



Stuart McMillan MSP
Convener of the Delegated Powers and Law
Reform Committee
The Scottish Parliament

19 July 2023

Dear Convener,

Thank you for your letter of the 28 June regarding the Economic Crime and Corporate Transparency Bill and more widely the use of consult or consult plus mechanisms by the UK Government in this Bill and others.

Firstly, I would like to thank your committee for its timely consideration of the supplementary LCM for the above Bill, it enabled us to take the Legislative Consent Motion at decision time on 28 June, shortly before Parliament went into recess.

As you will be aware there is an ongoing issue with the UK Government taking powers in UK Bills that would allow them to legislate in devolved areas. When it becomes clear the UK Government are planning to do this, the starting position of Scottish Ministers is that such powers should include a statutory consent clause, requiring the consent of Scottish Ministers before it would be possible for the UK Government to legislate in devolved areas. The Government's response to each relevant Bill is however considered on a case-by-case basis, balancing the principle of seeking consent with pragmatic considerations in the context of the Bill. For example, with this Bill Scottish Ministers were persuaded that the overall advantages of being able to demonstrate a united front on tackling economic crime and promoting corporate transparency outweighed concerns about the lack of a statutory consent provision for some of the delegated powers in the Bill. Each decision taken in this regard is bespoke to each Bill and does not set a precedent for other pieces of legislation.

I have responded to each of the Committee's questions below:

- (a) There is currently no agreement in place between the Scottish Government and the Scottish Parliament that would facilitate parliamentary scrutiny of the Scottish Ministers' response to the UK Government consulting them ahead of exercising delegated powers. The use of a statutory consult or so-called consult-plus requirement has become a feature of a number of recent UK Government Bills. Although these powers have not been exercised to date.

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The on-going work by parliamentary and government officials to review the effectiveness and proportionality of SI Protocol II will provide an opportunity to consider the scope of the Protocol. The Protocol currently only covers UK SIs that would previously fall under the legislative competence of the EU, and we may wish to consider how the scrutiny process might apply to powers conferred on UK Ministers in devolved areas which include a statutory consult or consult plus mechanism. Any intention to change this would of course need to be discussed with the UK Government to ensure that they would respect the arrangement put in place.

- (b) Regarding the information the Scottish Government might provide in support of parliamentary scrutiny of these powers, while it is important that we maintain a space for inter-governmental consultation, the Scottish Government understands the parliament's rightful interest in understanding how the UK Ministers intend to use such powers in devolved areas. At a minimum I would hope that we would be able to share information concerning the consultation with the UK Government, including the questions asked and the Scottish Government's response. The UK Government have to date been clear that they would not seek the consent of Scottish Ministers, but depending on whether SIs which emerge from the process fell within the scope of Protocol II it could still be notified to the Parliament. I have asked my officials to liaise with yours with further detail on a proposed approach in due course.

I am copying this letter the Deputy First Minister and Cabinet Secretary for Finance.

Kind regards,

George Adam

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