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Bill Bowman MSP
Convener of Delegated Powers and Law Reform
Committee
Scottish Parliament
Edinburgh
EH99 1SP

15 October 2020

Dear Bill,

State Aid (Revocations and Amendments) (EU Exit) Regulations 2020

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

The Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, wrote to the Conveners of the Finance & Constitution and Delegated Powers and Legislative Reform Committees on 11 September 2018 setting out the Scottish Government's views on EU withdrawal. That letter also said that we must respond to the UK Government's preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

The UK Government has laid the above named Regulations (the "Revocation SI") as a technical measure to remove State aid within the meaning of Article 107(1) of the Treaty of the Functioning of the European Union from the UK statute book from 1 January 2021. The UK Government has not written to request the consent of Scottish Ministers to the Revocation SI and we are therefore not in a position to notify the Scottish Parliament under the agreed protocol. This is due to an on-going disagreement with the UK Government as regards devolved competence in relation to State aid.

The Scotland Act 1998 reserves competition law under head C3 of Schedule 5 to that Act by referring to practices and matters that fall within the subject matter of the Competition Act 1998. The Explanatory Notes expressly state that competition matters are currently regulated

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by the Competition Act 1998. State aid is not regulated by the latter Act. The position of Scottish Government is therefore that state aid is a devolved competence. The UK Government position is that state is reserved, although they have offered no formal explanation as to their arrival at that conclusion.

We already know that the proposed Internal Market Bill would take a wrecking ball to devolution and the Parliament rightly supports the Scottish Government's position not to give consent to this bill. I hope that the committee will also support our position on these regulations. The UK Government's failure to seek consent from Scottish Ministers for this State Aid (Revocations and Amendments) (EU Exit) Regulations 2020, further demonstrates that the interests of Scotland are being ignored. It is crucial that we ensure devolved interests are respected and we will continue to press our position with the UK Government in relation to these Regulations. I would welcome the Parliament's support in this endeavour.

I am copying this letter to the Conveners of the Culture, Tourism, Europe and External Affairs Committee and the Finance and Constitution Committee.

I look forward to hearing from you in due course.

Kind regards,

IVAN McKEE

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