



Rt Hon. Sir Edward Leigh MP, Mr
Graham Stringer MP
Chairs, Immigration and Social Security
Co-ordination (EU Withdrawal) Bill
Committee
House of Commons
London, SW1A 0AA

2 Marsham Street
London SW1P 4DF
www.gov.uk/home-office

22 June 2020

Dear Sir Edward and Mr Stringer,

Further to discussions on Clause 5 of the Immigration and Social Security Co-ordination (EU Withdrawal) Bill ('the Bill) during Committee stage on 16 June, I am writing to inform members of the government amendments I am bringing forward to the Bill. These amendments seek to remove powers conferred on Scotland under Clause 5 of the Bill following confirmation from the Scottish Government they will not support legislative consent for the provisions.

As we discussed during the Bill Committee, clause 5 of the Bill as currently drafted provides the power to enable the UK Government and/or, where appropriate, a devolved authority to modify, by regulations, the retained EU social security co-ordination regulations, and to make regulations to implement any new policies regarding co-ordination of social security for those not covered by the EU Withdrawal Agreement.

Social security is transferred in respect of Northern Ireland and partially devolved to Scotland, and so the clause currently confers powers on a Scottish minister or a Northern Ireland department to legislate in areas of devolved competence. Therefore, the Bill engages the legislative consent process in both the Scottish Parliament and Northern Ireland Assembly, and letters seeking legislative consent in principle were issued on 2 March 2020. Social security is reserved in Wales and immigration is reserved.

Following a further letter sent to the Scottish Government seeking legislative consent, the Cabinet Secretary for Social Security and Older People, Shirley-Anne Somerville MSP, confirmed on 19 June the Scottish Government will not support legislative consent for the clause 5 relevant provisions of the Bill. This is despite stating in a legislative consent memorandum during the passage of the Bill in the previous Parliament that the conferred power for Devolved Administrations was welcome and useful.

As I explained during Committee stage on 16 June, if the Scottish Government did not support consent, the UK Government would seek to amend clause 5 to restrict the powers in the Bill in relation to Scotland, with the effect of not engaging the legislative consent process in the Scottish Parliament. This is in line with the Sewel Convention.

The amendments I am tabling today seek to: remove the power for Scottish Ministers to modify retained EU direct legislation under clause 5 (and to remove all related provisions in Part 2 of the Bill, the Social Security Coordination provisions); and to limit the power of the Secretary of State and the Treasury, and a Minister of the Crown acting jointly with a Northern Ireland Department, to make modifications so that they cannot make provision which falls within Scottish legislative competence.

These amendments will not impact on reserved powers in the Bill or the powers for the UK Government or Northern Ireland Department to make provisions within Northern Irish legislative competence.

The Scottish Government would need to bring forward their own parallel legislation to give them equivalent powers to amend the retained EU social security co-ordination regulations in areas of devolved competence.

There has been significant engagement at official level with counterparts in the Scottish Government, in which the potential implications for the Scottish Government of not having these powers has been outlined.

I am copying this letter to members of the Bill Committee, Justin Tomlinson MP, Minister responsible for social security co-ordination policy at DWP, and to the Secretary of State for Scotland. A copy of this letter will be placed in the libraries of both Houses.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Foster', with a large flourish at the end.

Kevin Foster MP
Minister for Future Borders and Immigration