

Stuart McMillan MSP  
Convener  
Delegated Powers and Law Reform Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

**24<sup>th</sup> January 2025**

Dear Convener,

Thank you for your letter of 19 December on scrutiny of secondary legislation made by UK Ministers that include provisions within devolved competence.

The Scottish Government recognises and shares concerns about proper scrutiny of powers for UK Ministers to exercise functions in devolved areas, especially powers that do not require statutory consent from Scottish Ministers. This was a particular concern under the previous UK Government, which also took powers in devolved areas without the consent of the Parliament, in breach of the Sewel Convention.

As I said in my previous letter, the Scottish Government is clear that, as a matter of principle, the Scottish Parliament should have oversight of the use by UK Ministers of delegated powers in devolved areas. The Scottish Government also believes that the UK Government should seek the consent of Scottish Ministers in exercising powers in devolved areas, whether that is required by the statute or not. The Scottish Government will continue to press the UK Government to formally seek consent to planned Statutory Instruments (SIs) in devolved areas, as and when these arise through the normal course of business.

In general, it is for the lead UK Government department and the appropriate policy area within the Scottish Government to engage on planned SIs, to develop policy and to consider how and when to notify the Scottish Parliament. In addition, Scottish Government officials have regular meetings with their counterparts in the UK Government and other devolved administrations to consider the forward programme of SIs.

The Scottish Government will also and consider with the UK Government the possibility of extension of SIP2 beyond Brexit related powers, or alternative arrangements to govern notification to the Parliament. However, that protocol was put in place to manage particular circumstances in which a large volume of SIs connected to Brexit was expected in a short period. More flexible and proportionate arrangements might suffice in the future.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

Finally, you mention the Committee's interest in considering powers conferred on UK Ministers to make subordinate legislation within devolved competence when looking as legislative consent for UK Government bills. As I said earlier, this was a particular concern under the previous UK Government. While there might still be circumstances when such powers are appropriate, the Scottish Government would hope and expect that the current UK Government would not propose such powers without proper safeguards for devolved interests, such a statutory requirement to Scottish Ministers' consent to their exercise, and would not proceed with any such powers if legislative consent is refused by the Scottish Parliament.

I am copying this letter to Jamie Hepburn and Clare Adamson, as Convener of the Constitution, Europe, External Affairs and Culture Committee.

Yours sincerely,

**ANGUS ROBERSTON**

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