



Department for  
Science, Innovation  
& Technology

Stuart McMillan MSP  
Convener of the Delegated Powers and Law Reform Committee  
Chamber Office  
EDINBURGH  
EH99 1SP

*Sent by email*

Dear Stuart,

Thank you for your letter of the 31 May and your interest in this eminently beneficial legislation.

The UK and Scottish Government's have been working together to ensure that the Electronic Trade Documents Bill works for the whole of the UK and will give businesses the confidence that electronic trade documents have equivalence with paper trade documents, as well as the opportunity to realise the significant benefits it will bring.

Achieving the stated aims of the Bill through Scottish Minister's consent rather than a consultation requirement would limit the Secretary of State's ability to intervene to remove areas of legal ambiguity and ensure a consistent framework on electronic trade documents across the UK. This is particularly important with a permissive Bill that intends to directly apply the legal concept of possession to electronic trade documents and ensure that new or amended legislation evolves in parallel with legal and technological developments in the market. To hinder such changes would remove the key advantages of the Bill to all UK business, namely that of certainty and adaptability in all potential scenarios.

I should add that the Bill is highly unlikely to require revision in the future, amendments are only likely to be necessary in very narrow contexts, such as a fundamental change in technology or market practises, e.g. if the regulatory framework for financial services needs updating to take account of new digital trading formats.

In recognition of this fact and to honour both the devolution settlement and the collaborative work between our respective officials, we have recently tabled amendments in the House of Commons. Although there are six amendments in total, the majority are consequential amendments to facilitate two substantive changes:

- an amendment which enables Scottish Ministers to make regulations within Scottish devolved competence. This will be in addition to the Secretary of State's regulation-making powers already contained in the Bill, subject to the consultation mechanism under Clause 5(4) of the existing Bill where applicable. The amendment will also introduce an option for the Scottish Ministers and the Secretary of State to act jointly in making regulations; and
- an amendment which provides for regulations under clause 5 to be statutory instruments and to be subject to the affirmative resolution procedure in Parliament and in the Scottish Parliament. Clause 5 sets out the circumstances in which the substantive provisions of the Bill will not apply to a particular document, whether by the intentions of the relevant parties or because they have been carved out through legislation.

The amendments will be published on the Parliamentary website shortly.

Yours sincerely,

Paul Scully MP  
**Parliamentary Under Secretary of State at the  
Department for Science, Innovation & Technology**

Paul Scully MP  
Parliamentary Under Secretary of State  
Department for Science, Innovation &  
Technology  
100 Parliament Street  
London SW1A 2BQ

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