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Andrew Proudfoot
Clerk to the Delegated Powers and Law Reform Committee
Scottish Parliament

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Re: Scottish National Investment Bank Bill at Stage 2

Dear Andrew,

Many thanks for your letter of 7 January regarding the Fair Work direction-making power introduced to the Scottish National Investment Bank Bill at Stage 2. The Government does not consider that section 14A of the Bill confers a particularly broad power.

Powers of ministerial direction are common in statutes that establish public bodies. Those powers are frequently open-ended as to the matters that a direction can address (unlike the power that section 14A confers). The Parliament recently approved just such an open-ended power of direction in the South of Scotland Enterprise Act. The Committee stated that it was content in principle with that power in its Stage 2 report on the Bill for that Act (Delegated Powers and Law Reform Committee 29th report, 2019, South of Scotland Enterprise Bill: as amended at Stage 2 (SPP 545)).

The power that section 14A confers is limited to giving the Scottish National Investment Bank directions about Fair Work. As Willie Coffey explained when moving the amendment which, with the unanimous support of the Economy, Energy and Fair Work Committee, inserted section 14A: “the intention is to ensure consistency with the implementation of Fair Work across the public sector landscape” (SP OR EEFW 19 November 2019 col 63). Setting further constraints on the exercise of the power conferred by section 14A, when the exercise of the other direction-making powers available to the Scottish Ministers to advance the Fair Work agenda across the public sector are not subject to the same constraints, may result in its failing to deliver the intended consistency across the public sector landscape.

In his remarks at Stage 2, the Cabinet Secretary for Finance, Economy and Fair Work recognised the significant contribution that the Bank can make to advancing Fair Work. He also stressed the need for flexibility in how the Bank uses its role as an investor to support the embedding of fair work practices across Scottish workplaces.

The Government published its Fair Work Action Plan in February 2019. The committee will find extensive information about how the Government, with the advice of the independent Fair Work Convention, defines fair work on the action plan’s website:

<https://economicactionplan.mygov.scot/fair-work/>.

Best wishes,

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