



Stuart McMillan MSP
Delegated Powers and Law Reform Committee
T1.01
Chamber Office
Edinburgh
EH99 1SP

6 June 2023

Dear Convenor,

Electronic Trade Documents Bill

Thank you for your letter of 31 May 2012 in relation to the abovementioned Bill and the LCM lodged by the Scottish Government on 16 May. To assist the Committee you have asked the following questions:

- (a) whether the power conferred on the Secretary of State by clause 5(2)(b), insofar as within devolved competence, falls within areas formerly within EU competence before the UK fully withdrew from the EU; and
- (b) if an amendment is agreed to include a consent mechanism, and the process for scrutiny by the Scottish Parliament set out in SI Protocol 2 does not apply as the power does not fall within an area of former EU competence, how the Parliament is to scrutinise the Scottish Ministers' consent to exercise of the power by the Secretary of State.

The Government's response is as follows:

- (a) the power conferred on the Secretary of State by clause 5(2)(b), insofar as within devolved competence, does not fall within an area formerly within EU competence before the UK fully withdrew from the EU. Trade documents have developed overtime as part of the private law of each jurisdiction, including at the common law, with subsequent regulation taken forward on a UK wide basis in, therefore, a mixture of devolved and reserved areas. Above that regulation for International Trade was and remains a matter of International Private Law.

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(eIDAS Regulation (EU) No 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC is considered to be capable of assisting Scots law in recognising an electronic signature on an electronic trade document but this not relevant to the exercise of the power in clause 5(2)(b).)¹

- (b) an amendment to include a consent mechanism has not been agreed to at the time of writing. Draft amendments have been shared with the Scottish Government in confidence but until they have been made public or tabled at Westminster I am unable to offer any further comment. We do, however, expect to lodge a supplementary LCM in due course and when that occurs and, if a consent mechanism has been agreed to, we will be able to return to and answer the question then.

I trust this will inform the Committee's final report, but I would of course be happy to offer any further points of clarification as required.

NEIL GRAY

¹ At the end of the UK EU transition period, eIDAS was incorporated into domestic law (with some amendments) by operation of the European Union (Withdrawal) Act 2018, s 3(1), and the amendments contained in the Electronic Identification and Trust Services for Electronic Transactions (Amendment etc.) (EU Exit) Regulations 2019, SI 2019 No 89.

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