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Der Graham,

Thank you for your letter of 7 January, regarding the views of the Delegated Powers and Law Reform Committee in relation to the EU Withdrawal Agreement Bill. I am responding on behalf of the Secretary of State.

We were disappointed that the Scottish Government did not recommend legislative consent to the Bill on the basis of their objective to a reserved policy matter, namely the Withdrawal Agreement itself. In line with the Sewel Convention and associated procedures and practices, we were seeking consent for the relevant provisions of the Bill, i.e. where there are specific provisions which legislate in areas of devolved competence or modify it.

We were not seeking consent to the Withdrawal Agreement itself. The approval of the Withdrawal Agreement was a matter for the UK Parliament. The consideration by the Scottish Government of whether to recommend consent to the Bill did not turn on the clauses for which legislative consent has been sought.

The legislative consent process should not be used to attempt to frustrate UK Government policy on reserved matters. This goes against the spirit and the letter of the devolution settlement. It is particularly disappointing given the good engagement that existed between UK and Scottish Government officials during preparations of the draft bill.

We are disappointed that the Scottish Parliament did not consent to the elements of this Bill on which consent was sought, and that a vote on consent took place before the Bill had even completed Committee stage in the Commons. We had hoped that the Scottish Parliament would be able to consider the Bill on the basis of the provisions we have sought consent for, including the important powers granted to the Scottish Government to protect citizens' rights.

I am setting out below the answers to your Committee's questions that refer to concurrent powers.

We have shared numerous versions of the clauses the Scottish Government refer to in our engagements on the Bill since November 2018. These provisions are so called 'concurrent' powers, which allow both the UK Government and Scottish Ministers to make changes in devolved areas, principally for administrative efficiency where regulations need to be made across the UK. Concurrent powers enable the most suitable legislative body to introduce laws in specific policy areas. In this way they are in line with the subsidiarity principle – sometimes it makes sense for the UK to introduce legislation across the whole country, including in devolved areas.

We have regularly used concurrent powers in conjunction with devolved administrations to ensure the statute book continues to function effectively. For example, we have agreed more than 150 areas of secondary legislation, where the UK can legislate on devolved matters, in partnership with the Scottish Government ahead of EU Exit.

Scottish Ministers have praised the success of this work as evidence that concurrent powers can continue to operate effectively. We fully support this collaborative, productive approach. This is an established model, which has precedent in the European Communities Act 1972 and the EU (Withdrawal) Act 2018.

The UK Government has committed that we will not normally use these powers in areas of devolved competence without the consent of the devolved administrations.

I hope this is helpful in clarifying the position of the UK Government.



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