



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Roseanna Cunningham MSP,
Cabinet Secretary for Environment,
Climate Change and Land Reform

Room T1.01
Chamber Office
EDINBURGH
EH99 1SP

Direct Tel: 0131-348-5212
(RNID Typetalk calls welcome)
dplr.committee@parliament.scot

2 June 2020

Environment Bill

Dear Cabinet Secretary

At its meeting earlier today, the Delegated Powers and Law Reform Committee considered the Legislative Consent Memorandum for the UK Environment Bill (“the Bill”). Given the Committee’s remit, it focused on the powers in the Bill to make subordinate legislation.

We note that the Environment, Climate Change and Land Reform Committee has already written to you with questions on the Bill. We will not repeat these here but look forward to seeing your response. The Delegated Powers and Law Reform Committee would be grateful if you could answer the following additional questions to aid its consideration.

Firstly, in Schedules 4, 5, 6 and 7 is it the intention in each case that the Part 2 enforcement regulations must be made by the person who made the relevant Part 1 regulations? Or is the intention, for example, that a particular set of Part 1 regulations could be made by the Secretary of State and the related Part 2 enforcement regulations could be made by the Scottish Ministers?

1. Could you clarify what the Scottish Government understands the intention to be?

Clause 49(3)(b) of the Bill specifies that regulations under Schedule 6 made by Scottish Ministers may only contain provision that would be within the legislative competence of the Scottish Parliament. The same specification is made in clause 50 in relation to regulations under Schedule 7, and in relation to regulations made under

Schedule 19. However, this is not specified in relation to regulations under Schedules 4 and 5 (on producer responsibility).

2. Could you explain why a legislative competence limitation is specified in relation to regulations under Schedules 6, 7 and 19 but not in relation to regulations under Schedules 4 and 5?

Clauses 81(1) and 84(1) of the Bill concern the Solway Tweed River Basin District ("RBD"). Clause 84(1) allows functions in a devolved area to be reallocated between the Scottish and UK Ministers by subordinate legislation which is subject to the negative procedure and laid in the UK Parliament alone. While the Scottish Ministers' consent is required, the Scottish Parliament's consent is not. There would therefore be no formal means for the proposals for the new division of functions to be scrutinised by the Scottish Parliament. Similarly, clause 81(1) allows the UK Secretary of State to make regulations amending specified legislation concerning groundwater in the Scottish part of the RBD.

3. Why is it considered appropriate that these powers are conferred on the Secretary of State with Scottish Ministers' consent, but with no corresponding power of the Scottish Ministers to make regulations within devolved competence?

4. What is the difficulty with the current position that clause 84(1) is intended to address?

Clause 125 introduces Schedule 19 paragraph 1 which creates a power to amend the UK REACH Regulation. This is a very wide-ranging power to amend the regime by secondary legislation.

5. Why is it considered appropriate for this power to be conferred on the Secretary of State with Scottish Ministers' consent, but with no corresponding power of the Scottish Ministers to make regulations within devolved competence?

The Committee would welcome a response to these questions by **12 noon on Thursday 4 June**. I appreciate this is a tight turnaround time but this is necessitated by the tight timetable to which the LCM process is running.

Yours sincerely,



Bill Bowman
Convener of the Delegated Powers and Law Reform Committee