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Economy and Fair Work Committee
The Scottish Parliament
Edinburgh
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28 February 2023

Dear Claire

Thank you for the opportunity last year to give evidence to the Economy and Fair Work Committee on the Scottish Government's Legislative Consent Memorandum in relation to the Trade (Australia and New Zealand) Bill. While I was unable at that time to recommend that the Scottish Parliament gave its consent to the Bill – and I note that the Committee reached a similar view in its report – I undertook to update the Committee on the progress of discussions with the UK Government.

It is with regret that I must inform the Committee that we have been unable to reach an acceptable outcome in relation to this Bill, and that I do not therefore anticipate lodging a supplementary memorandum.

I met with the UK Minister for International Trade, Nigel Huddleston MP, and conveyed to him the significance we place on the principle that the proposed delegated power should either be conferred solely on the Scottish Ministers in relation to devolved matters, or that its exercise by UK Ministers in relation to devolved matters should be accompanied by a requirement to secure the consent of the Scottish Ministers. I also suggested that an alternative legislative approach, which would allow the Scottish Parliament to scrutinise precisely what it was being asked to consent to, would be to make the provisions necessary to implement the procurement chapters of the Australia and New Zealand free trade agreements on the face of the Bill.

Following that meeting, and extensive engagement at official level, the UK Government has offered to lodge amendments to put in place what it describes as a compromise position, should we be willing to recommend the Scottish Parliament gives its consent to the Bill.

This offer amounts to specifying that the power could only be used by UK Ministers in relation to devolved matters if either the Scottish Ministers request this, or if, following a request from UK Ministers, the Scottish Ministers had failed to make the necessary secondary legislation within 15 days.

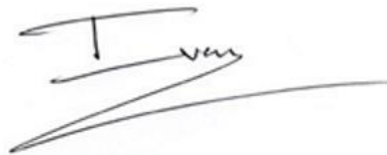
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Whilst we would clearly welcome that first condition, the second condition is both impractical in its timeframes and unacceptable in that it would still allow UK Ministers to bypass the reasonable expectation that they should secure the consent of Scottish Ministers before legislating in relation to a devolved matter.

Although we may be able to secure some movement on the proposal for a 15 day trigger, the UK Government has indicated that it is not prepared to move on the matter of consent. The issue of consent is a matter of significant principle, and without that being adequately addressed, I am unable to agree to any such proposal.

The approach which the UK Government appears to be adopting in relation to devolution and devolved competence in this Bill is incredibly disappointing, and I hope the Committee agrees that it would not be appropriate in these circumstances to give consent to this Bill as drafted.



IVAN McKEE

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