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Net Zero, Energy and Transport Committee

Supplementary Legislative Consent Memorandum (LCM) on the UK Environment Bill



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Net Zero, Energy and Transport Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Net Zero, Energy and Transport.



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Introduction

1. A supplementary Legislative Consent Memorandum ([LCM](#)) on the UK Environment Bill was lodged by the Scottish Government on 9 July.ⁱ On 1 September, the Scottish Parliament agreed to refer it to the Net Zero, Energy and Transport (NZET) Committee as lead Committee.ⁱⁱ
2. As the lead Committee, the NZET Committee must consider and report to the Scottish Parliament on the LCM. The UK Environment Bill is [currently](#) awaiting its 3rd reading in the House of Lords.ⁱⁱⁱ We note that a Scottish Parliament debate on the LCM has been scheduled for 5 October, effectively requiring us to report by the end of September.
3. The procedure for scrutiny of Legislative Consent Memorandums and Motions is set out in [Chapter 9B](#) of the Parliament's standing orders.
4. An LCM has already been lodged in relation to the UK Environment Bill. This was considered by the then Environment, Climate Change and Land Reform Committee in Session 5. That process is now complete.^{iv}
5. The Scottish Government considers that the need for a supplementary LCM on the same Bill has been triggered by amendments made to it earlier this year about—
 - due diligence for the use of forest risk commodities in commercial activity (now clause 112 of the UK Bill)
 - guiding principles on the environment for UK Ministers to adhere to (now clause 19(5) of the UK Bill).
6. The supplementary LCM sets out the Scottish Government's views on what the provisions do, and its objections to them. In essence, it considers that the provisions relate to devolved matters and that there was no need for the UK Government to legislate in this way. It also states that the UK Government did not consider that a need for a supplementary LCM had been triggered. In a letter to this Committee (see below), the UK Government in effect confirms this. **In other words, there is legal disagreement between the two governments as to whether or not these two amendments intrude into devolved areas.**

ⁱ [Supplementary Legislative Consent Memorandum on the UK Environment Bill](#)

ⁱⁱ Collette Stevenson MSP was a substitute member for Natalie Don MSP during consideration of the LCM.

ⁱⁱⁱ See [UK Environment Bill](#) page

^{iv} More information available here: [Environment Bill - Parliamentary Business: Scottish Parliament](#)

Scottish Parliament consideration of the supplementary LCM

7. The Committee considered its initial approach to the LCM on [7 September](#). We agreed to invite the Scottish Government to give oral evidence on the LCM. We also agreed to write to the UK Government to ask for its response to the LCM. This letter is available on the Committee's [webpage](#) and can be found at Annexe 1.
8. At its meeting on 7 September, the Delegated Powers and Law Reform (DPLR) Committee considered the delegated powers in the amendments in the supplementary LCM, and also agreed to write to both the [UK Government](#) and the [Scottish Government](#).^v These letters are available on the DPLR Committee's [webpage](#) and can be found at Annexe 3.
9. In their letters, the DPLR Committee acknowledged the differing views between the UK Government and the Scottish Government as to whether the amendments to the Bill are within the legislative competence of the Scottish Parliament, but said they wished to raise important points of principle:
 1. The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
 2. The Committee notes that in the event the powers in the bill are exercised by UK Ministers 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.
 3. 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.
 4. As a minimum, it is appropriate that all powers under a bill exercisable by UK Ministers in devolved areas are subject to the process set out in the SI Protocol agreed between the Scottish Parliament and the Scottish Government.
10. These points are consistent with the approach that the DPLR Committee's predecessor in Session 5 of the Scottish Parliament took in relation to delegated powers conferred solely on UK Ministers which may be exercisable within devolved competence. We note that the four points the DLPR Committee raise are contingent on the two amendments discussed in the LCM intruding into devolved areas.
11. On [14 September](#), we took evidence on the LCM from Michael Matheson, Cabinet Secretary for Net Zero, Energy and Transport and officials. We explored with them why the Scottish Government considered there was a need for a supplementary

^v Rule 9B.3 in the Standing Orders of the Scottish Parliament states that 'in any case where the Bill that is the subject of the memorandum contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the committee mentioned in Rule 6.11 [Delegated Powers and Law Reform] shall consider and may report to the lead committee on those provisions.'

LCM and why it objects to the UK Government legislating in these areas. We also discussed the Scottish Government's views on the policy implications of the amendments, including how they compare with their own ambitions in relation to forest risk commodities. The Official Report for this evidence session can be accessed [here](#).^{vi}

12. On [21 September](#), the UK Government responded to our letter. This can be found at Annexe 2.
13. On [22 September](#), the Scottish Government responded to the DPLR Committee letter. This can be found at Annexe 4.

The NZET Committee's approach to scrutiny of the supplementary LCM

14. Since the LCM procedure was established, it has been very rare for a committee of the Scottish Parliament to have to report on an LCM in circumstances where the UK and Scottish Governments disagree as to whether the LCM was actually needed.
15. In this situation, it is not within the power of any committee to comment authoritatively on which government is right. That is a legal question. At most, it can take evidence from experts on the relevant law and seek to provide the Parliament with an informed view of where the balance of evidence appears to lie. Because of the very tight timescale we have had to report, this has not been possible in this case.
16. We further note that the principle of the confidentiality of legal advice means we are unsighted on the legal briefing Ministers in both administrations would have received on the reserved-devolved dividing line in the case of these two amendments. We have only had an outline of the relevant legal arguments from both governments.
17. It is more normal for a Committee report on an LCM to focus on the policy implications of the provisions that triggered the LCM. As noted below, it became apparent in our evidence-taking that the policy differences between the UK and Scottish governments on the two amendments do not appear to be significant. The Scottish Government's objection is primarily a principled and constitutional one. In other words, it reverts in large part to the legal dispute.
18. Overall, this has left the Committee in an unsatisfactory position in terms of making a report on the LCM to the Scottish Parliament. The processes that have led to the Committee being in this position appear a relevant issue to raise in this report, inasmuch as we have been able to discern them in this very limited scrutiny period.

Due diligence for the use of forest risk commodities in commercial activity

19. The term ‘forest risk commodities’ refers to products which are considered at high risk of being linked to illegal deforestation. They might include foods such as beef, soya, palm oil and cocoa.
20. The Committee understands that new clause 112 of the UK Bill makes it unlawful for businesses within scope to use in the UK forest risk commodities which have not been produced in accordance with relevant laws in the country where they are grown. They would be required to conduct due diligence to ensure that illegally produced forest risk commodities do not enter their supply chain, and to report on that annually. The clause gives the UK Government the power, by regulations, to specify matters such as the type of products, threshold amounts of any such product in scope that would trigger due diligence requirements, and the size of business subject to the new requirements. The UK Government may also specify in regulations fines and other civil sanctions against businesses which fail to comply.
21. New clause 112 stems from a [recommendation of the Global Resource Initiative Taskforce](#), commissioned by the UK Government in 2019 to advise on how to tackle issues around UK supply chains driving illegal deforestation, unsustainable land use change and associated emissions and biodiversity loss abroad. The introduction of this amendment to the UK Environment Bill is part of the UK Government’s response to that recommendation. The Taskforce made a number of other recommendations, including that the UK government should “introduce a legally binding target to end deforestation within UK agricultural and forestry commodity supply chains by no later than 2030”, and that the public sector should lead the transition to sustainable commodities by strengthening public procurement requirements.^{vii}
22. [DEFRA consulted on the regulation of forest risk commodities in 2020 before the amendment was introduced](#). The supplementary LCM states that:

” ... Scottish Ministers, however, were not consulted on the development of the policy, and do not consider that it is acceptable for policy to be made for the UK in areas of devolved competence without the involvement of the Scottish Government and the Scottish Parliament. The UK Government has offered early informal engagement with the Scottish Government on the preparation of draft regulations for consultation, and some discussions have taken place at official level. While this engagement is welcome, it is no substitute for a proper recognition of devolved competence.^{viii}
23. The supplementary LCM also states that:

vii UK Government response to the recommendations of the Global Resource Initiative, published [11 November 2020](#)

viii [Supplementary Legislative Consent Memorandum on the UK Environment Bill](#)

” The UK Government is of the view that these measures [i.e. new clause 112] are reserved, arguing that they are solely concerned with the regulation of business activities (as set out in Head C, Part II, Schedule 5 of the Scotland Act 1998 – the creation, operation, regulation and dissolution of types of business association). The Scottish Government does not agree with this position and considers that the regulation of businesses for this particular environmental purpose falls within the Scottish Parliament’s devolved competence.^{ix}

24. At our meeting on 14 September, the Cabinet Secretary said:

” Although [new clause 112] is broadly in line with Scottish Government policy on reducing the overseas impact of our consumption, the proposal was developed without the Scottish Government’s involvement and does not recognise that the policy is within devolved environmental competence, as it has a clear environmental purpose.^x

25. The Cabinet Secretary further clarified that the Scottish Government took the view of new clause 112 that:

” Its primary purpose is environmental, and the long-standing position between the Scottish Parliament and the UK Government is that the primary purpose, which is clearly environmental, is the starting point and everything else is secondary to that. Again, that is the principle that, in this case, is being breached by the UK Government, when it chooses to legislate in an area that, because of its primary purpose, is within devolved competence.^{xi}

26. The UK Government told us in their letter:

ix [Supplementary Legislative Consent Memorandum on the UK Environment Bill](#)

x Official Report, 14 September 2021, col. 37

xi Official Report, 14 September 2021, col. 45

” As we have stated in previous correspondence with the Scottish Government, the due diligence legislation to tackle illegal deforestation in UK supply chains comes under the regulatory powers within Clause 112 of the Environment Bill, regarding the use of forest risk commodities, which is a reserved matter in Scotland.

The measures fall within the scope of the C1 reservation for ‘the creation, operation, regulation and dissolution of types of business association’. The obligations imposed under Part 1 (Schedule) on the ‘regulated persons’ are requirements of a formal regulatory nature, including reporting on certain matters in each financial year. As defined in paragraph 7 (Schedule), a ‘regulated person’ is a type of business association. Therefore, the Part 1 requirements amount to regulation of a business association for the purpose of the C1 reservation. This is set out in Schedule 5, Part II, Section C1 of the Scotland Act 1998. We are continuing to engage with the devolved administrations over these matters.

The Global Resource Initiative proposed a broad package of recommendations to reduce the UK’s global environmental footprint. Our response to these recommendations was published in November 2020 and outlines our approach to actioning the proposed measures and the work already underway to deliver against these. Responding to many of these recommendations will not require legislation and we will work with devolved administrations wherever appropriate or helpful.^{xii}

27. Setting aside questions of legislative competence, the Committee recognises the need for governments in the UK and elsewhere to tackle the global impact unsustainable domestic consumption has on greenhouse gas emissions and biodiversity. Consumption of products and materials accounts for an estimated 74% of Scotland’s carbon footprint, so Scotland cannot fully play its part in addressing the climate emergency without tackling its consumption emissions as well as its domestic emissions, however this is achieved.^{xiii}
28. The Scottish Government told us that the approach set out in the forest risk commodities amendment is consistent with Scottish Government policies to reduce the global impact of consumption in Scotland.^{xiv}
29. The Committee also notes that the [European Commission is working towards a possible Directive on due diligence](#) recognising that international supply chains can drive negative impacts relating to human rights, environmental damage and land rights. Given the Scottish Government’s commitment to continue to align with EU standards where possible, this development may raise further questions about what the devolved levers are in this area, and how the Scottish Government proposes to use them.^{xv}

xii UK Government letter, [21 September 2021](#)

xiii This figure is according to Zero Waste Scotland: [CloCE Summary Report - FINAL - 15.06.15.pdf \(zerowastescotland.org.uk\)](#)

xiv Official Report, 14 September 2021, col. 41

xv As noted in the most recent PfG, the Scottish Government will ‘implement our commitment to align with EU standards and laws.’ [A Fairer, Greener Scotland: Programme for](#)

30. Looking more broadly at how to prevent domestic consumption that has negative global consequences on biodiversity or climate change, this appears to be a legally complex area. Some powers are likely to be reserved, and others devolved. It is our understanding that, whilst the forest risk commodities amendment has generally been welcomed by environmental stakeholders at a UK level, there are views that regulation should go further; for example, establishing equivalent obligations for financial institutions or implementing other recommendations of the Global Resource Initiative.
31. This ongoing discussion is largely outwith the scope of this report. However, the Committee recognises that further policy and legislative development may be required to fully address the impact supply chains have on deforestation and unsustainable land use abroad, and that some of this may engage devolved competence. On 14 September, we sought to explore further with the Scottish Government what its policies are in this area. They offered to write back with more information, which we are still awaiting.
32. The Committee also recognises that such issues are a matter of international climate justice, as the burden of these negative impacts falls disproportionately on poorer communities in developing countries. The Scottish Government states in its [Environment Strategy \(Vision and Outcomes\) published in 2020](#):
- ” Our consumption relies on resources extracted or used in other parts of the world, including water, land and biological and mineral resources. We have a significant carbon footprint, including emissions produced in Scotland, and emissions in other countries making goods which we import. As a result, our environmental impact extends far beyond our own country. The nature of this impact is complex. Some of the commodities we import are associated with deforestation, water stress and other ecological pressures in different parts of the world.
- To achieve this outcome, we will strive to ensure that Scotland lives within the sustainable limits of our single, shared planet; and, where we can, take actions which help to make the impact of our consumption and production on other countries sustainable. As a first step, we will gather evidence on the nature of Scotland’s international environmental impact.^{xvi}
33. Agreeing Common Frameworks - such as the anticipated Common Framework on waste and resources – would be one way for governments in the UK to make progress in this area, whether through pursuing joint approaches, or developing discrete policies in this area.

Guiding principles on the environment for UK Ministers to adhere to

34. Following the UK's exit from the EU, environmental principles set out in the Treaty on the Functioning of the European Union were brought into Scottish domestic law via the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 (the "2021 Continuity Act"). These are:
 - a) the principle that protecting the environment should be integrated into the making of policies - sometimes referred to as the 'integration' principle,
 - b) the precautionary principle as it relates to the environment,
 - c) the principle that preventative action should be taken to avert environmental damage,
 - d) the principle that environmental damage should as a priority be rectified at source,
 - e) the "polluter pays" principle.
35. Scottish Ministers must, in making policies, including legislation, have due regard to the guiding principles on the environment (with some exceptions). The 2021 Continuity Act also requires them to publish guidance on the guiding principles on the environment, including on their interpretation, and how to demonstrate compliance with them.
36. Section 14 (2) of the 2021 Continuity Act states that Ministers of the Crown must, in making policies (including proposals for legislation) so far as extending to Scotland, have due regard to the guiding principles on the environment. In other words, the Act requires UK Ministers to have due regard to the Scottish environmental principles when making policy extending to Scotland in relation to any area, including reserved areas (again with some specified exceptions).
37. The UK Environment Bill now brings the EU environmental principles into UK law, (with some small drafting differences compared to the 2021 Continuity Act). The duty to have due regard to the principles is framed differently from the 2021 Continuity Act, requiring Ministers to have due regard to a policy statement on the principles.
38. New clause 19(5) of the UK Bill now disapplies section 14(2) of the 2021 Continuity Act in relation to reserved matters. As the Committee understands it, this means that UK Ministers will no longer be required to have due regard to the 'Scottish' guiding principles (and associated guidance), as set out in the 2021 Continuity Act, when acting in reserved areas extending to Scotland. Instead they would be required to have due regard to the environmental principles set out in the UK Bill (assuming it becomes law).
39. The Supplementary LCM states that the UK Government considers that these amendments are within reserved competence and is not seeking the consent of the Scottish Parliament. It notes that:

” Late in the passage of the Continuity Bill in the Scottish Parliament, the UK Government stated that their view was now that duties in the Continuity Bill would have to be “read down” under section 101 of the Scotland Act 1998 (“SA 98”) so as not to apply to the exercise of powers by Ministers of the Crown in reserved areas.

40. The LCM adds that:

” The UK Government’s amendments also change the previously agreed approach by disapplying the Scottish guiding principles on the environment when UK Ministers are acting in reserved areas in Scotland, and replacing them with the principles set by UK Government Ministers. As with provision in section 14(2) of the Continuity Act, the purpose of the amendments concerns the devolved matter of the environment. These amendments are, therefore, for a devolved purpose, and would require the consent of the Scottish Parliament under section 28(8) SA 98.^{xvii}

41. The Cabinet Secretary told us that:

” The Scottish Government considers that the duty in the 2021 act can apply to UK ministers in Scotland when they are making policy whether it does or does not relate to a reserved matter. The application of environmental principles has a clear environmental purpose and is therefore within devolved competence.^{xviii}

42. The Cabinet Secretary later added:

” ...the important issue around the environmental principle is that it could involve a UK-based organisation applying the UK Government’s environmental principle, which, for environmental reasons, is contrary to the position that we have in Scotland on the matter. That effectively means that the UK Government trumps our environmental principles in Scotland in order to enforce its position, even though that might go against our environmental principle, which could result in a negative consequence for us. That is why our view is that the approach is wrong, because it is a devolved matter, and UK bodies should apply the Scottish Government’s and Scottish Parliament’s agreed environmental principle.^{xix}

43. In his letter to us, the UK Minister, Lord Goldsmith, said:

^{xvii} [Supplementary Legislative Consent Memorandum on the UK Environment Bill](#)

^{xviii} Official Report, 14 September 2021, col. 37

^{xix} Official Report, 14 September 2021, col. 44-45

” On Clause 19(5), it is the UK Government’s view that this clause is necessary to provide legal clarity. It applies to Ministers of the Crown when making policy relating to Scotland only insofar as relating to reserved matters. It is therefore in accordance with the devolution settlement. As such, it is our opinion that a Supplementary Legislative Consent Memorandum (LCM) is not required for this provision. As I emphasised in Parliament, the UK Government will continue to consult the Scottish Government when developing reserved policies that have an impact on Scotland.

This is not a change in approach. Our amendment looks to ensure there is no gap in environmental governance created by ensuring the principles apply to UK Ministers when making policy relating to reserved matters in Scotland. The provisions enshrined in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, if left unaddressed, would have left such a gap because the duties set out by that Act cannot apply to UK Ministers when making policy related to reserved matters in Scotland. During the passage of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, we raised this concern with the Scottish Government, but the issue was not satisfactorily addressed at that stage.^{xx}

44. The Committee notes that there are two cases currently before the Supreme Court which may help cast light on the disagreement over competence brought to light by new clause 19(5) of the UK Bill. Judgement is expected soon.^{xxi}

^{xx} UK Government letter, [21 September 2021](#)

^{xxi} [REFERENCE by the Attorney General and the Advocate General for Scotland - United Nations Convention of the Rights of the Child \(UNCRC\) \(Incorporation\) \(Scotland\) Bill - The Supreme Court](#)
[REFERENCE by the Attorney General and the Advocate General for Scotland - European Charter for Local Self-Government \(Incorporation\) \(Scotland\) Bill - The Supreme Court](#)

Recommendations

45. **The Committee recommends to the Scottish Parliament that it notes the Scottish Government’s supplementary legislative consent memorandum on the UK Environment Bill, and the clear views advanced within it, and by the Cabinet Secretary in his oral evidence to the Committee, that the two amendments discussed in the supplementary LCM relate to devolved matters and the UK Government did not seek the Scottish Ministers’ agreement to them.**
46. **The Committee also recommends that the Parliament notes the UK Government’s response to us, setting out why it thinks both amendments relate to reserved matters and are necessary, and that a Supplementary LCM was not required.**
47. **This being ultimately a legal dispute on the dividing line between devolved and reserved competencies, the Committee is in no position to adjudicate authoritatively. But it is disappointing to have reached this stage, as it points to a lack of dialogue between governments before and during the amending stages of the UK Bill, in relation to matters on which any policy differences between the UK and Scottish Governments appear very minor. We note the Cabinet Secretary’s views in evidence as to a lack of consultation from the UK Government.**
48. **Looking more widely at issues raised by the LCM, the Committee urges the Scottish and UK Governments to work collaboratively across environmental matters in the post EU exit environment and (together with Welsh and Northern Irish administrations) to work to break what appears to be a logjam in delivering common frameworks on environmental matters. Otherwise, there is a significant risk of the Committee’s, and the Parliament’s, valuable scrutiny time in this session being taken up in dealing with the consequences of intergovernmental disputes rather than urgent environmental challenges requiring our attention.**
49. **The Committee notes that the amendment on forest risk commodities in the UK Bill stems from the Global Resource Initiative taskforce, which made a number of other recommendations intended to tackle the global consequences of unsustainable domestic consumption, and which the Scottish Government supports. We ask the Scottish Government to clarify what devolved levers it considers it has to implement the taskforce’s recommendations and what plans it has to make use of these. We also request further information from the Scottish Government on how it will**

seek to work with the UK Government on any other measures to reduce Scotland's global environmental footprint. In this connection, we request a progress report on the agreement of any Common Frameworks relevant to this policy area.

Annexe 1

Letter from the Convener to the Department for Environment, Food and Rural Affairs (DEFRA), 13 September 2021

Dear Mr Eustice,

At its meeting on 7 September 2021, the Net Zero, Energy and Transport Committee agreed to write to the UK Government to request further information on the amendments to UK Environment Bill referred to in the supplementary Legislative Consent Memorandum (LCM) lodged by the Scottish Government in the Scottish Parliament on 9 July 2021.

In the LCM, the Scottish Government says that two UK Government amendments fall within the legislative competence of the Scottish Parliament and, as such, required the LCM to be lodged. These amendments are those concerning—

- The use of forest risk commodities in commercial activity (now clause 112), and
- Guiding principles on the environment (now clause 19(5)).

To assist in our scrutiny of the LCM, which includes making a report to the Scottish Parliament, we would welcome the views of the UK Government on the questions below.

We will also be asking the Scottish Government related questions with regards to this legislation.

Questions on new clause 112 - The use of forest risk commodities

The supplementary LCM lodged by the Scottish Government states:

“The UK Government is of the view that these measures are reserved, arguing that they are solely concerned with the regulation of business activities (as set out in Head C, Part II, Schedule 5 of the Scotland Act 1998 – the creation, operation, regulation and dissolution of types of business association). The Scottish Government does not agree with this position and considers that the regulation of businesses for this particular environmental purpose falls within the Scottish Parliament’s devolved competence.”

1. We would welcome confirmation, first, that this is an accurate statement of the UK Government’s legal position. If so, it would also be helpful to understand the UK Government’s reasoning for the view that these measures are reserved.
2. The Committee understands that this amendment stems from recommendations of the Global Resource Initiative taskforce, which was tasked with considering actions the UK can take to “green” its international supply chains. We note that some of these recommendations would, if applied in Scotland, likely require the use of devolved powers. Does the UK Government expect to develop further legislative proposals following on from the recommendations?

Questions relating to new clause 19(5) - Guiding principles on the environment

The supplementary LCM lodged by the Scottish Government states:

“The UK Government’s amendments also change the previously agreed approach by

disapplying the Scottish guiding principles on the environment when UK Ministers are acting in reserved areas in Scotland, and replacing them with the principles set by UK Government Ministers. As with provision in section 14(2) of the Continuity Act, the purpose of the amendments concerns the devolved matter of the environment. These amendments are, therefore, for a devolved purpose, and would require the consent of the Scottish Parliament under section 28(8) SA 98.”

3. The UK Government’s response to these views would again be welcome. Does it agree that clause 19(5) legislates in a devolved area and does it agree it amounts to a change in approach from what was previously agreed with the Scottish Government?

We note that the Delegated Powers and Law Reform Committee at the Scottish Parliament also agreed last week to write to the UK Government with some questions about the LCM relevant to their remit. Responses to each of these letters will be very helpful for us, as we prepare our report. Given the constrained timeline for consideration imposed by the timetabling at Westminster, we would be most grateful for a response to our letter by no later than 21 September 2021.

Yours sincerely,

Dean Lockhart MSP

Convener

Net Zero, Energy and Transport Committee

cc. Stuart McMillan MSP, Convener of the Delegated Powers and Law Reform Committee

Annexe 2

Letter from the Department for Environment, Food and Rural Affairs (DEFRA) to the Convener, 21 September 2021

Dear Dean,

Thank you for your letter of 13 September about amendments to the Environment Bill referred to in the supplementary Legislative Consent Memorandum (LCM), tabled by the Scottish Government in July. I am replying as the Minister responsible for forestry policy.

Forest risk commodities

As we have stated in previous correspondence with the Scottish Government, the due diligence legislation to tackle illegal deforestation in UK supply chains comes under the regulatory powers within Clause 112 of the Environment Bill, regarding the use of forest risk commodities, which is a reserved matter in Scotland.

The measures fall within the scope of the C1 reservation for ‘the creation, operation, regulation and dissolution of types of business association’. The obligations imposed under Part 1 (Schedule) on the ‘regulated persons’ are requirements of a formal regulatory nature, including reporting on certain matters in each financial year. As defined in paragraph 7 (Schedule), a ‘regulated person’ is a type of business association. Therefore, the Part 1 requirements amount to regulation of a business association for the purpose of the C1 reservation. This is set out in Schedule 5, Part II, Section C1 of the Scotland Act 1998. We are continuing to engage with the devolved administrations over these matters.

The Global Resource Initiative proposed a broad package of recommendations to reduce the UK’s global environmental footprint. Our response to these recommendations was published in November 2020 and outlines our approach to actioning the proposed measures and the work already underway to deliver against these. Responding to many of these recommendations will not require legislation and we will work with devolved administrations wherever appropriate or helpful.

Guiding principles on the environment

On Clause 19(5), it is the UK Government’s view that this clause is necessary to provide legal clarity. It applies to Ministers of the Crown when making policy relating to Scotland only insofar as relating to reserved matters. It is therefore in accordance with the devolution settlement. As such, it is our opinion that a Supplementary Legislative Consent Memorandum (LCM) is not required for this provision. As I emphasised in Parliament, the UK Government will continue to consult the Scottish Government when developing reserved policies that have an impact on Scotland.

This is not a change in approach. Our amendment looks to ensure there is no gap in environmental governance created by ensuring the principles apply to UK Ministers when making policy relating to reserved matters in Scotland. The provisions enshrined in the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, if left unaddressed, would have left such a gap because the duties set out by that Act cannot apply to UK Ministers when making policy related to reserved matters in Scotland. During the passage of the UK Withdrawal from the European Union (Continuity) (Scotland) Bill, we raised this

concern with the Scottish Government, but the issue was not satisfactorily addressed at that stage.

I hope this answers the questions you have. Officials from Defra and from the Office of the Secretary of State for Scotland remain available to answer any further questions you may have about the Bill or any of these amendments.

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

Thank you once again for your letter.

With best wishes, The Rt Hon the Lord Goldsmith of Richmond Park

Annexe 3

Letter from Convener to the Cabinet Secretary for Net Zero, Energy and Transport, 10 September 2021

Dear Cabinet Secretary,

At the meeting of the Delegated Powers and Law Reform Committee on 7 September, the Committee considered the delegated powers in the amendments to the Environment Bill that are referred to in the supplementary Legislative Consent Memorandum lodged by the Scottish Government with the Scottish Parliament on 9 July 2021. The Committee agreed to write to you in relation to powers that are being conferred on UK Ministers without a corresponding power for Scottish Ministers and without a requirement to obtain the consent of the Scottish Ministers.

The Committee's consideration was limited to the amendments relating to the use of forest risk commodities (clause 112 and Schedule 17 of the Bill as amended in committee in the House of Lords), and was limited to the delegated powers in those provisions.

While the Committee acknowledged the differing views between the UK Government and the Scottish Government as to whether the amendments to the Bill within the legislative competence of the Scottish Parliament, it agreed to highlight to you and to the UK Government the following points of principle. These points are consistent with the approach that the Committee's predecessor in session 5 of the Scottish Parliament took in relation to delegated powers conferred solely on UK Ministers which may be exercisable within devolved competence:

1. The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
2. The Committee notes that in the event the powers in the bill are exercised by UK Ministers 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
3. 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.
4. As a minimum, it is appropriate that all powers under a bill exercisable by UK Ministers in devolved areas are subject to the process set out in the SI Protocol agreed between the Scottish Parliament and the Scottish Government.

I am writing in similar terms to the Secretary of State for Environment, Food and Rural Affairs and am copying this letter to the Net Zero, Energy and Transport Committee and the Constitution, Europe, External Affairs and Culture Committee.

Yours sincerely,

Stuart McMillan MSP

Convener of the Delegated Powers and Law Reform Committee

Letter from the Convener to the Secretary of State for Environment Food and Rural Affairs, 10 September 2021

Dear Secretary of State,

At the meeting of the Scottish Parliament's Delegated Powers and Law Reform Committee on 7 September, the Committee considered the delegated powers in the amendments to the Environment Bill that are referred to in the supplementary Legislative Consent Memorandum lodged by the Scottish Government with the Scottish Parliament on 9 July 2021. The Committee agreed to write to you in relation to powers that are being conferred on UK Ministers without a corresponding power for Scottish Ministers and without a requirement to obtain the consent of the Scottish Ministers

The Committee's consideration was limited to the amendments relating to the use of forest risk commodities (clause 112 and Schedule 17 of the Bill as amended in committee in the House of Lords), and was limited to the delegated powers in those provisions.

While the Committee acknowledged the differing views between the UK Government and the Scottish Government as to whether the amendments to the Bill are within the legislative competence of the Scottish Parliament, it agreed to highlight to you and to the Scottish Government the following points of principle. These points are consistent with the approach that the Committee's predecessor in session 5 of the Scottish Parliament took in relation to delegated powers conferred solely on UK Ministers which may be exercisable within devolved competence:

1. The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
2. The Committee notes that in the event the powers in the bill are exercised by UK Ministers 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.
3. 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.
4. As a minimum, it is appropriate that all powers under a bill exercisable by UK Ministers in devolved areas are subject to the process set out in the SI Protocol agreed between the Scottish Parliament and the Scottish Government.

I am writing in similar terms to the Cabinet Secretary for Net Zero, Energy and Transport in the Scottish Government and am copying this letter to the Scottish Parliament's Net Zero, Energy and Transport Committee and the Constitution, Europe, External Affairs and Culture Committee.

Yours sincerely,

Stuart McMillan MSP

Convener of the Delegated Powers and Law Reform Committee

Annexe 4

Letter from the Cabinet Secretary for Net Zero, Energy and Transport to the Convener, 22 September 2021

Dear Convener,

Thank you for your letter of 10 September 2021, regarding the Delegated Powers and Law Reform (“DPLR”) Committee’s consideration of the delegated powers in the amendments to the UK Environment Bill described in the Supplementary Legislative Consent Memorandum (“LCM”) lodged by the Scottish Government with the Scottish Parliament on 9 July.

You advised that the Committee acknowledged the differing views between the UK and Scottish Government as to whether the delegated powers in provisions Clause 117 and Schedule 17 (as amended at Committee in the House of Lords), which propose to introduce a new due diligence regime for forest risk commodities, are within the legislative competence of the Scottish Parliament. You reported that the Committee agreed to highlight points of principle relating to the exercise of delegated powers conferred solely on UK Ministers which may be exercisable within devolved competence. As you will be aware from the supplementary LCM, the Scottish Government is of the view that these amendments do confer powers within devolved competence.

The Net Zero, Energy and Transport Committee considered the Supplementary LCM at its meeting of 14 September and a Parliamentary debate is scheduled for 5 October.

I am copying this letter to the Convenors of the Net Zero, Energy and Transport Committee and the Constitution, Europe and External Affairs Committee.

Yours Sincerely,

Michael Matheson

