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Michelle Ballantyne MSP
Convener, Economy, Energy and
Fair Work Committee
The Scottish Parliament

3 July 2020

By e-mail

Dear Michelle,

UK CORPORATE INSOLVENCY AND GOVERNANCE ACT 2020

You may recall the Committee considered the Legislative Consent Motion for the then Bill at its meeting on 9th June. The Act received Royal Assent on 25th June.

I am writing now to let you know that changes to the parts of the bill covered by the LCM were made after your consideration, largely to address concerns raised at Westminster by the Delegated Powers and Regulatory Reform Committee (their report is available here:

<https://committees.parliament.uk/publications/1423/documents/13008/default/>).

Changes were made at Report Stage in the House of Lords to clause 43 of the Bill as introduced (section 45 in the Act as passed). Section 45 modifies the procedure applicable to two powers to make regulations which the Bill confers on the Scottish Ministers in relation to the new moratorium and its application to Registered Social Landlords. As introduced, the relevant powers, which will ordinarily be subject to the affirmative procedure, could have been exercised using the negative procedure for the period of 6 months beginning with the date of Royal Assent. The clause was amended at Report Stage however so that the relevant powers can instead be exercised using the 'made' affirmative procedure for 6 months following Royal Assent, rather than the negative procedure. The 'made' affirmative procedure requires regulations to be laid before the Scottish Parliament as soon as reasonably practicable after being made, and the regulations will cease to have effect 40 days later, unless during that period they are approved by a resolution of the Parliament. The position remains that following the expiry of the initial 6-month period, the powers will be exercisable under the usual draft affirmative procedure.

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Changes were also made at Report Stage in the House of Lords to the powers conferred on the Scottish Ministers under Schedule 14 to the Bill. Schedule 14 makes provision in relation to meetings of companies and other bodies, including Scottish Charitable Incorporated Organisations (SCIOs), and it confers various regulation-making powers on the Scottish Ministers in connection with meetings of SCIOs. The powers conferred by paragraphs 2(2)(b), 4 and 6 of Schedule 14, which on introduction of the Bill were subject to the negative procedure, were amended at Report Stage in the House of Lords so that the powers are now subject to either the made affirmative procedure or the draft affirmative procedure.

These changes were made in order to maintain consistency between the levels of parliamentary scrutiny for the equivalent sections of the Act that apply to powers covering England and Wales. The changes were made without prior consultation with us, and I have expressed my disappointment to the relevant UK Minister both about this, and about the fact that it is surely for the Scottish Parliament to determine what level of scrutiny is appropriate for secondary legislation that is to come before it. That said, an increased level of scrutiny by the Scottish Parliament is not something that should overly concern us.



JAMIE HEPBURN

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