



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Michael Russell MSP
Cabinet Secretary for Government
Business and Constitutional Relations

Room T1.01
Chamber Office
EDINBURGH
EH99 1SP

Direct Tel: 0131-348-5212
(RNID Typetalk calls welcome)
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14 January 2020

Direct Payments to Farmers (Legislative Continuity) Bill

Dear Cabinet Secretary,

At its meeting today the Committee considered the delegated powers conferred by the Direct Payments to Farmers (Legislative Continuity) Bill in devolved areas.

The Committee has not had the opportunity fully to carry out its scrutiny role due to the Bill's expedited timetable. However, the Committee agreed to write to you and to the UK Government to raise the following points. Several of these points echo issues that the Committee has raised before, in Committee reports on LCMs for other EU bills related to EU withdrawal and in our letter to you of 7 January in relation to the European Union (Withdrawal Agreement) Bill.

- The time available for the Committee to scrutinise the LCM for this Bill is wholly inadequate. The Bill was introduced in the UK Parliament on Thursday 9 January, the legislative consent memorandum (LCM) was lodged yesterday, and the UK Government's stated intention is that the Bill, and some of the subordinate legislation to be made under it, will be in force on 31 January. The Committee appreciates, however, that the Bill timetable is outwith the control of the Scottish Government.
- The Committee emphasises that as a matter of principle the Scottish Parliament should have the opportunity to scrutinise the exercise of legislative powers within devolved competence. Cooperation between the UK Government and Scottish Government is not a substitute for this.
- The Committee acknowledges and welcomes the commitment, made in your letter of 19 December 2019 to the Rural Economy and Connectivity

Committee, that the Scottish Government will act as if the protocol on the scrutiny of 'devolved' UK SIs made under the European Union (Withdrawal) Act 2018 applies to 'devolved' UK SIs made under this Bill. The Committee notes and welcomes that a new protocol is being prepared that will formalise this arrangement, covering this Bill and future bills related to EU withdrawal.

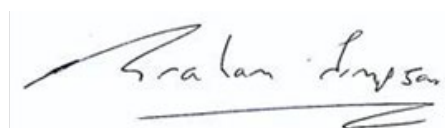
- The Committee notes, however, that for those instruments which are to be made after the Bill becomes law and before 31 January, the opportunity for the Scottish Parliament to scrutinise the Scottish Minister's intention to consent will in practice be very limited.
- The Committee notes the statement in paragraph 27 of the LCM that the powers in the Bill (with the exception of clause 5) will not enable policy changes. In relation to the wide power to make regulations to address deficiencies (clause 3 of the Bill), the Committee therefore expects that this power will be used only for the purposes of ensuring continuity. The Committee asks the Scottish Government to pay particular attention to adhering to this commitment when consenting to 'devolved' UK SIs, as the Scottish Parliament will not normally have the opportunity to see the terms of those SIs and therefore cannot assess for itself whether they in fact introduce a policy change.
- The Committee accepts that the 'made affirmative' procedure may be appropriate for exercising the power in clause 3(3)(a) in the present circumstances of urgency. However, the Committee would not wish to see the use of this power becoming widespread in other EU withdrawal-related bills.

Finally, the Committee agreed to ask you the following question on the anticipated operation of the Bill:

- The deficiency-correcting powers in clause 3 of the Bill and the powers to make consequential and transitional provision in clause 6 of the Bill enable delegated legislation to be made in areas of devolved competence in two ways, either by the Scottish Ministers alone or by UK Ministers (with the consent of the Scottish Ministers). How will this division of responsibility work in practice, and in what circumstances is it likely that UK Ministers will exercise each of these powers rather than the Scottish Ministers?

I would be grateful for a response by **Friday 14 February**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Graham Simpson', with a horizontal line underneath.

Graham Simpson
Convener of the Delegated Powers and Law Reform Committee



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Delegated Powers and Law Reform Committee

Rt Hon Theresa Villiers MP
Secretary of State for Environment, Food
and Rural Affairs

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EH99 1SP

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14 January 2020

Direct Payments to Farmers (Legislative Continuity) Bill

Dear Secretary of State,

At its meeting today the Committee considered the delegated powers conferred by the Direct Payments to Farmers (Legislative Continuity) Bill in areas within the legislative competence of the Scottish Parliament.

The Committee has not had the opportunity fully to carry out its scrutiny role due to the Bill's expedited timetable. However, the Committee agreed to write to you and to Michael Russell MSP, Cabinet Secretary for Government Business and Constitutional Relations, to raise the following points. Several of these points echo issues that the Committee has raised before, in Committee reports on LCMs for other bills related to EU withdrawal and in our letter of 7 January to the Secretary of State for Exiting the European Union in relation to the European Union (Withdrawal Agreement) Bill.

- The time available for the Committee to scrutinise the LCM for this Bill is wholly inadequate. The Bill was introduced in the UK Parliament on Thursday 9 January, the legislative consent memorandum (LCM) was lodged yesterday, and the UK Government's stated intention is that the Bill, and some of the subordinate legislation to be made under it, will be in force on 31 January.
- The Committee emphasises that as a matter of principle the Scottish Parliament should have the opportunity to scrutinise the exercise of legislative powers within devolved competence. Cooperation between the UK Government and Scottish Government is not a substitute for this.

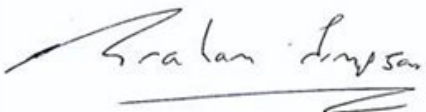
- The Committee notes the statement in paragraph 27 of the Scottish Government's Legislative Consent Memorandum that the powers in the Bill (with the exception of clause 5) will not enable policy changes. In relation to the wide power to make regulations to address deficiencies (clause 3 of the Bill), the Committee therefore expects that this power will be used in relation to matters within Scottish devolved competence only for the purposes of ensuring continuity. The Committee expects particular attention to be paid to adhering to this commitment when the Scottish Ministers consent to UK SIs in devolved areas, as the Scottish Parliament will not normally have the opportunity to see the terms of those SIs and therefore cannot assess for itself whether they in fact introduce a policy change.
- The Committee accepts that the 'made affirmative' procedure may be appropriate for exercising the power in clause 3(3)(a) in the present circumstances of urgency. However, the Committee would not wish to see the use of this power becoming widespread in other EU withdrawal-related bills.

Finally, the Committee agreed to ask you the following question on the anticipated operation of the Bill:

- The deficiency-correcting powers in clause 3 of the Bill and the powers to make consequential and transitional provision in clause 6 of the Bill enable delegated legislation to be made in areas of Scottish devolved competence in two ways, either by the Scottish Ministers alone or by the Secretary of State (with the consent of the Scottish Ministers). How will this division of responsibility work in practice, and in what circumstances is it likely that the Secretary of State will exercise each of these powers rather than the Scottish Ministers?

I would be grateful for a response by **Friday 14 February**.

Yours sincerely,

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Graham Simpson
Convener of the Delegated Powers and Law Reform Committee