



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Bruce Crawford MSP
Convener
Finance and Constitution Committee

Room T1.01
Chamber Office
EDINBURGH
EH99 1SP

Direct Tel: 0131-348-5212
(RNID Typetalk calls welcome)
dplr.committee@parliament.scot

1 May 2019

Dear Bruce,

Thank you for your letter of 25 March 2019. The Delegated Powers and Law Reform Committee welcomes the Finance and Constitution Committee's continued work considering the role of the Scottish Parliament in scrutinising new powers arising from the UK's withdrawal from the EU. The Committee also welcomes your Committee's desire for a more co-ordinated approach to this work across parliamentary committees.

As you noted in your letter, this Committee has considered Legislative Consent Memorandums (LCMs) in relation to 'Brexit Bills'. The Committee believes that, where the Scottish Parliament accepts that it is appropriate for legislation to confer power on UK Ministers to make regulations in devolved areas, the consent of the Scottish Ministers must be sought. In cases where the Scottish Ministers propose to consent to the use of such powers, there needs to be a process for the Scottish Parliament to scrutinise Scottish Ministers' decision to consent before that consent can be given. The Committee has therefore championed the protocol you referred to in your letter between the Scottish Parliament and Scottish Government. This established a process for obtaining the approval of the Scottish Parliament where the Scottish Ministers proposed to grant consent to the exercise by UK Ministers of regulation-making powers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

During its scrutiny of other Brexit-related legislation, the Committee has also shared your concerns about the conferral of delegated powers which would allow the UK Government to legislate in devolved areas (on areas which were within the competence of the EU prior to exit day) without the opportunity for scrutiny by the Scottish Parliament. In its recent report on the LCM on the Immigration and Social

Security Co-ordination (EU Withdrawal) Bill, this Committee recommended, as a matter of principle, that where it is appropriate for the power to be exercised by the relevant UK Minister acting alone:

- the power should only be exercised where the consent of the Scottish Ministers has been obtained; and
- a process should be put in place to enable the Scottish Parliament to scrutinise any proposal by the Scottish Ministers to consent to the exercise of the powers by the relevant UK Minister, in advance of the consent being given.

As you said in your letter, these concerns have been a recurring theme in our committees' respective consideration of LCMs stemming from Brexit Bills.

To directly answer some of the questions you posed in your letter, this Committee agrees that further consideration needs to be given to the role of the Scottish Parliament in relation to future UK legislation which may confer powers on UK Ministers to legislate in devolved matters currently subject to EU law. It also agrees, as a matter of principle, that the Scottish Parliament, as a minimum, must be consulted prior to consent being given by Scottish Ministers to exercise of such powers.

In terms of what process should be in place to enable the Scottish Parliament to scrutinise all UK legislation which confers powers on UK Ministers to make subordinate legislation in devolved areas that were previously within the competence of the EU, we agree that the protocol which applies to the 2018 Act may be a starting point in that consideration. The collaboration between the Scottish Parliament and Scottish Government in developing the protocol was very encouraging and we would commend such joint working in the future.

You also asked in your letter a number of questions in relation to the Parliament's future consideration of international treaties and its scrutiny of the development of common UK frameworks. Given our particular remit, the Committee has not looked at either of these areas in any detail so we do not feel able to provide a definitive view. I trust other committees will be able to provide detailed responses to these questions.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Graham". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Convener of the Delegated Powers and Law Reform Committee