

Stuart McMillan MSP
Delegated Powers and Law Reform Committee
T1.01
Chamber Office
EDINBURGH
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19 June 2023

Dear Convener,

Data Protection and Digital Information (No.2) Bill

Thank you for your letter dated 8 June 2023 relating to the Legislative Consent Memorandum for the Data Protection and Digital Information (No. 2) Bill (“the Bill”). Before I respond to the committee’s questions, I would like to update you on agreed amendments to the Bill that alter Clause 93.

In total, ten amendments were agreed at the Bill’s Committee Stage. The Bill page has now been updated to reflect those amendments and I summarise them below:-

- Clause 93 (now Clause 99) is amended to grant the power to make regulations via the negative resolution procedure for the implementation of international agreements as they relate to law enforcement data sharing (“the power”) to ‘appropriate national authorities’.
- New Clause 100 designates the Scottish Ministers as an appropriate national authority where regulations made with the power contain only devolved provisions.
- Clause 108 (now Clause 115) is consequentially amended to state the procedures to be followed for regulations made by the Scottish Ministers.

As a result of these amendments, the Scottish Government will recommend that parliament gives consent to Clause 93 (now clause 99).

I will respond to the committee’s questions as they are marked, (a) – (c):-

- (a) We would not expect the UK Government to legislate in a devolved area without consulting the Scottish Government. However, following the aforementioned amendments to the Bill, the power will be granted to Scottish Ministers and its use by Scottish Ministers will be subject to scrutiny by the Scottish Parliament.

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- (b) The power itself does not fall within an area formerly within EU competence before the UK fully withdrew from the EU. It is possible that the future use of this power could create regulations that would fall within areas that were formerly within EU competence however it is difficult to say as the future use of this power is only hypothetical.
- (c) Importantly and to avoid any doubt, due to the amendments to the DPDI that Scottish Ministers requested, the Scottish Parliament will scrutinise the Scottish Ministers' use of the power via the negative procedure.

The Scottish Government's position is that there ought to be parallel powers for Scottish Ministers to implement international agreements in this case, which thus facilitates the scrutiny of the Scottish Parliament.

To facilitate scrutiny where UK SIs in devolved areas are made in consultation with Scottish Ministers, both Scottish Ministers and UK Ministers may be invited to appear before committee.

I hope the committee finds this helpful.

Yours sincerely,

NEIL GRAY

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