



The Scottish Parliament
Pàrlamaid na h-Alba

Delegated Powers and Law Reform Committee

Neil Gray MSP
Cabinet Secretary for Wellbeing
Economy, Fair Work and Energy
By email

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8 June 2023

Dear Cabinet Secretary,

Data Protection and Digital Information (No.2) Bill

At the meeting of the Delegated Powers and Law Reform Committee on 6 June, the Committee considered the delegated powers relevant to Scotland in the above Bill, as referred to in the [Legislative Consent Memorandum](#) ("the LCM") lodged by the Scottish Government with the Scottish Parliament on 15 May 2023.

To assist the Committee in considering the LCM, it agreed to request further information in relation to Clause 93 - Implementation of law enforcement information-sharing agreements.

The LCM states that the Scottish Government does not consider that consent should be given in respect of this clause. It notes that the implementation of international agreements within devolved competence is a devolved function. The Scottish Government states that consent may be given should amendments be made to the Bill for parallel powers to be granted to the Scottish Ministers or for implementation to be subject to consultation.

The Committee has agreed to ask:

- (a) whether the Scottish Government considers that the power conferred on the Secretary of State by clause 93, insofar as within devolved competence, should be subject to a requirement for (i) the Scottish Ministers' consent, or (ii) consultation with the Scottish Ministers, and why;

(b) whether the power conferred on the Secretary of State by clause 93, insofar as within devolved competence, falls within areas formerly within EU competence before the UK fully withdrew from the EU and as such is within the scope of Statutory Instrument Protocol 2; and

(c) how, if the bill is amended to require the consent of, or consultation with, the Scottish Ministers where the power is exercised by a UK Minister, the Scottish Government will facilitate scrutiny by the Scottish Parliament of the Scottish Ministers' proposed consent or its proposed response to the consultation.

I request a response to these questions by **Wednesday, 21 June 2023**, so that this can be reflected in the Committee's final report.

Finally, I am also writing to the UK Government regarding this clause, in relation to why it considers it appropriate, in the particular policy context of the Bill, that the power in clause 93 has (a) been conferred so that it is exercisable independently by the Secretary of State within devolved competence, and not by the Scottish Ministers; and (b) when the power is exercised by the Secretary of State within devolved competence, there is no requirement to obtain the consent of the Scottish Ministers.

Yours sincerely,

Stuart McMillan MSP

Convener of the Delegated Powers and Law Reform Committee