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Scottish Parliament
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By email: DPLR.Committee@parliament.scot

30 September 2025

Dear Convener,

Thank you for your letter of 18 September 2025, to Cabinet Secretary for Transport, regarding the Committee's consideration of the Legislative Consent Memorandum ("LCM") for the Sustainable Aviation Fuel Bill.

Although the Cabinet Secretary for Transport formally lodged the LCM, I am responding on behalf of the Scottish Government as sustainable aviation falls within my Ministerial portfolio. I will therefore be leading on the LCM, including engagement with the Scottish Parliament as it progresses.

The Committee has highlighted two clauses – Clause 1(6) and Clause 10(1) – which enable the Secretary of State to make regulations that could be exercised in relation to devolved matters. Neither of the clauses require the Secretary of State to obtain the consent of the Scottish Ministers before exercising those powers in relation to devolved matters, although Clause 10(1) requires the Secretary of State to consult with the Scottish Ministers if regulations contain provision that would be within the legislative competence of the Scottish Parliament if contained in an Act of the Scottish Parliament (see clause 10(4)).

While consultation is a welcome step, it does not guarantee that Scottish Ministers' views will be acted upon. Given the financial and regulatory implications of Clause 10, particularly around surplus payments and their potential impact on Scottish producers and public finances, a consult-only approach risks undermining devolved interests. A consent mechanism would provide stronger safeguards and ensure that decisions affecting devolved areas are made with appropriate Scottish input.

I therefore share the Committee's concerns, as set out in your letter, about the two clauses highlighted i.e. that the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.

In the LCM lodged for the Bill Ministers also highlighted concerns about Clauses 3(1) and 11(4), which also confer regulation-making powers on the Secretary of State without any

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requirement to consult or to seek the consent of Scottish Ministers. This is concerning given that these clauses relate to transparency, enforcement, and financial penalties, all of which have implications for devolved responsibilities and public accountability in Scotland.

The Scottish Government's position overall is that Scottish Ministers should have a formal role in any regulation-making powers that touch on devolved matters. This is not only a matter of constitutional principle but also of practical policy alignment, as SAF production is a key component of Scotland's ambition for aviation decarbonisation.

The LCM also noted that the Scottish Government was not currently in a position to make any recommendation to the Scottish Parliament as to consent on the four regulation-making provisions noted. I subsequently met the then UK Minister for Aviation, Maritime and Security, Mr Kane, where he took the opportunity to discuss the Bill but the discussions were inconclusive.

I am looking to arrange a meeting with the new UK Minister for Aviation, Maritime and Security, following the UK Government's recent Ministerial reshuffle. The purpose of this meeting is to continue our discussions on the Bill, to reiterate the Scottish Government's concerns, and to explore whether amendments can be made to better reflect devolved responsibilities.

I welcome that you have written in broadly similar terms to the Secretary of State for Transport, as this helps to ensure a clear and consistent message from Scottish Ministers and the Scottish Parliament. I would be grateful if you could share her response. In turn, I will keep the Committee updated on Ministerial discussions with the UK Government, which I hope will assist the NZET Committee in deciding when to invite me to provide evidence on the LCM. The discussion should also help to inform the decision on when to lodge a Supplementary Legislative Consent Memorandum.

Yours sincerely,

JIM FAIRLIE

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