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Convener, Economy and Fair Work Committee
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23 August 2022

Dear Convener

THE UNITED KINGDOM INTERNAL MARKET ACT 2020 (SERVICES EXCLUSIONS) REGULATIONS 2022 (“the SI”)

I am writing in relation to the above-named SI, which the UK Government intends to lay under section 18(2) of the UK Internal Market Act 2020 (“the UKIM Act”). In accordance with section 18(8) of the UKIM Act, the UK Government sought the consent of Scottish Ministers to making the SI.

I have responded to this request to inform the Minister for Small Business, Consumers and Labour Markets that while a decision to exclude the regulation of Heat networks from the Act is welcome, the Scottish Government is not in a position to consent to this SI given its overall purpose of widening the scope of the UKIM Act.

The UK Government has proposed secondary legislation which would amend the UKIM Act by repealing and re-enacting Schedule 2 of that Act. Schedule 2 is split into two Parts: Part 1 sets out the services to which section 19 (mutual recognition) does not apply and Part 2 sets out the services to which sections 20 and 21 (non-discrimination) do not apply. The new Schedule will create new exclusions, including heat networks, which follows a Scottish Government request for both heat networks policy and wider heat regulation policy to be excluded in response to a UK Government consultation (the latter, wider exclusion was rejected by the UK Government).¹

¹ See the UK Government’s response to the consultation [UK internal market: the continuity of exclusions from the principles of mutual recognition and non-discrimination for services - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/uk-internal-market-the-continuity-of-exclusions-from-the-principles-of-mutual-recognition-and-non-discrimination-for-services)

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The new Schedule would bring a number of new policy areas into scope of the Act: financial services, postal services, electronic communications services, services of temporary work agencies, and services of a statutory auditor. We have previously made clear that we are opposed in principle to the scope of the Act being extended, a position strengthened by the approach to parliamentary scrutiny adopted by the UK Government. Therefore, while we welcome the exclusion of Heat Networks, the Scottish Government has not consented to this SI.

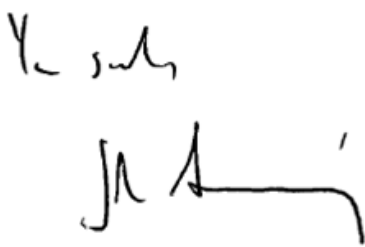
The request for consent from the UK Government was received on 29 June. Under section 18(8) of the UKIM Act the UK Government must seek the consent of the devolved governments, including the Scottish Ministers, but it can proceed without consent of devolved governments one month after a request was made (see section 18(9) of the UKIM Act). It is, therefore, a meaningless provision.

It is disappointing that the timing of this request from the UK Government – two days before the start of the Scottish Parliament’s summer recess – would not have provided any time for the Scottish Parliament to scrutinise a notification for this instrument, before the UK Government was in a position to proceed with the SI in the absence of consent in any event. This was communicated to the UK Government by my officials.

The UK Government now intends to lay the SI when the UK Parliament returns in early September. My officials will provide an update to your committee’s clerks when we know when the SI will be laid.

I have written to the UK Government expressing my dissatisfaction at the timing of this request for consent. We have previously made the UK Government aware of the protocol agreed with the Scottish Parliament and I have reiterated the importance of ensuring the Scottish Parliament is given sufficient time to scrutinise SIs covered by this protocol.

I am copying this letter to the Convener of the Constitution, Europe, External Affairs and Culture Committee, the Cabinet Secretary for the Constitution, External Affairs and Culture and the Minister for Parliamentary Business.



JOHN SWINNEY

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