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Convener
Delegated Powers and Law Reform Committee
Room T1.01
Chamber Office
EDINBURGH
EH99 1SP

14 January 2020

Dear Graham,

Scottish National Investment Bank Bill

Thank you for your letter of 14 January 2020. I have set out a response to the points you have raised below on behalf of the Scottish Government.

The Government considers the arrangements set out in section 14A of the Bill to be appropriate. As the Committee will be aware, the direction-setting power in section 14A refers to the Bank's exercise of its functions and it is within, and for the purposes of, that limited context that "fair work" will be defined.

Section 14A requires that the fair work direction be consulted on before being made, and for it to be published once it has been made. If the Parliament, or any parliamentary committee, wishes to scrutinise the direction (or indeed the Government's proposals for the direction) there will be no impediment to doing so. The Parliament and its committees are of course entitled to call Government Ministers and officials before them to account for anything the Scottish Government does.

The Government does not think that it would be beneficial for the fair work definition to be set by regulations. Any definition of fair work set out in regulations would be partial and incomplete because of the need to work within the limits of legislative competence.

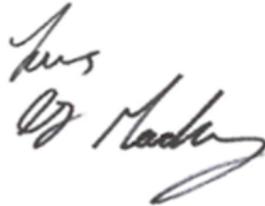
Further, we would suggest that regulations are an unsuitable means by which to attempt to define fair work even for those areas where it is possible to do so. Regulations have to be framed in legally precise terms and are subject to constraints in how they can be formatted. In the Government's view, it would be unhelpful to have "fair work" defined in the legalistic way that it would need to be were the definition put in regulations rather than in a direction.

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Using a direction to set the definition leaves space to include amplifications of the definition, such as worked examples, which it would be inappropriate to attempt to put into regulations. The Government would again refer the committee to the website for its [fair work action plan](#) to see all the supporting material that, in the Government's view, ought to surround an explanation of what constitutes fair work in different contexts.

While a definition in regulations could be supplemented by extrinsic material which develops it; that material would not, as a matter of law, form part of the definition. In the Government's view it is better for all of the material forming, and supporting, the definition to sit within the direction, as the duty on the Bank to comply applies to the whole of the direction.



DEREK MACKAY

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