Home Office

Lord Bates
Lords Minister
2 Marsham Street
London
SW1P 4DF
www.gov.uk/home-office

Dear Lord Hayter,

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Immigration Bill – Lords' Report – Second Day

During our debate on the Immigration Bill on 15 March, I was asked to clarify the position on the powers in clauses 34, 40 and 68 of the Bill to make regulations which make similar provision to what is on the face of the Bill for Scotland and Northern Ireland, and in some cases Wales. In particular, I undertook to write about whether our Bill was drafted on the assumption that the Scotland Bill will be passed in its current form.

Clause 2 of the Scotland Bill sets out that the UK Parliament will not normally legislate with regard to devolved matters without the consent of the Scottish Parliament. This puts what is known as the Sewel Convention in statute, as per the Smith Commission Agreement. The use of the word "normally" in clause 2 does not abolish the Sewel Convention. The convention, as explained by Lord Sewel during the passage of the Scotland Act 1998 uses, the same language: "*we expect a convention to be established that Westminster would not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament.*"

Further, the Sewel Convention (and so clause 2) does not apply to secondary legislation. Finally, the Government has always been clear during the passage of the Scotland Bill that clause 2 does not give rise to any justiciable rights. The language and wording of the clause does not invite the courts to adjudicate on the UK Parliament's decision to legislate for devolved matters with or without the consent of the Scottish Parliament.

In the case of the Immigration Bill, the Sewel Convention (or the equivalent provision in clause 2 of the Scotland Bill) is not applicable. Clauses 34, 40 and 68 of the Immigration Bill relate to the reserved matter of immigration. The regulations can amend or revoke legislation made by the devolved legislatures: since the regulations will be made in relation to a matter that is clearly reserved, the amendments of that legislation will not amount to legislating with regard to devolved matters.

It is outside the competence of the Scottish Parliament and other devolved legislatures to legislate on immigration matters. Accordingly, the UK Government has not asked the Scottish Government to seek the consent of the Scottish Parliament.

To the extent that the regulations have an incidental or consequential impact on devolved legislation, I can reassure you that, in accordance with best practice, we will continue to work closely with the devolved administrations to ensure that the regulations properly reflect the differing legislative frameworks across the United Kingdom.

I also wish to allay some concerns as to the apparent breadth of the powers in these clauses. I note that both you (Lord Hope) and Lord Wigley were struck by provisions which allow the Secretary of State to "amend, repeal or revoke any enactment". But this wording has to be read in the context of the limitations on the power itself. This is of course not a power at large, but a power to enable specific provisions of the Immigration Bill to apply in Wales, Scotland or Northern Ireland, or to make provision which has a similar effect to those specific provisions.

Finally, I undertook to make available copies of correspondence on the Immigration Bill between the Home Office and the Scottish Government, to show the degree of engagement there has been. This is enclosed with this letter.

I hope this provides colleagues with the reassurances they were seeking. I am copying this letter to Lord McCluskey, Lord Wigley and all peers who have spoken during the consideration of this Bill. I am also placing a copy of this letter in the House library.

With best wishes,

The Rt Hon Lord Bates