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**GEO-BLOCKING REGULATION (REVOCATION) (EU EXIT) REGULATIONS 2019  
EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT**

I am writing in relation to the protocol on obtaining the approval of the Scottish Parliament to the exercise of powers by UK Ministers under the European Union (Withdrawal) Act 2018 in relation to proposals within the legislative competence of the Scottish Parliament.

As you know, the Cabinet Secretary for Government Business and Constitutional Relations, Michael Russell MSP, wrote to the Conveners of the Finance & Constitution and Delegated Powers and Law Reform Committees on 11 September setting out the Scottish Government's views on EU withdrawal. That letter also said that we must respond to the UK Government's preparations for a No-Deal scenario as best we can, despite the inevitable widespread damage and disruption that would cause. It is our unwelcome responsibility to ensure that devolved law continues to function on and after EU withdrawal.

I attach a notification which sets out the details of the Statutory Instrument which the UK Government propose to make and the reasons why I am content that Scottish devolved matters are to be included in this Statutory Instrument. Please note, we are yet to have sight of the final Statutory Instrument and it is not available in the public domain at this stage. We will, in accordance with the protocol, advise you when the final Statutory Instrument is laid and advise you as to whether the final Statutory Instrument is in keeping with the terms of this notification.

I have made the UK Government well aware of the need to respect the processes of the Scottish Parliament and not to lay the Statutory Instrument until after receiving its formal consent. This includes allowing the Scottish Parliament 28 days to consider the notification before proceeding.

The Statutory instrument aims to repeal the EU *Geo-Blocking Regulation*, implemented in the *Geo-Blocking (Enforcement) Regulation 2018*, which prohibits certain forms of discrimination encountered by customers buying certain goods and services from traders in the EU. This applies regardless of whether the sale is processed online or offline or if the customer is a consumer or a business.

Scottish Government and UK Government officials are in agreement that this relates to devolved provision in very limited circumstances. These occur when a business customer in Scotland is the end user and makes an offline transaction with an EU business. This covers infrequent situations where businesses in Scotland purchase from an EU business with the likes of cash, cheque, postal order or banker's draft payments.

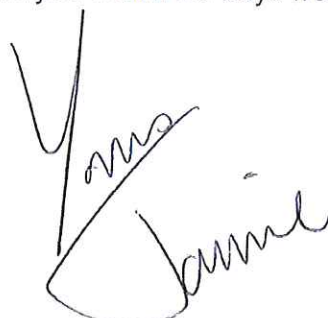
The policy rationale for agreeing to the repeal of the *Geo-Blocking Regulation* is that it would have a minimal detrimental in terms of devolved elements, particularly given that these relate to the least regulated or protected types of transactions where businesses in Scotland are making offline payments to businesses in the EU. There would also be no change to the sales of goods acts in respect of sales to businesses and no discernible anti-discrimination law in this area.

In the event of a "no deal" exit from the EU, preserving the *Geo-Blocking Regulation* would, with reference to reserved matters, mean that UK business would retain the same obligations to EU customers under UK law while UK customers would have a substantial loss of protection. This is because UK customers would be outside the EU internal market, meaning EU traders would not retain the same obligations.

As a result, businesses in Scotland would have non-reciprocal regulatory burdens.

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

I look forward to hearing from you within 28 days from the date of this letter.

A handwritten signature in black ink, appearing to read 'Jamie', is written over a large, stylized 'V' or 'Y' shaped mark.

JAMIE HEPBURN



## NOTIFICATION TO THE SCOTTISH PARLIAMENT GEO-BLOCKING REGULATION (REVOCATION) (EU EXIT) REGULATIONS 2019

### **A brief explanation of law that the proposals amend**

Would repeal the EU *Geo-Blocking Regulation*, implemented in the *Geo-Blocking (Enforcement) Regulation 2018*. This prohibits certain forms of discrimination against customers buying certain goods and services from traders in the EU. The regulation applies regardless of whether the sale is processed online or offline or if the customer is a consumer or a business.

### **Summary of the proposals and how these correct deficiencies**

The UK Government have advised that preserving the *Geo-Blocking Regulation* in UK law in the event of a “no deal” exit from the EU would risk retaining burdens for UK businesses with limited corresponding benefit for UK customers given that it is an EU internal market measure.

By preserving the *Geo-Blocking Regulation* UK businesses would continue to have the same obligations to EU customers under UK law while UK customers, in the event of a “no deal” exit from the EU, would have a substantial loss of protection in that EU traders would not retain the same obligations given these customers would then be outside the EU internal market.

Repealing the *Geo-Blocking Regulation* will ensure that UK businesses are not subject to non-reciprocal demands which would act as a burden without any benefit for both UK businesses and customers.

### **An explanation of why the change is considered necessary**

Preserving the *Geo-Blocking Regulation* in UK law in the event of a “no deal” exit from the EU would place demands on UK businesses which EU businesses would be under no obligation to reciprocate in relation to UK customers.

This would result in a situation where UK businesses would be obliged, under UK law, to afford rights to EU customers while existing rights retained by UK customers in relation to EU businesses would be impossible to enforce.

### **Scottish Government categorisation of significance of proposals**

Category A: the extent to which *Geo-Blocking Regulation* affects devolved areas is devolved provision is very limited. The Scottish Government considers that the repeal of *Geo-Blocking Regulation* would have minimal effect. The transactions concerned related to the least regulated or protected types of transactions. There would be no change to the sales of goods acts in respect of sales of businesses with no discernible anti-discrimination law in this area.

### **Impact on devolved areas**

The devolved provision concerns offline sales to business customers in Scotland and only in circumstances where these businesses are end users. Such occurrences are infrequent and involve a business in Scotland making a payment to an EU business using the likes of cash, cheque, postal order or banker's draft payments.

**Summary of stakeholder engagement/consultation**

We have neither engaged nor consulted stakeholders as the repeal of the *Geo-Blocking Regulation* would have minimal impact in respect of devolved provision, any rights being impossible to enforce. Regarding reserved aspects, the repeal of the *Geo-Blocking Regulation* would, in the event of a “no deal” exit from the EU, impose non-reciprocal obligations on these stakeholders.

**A note of other impact assessments, (if available)**

There has been no impact assessment on the basis that the repeal of the *Geo-Blocking Regulation* covers very limited circumstances involving business customers making offline transactions as end users to businesses in the EU.

**Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation**

Scottish Government and UK Government officials are in agreement that the *Geo-Blocking Regulation* relates to devolved provision in very limited circumstances. These occur when a business customer in Scotland is the end user and makes an offline transaction with an EU business. This covers infrequent situations where businesses in Scotland purchase from an EU business with the likes of cash, cheque, postal order or banker’s draft payments.

The policy rationale for agreeing to the repeal of the *Geo-Blocking Regulation* is that it would have a minimal impact in terms of devolved elements, particularly given that these relate to the least regulated or protected types of transactions. There would also be no change to the sales of goods acts in respect of sales to businesses and no discernible anti-discrimination law in this area.

In the event of a “no deal” exit from the EU, preserving the *Geo-Blocking Regulation* would, with reference to reserved matters, mean that UK business would retain the same obligations to EU customers under UK law while UK customers would have a substantial loss of protection. This is because UK customers would be outside the EU internal market, meaning EU traders would not retain the same obligations.

As a result, businesses in Scotland would have non-reciprocal regulatory burdens.

**Intended laying date (if known) of instruments likely to arise**

The Department of Business, Energy and Industrial Strategy (BEIS) plan to lay this affirmative SI on 14 March 2019.



**If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?**

The SI is subject to affirmative procedure and will be laid on 14 March 2019 in draft. The Chancellor of the Duchy of Lancaster Minister for the Cabinet Office has given an undertaking that the UK Government will not schedule debates for affirmative SIs until the Scottish Parliament has given a view on the SI notification under the protocol. We would welcome a view from the committee as soon as possible, however the Scottish Parliament will have 28 days for consideration if needed under the agreed protocol to consider the proposal to consent to the SI or SIs.

**Information about any time dependency associated with the proposal**

Given that the Statutory Instrument relates to the event of a "no deal" exit from the EU which would currently take place on 29 March 2019, this leaves very little time for delay.

**Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?**

The devolved element of the *Geo-Blocking Regulation* is very limited in scope and concerns rights of business customers in Scotland as end users in the rare event that they process offline transactions with EU businesses. In the event of a "no deal" exit from the EU, these rights would be impractical to enforce. Maintaining the *Geo-Blocking Regulation* regarding the reserved elements would, at the same time, would give UK businesses non-reciprocal administrative burdens with no reciprocal benefits for UK customers when doing any type of transaction with an EU business.

**Any significant financial implications?**

Maintaining the *Geo-Blocking Regulation* in terms of reserved areas would bring administrative costs to UK businesses and leave UK customers with no benefits relative to EU businesses who would not have to incur these costs and EU customers who would retain rights in relation to UK businesses.

