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Dear Ken

## **IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) BILL**

The Immigration and Social Security Co-ordination (EU Withdrawal) Bill was introduced to the House of Commons on 5 March 2020.

On introduction, the Bill's social security coordination provisions were deemed within the legislative competence of the Scottish Parliament and as such the Scottish Government was required under the Scottish Parliament Standing Orders to lodge a Legislative Consent Memorandum (LCM). The Government lodged an LCM (LCM-S5-42) on 25 June 2020.

The Cabinet Secretary for Social Security and Older People wrote to the UK Government on 19 June 2020 indicating that the Scottish Government intended to lodge a Legislative Consent Memorandum without a motion which indicated the Government were recommending that the Parliament do not consent to the provisions in the Bill. In response to that, the UK Government lodged amendments, passed during Report stage in the House of Commons, which removed all previously relevant provisions. Consequently the Scottish Government considers that this is no longer a relevant Bill under Parliament Standing Orders and that there is no longer a requirement for the Scottish Parliament to consider whether legislative consent should be granted. The annexed information sets out information about the relevant amendments.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)



I am copying this letter to Shirley-Anne Somerville, Cabinet Secretary for Social Security and Older People, Bob Doris, Convener of Social Security Committee and Bill Bowman, Convener of the Delegated Powers and Law Reform Committee given their Committees consideration of the Legislative Consent Memorandum.



**GRAEME DEY**

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**IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL) BILL****House of Commons Report Stage amendments****Overview**

A number of Government amendments were made at Report Stage in the House of Commons the effect being that the provisions which originally triggered the requirement for the legislative consent of the Scottish Parliament were removed.

**Provisions requiring legislative consent of the Scottish Parliament on introduction**

As set out in paragraphs 10 and 11 of the legislative consent memorandum<sup>1</sup>, on introduction the Bill created a power for the UK Government to adjust the retained EU rules on social security coordination for future policy development and to implement any future reforms of the rules. As the UK Government could have exercised the power for the whole UK, including where the exercise of the power affects devolved interests, the consent of the Scottish Parliament was required. The powers in Part 2 of the Bill would have allowed modification of the retained EU rules on social security coordination in part or in full.

On introduction, the Bill conferred on the Scottish Ministers and the devolved administration in Northern Ireland an equivalent power, for matters which were within devolved competence. So far as those provision extended to Scottish devolved interests, in connection with devolved disability and carers assistance, it also required consent from the Scottish Parliament.

**Amendments which removed the requirement for consent of the Scottish Parliament**

On 22 June 2020, the UK Government tabled a number of amendments<sup>2</sup>, in the name of Secretary Priti Patel, to remove the references to “devolved authority” and insert “Northern Ireland department” within the Bill. Amendment 1 and 2 would remove the power conferred on Scottish Ministers (acting alone or acting jointly with a Minister of the Crown) to make regulations under clause 5. Amendments 3, 4 and 6 to 31 were related consequential amendments.

The amendments were agreed<sup>3</sup> at Report Stage in the House of Commons on 30 June 2020. The amended clause 5 and schedules 2 and 3 to restrict the powers in the Bill in relation to Scotland and as such these provisions no longer engage the legislative consent process in the Scottish Parliament.

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<sup>1</sup> [https://www.parliament.scot/S5\\_Bills/SPLCM-S05-42.pdf](https://www.parliament.scot/S5_Bills/SPLCM-S05-42.pdf)

<sup>2</sup> [https://publications.parliament.uk/pa/bills/cbill/58-01/0104/amend/immigration\\_rm\\_rep\\_0622.pdf](https://publications.parliament.uk/pa/bills/cbill/58-01/0104/amend/immigration_rm_rep_0622.pdf)

<sup>3</sup> [https://hansard.parliament.uk/commons/2020-06-30/debates/581DFFF9-B3ED-4B76-9F51-A1F2325334A6/ImmigrationAndSocialSecurityCo-Ordination\(EUWithdrawal\)Bill](https://hansard.parliament.uk/commons/2020-06-30/debates/581DFFF9-B3ED-4B76-9F51-A1F2325334A6/ImmigrationAndSocialSecurityCo-Ordination(EUWithdrawal)Bill)