



Department
for Transport

Stuart McMillan MSP
Delegated Powers and Law Reform Committee
The Scottish Parliament
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From the Secretary of State
Rt Hon Heidi Alexander MP

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Dear Stuart,

Thank you for your letter dated 18 September, regarding the Committee's consideration of the Legislative Consent Memorandum for the Sustainable Aviation Fuel Bill. In response to your two questions on Clauses 1 and 10 that confer devolved regulation making powers on the Secretary of State, I would like to explain our current position and our rationale as to why we consider these clauses to be appropriate.

Some of the clauses in the SAF Bill relate to reserved matters and some to devolved matters. This complexity may make it harder for the Bill to work in a fair and efficient way if consent mechanisms are included. We consider these provisions to be relatively minor and technical, and in addition, consent mechanisms would create additional administrative burdens and complicate the scheme without practical benefits in Scotland.

Clause 1(6) allows the Secretary of State, by regulations, to extend the period during which a direction may be given to the counterparty to enter into contracts with a SAF producer. These regulations would be made through the affirmative procedure. We do not believe that a consent mechanism is suitable for this clause. If there were a consent mechanism and Scottish Ministers at the time did not consent to regulations made under this clause, it could lead to a situation where the UK government would be unable to enter into revenue certainty mechanism contracts with Scottish SAF producers, while still funding any contracts in England, Wales and Northern Ireland through a UK-wide levy. This could result in aviation fuel suppliers in Scotland paying the costs of the scheme, but SAF producers in Scotland not receiving any benefits.

Clause 10(1) allows the Secretary of State, subject to prior consultation with the Scottish Government, to make regulations which would require the counterparty to pay any surplus it has collected to those who have had to pay the levy, and to require persons who receive a surplus payment to make payments to their customers. This regulation would also be made by the affirmative procedure. A consent mechanism for this clause could lead to a situation where surpluses in Scotland are not paid to levy payers, but they are in England, Wales and Northern Ireland. This would put aviation fuel suppliers in Scotland at a disadvantage.

The addition of consent provisions for these clauses would risk preventing or delaying this Bill's benefits, as they would create an additional administrative burden without any practical benefits.

We continue to engage with the Scottish Government on this Bill, as I recognise the concern that these clauses confer powers on the Secretary of State without requiring the consent of the Scottish Ministers, and the principle behind this concern. However, we consider our current position appropriate and proportionate for the reasons I have set out and therefore do not intend to amend the Bill to grant consenting powers on Scottish Ministers on those clauses.

I would like to thank the Committee for your work on the consideration of the Bill and trust my response has addressed your questions on these matters. My officials will be more than happy to explain further if not.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Heidi Alexander', is centered on the page. The signature is fluid and cursive.

Rt Hon Heidi Alexander MP

SECRETARY OF STATE FOR TRANSPORT