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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers relevant to Scotland in the Elections Bill



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Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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Committee Membership



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Introduction

1. At its meeting on 9 November 2021, the Committee considered the delegated powers that are relevant to Scotland in the UK Government's [Elections Bill](#) ("the Bill").
2. The Bill was introduced by the UK Government in the House of Commons on 5 July 2021ⁱ. The Bill is currently at Report stage in the House of Commons having been amended at Committee stage on 27 October 2021.ⁱⁱ
3. The Scottish Government lodged a [Legislative Consent Memorandum](#) ("LCM") on 21 September 2021.
4. Although the Bill does not contain any delegated powers conferred on Scottish Ministers, Rule 6.11.1(b) and (c) of Standing Orders provide that the remit of the Committee includes considering and reporting on proposed powers to make subordinate legislation in particular bills "or other proposed legislation"; and general questions relating to powers to make subordinate legislation.
5. The lead committee for this LCM is the Standards, Procedures and Public Appointments Committee.

ⁱ The Bill as introduced is available [here](#).

ⁱⁱ The Bill as amended at Committee stage is available [here](#).

Overview of the Bill

6. This is a substantial Bill containing 63 clauses and 11 schedules. The stated purpose of the Bill is to modify and make provision in relation to electoral law covering a wide range of topics and areas, including in relation to overseas electors, rights of EU citizens, and the Electoral Commission, among other things. Many of the Bill's provisions will apply only to reserved areas; however, other provisions will apply to elections within the devolved responsibility of the Scottish Parliament.
7. Electoral law is generally a reserved matter, except where it relates to Scottish Parliamentary elections and local government elections. Some of the provisions in the Bill are therefore limited to reserved elections and other provisions apply to both reserved and devolved elections.

Review of powers conferred on UK Ministers exercisable in devolved areas

8. The UK Government has published a [Delegated Powers Memorandum](#) to accompany the Bill (the “UK DPM”). As is normal for UK bills, the Scottish Government has not published a delegated powers memorandum. The Scottish Government’s view on the relevant clauses is set out in the LCM.
9. There are no clauses in the Bill which confer delegated powers on the Scottish Ministers. However, there are powers conferred on UK Ministers which are exercisable in devolved areas. In some cases, the UK Government and the Scottish Government disagree about whether the relevant provisions fall within devolved competence and in one instance the power is not considered in the LCM and legislative consent is not sought. None of the delegated powers provisions in devolved areas appear to relate to areas formerly within EU competence before the UK fully withdrew from the EU.

Powers conferred on UK Ministers in devolved areas not formerly within EU competence

Clause 24 (clause 23 as introduced) – Power for the Secretary of State to add, vary or omit third parties from the list of third parties capable of giving notification for purposes of Part 6 of PPERA

Power conferred on: Secretary of State (new power)

Power exercisable by: Order

Parliamentary procedure: Affirmative

Provision

10. Clause 24 of the Bill limits the opportunities for third parties (and in particular non-UK third parties) to incur campaign spending (known as controlled expenditure). It does so by restricting spending to those categories of third parties listed in section 88(2) of the Political Parties, Elections and Referendums Act 2000 (“PPERA”) and those exempted in new section 89A(1)(b) of PPERA. Those categories of third parties not listed are limited to a maximum spend of £700, and those categories listed will be able to spend a maximum of £10,000 before they are required to notify the Electoral Commission.
11. The relevant delegated power is contained in clause 24 of the Bill, which amends section 88 of PPERA to enable the Secretary of State by order to add, vary or remove third parties from the list of third parties capable of giving notification for the purposes of Part 6 of PPERA.
12. Orders made by the Secretary of State under section 88 of PPERA as amended by clause 24 of the Bill as enacted are to be laid before and approved by a resolution of each House of Parliament (equivalent to the affirmative procedure).

Committee consideration

13. The Committee noted that Electoral law in relation to Scottish Parliament elections and local government elections is generally devolved to the Scottish Parliament subject to certain exceptions. These provisions in the Bill would apply to Scottish Parliament and local government elections
14. The new power in clause 24 of the Bill would be exercisable by the Secretary of State alone and not by Scottish Ministers.
15. According to Paragraph 43 of the LCM, the UK Government's position is that these provisions of the Bill present an immediate legislative opportunity to make an important change to electoral law and that introducing the same changes for both reserved and devolved elections would minimise voter confusion and assist electoral administrators in applying any changes. It highlights that the application of different rules to the registration and activity of third party campaigners in relation to different types of elections in the UK would be more complicated for campaigners to navigate and for the Electoral Commission to regulate.
16. Paragraph 153 of the UK DPM highlights that the introduction of clause 23 (in the Bill as amended) means exclusion from the list will significantly restrict a category of third parties' ability to campaign. Restricting access to campaigning has the potential to impinge on freedom of expression (Article 10 of the European Convention on Human Rights) and the right to enjoy a free election (Article 3 of the First Protocol of that Convention). The power in clause 24 would allow a legitimate category of third parties which emerges to be added quickly to the list of categories to ensure these restrictions on campaigning remain proportionate and no more extensive than is necessary to meet their aim of preventing campaigning by those with no genuine stake in the UK.
17. Paragraph 44 of the LCM also states that whilst the Scottish Government is sympathetic to these changes, there is an intention to legislate in this area prior to the Scottish Parliament election in 2026 and this will allow any Scottish legislation to take account of any issues raised in adoption of these provisions. Additionally, the existing threshold for both registration and reporting for non-party campaigners in Scotland is already £10,000. The Scottish Government does not therefore recommend legislative consent in relation to this provision.
18. The Committee noted that an Order made under this power would be subject to the affirmative procedure, which allows a high level of scrutiny. However, there is no requirement for the consent of Scottish Ministers in respect of the power conferred on the Secretary of State to make Orders in devolved areas.
19. As part of its consideration of the LCMs for the Police, Crime, Sentencing and Courts Bill, and the Health and Care Bill, the Committee noted that powers were conferred on UK Ministers in devolved area which do not appear to arise in areas formerly within EU competence. In its letter to the Minister for Parliamentary Business dated 6 October 2021 (Annex A), the Committee asked the Scottish Government how, where the process for scrutiny by the Scottish Parliament set out in SI Protocol 2 does not apply, the Parliament is to scrutinise the exercise of delegated powers conferred on UK Ministers in devolved areas that do not fall within areas formerly within EU competence before the UK fully withdrew from the EU.
20. The Minister for Parliamentary Business responded on 21 October 2021 (Annex B)

recognising the Scottish Parliament's interest in scrutinising any proposals by the UK Government to legislate in devolved areas. He had no specific proposal to offer on how the Parliament could best scrutinise the exercise of delegated powers in devolved areas that do not fall within areas formerly within EU competence before the UK fully withdrew from the EU. However, he noted that any process would need to be flexible and take account of factors such as the type and significance of the power being exercised, whether or not the power was exercisable subject to the consent of the Scottish Ministers, and the extent and timing of engagement by the UK Government with Scottish Ministers.

21. **The Committee draws the lead committee's attention to the disagreement between the Scottish Government and the UK Government on whether these powers should be conferred on the Secretary of State in devolved areas to consider from a policy perspective**
22. **Along similar lines to the position the Committee has set out previously in its reports on the LCMs for the [Police, Crime, Sentencing and Courts Bill](#) , and the [Health and Care Bill](#) , the Committee considers that:**
 - **the Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence;**
 - **this new power, when exercisable within devolved competence, is conferred on the Secretary of State, and not on the Scottish Ministers;**
 - **where this power is exercised by the Secretary of State in devolved areas, there would be no formal means by which the Scottish Parliament could scrutinise such regulations or be notified that they had been laid before the UK Parliament; and**
 - **the power conferred on the Secretary of State should be subject to a requirement for the Scottish Ministers' consent when exercised within devolved competence.**
23. **The Committee notes that the process set out in the SI Protocol 2 would not apply to the exercise of this power by the Secretary of State in devolved areas on the basis that it does not appear to relate to an area formerly within EU competence before the UK fully withdrew from the EU.**
24. **The Committee agrees to highlight to the lead committee the correspondence between the Committee and the Minister for Parliamentary Business dated 6 and 21 October 2021 in relation to LCMs for the Police, Crime, Sentencing and Courts Bill, and the Health and Care Bill, in relation to options for how the Parliament could best scrutinise the exercise of such powers.**

Clause 33 (clause 32 as introduced) – Power of UK Ministers to add, vary or omit offences from the list of criminal offences in Schedule 8 in respect of which a disqualification order can be made

Power conferred on: UK Ministers (new power)

Power exercisable by: Regulations made by SI**Parliamentary procedure: Affirmative***Provision*

25. Clause 27 of the Bill allows a court to impose a 5 year disqualification order where an offender aged 18 or over is convicted of a relevant offence and the court is satisfied it was aggravated by hostility to certain persons such as candidates or future candidates.
26. Schedule 8 of the Bill lists the criminal offences in respect of which a disqualification order can be made. Clause 33 of the Bill confers a new power on UK Ministers to add, vary or omit criminal offences from that list.
27. Regulations made by the UK Ministers under clause 33 of the Bill as enacted are to be laid before and approved by a resolution of each House of Parliament (equivalent to the affirmative procedure).

Committee consideration

28. The Committee noted that Paragraph 155 of the UK DPM states that a similar power is contained in paragraph 16 of schedule 8 to the Sentencing Act 2020, which allows the list of offences in schedule 13 to that Act (for which a special custodial sentence under section 265 or 278 of that Act has to be imposed) to be varied. Paragraph 156 of the UK DPM states that the power will allow the list of relevant offences to be kept up to date over time as new offences are created or existing offences are amended or repealed, and therefore to ensure that the legislation continues to work as intended.
29. The committee considered that this is a significant power conferred on UK Ministers to add, vary or omit listed offences in respect of which a disqualification order can be made and is exercisable in relation to both reserved and devolved elections. Regulations made under this power would be subject to the affirmative procedure, which allows a high level of scrutiny. However, there is no requirement to obtain the consent of Scottish Ministers where the power is exercised by UK Ministers in devolved areas, despite the implications for devolved elections.
30. Application of this change to Scottish devolved elections is within the competence of the Scottish Parliament. As with the power in clause 24 considered above, the Scottish Government states at paragraph 47 of the LCM that the UK Government considers that these provisions present an immediate legislative opportunity to make an important change to electoral law and that introducing the same changes for both reserved and devolved elections would minimise voter confusion and assist electoral administrators in applying any changes.
31. According to paragraph 48 of the LCM, UK-wide application would seem to strengthen the sanction, ensuring that candidates etc. in every part of the UK can benefit equally from the protection of the sanction and mean that the five-year ban, and its deterrent effect, are enforced consistently. However, as with the power in clause 24 considered above, paragraph 49 of the LCM states that whilst the Scottish Government is sympathetic to these changes, there is an intention to legislate in this area prior to the Scottish Parliament election in 2026 and this will allow any Scottish legislation to take account of any issues raised in adoption of

these provisions. The Scottish Government does not therefore recommend legislative consent in relation to this provision.

32. **The Committee adopts the recommendations as noted in paragraphs 21 to 24, in relation to clause 24, which would equally apply here.**

Powers conferred on UK Ministers where devolved competence disputed but not formerly within EU competence

Provision

33. Part 6 of the Bill makes provision for the information to be included with electronic material. Clauses 36(6), 38(4), 43(7), 50 and 56 of the Bill include provisions conferring delegated powers on UK Ministers regarding information to be included with electronic election material. These clauses are summarised as follows:
1. **Clause 36(6) – definitions relating to electronic material and publication:** Clause 36 provides for the definitions of “electronic material”, “the promoter” or “publish” that for the time being have effect for the purposes of Part 6. The power provides that these definitions in clause 36 may be amended by UK Ministers by regulations. A UK SI made under this power is to be laid before and approved by a resolution of each House of Parliament (equivalent to the affirmative procedure).
 2. **Clause 38(4) – requirement to include information with electronic material:** Clause 38 provides for the information that must appear on electronic material to be published. This is set out in clause 38(3) as the name and address of the promoter of material or any person on behalf of whom the material is being published (other than the promoter). The power provides that clause 38(3) may be amended by UK Ministers by regulations so as to add, modify or remove a description of information. A UK SI made under this power is to be laid before and approved by a resolution of each House of Parliament (equivalent to the affirmative procedure).
 3. **Clause 43(7) – exceptions to clause 38:** Clause 43 provides for the situations when the requirements contained in clause 38 to include certain information that must appear on electronic material for elections will not apply in respect of republication of such electronic material. For example, it provides that imprints are not required on any party political broadcast included by a broadcaster in its broadcasting services on the basis that party political broadcasts are subject to existing legislative requirements. The power provides that clause 43 may be amended by UK Ministers by regulations so as to add, modify or remove cases to which clause 38 does not apply. A UK SI made under this power is to be laid before and approved by a resolution of each House of Parliament (equivalent to the affirmative procedure).
 4. **Clause 50 – guidance:** This provides that the Electoral Commission must prepare guidance about the operation of Part 6 of the Bill. The draft guidance must be submitted to the UK Minister for approval. Such approval can be either without modifications or with such modifications as the Minister may determine. The draft guidance is to be laid under an equivalent of the negative procedure but coming into force will be by regulations with no parliamentary procedure.

5. **Clause 56 – regulation making power:** This provides for a gloss on the exercise of the above powers in that UK Ministers may make regulations under this Part only where they give effect to a recommendation of the Electoral Commission, or after consultation with the Commission. Any regulations may make consequential, incidental, supplementary, transitional, transitory or saving provision.
34. With reference to each of the above clauses there are no corresponding powers conferred on Scottish Ministers. UK Ministers are not required to obtain the consent of Scottish Ministers before exercising these powers, nor are they required to consult the Scottish Ministers.

Committee consideration

35. The Committee noted that as stated in paragraphs 50 onwards of the LCM, the Scottish Government's view is that sections 35-56 of the Bill, other than the "take down" provisions (clauses 43 to 48), are within devolved competence and therefore legislative consent should be sought.
36. Notably, paragraph 52 of the LCM indicates that in 2020 Scottish Ministers made broadly similar provision introducing requirements for digital imprints. This was contained in the Scottish Elections (Details to appear on Election Material) Regulations 2020 (SSI 2020/297) and the Scottish Elections (Details to appear on Election Publications) Regulations 2020 (SSI 2020/298). It states that this was the first (and so far only) regime in the UK to require digital imprints at an election. The Scottish Government states that the Bill therefore seeks to effectively override an existing Scottish regime that focuses on specific elections and all kinds of election material, including both paid and unpaid material from registered and unregistered campaigners. The Scottish Government's initial position is that the existing Scottish regime should remain in place, with any adjustments needed to accommodate the reserved aspects of the Bill in relation to the "takedown" of material on the internet.
37. By way of contrast, the Committee also noted that the UK Government considers that, as the provisions are to regulate publication of electronic campaigning material for elections online, the matter is reserved under reservation C10 of schedule 5 of the Scotland Act (specifically "internet services"). Accordingly, legislative consent is not sought for these provisions.
38. The committee considered that, to the extent that the provisions are within the legislative competence of the Scottish Parliament, the Parliament may expect to have a role in scrutinising any regulations made under those powers. Powers which are conferred on UK Ministers alone and are exercisable within devolved competence should, in principle, be subject to a requirement for the Scottish Ministers' consent.

39. **To the extent that the delegated powers within clauses 36(6), 38(4), 43(7), 50 and 56 of the Bill are within devolved competence, the Committee adopts the recommendations as noted in paragraphs 21 to 24, in relation to clause 24, which would equally apply here.**

Powers conferred on UK Ministers not covered in the LCM potentially within devolved

competence but not formerly within EU competence

Clause 58 – Power for UK Ministers to amend references to subordinate legislation

Power conferred on: UK Ministers (new power)

Power exercisable by: Regulations made by SI

Parliamentary procedure: Affirmative

Provision

40. Clause 58 allows UK Ministers to amend any provision of the Bill as enacted, or any provision inserted by it into another Act, in consequence of the amendment or revocation of any subordinate legislation which is for the time being referred to in the provision.
41. In terms of the meaning of “subordinate legislation” it includes an Act of the Scottish Parliament and so may be within the devolved competence of the Scottish Parliament.
42. Regulations made by the UK Ministers under clause 58 of the Bill as enacted are to be laid before and approved by a resolution of each House of Parliament (equivalent to the affirmative procedure).

Committee consideration

43. The Committee noted that this power is not considered in the LCM and it is not a provision for which legislative consent is sought. However, it is possible that the provision of the primary legislation being amended may be within devolved competence.
44. According to paragraph 172 of the UK DPM, there are a number of provisions in the Bill, and in provisions inserted by the Bill into other legislation, that refer expressly to secondary legislation which could be revoked, or amended in a way that means that references to them, and therefore the effect of the provisions, no longer work. The powers to make that secondary legislation do not in every case include powers to update any connected primary legislation, meaning that, without taking this power the provisions would not be able to be updated in consequence.
45. The Committee also noted that regulations made under this power would be subject to the affirmative procedure, which allows a high level of scrutiny. However, there is no corresponding power conferred on Scottish Ministers. UK Ministers are not required to obtain the consent of Scottish Ministers before exercising this power, nor are they required to consult the Scottish Ministers.

46. **To the extent that the delegated power within clause 58 is within devolved competence, the Committee adopts the recommendations as noted in paragraphs 21 to 24, in relation to clause 24, which would equally apply here.**

Annex A

Letter to the Minister for Parliamentary Business dated 6 October 2021

At the meeting of the Delegated Powers and Law Reform Committee on 28 September, the Committee considered the delegated powers relevant to Scotland in both the [Police, Crime, Sentencing and Courts Bill](#) and the [Health and Care Bill](#) as referred to in the Legislative Consent Memorandums lodged by the Scottish Government on 6 August and 31 August 2021 respectively. The Committee has since published its reports on both LCMs:

- [Legislative Consent Memorandum: delegated powers relevant to Scotland in the Police, Crime, Sentencing and Courts Bill](#)
- [Legislative Consent Memorandum: delegated powers relevant to Scotland in the Health and Care Bill](#)

A similar issue arose in the Committee's consideration of both Bills in relation to powers conferred on UK Ministers in devolved areas not formerly within EU competence. This letter covers each in turn.

Police, Crime, Sentencing and Courts Bill

Clauses 40 to 42 include provision conferring three police powers on UK Ministers in devolved areas, albeit they do not appear to arise in areas formerly within EU competence. These regard the extraction of data from digital devices. While the LCM states that the Scottish Government does not currently recommend that consent is given for these provisions, it also states that "the Scottish Government intends to bring forward a supplementary memorandum for these provisions in order to ensure a consistent approach that takes account of Scotland's distinct position."

While the Committee would expect to consider these powers in any supplementary LCM, in the first instance it agreed to write to you to ask:

1. whether the three powers conferred on the Secretary of State by clauses 40 to 42, insofar as within devolved competence, fall within areas formerly within EU competence before the UK fully withdrew from the EU; and
2. how, where the process for scrutiny by the Scottish Parliament set out in SI Protocol 2 does not apply, the Parliament is to scrutinise the exercise of delegated powers conferred on UK Ministers in devolved areas that do not fall within areas formerly within EU competence before the UK fully withdrew from the EU.
3. whether the powers conferred on the Secretary of State by clauses 87 and 123, insofar as within devolved competence, fall within areas formerly within EU competence before the UK fully withdrew from the EU; and
4. how, where the process for scrutiny by the Scottish Parliament set out in SI Protocol 2 does not apply, the Parliament is to scrutinise the exercise of delegated powers conferred on UK Ministers in devolved areas that do not fall within areas formerly within EU competence before the UK fully withdrew from the EU.

5. how do you envisage the Scottish Parliament scrutinising the exercise of delegated powers conferred on UK Ministers in devolved areas that do not fall within areas formerly within EU competence before the UK fully withdrew from the EU.

Health and Care Bill

Clauses 87 and 123 in the Health and Care Bill include provisions conferring powers on UK Ministers in partially devolved areas. There is no requirement in the Bill that Scottish Ministers' consent is sought before using the relevant regulation making powers.

The Committee agreed to write to you to ask:

Finally, also under the Health and Care Bill, the Committee noted that clause 125 includes provision to enable the Secretary of State to make regulations in relation to the prohibition of paid for advertising of less healthy food and drink online.

The Committee acknowledged the differing views between the UK Government and the Scottish Government as to whether the provisions are within the legislative competence of the Scottish Parliament. However, should the provisions be considered to be within the legislative competence of the Scottish Parliament, the Parliament would expect to have a role in scrutinising the exercise of delegated powers conferred on UK Ministers.

So, should clause 125 be considered to be devolved, the Committee agreed to write to you to ask:

I would be grateful if you were able to provide a response to each question by Friday 22 October 2021.

I am copying this letter to the Conveners of the Criminal Justice Committee and the Health, Social Care and Sport Committee as the lead committees for the respective LCMs.

Annex B

Letter from the Minister for Parliamentary Business dated 21 October 2021

Thank you for your letter of the 6 October regarding the LCMs for the Police, Crime, Sentencing and Courts Bill and the Health and Care Bill and in particular the issue the committee has raised regarding the powers conferred on UK Ministers in devolved areas not formerly within EU competence.

Regarding question (i), which related to the Police, Crime, Sentencing and Courts Bill, the Scottish Government does not consider that the powers conferred on the Secretary of State, insofar as within devolved competence, fall within areas formerly within EU competence before the UK fully withdrew from the EU and as such the protocol does not apply.

We have considered question (iii), which relates to the Health and Care Bill. In respect of clause 87, the Scottish Government is currently discussing this clause with the UK Government. We have asked the UK Government to amend this clause to ensure that the consent of the Scottish Ministers is obtained if the regulations contain any provision which falls within legislative competence. Once discussions on that issue are concluded, we will respond separately to the Committee on this question as it relates to clause 87.

In respect of clause 123 of the Health and Care Bill, the Scottish Government does not consider that the powers conferred on the Secretary of State, insofar as within devolved competence, fall within areas formerly within EU competence before the UK fully withdrew from the EU and as such the protocol does not apply.

In respect of clause 125 of the Health and Care Bill, the Scottish Government considers that the question posed is of a hypothetical nature, as the UK Government position remains that the online advertising provisions are reserved. As it stands the Secretary of State would exercise powers for the whole of the UK. The Scottish Government consider this to be an unsatisfactory position, given our position that elements of clause 125 are devolved. Should the provisions in the Bill be amended to recognise this, the Scottish Government will update the Committee.

I note the Committee's view that the Scottish Parliament would expect to have a role in scrutinising the exercise of delegated powers conferred on UK Ministers, and you ask how I envisage that could be facilitated in devolved areas that do not fall within areas formerly within EU competence before the UK fully withdrew from the EU.

The Scottish Government recognises the Parliament's interest in scrutinising any proposals by the UK Government to legislate in devolved areas. As you will be aware there is a protocol in place between the Scottish Government and the Scottish Parliament to facilitate scrutiny of proposals by the UK Government to legislate through subordinate legislation in devolved areas that would have formally been within the competence of the EU. There isn't, nor has there ever been, a similar arrangement to provide for scrutiny by the Scottish Parliament of proposals by the UK Government to legislate through subordinate legislation in devolved areas that were not previously within the competence of the EU.

Although I am happy to consider further how the Scottish Parliament could best scrutinise the exercise of delegated powers in devolved areas that do not fall within areas formerly

within EU competence before the UK fully withdrew from the EU I do not have a specific proposal to offer. My view is that any process would need to be flexible and take account of factors such as the type and significance of the power being exercised, whether or not the power was exercisable subject to the consent of the Scottish Ministers, and the extent and timing of engagement by the UK Government with Scottish Ministers. Our officials worked together when developing the protocol for scrutiny of proposals to legislate through subordinate legislation in devolved areas that would have formally been within the competence of the EU, and I suggest it would be helpful to remit the issue to them to consider options.

If you are content with this proposal I will ask my officials to take matters forward.

