



The Scottish Parliament
Pàrlamaid na h-Alba

The Presiding Officer
Rt Hon Ken Macintosh MSP

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

By email

3 July 2020

Dear Gillian

Legislative Consent Memorandum – UK Environment Bill

Thank you for your letter of 23 June highlighting a number of issues raised in your Committee's recent report on the Legislative Consent Memorandum on the UK Environment Bill. I also listened with interest to the points you made during your Committee announcement last week.

As you know, legislating in areas where EU competences have to date shaped the legislative framework has and will continue to raise complex questions. I consider it to be crucially important that individual members, committees and the Parliament as a whole have the support to help them consider these matters carefully and to ensure that the issues are as widely understood as possible. You may be aware that the SPCB has provided additional clerking, research and legal resources in recent years to help provide this support.

Your Committee's report and announcement have of course also helped to ensure that the Parliament is fully informed of these important issues and I am aware that other committees have raised similar matters in relation to their consideration of LCMs on other Brexit-related UK Bills.

The points you make about whether powers relating to devolved matters should be 'shared' with, and potentially exercised by, the UK Parliament are primarily matters for members to debate when they consider an LCM and take the decision on whether or not to grant legislative consent to the UK Parliament. The LCM on the Environment Bill indicates that the Scottish Government proposes to invite the Parliament to consent and it is, therefore, for the Scottish Government to seek to persuade the Parliament that this is appropriate. In doing so, the Government will no doubt seek to address the points raised in your report.

You raise particular questions about the circumstances in which the Scottish Ministers are likely to consent to the UK Ministers exercising delegated powers in devolved matters. Whether the Parliament is content with the level of oversight of delegated powers to legislate is always a matter for consideration when debating creating such powers. It is again for the Scottish Government to give information sufficient to satisfy the Parliament that it is appropriate to provide legislative consent to granting these powers in the Environment Bill. However, I recognise that you also raise concerns about scrutiny of the eventual exercise of such delegated powers if the instruments themselves are not subject to scrutiny in the Scottish Parliament.

As you know the governance of interdependent common internal UK structures in devolved areas post EU exit is a matter of current debate. This includes the sufficiency of mechanisms for scrutinising legislation under these structures in the devolved Parliaments within the UK. I would add that this is an issue which continues to be of particular concern to me as there is a danger of losing the benefits of Parliamentary scrutiny in the period before inter-governmental agreements are reached. Each of the UK's Parliaments, and our Committees in particular, have a key role to play as policies are in the process of being developed and not just simply applying accountability once they are signed off. I am aware that the Finance and Constitution (F&C) Committee has been leading on this work and your Committee's observations will inform any Parliamentary debate on these matters from the particular perspective of environmental regulation.

As you mention, a protocol is under development in discussion between Scottish Parliament and Scottish Government officials to apply where the Parliament has agreed to the creation of UK powers subject to Scottish Government oversight. This work has been mandated by the F&C and the Delegated Powers and Law Reform (DPLR) Committees, and has been discussed with the sub-group of conveners of committees most concerned with Brexit-related matters. The protocol is intended to ensure that the Parliament has an appropriate and proportionate opportunity to scrutinise any proposal by the Scottish Ministers to consent to UK Ministers making subordinate legislation on devolved matters. I understand that a draft protocol will be considered by the F&C and DPLR Committees and the Conveners Group sub-group, as soon as possible. As a member of the Conveners Group sub-group I hope you are able to take this opportunity to feed in your committee's views on whether the protocol is suitable to allow for the sufficient level of detail to be provided as well as adequate time for proper scrutiny. I aim to arrange a meeting of the sub-group as soon as possible after recess.

Finally, you make recommendations about the information that Brexit-related LCMs should include. You may be aware that the Parliament's clerks consider draft LCMs to ensure that they provide the specific information required under Rule 9B.3.3 of Standing Orders. It is then open to the committees considering an LCM whether they are satisfied with the level of information provided about the context of the UK Bill and the proposal on consent and they can seek further information from the Scottish Government, as I understand your committee did on this occasion. The Scottish Government may wish to respond on the general point about the information it provides

about the wider constitutional implications of Brexit-related UK Bills, or indeed it may be an issue that you would like to discuss at the Conveners Group sub-group meeting

I am copying this letter to the Convener of the Finance and Constitution Committee and the Convener of the Delegated Powers and Law Reform Committee for their awareness.

Yours sincerely

A handwritten signature in blue ink that reads "Ken Macintosh". The signature is written in a cursive style with a large initial 'K'.

Rt Hon Ken Macintosh MSP
Presiding Officer