27 March 2018

Dear [Name],

During the European (Withdrawal) Bill, Committee day 8 on Monday 19 March, you asked if I had any special comment on proposed new sub-paragraph (4) in Amendment 248, which seems to have nothing much to do with the amendments and seems in conflict with what the noble Lord, Lord Tyler, was saying earlier. I am sorry that I was unable to respond to you at the time and I promised to write to you.

Amendment 248 was largely concerned with providing for amendable statutory instruments to be made under this Bill. I hope the Government satisfied you of our position on that point and so I shall not repeat myself here.

Sub-paragraph (4) of amendment 248 provided:

4) In the event that a draft instrument previously approved by a resolution in the House of Commons is rejected by the House of Lords, the draft resolution in the form approved by the House of Commons will, after 28 sitting days from its approval by a resolution of the House of Commons, and unless the House of Commons directs otherwise, be deemed to have been approved by a resolution of each House of Parliament.

This provision in the amendment, to the Government’s eye, seeks to provide for a statutory form of ‘Commons primacy’ in relation to the envisaged amendable statutory instruments.

This provision bears close relation to proposals made by Lord Strathclyde in his review of “Secondary legislation and the primacy of the House of Commons” to bring the procedures for approving secondary legislation more in line with those for primary legislation where the House of Commons is able to assert its primacy. Although the Government found Lord Strathclyde’s analysis compelling and is determined that the principle of the supremacy of the elected House should be upheld, there have no plans to introduce new primary legislation at this time.

The EU (Withdrawal) Bill is an essential piece of legislation which will have a substantial impact on the framework of the UK statute book for the foreseeable future.
We do not believe it is appropriate therefore to make additional changes of the nature or magnitude of amendment 248(4), which are beyond the intended purpose of the EU (Withdrawal) Bill - to provide a functioning statute book ahead of our withdrawal from the EU.

I hope you find this letter helpful. I will also place a copy in the House library.

Yours sincerely,

[Signature]

BARONESS GOLDIE

Lord Mackay of Clashfern
House of Lords