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Claire Baker MSP
Convenor
Economy and Fair Work Committee
The Scottish Parliament
Edinburgh
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25 July 2022

Dear Convenor

The Public Procurement (International Trade Agreements) (Amendment) Regulations 2022
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

The Scottish Parliament agreed on 22 November 2021 that it was content for Scottish Ministers to give their consent to the Public Procurement (International Trade Agreements) (Amendment) Regulations 2022 including Scottish devolved matters, as set out in the notification to the Parliament.

The Public Procurement (International Trade Agreements) (Amendment) Regulations 2022 was made at UK Parliament on 26 June 2022 and came into force on 27 June 2022. I can now confirm that this SI varies in some respects from the original proposal but that the variation is not so significant as to need any further process.

The SI has amended UK and Scottish procurement legislation. These amendments are required to ensure that the UK fulfils obligations that have arisen due to international agreements. There is no scope for Scottish Ministers to take a distinct approach and a separate Scottish Statutory Instrument, making the exact same changes, would be unnecessary duplication. The amendments do not result in any additional procurement processes or practices that public bodies must follow, given that they are, in effect, already compliant with the agreement.

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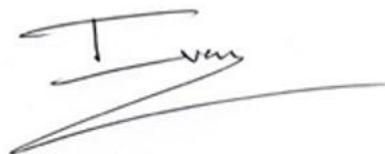
The notification previously submitted to the Committee sought the agreement of the Parliament that Scottish Ministers consent to devolved provision being included in the SI in two areas. Firstly, that domestic procurement legislation would be amended to give effect to the free trade agreement between the UK and Iceland, Liechtenstein and Norway signed on 8 July 2021. Secondly, the UK Government was proposing to make amendments to UK and Scottish procurement legislation under section 31 of the EU (Future Relationship) Act 2020, with the purpose of reducing the risk of non-compliance by making UK-EU Trade and Cooperation Agreement (“TCA”) obligations explicit in domestic procurement law.

UK Government officials subsequently indicated that the SI would no longer seek to address the TCA issue. My officials have reviewed the SI that has been made, and note that:

- The SI is now named The Public Procurement (International Trade Agreements) (Amendment) Regulations 2022; this was previously referred to as the “EFTA and TCA International Agreement Procurement SI”.
- The amendments made under these Regulations are being made under powers by sections 2(1) and (2), 4(1)(c) and (d) and 5(1) of the Trade Act 2021. Previously it was understood that only powers under Section 2 of the Trade Act 2021 would be invoked.
- This instrument implements obligations from the EFTA Agreement only. Previous versions also included explicit reference to the existing obligations from the Trade and Cooperation Agreement (TCA). However, these references were removed. These obligations continue to remain in force under the European Union (Future Relationship) Act 2020.

I am copying this letter to the Convener of the Delegated Powers and Law Reform Committee.

Yours Sincerely,



IVAN MCKEE

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