



Department for Levelling Up,
Housing & Communities

Stuart McMillan MSP
Convener, Delegated Powers and Law Reform
Committee
The Scottish Parliament
Edinburgh
EH99 1SP

Rt Hon Greg Clark MP
*Secretary of State for Levelling Up,
Housing and Communities*

**Department for Levelling Up,
Housing and Communities**
4th Floor, Fry Building
2 Marsham Street
London SW1P 4DF

www.gov.uk/dluhc

Email: greg.clark@levellingup.gov.uk

14 August 2022

Thank you for your letter of 12 July 2022 to the Paymaster General regarding delegated powers in UK Parliament Bills. I am responding given my responsibilities for the Union.

The UK Government takes into account a variety of factors when seeking delegated powers in devolved areas. Each bill is drafted according to its specific policy intent and the most appropriate way to affect those policy changes. Powers for the UK Government to make statutory instruments (SIs) in devolved areas are not new and have been used across a wide range of policy areas since the advent of devolution. This is because it is often appropriate for the UK Government to amend existing or introduce new UK-wide regulations, including in devolved areas, as it can be more efficient, or to ensure coherence across the UK and make it easier for our stakeholders. For example, in recent months, the UK Government has made SIs for Scotland using a variety of existing powers including in the Energy Act 2004 and the Climate Change Act 2008, all with the support of the Scottish Government.

You raised concerns around the Scottish Parliament's ability to scrutinise UK Government SIs) in devolved areas. Arrangements for scrutinising and being notified of Scottish Ministers' consent to UK Government SIs are of course a matter for the Scottish Government and Scottish Parliament. This includes the scope of the Scottish Parliament's SI Protocol 2.

I note your position that all delegated powers for UK Ministers to make SIs in devolved areas should be subject to a requirement for the Scottish Ministers' consent. The UK Government already seeks the consent of Scottish Ministers for SIs in devolved areas both when there is a statutory requirement or an existing political commitment to do

so. Whether or not to include statutory consent requirements is considered on a case-by-case basis as each policy area has a different legislative context.

This approach to secondary legislation is consistent with long standing practice. It has worked well for over 20 years and continues to do so. The only change to our approach has been to facilitate further scrutiny in some areas in line with the commitments and statutory requirements mentioned above. Imposing a blanket consent procedure and lengthy process on future secondary legislation is unnecessary, creating additional administrative burdens and risks delaying the making of legislation in the future.

UK Government officials regularly engage with their Scottish Government counterparts and share information on any upcoming UKG secondary legislation that legislates on devolved matters in Scotland. We will continue to engage constructively with the Scottish Government and the other Devolved Governments to develop future secondary legislation on devolved matters in the spirit of the Devolution Memorandum of Understanding.

Thank you for your invitation to attend a session of the Committee on Tuesday 4 October. I am sure you will understand that I need to defer a substantive response on this point until September.

I am copying this letter to the Secretary of State for Scotland.

Yours ever,

A handwritten signature in black ink, appearing to be 'G. Clark', written in a cursive style.

Rt Hon Greg Clark MP
Secretary of State for Levelling Up, Housing and Communities