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Clare Adamson MSP
Convener, Constitution, Europe, External Affairs and Culture Committee
Scottish Parliament
Edinburgh
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26 June 2024

Dear Clare,

Work of the Scottish Parliament-Scottish Government Officials' Joint Working Group on Post-Brexit Scrutiny Issues

Many thanks for your letter of 30 May. I know my officials are planning to speak to their Scottish Parliament counterparts over summer recess to consider in detail how the outcome of the UK General Election might impact these issues.

In the meantime, I thought it would be helpful to provide an overview of our position on the main points you raise.

UK Internal Market Act 2020 Exclusions Process

As the Committee notes, the IMA creates significant uncertainty as to the effect of devolved law. There is a particular challenge when, despite the best efforts of the Scottish Government, the UK Government's position is not clear when the Parliament comes to finalise its legislation.

On each of the three occasions on which an exclusion has been sought - single use plastics (SUP) regulations, Scotland's deposit return scheme (DRS) and the ban on the sale of glue traps – the Scottish Government has tried to ensure that the Scottish Parliament has been informed and updated in as timely a manner as possible.

The Scottish Government welcomes the Committee's detailed proposals for the scrutiny of IMA exclusions, and we look forward to considering these further at official level. We are also working to improve information flows with the Scottish Parliament; for example, we are working to ensure that IMA implications are clearly identified in accompanying Bill documents, as suggested by the Committee.

More generally, the Scottish Government remains of the view that neither the IMA nor the current UK Government approach to exclusions are fit for purpose. The upcoming General

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Election offers an opportunity for a reset, regardless of the outcome. The Scottish Government intends to work with an incoming UK Government, and the other devolved governments, with an ambition to jointly develop and agree sustainable and transparent alternative arrangements.

Annual Reporting on Common Frameworks and the DLUHC Evaluation

The Scottish Government will to be able to say more on annual reporting arrangements following agreement between governments, which we expect to be this autumn. We would emphasise two points. First, that we expect levels of activity in some frameworks areas to be higher than others, and that there will be some framework areas where there may be little to report on year on year. Second, in addition to agreed annual reporting requirements, the Scottish Government aims to proactively provide information to the Scottish Parliament on relevant frameworks activity as part of its commitment to timely notification of future IMA exclusions proposals.

Specifically on the Hazardous Substances Planning common framework, the Scottish Government understands publication has been affected by the announcement of the General Election. We will seek an update from UK Government in July. However, as the Committee notes, these reports are likely to be concise.

The DLUHC evaluation report is a UK Government exercise; however, we understand publication has been held up by the General Election.

Statutory Instrument Protocol Review

As the Committee, and the Delegated Powers and Legislative Reform and other Committees, have observed, there has been an increase since Brexit in the number of powers taken by UK Ministers to legislate in devolved areas. For some of these, the Parliament has specifically refused its legislative consent to such powers, but UK Ministers have taken them anyway.

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. This recognises the Scottish Parliament's responsibility for these matters in Scotland.

The current protocol (SIP2) shows the potential for non-legislative arrangements to provide the Parliament with the opportunity to scrutinise such secondary legislation. However, to be effective, the protocol, and any extended arrangements beyond its current scope, require the agreement and the cooperation of the UK Government.

The Scottish Government intends to engage with the new UK Government on the issue of UK Ministers' powers in devolved areas, to continue to try to ensure that their use respects devolved responsibilities and provides the Parliament with appropriate levels of transparency and scrutiny. The Scottish Government will keep the Parliament informed about this engagement, which will be in the context of a more general reset of intergovernmental relations, including the Sewel Convention and the IMA exclusions process as set out above.

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On specific matters raised in your letter, I am happy to confirm that Scottish Government officials have authority to update Annex A of the current protocol. The Scottish Government will also work with the UK Government to confirm to the Parliament UK Ministerial powers within the scope of any arrangements.

The Scottish Government also intends to work through at official level the Committee's proposals on the content of notifications, handling of consultations with the UK Government and refusal of consent by Scottish Ministers, recognising the points made by the Committee and the DPLR Committee.

The process of Brexit, and other developments over the last few years, have clearly created a number of issues for both the Scottish Government and Parliament in ensuring proper democratic scrutiny and accountability for matters within the Parliament's devolved responsibilities.

The forthcoming UK General Election, whatever its outcome, provides a valuable opportunity to take stock with a new UK Government, and the other devolved governments, and develop transparent and sustainable processes that properly recognise and respect the roles of devolved institutions. The Scottish Government intends to approach this opportunity in a constructive and positive way, to restore and protect the devolution settlement, and democratic self-government in Scotland.

I look forward to engaging with the Committee after the General Election as this work proceeds.

Given their interests in these matters, I am copying this letter to the Conveners of the DPLR and NZET Committees.

Yours sincerely,

ANGUS ROBERTSON

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