



Delegated Powers and Law Reform Committee

The Rt Hon Grant Shapps
Secretary of State for Business, Energy and
Industrial Strategy
By email

T1.01
Chamber Office
EDINBURGH
EH99 1SP

Direct Tel: 0131-348-5212
(RNID Typetalk calls welcome)
(Central) Textphone: 0131-348-
5415
DPLR.Committee@parliament.scot

30 November 2022

Dear Secretary of State

Retained EU Law (Revocation and Reform) Bill

At its meeting yesterday, the Scottish Parliament's Delegated Powers and Law Reform Committee ("the Committee") considered the [Legislative Consent Memorandum](#) ("the LCM") for the [Retained EU Law \(Revocation and Reform\) Bill](#) ("the Bill") and agreed to write to you.

Rule 6.11.1(b) and (c) of the Scottish Parliament's Standing Orders provide that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills or other proposed legislation as well as general questions relating to powers to make subordinate legislation. The Committee and its predecessor Committee have considered powers exercisable within devolved competence that are conferred on UK Ministers in various Bills over the course of sessions 5 and 6.

As you will know, all of the clauses of the Bill extend and apply to the whole of the UK. The UK Government is seeking the Scottish Parliament's legislative consent for clauses 1, 2, 7, 8, 10, 12-14, 15, 16 and for Schedules 2 and 3. 24. The Scottish Government agrees that these clauses require consent. In addition, it considers that clauses 3, 4, 5, 6, 19, 20, 21, and schedule 1 also require consent.

The Scottish Government does not support the Bill and states in its LCM that it believes "the Parliament should not give consent to the Bill for three reasons: its deregulatory agenda; its undermining of devolution; and the risk posed by the sunset provision to automatically repeal this body of law unless Ministers take legislative action and the date of sunset which will disrupt Scottish Government work, including the legislative programme." Nevertheless, this Committee is required to consider the relevant powers in

the Bill and may report on these to the lead committee, which in this case is the Constitution, Europe, External Affairs and Culture Committee.

The Bill confers powers on both UK Ministers and Scottish Ministers. However, there is no requirement in the Bill that UK Ministers obtain or seek the consent of the Scottish Parliament or Scottish Government before exercising the powers within devolved competence.

The Scottish Government states in its LCM that “As currently drafted, the Bill is another example of a UK Bill that gives the UK Government powers to act in devolved areas without a formal legal requirement for consent from Scottish Ministers, accountable to the Scottish Parliament for the exercise of that consent”.

The Committee’s position in relation to powers in UK bills conferred on UK Ministers in devolved areas is as follows:

- (a) The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
- (b) Where such powers are exercised by the Secretary of State in devolved areas, there is no formal means by which the Scottish Parliament can scrutinise such regulations or be notified that they had been laid before the UK Parliament.
- (c) If such powers contain a requirement for the Scottish Ministers’ consent when exercised within devolved competence, the Scottish Parliament can scrutinise the Scottish Ministers’ consent decision.

The Committee will scrutinise powers conferred on UK Ministers not subject to a requirement for Scottish Ministers’ consent, and may suggest matters for the lead committee to consider.

- (d) As a minimum, powers when exercised by the Secretary of State in devolved areas should be subject to the process set out in the SI Protocol 2 where the power is within the scope of that protocol.

The Committee wrote to the UK Government on [12 July 2022](#) regarding the scrutiny of delegated powers in UK Parliament bills conferred on UK Ministers in devolved areas and the application or otherwise of SI Protocol 2. The Secretary of State for Levelling Up, Housing and Communities responded on [14 August](#) indicating that the “UK Government takes into account a variety of factors when seeking delegated powers in devolved areas.” He also indicated that “[w]hether or not to include statutory consent requirements is considered on a case-by-case basis as each policy area has a different legislative context.”

In light of the above, the Committee has agreed to ask you questions in relation to **clauses 1, 2, 8, 12, 13, 15, 16 and 19**, as set out below.

The Committee would be grateful for an explanation regarding the following matters.

1. In relation to clauses 1, 2, 8, 12, 13, 15, and 16:
 - **why the UK Government considers it appropriate that the power is exercisable by UK Ministers in relation to devolved matters;**
 - **why the UK Government considers it appropriate that when the power is exercised by UK Ministers in relation to devolved matters, there is no requirement to obtain the consent of the Scottish Ministers; and**
 - **whether the UK Government intends to amend the Bill to either ensure the power is conferred solely on the Scottish Ministers in relation to Scotland, or to require UK Ministers, when exercising the power in relation to devolved matters, to obtain the consent of the Scottish Ministers.**
2. In relation to clauses 1, 8, 12, 13, 15, and 16, **whether the UK Government could provide examples of circumstances in which it anticipates that the power would be exercised jointly by UK and Scottish Ministers, considering that the “deficiency-correcting” power in the EU (Withdrawal) Act 2018, which is also capable of being exercised jointly, has never been used in that way.**
3. In relation to clause 2, **what the procedure would be for the Scottish Ministers to request that the UK Minister exercises this power so as to extend the sunset in relation to specified devolved legislation.**
4. In relation to clause 8, **which are the areas where the supremacy of REUL currently applies where the UK Government wishes to reverse that position.**
5. In relation to clause 12, **the Committee seeks further explanation regarding where the outer limits of what constitutes a “restatement” lie.**
6. In relation to clause 15, **how the UK Government envisages this power will be used in practice, given the high level of Ministerial discretion afforded by the use of terms such as “appropriate”, “correspond” and “similar”.**
7. In relation to clause 16, **why, given that the power is so open-ended and affords Ministers such broad discretion, UK Government considers delegated legislation (rather than primary) is appropriate.**
8. In relation to clause 19:
 - **why the power is not available to Scottish Ministers to exercise within devolved competence; and**
 - **why the UK Government considers it appropriate that the power is exercisable by UK Ministers in relation to devolved matters, and so exercisable without the consent of, or consulting, the Scottish Ministers.**

9. Finally, what steps the UK Government is taking to mitigate against the risk of unintended or undesirable regulatory gaps emerging due to the blanket application of the sunset provision.

I should be grateful if you would respond by **Tuesday, 13 December 2022** to allow the Committee time to report on the LCM prior to any final consideration by the Scottish Parliament.

I am copying this letter to Angus Robertson MSP, Cabinet Secretary for the Constitution, External Affairs and Culture.

I look forward to hearing from you.

Yours sincerely

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee