



The Scottish Parliament  
Pàrlamaid na h-Alba

Presiding Officer

***By email only***

c/o Clerk to the Committee  
Room T3.40  
The Scottish Parliament  
Edinburgh  
EH99 1SP

[ecclr.committee@parliament.scot](mailto:ecclr.committee@parliament.scot)

23 June 2020

Dear Presiding Officer,

## **UK ENVIRONMENT BILL LCM**

The Environment, Climate Change and Land Reform Committee published its [report](#) on the UK Environment Bill and LCM on Friday. In its report, the Committee unanimously agreed it was unable to make a recommendation in relation to the LCM.

The Committee agreed I would write to you to set out the Committee's reasoning for this decision – and highlight the strong concerns we have around the provisions for 'shared powers' proposed in the Bill and their implications for parliamentary scrutiny. We are concerned the Bill has significant consequences for the devolution settlement and consideration now needs to be given to the Scottish Parliament's response.

Our first concern is that the Bill proposes 'shared powers' in relation to producer responsibility and resource efficiency. In our report, we state that powers which fall within devolved competence, including environment policy, should return to the Scottish Parliament on exit day. We have asked the Scottish Government why – where it is agreed a UK-wide scheme is desirable – it is proposed these powers in devolved competence should be shared with, and potentially exercised by, UK Ministers, rather than providing for these powers in Scottish primary legislation, to be exercised by Scottish Ministers in parallel with UK Ministers.

We are aware the UK Environment Bill is just one of the UK Brexit Bills which would delegate the Scottish Parliament's legislative powers to the UK Government and Scottish Government, on a shared basis. In addition, many of the SIs made under the European Union (Withdrawal) Act 2018 made similar provision (not all of which required Scottish Ministers' consent). We believe this development has significant constitutional implications for the devolution settlement and this Parliament's ability to exercise its legislative powers.

With limited information on the circumstances in which Scottish Ministers would agree to the Parliament's delegated legislative powers being exercised by UK Ministers, we feel we cannot express a view on whether this LCM should be agreed to. Given the constitutional implications of the Bill, we agree that more information about when Scottish Ministers would give their consent should be provided to the Scottish Parliament.

Our second concern relates to the significant challenges to Scottish parliamentary scrutiny where powers in devolved competence are exercised by UK Ministers. The Scottish Parliament, as the Bill is currently drafted and if enacted, would have limited scope to influence decisions on devolved policy, scrutinise relevant legislation and its implementation and, therefore, effectively hold Scottish Ministers to account, given that such legislation would be laid in the UK Parliament only. We conclude that measures need to be put in place – as a matter of priority – to ensure the devolution settlement keeps pace with the constitutional reality of a post-EU UK.

We highlight the joint procedure as one way which would enable Scottish parliamentary scrutiny of UK Ministers exercising powers in devolved competence. This would give the Scottish Parliament sight of the statutory instrument and enable it to approve or annul the instrument, as the case may be.

We also note the proposals to revise the existing protocol between the Scottish Government and Scottish Parliament in relation to SI notifications. We agree that, for the revised protocol to be meaningful, it needs to address the issues around limited information and time for parliamentary scrutiny of SI notifications.

The Conveners' Group Brexit sub-group met in January to discuss the proposals to revise the existing protocol. We think it would be helpful if the group could meet again to discuss the proposals, in advance of the revised protocol being sent to the Finance and Constitution Committee and Delegated Powers and Law Reform Committee. With EU exit approaching at the end of the year, and committees' experiences of considering these UK Brexit bills, we think it would be helpful to discuss this again with other committee conveners whose committees are impacted by Brexit.

I also draw your attention to the recommendation we make regarding specific information Brexit Bill LCMs should include. We believe this would assist members' understanding of the constitutional consequences of EU exit and assist the transparency of the full implications of UK Brexit legislation.

I am copying this letter to the Convener of the Finance and Constitution Committee.

Yours sincerely,



Gillian Martin MSP  
Convener  
Environment, Climate Change and Land Reform Committee