hon Stephen Barclay MP, Secretary of State for Exiting the European Union, to highlight certain key issues, including some which it has raised in previous reports on LCMs relating to EU Exit bills. Specifically:

- The Committee emphasises that as a matter of principle the Scottish Parliament should have the opportunity to scrutinise the exercise of legislative powers within devolved competence.
- The Committee notes the very broad nature of many of the delegated powers in the Bill. Clauses 12 to 14 (citizens' rights), 18 and 19 (separation issues) and 21 and 22 (Ireland / Northern Ireland protocol) are examples of this. The Committee considers that the powers should be as tightly defined as possible and that there must be opportunities for effective scrutiny of the exercise of such delegated powers.

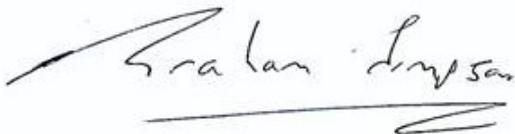
- The new SI protocol to be agreed between the Scottish Parliament and the Scottish Government for the scrutiny of the Scottish Ministers' consent to delegated powers exercised by UK Ministers in devolved areas arising from EU withdrawal should cover proposals for instruments made by UK Ministers under the new and amended powers in the Bill.

In addition, the Committee also agreed to ask you a number of questions on the anticipated operation of the Bill:

- Many of the powers in the Bill may be exercised within devolved competence by UK or Scottish Ministers acting alone or jointly. The Committee seeks the Scottish Government's views on when it is likely to be appropriate for the powers to be exercised by UK Ministers.
- The Committee would welcome clarity from the Scottish Government on the programming of the exercise of the powers as soon as that is available. For example, the number of instruments likely to be made under each power; the subject areas that will be impacted; whether provision will be made by UK Ministers alone, Scottish Ministers alone, or jointly; when, during each phase of the withdrawal process (i.e. before exit day, during the implementation period and afterwards), is it anticipated the powers will be exercised.
- Whether concurrent powers will be sought in relation to powers conferred solely on UK Ministers that are exercisable in devolved areas, or at least a statutory consent requirement.
- Instruments made under a number of the new powers in the Bill are subject to the affirmative procedure when amending primary legislation and retained direct principal EU legislation and are otherwise subject to the negative procedure. The Committee seeks the Scottish Government's views on whether the broad nature of a number of the powers in the Bill, which permit provision to be made in a number of substantive policy areas, might alone be considered sufficient to justify use of the affirmative procedure, regardless of whether the instrument amends primary legislation.

I would be grateful for a response to these questions by **Friday 7 February**.

Yours sincerely,

A handwritten signature in black ink that reads "Graham Simpson". The signature is written in a cursive style and is positioned above a horizontal line.

Graham Simpson  
Convener of the Delegated Powers and Law Reform Committee