

T: 0300 244 4000
E: scottish.ministers@gov.scot

Graham Simpson
Convener
Delegated Powers and Law Reform Committee
The Scottish Parliament
Room T1.01
Chamber Office
Edinburgh
EH99 1SP

5 February 2020

Dear Graham

Firstly, I would like to place on record my thanks to the Committee and relevant Scottish Parliamentary officials for all the efforts made to allow Holyrood consideration of the then European Union (Withdrawal Agreement) Bill to take place at the normal point in the legislative cycle, that is to say, before the last amending stage in the first House in the UK Parliament. I know it was no small feat to reflect and accommodate the expedited timetable of the Bill at Westminster, particularly over the Christmas period, and I am grateful for it.

While I addressed the key issues raised by the Committee during the parliamentary debate held on 8 January, please see my below confirmation of my response to those points.

In answer to the first three points raised by the Committee, the Scottish Government of course believes that the Scottish Parliament should be afforded the opportunity to effectively scrutinise the exercise of legislative powers within devolved competence. That is why the Parliament and the Scottish Government are in discussion on a new protocol for scrutiny of Scottish Ministers' consent to UK SIs in devolved areas arising from EU withdrawal, building on the existing protocol. Those discussions have been positive and I hope that the new protocol will be in place soon.

As you are aware, it is our intention that the new protocol should cover all instruments proposed to be made by UK Ministers arising from EU exit and relating to devolved matters. This would include instruments under the new European Union (Withdrawal Agreement) Act 2020 (the "2020 Act"). I wrote to the then Minister for the Cabinet Office, David Lidington, last year setting out our expectations for the new protocol and discussions with the UK Government have taken place at official level. While those discussions were interrupted by the General Election, we are continuing to press for progress and we will keep the Parliament informed of developments.

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

With regard to when powers under the 2020 Act, that are within devolved competence, might be appropriately exercised by UK Ministers, I can advise the Committee that the Scottish Government will engage with the Parliament on a process to determine the exercise of these powers. Again, regardless of which process is followed, the Parliament should have the opportunity to exercise effective scrutiny. As already noted, this will be afforded by the revised protocol with the Scottish Parliament where these wouldn't otherwise be considered by the Parliament.

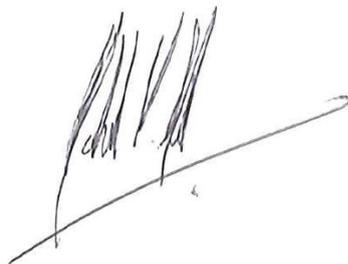
My officials will continue to press their UK counterparts for detailed information about the programme of UK SIs under the 2020 Act, and indeed other EU exit-related legislation. The Minister for Parliamentary Business and Veterans is already providing individual Committees with regular information about the upcoming programme of subordinate legislation activity for that Committee. When we have more information from the UK Government about proposed instruments under the 2020 Act and other Brexit legislation, we will ensure that is reflected in the regular updates which Committees receive.

As the Committee notes, the 2020 Act gives UK Ministers powers to make regulations in devolved areas, concurrent with Scottish Ministers' powers. The UK Government has given undertakings that they will not normally use the powers in areas of devolved competence without the agreement of the relevant devolved authority but they were unwilling to put this assurance formally into the legislation.

While this is similar to the approach in the EU (Withdrawal) Act 2018, and we have operated those powers in cooperation with the Parliament, the Scottish Government is of the firm view that there should have been a statutory requirement for consent in the 2020 Act, especially as the undertakings given are non-binding and apply only to the current UK administration.

The Scottish Government notes the position of the Committee on the use of the affirmative procedure and agrees that effective scrutiny of instruments is required regardless of the formal provision made by the UK Parliament. I hope the Committee will be assured that the revised protocol being discussed will enable the Parliament to have effective and proportionate levels of scrutiny for the legislation brought forward under the 2020 Act.

I am copying this letter to the Chancellor of the Duchy of Lancaster.



Michael Russell MSP

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

The Scottish Parliament, Edinburgh EH99 1SP
www.gov.scot



INVESTORS
IN PEOPLE

Accredited
Until 2020

