



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Rt Hon Stephen Barclay MP
Secretary of State for Exiting the
European Union

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7 January 2020

European Union (Withdrawal Agreement) Bill

Dear Secretary of State,

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 Michael Russell MSP, Cabinet Secretary for Government Business and Constitutional Relations, to highlight certain key issues, including some which it has raised in previous reports on LCMs relating to EU Exit bills. Specifically:

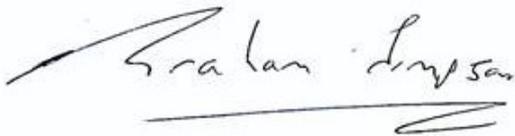
- The Committee emphasises that as a matter of principle the Scottish Parliament should have the opportunity to scrutinise the exercise of legislative powers within devolved competence. The UK Government should seek the consent of Scottish Ministers to the exercise of the delegated powers in the Bill in devolved areas.
- 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.

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 UK 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 UK 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 requirement for statutory consent.
- 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 asks the UK Government to justify this choice of procedure, particularly given the broad nature of a number of the powers, and that provision is capable of being made in a number of substantive policy areas in subordinate legislation, whether or not amending other subordinate 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 with a long horizontal flourish underneath.

Graham Simpson
Convener of the Delegated Powers and Law Reform Committee