

INFORMATION

Freedom of Information Request

Case Reference: 2023 0038 7684

Subject: Electronic Trade Documents LCM

THIS DOCUMENT CONTAINS INFORMATION RELATING TO THE ABOVE REQUEST. IT IS SPLIT INTO TWO SECTIONS, DOCUMENTS AND EMAILS.

SOME OF THESE ITEMS MAY NOT BE INCLUDED IN FULL.

PART ONE - DOCUMENTS:

1.	Submission to Ministers on the Electronic Trade Documents Bill	03/04/2023
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From: [REDACTED]

Trade Policy, Directorate for International Trade and Investment

03/04/2023

Cabinet Secretary for Wellbeing Economy, Fair Work and Energy

Minister for Small Business, Innovation and Trade

ELECTRONIC TRADE DOCUMENTS BILL

PRIORITY AND PURPOSE

1. **Routine:** A briefing was requested by the Cabinet Secretary following a letter from Paul Scully, Parliamentary Under-Secretary of State for Tech & the Digital Economy at the Department for Science Innovation & Technology (DSIT) on 31 March 2023 regarding the Electronic Trade Documents Bill (“the Bill”).

BACKGROUND:

2. The Bill follows a Law Commission for England and Wales (LCEW) consultation in 2021. Currently the law in all four UK jurisdictions, which has aligned over time, does not recognise electronic trade documents.
3. The Bill provides for digital versions of trade documents to be put on the same legal footing as paper-based equivalents. Examples: bills of exchange, ship’s delivery order, warehouse receipts, mate’s receipts & marine insurance policies.
4. The Bill will remove a legal obstacle and give UK businesses more flexibility in how they trade, offering quicker and more reliable processing of trade documents significantly lowering administration costs.
5. [REDACTED].
6. However, when the Bill was introduced in October 2022 the draft granted UK Ministers sole powers to make regulations to carve out types of documents from the Bill, powers that were unilaterally exercisable in devolved areas.
7. Normal practice prior to Brexit suggested that the UK Ministers should not typically have power to make secondary legislation in devolved areas. Where they do, that those powers would be exercisable both by UK and Scottish Ministers, and by UK Ministers only with SG consent. Both the Scottish Parliament and Welsh Senedd have expressed opposition to the post-Brexit increase in UK Ministerial powers in devolved areas.

8. The Scottish Government has written to the Presiding Officer to explain the late lodging of an LCM. This has allowed Officials to work with UKG officials who signalled the Bill may be amended to address these concerns.
9. Following SG's request, Minister Scully confirmed the amendments on Friday afternoon. While legal and constitutional teams are still reviewing the amendments at the time of this briefing, officials' initial view is **[REDACTED]**
10. **[REDACTED]**
11. Advice to Ministers prior the Leadership election was finely balanced. Ministers could lodge an LCM recommending **withholding consent** as the Bill confers UK Ministers power in devolved areas exercisable without consent.
12. However, a law reform proposal is by convention uncontroversial. As a result, without a Scottish Parliament LCM the UKG has indicated it might remove Scotland from the Bill. This would create a different regime for businesses in Scotland.
13. Therefore in this case, and subject to the review of the final amendments received on Friday, officials consider there may be a good case for Ministers to propose Parliament it **grants consent** for the amended bill:
 - Legal analysis suggests that a Scottish Parliament Bill could not wholly recreate the effects of the Bill. Any such legislation would not be as comprehensive as the UK bill.
 - There is no current legislative opportunity at Holyrood to make equivalent provision for Scotland.
 - The power involved is extremely limited, and unique to this bill.
 - **[REDACTED]**
 - In practice it is highly unlikely for Scottish Ministers to want different arrangements for trade documents to apply in Scotland.
 - The policy objective of the bill is strongly supported by both the Scottish Government and stakeholders.
14. Note also that **[REDACTED]**

RECOMMENDATION AND NEXT STEPS

15. Officials, including legal teams, will review the amendments proposed by Minister Scully who requested a response by 6 April (Thursday). Officials will draft a response based on this analysis and the Cabinet Secretary's view.
16. **[REDACTED]**
17. Subject to CSCL approval, the Legislative Consent Motion process will be commenced with the Scottish Parliament.

Bute House Agreement Implications

18. The issue is not excluded under the Bute House Agreement. Full consideration of Bute House Agreement will be considered in the CSCL submission.

Financial, resource and legal considerations

19. The amendments proposed by Minister Scully on Friday are still to be reviewed by SG Legal Directorate (SGLD).
20. We do not anticipate any costs for the Scottish Government.

Sensitivities

21. Ministers will be aware of several instances of the UK Government not adhering to the Sewel convention. The Scottish Parliament is sensitive to UK Ministerial powers in devolved areas which are not subject to its democratic oversight.
22. It will be important that a recommendation for consent is accompanied by clear communications (whether Ministerial letter, the legislative consent memorandum, or both) that this recommendation is not a change in the SG policy of opposing UK Ministerial power in devolved areas and it is only possible in this instance due to the highly technical nature of the Bill and the limited nature of the power.

Copy List:	For Action	For Comments	For Information		
			Portfolio Interest	Constit Interest	General Awareness
Cabinet Secretary for Wellbeing Economy, Fair Work and Energy Minister for Small Business, Innovation and Trade		X	X		

**Gregor Irwin, Director-General
Economy**

**Richard Rollison Director for
International Trade and Investment**

**David Rogers, Director for
Constitution**

**David Barnes, Deputy Director Trade
Policy**

**Donald Cameron, Deputy Director
Constitutional Relations**

2.	Briefing – Consent and Consult Table Section on Electronic Trade Documents Bill	16/05/2023
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[REDACTED]

Bill/Act	<p>Item 3. Electronic Trade Documents Bill The Bill provides for digital versions of trade documents to be put on the same legal footing as paper-based equivalents. (This is a Law Commission Bill).</p>
SG Position	<p>Following recent engagement with UKG, it is anticipated that SG will recommend SP consent be withheld on the concurrent power. SG does however agree <u>s</u> with the overall policy content of the Bill.</p> <p>LCM lodged on 16 May recommending against consent pending outcome of talks with UKG.</p> <p>Consent/ Consult Issues – UKG policy position on concurrent powers – Document Exceptions Clause 5(2)(b) confers a power on the Secretary of State to provide, by regulations, that the provisions of the Bill do not apply to a specified type of document. The power may be used to specify any type of document and, as such, this is a power exercisable within devolved competence. Clause 5(4) provides that the Secretary of State must consult the Scottish Ministers before exercising the power. But there is no requirement for consent and there is no corresponding power conferred on the Scottish Ministers in devolved areas.</p>
Outcome	<p>[REDACTED] SG now considering further amendments that might allow a recommendation in favour of consent although they do not provide all SG was seeking.</p> <p>Date for 2nd Reading (HoC, 2nd House) TBA.</p>
Issues	<ul style="list-style-type: none"> • UKG policy position on concurrent powers • International trade

[REDACTED]

3.	Note of Meeting – Parliament and Legislation Portfolio	17/05/2023
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Meeting	Minister for Parliamentary Business and Parliament and Legislation Unit (PLU)
Time	Wednesday, 17 May 2023, 13:00
Purpose	Meeting to discuss topics in relation to the legislative programme
Attendees	George Adam MSP, Minister for Parliamentary Business [REDACTED]
Issues discussed	[REDACTED] Legislative Consent Motions <u>Electronic Trade Documents</u> It was noted the LCM was lodged on 16 May and that it contained an explanation for the late lodging. It was also noted that amendments required to give effect to an agreement reached between the governments are expected to be lodged on 15 June and that a supplementary LCM will then be required which will need to be debated ahead of recess. [REDACTED]
Action points	1. [REDACTED]

4.	Minutes of Meeting #130 – SG Working Group on Borders	14/06/2023
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SG Working Group on Borders

Minutes of the 130th meeting – 14 June 2023, 10.00 – 11.00

[REDACTED]

6. Electronic Trade Documents Bill LCM:

[REDACTED] reported that significant progress has been made in the last week. SG finds this Bill relatively uncontroversial except for the section on delegated powers which would have permitted the UKG the ability to act in areas of devolved competence. The SG has successfully secured amendments in the Bill which should mitigate this risk.

The LCM was lodged with the Scottish parliament on 13 June and Mr Lochhead is appearing in front of the Economy and Fair Work Committee today and it is hoped it will go through Parliament ahead of recess.

[REDACTED]

5.	Ministerial update	21/06/2023
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[REDACTED]

Purpose

1. [REDACTED]
 - **Note** that amendments to the Bill, related to delegated powers, have been tabled on, 7th June 2023, with the intention that they will be taken at Public Bill Committee hearings on the 19th of June.
 - **Note** that while the amendments to the Bill are imperfect, officials assess them as reasonable – particularly when weighed against risks of withholding consent to the Bill and the desirable policy intent of the Bill.
 - **Agree** the supplementary legislative consent memorandum should be lodged recommending that the Scottish Parliament gives legislative consent.

Priority

2. **Urgent.** Responses are requested by XXX

Background

3. [REDACTED]

Analysis of amendments

4. The amendments confer the powers on the Scottish Ministers in devolved areas. This is an improvement on the Bill as introduced which conferred powers on UK Ministers only.

5. However, the UK Government is still able to act in devolved areas by a regulation-making power conferred on the Secretary of State which is exercisable “in any case” subject to the consultation mechanism under Clause 5(4). The amendments also introduced a parallel option of a joint instrument procedure (the Scottish Ministers and the Secretary of State acting jointly in making regulations) but it is optional. So, the UK Government can legislate in devolved areas without the agreement of the Scottish Ministers as there is no consent requirement on the face of the Bill.

Assessment of options:

6. There are several factors supporting a recommendation to The Parliament that it consents to this Bill.
7. Firstly, this is a highly technical Bill from the Law Commission of England and Wales (LCEW) which has been welcomed by Scottish stakeholders and which could not be wholly recreated in Scotland by the Scottish Parliament. Scottish Ministers have accepted the principle that a common regime is beneficial.
8. As LCEW Bills progress through an expedited parliamentary procedure which is only available for non-politically contentious law reform Bills, there is a high likelihood that UKG will remove Scotland from the scope of the Bill in the absence of legislative consent, in line with the Sewel Convention. The UKG has indicated this is the case.
9. In that event, equivalent primary legislation in the Scottish Parliament could be extremely challenging. Legal analysis suggests that a Scottish Parliament Bill could not wholly recreate the effects of the Bill as it covers a mix of devolved and reserved matters. Where the framework applies to electronic trade documents which the Scottish Parliament cannot legislate for, then it could not be extended to Scotland¹.
10. **[REDACTED]**
11. Any scenario where the Bill did not apply to Scotland **[REDACTED]** and additional costs for businesses trading in Scotland.
12. The second factor is the extremely limited nature of the power itself. It enables the UK Secretary of State (and Scottish Ministers) to remove a type of

document from the scope of the Bill so that it cannot be used in electronic form. The exercise of this power will not alter Scots law in any other way. Electronic trade documents will have the same status as their paper counterparts and will be usable for the same transactions. The Bill will not change trade policy, for example by allowing a new form of import or transaction. [REDACTED]

13. This is a contrast to powers taken by UK Ministers in other recent Bills. For example, the Professional Qualifications Act 2022 (where consent was withheld) granted substantive powers to change the regulation of devolved professions.

14. [REDACTED]

15. In a constitutional context, recommending consent for this Bill would demonstrate flexibility and pragmatism over the issue of [REDACTED]

16. The amendments on offer from the UK Government still fall short of those requested by the Scottish Government and sought by the Scottish Parliament for other bills with similar powers. A recommendation to consent will therefore need careful justification to Parliament.

17. In this case officials consider that there is good case for making such a recommendation:

- The policy objective of the Bill is strongly supported by both the Scottish Government and stakeholders.
- There is no current legislative opportunity at Holyrood to make equivalent provision for Scotland, and any such legislation would not be as comprehensive as the UK Bill
- The power involved is extremely limited, and unique to this Bill.
- The amendments provide equivalent powers for Scottish Ministers and the opportunity to reverse, or threaten to, any changes not supported.
- In practice it is highly unlikely for Scottish Ministers to want different arrangements for trade documents to apply in Scotland.

18. There are good reasons to believe that Scotland would be removed from the Bill if there is no legislative consent, with adverse implications for Scottish businesses.

19. Officials therefore recommend, on balance, that **Ministers should recommend the Scottish Parliament consents** to this Bill.

20. In addition, officials recommend Ministers **should also write to the UK Government** if Parliament consents to the attached motion, noting that Scottish Ministers recommendation for consent is justified by the nature of this specific technical law reform Bill and is without prejudice to the approach to future Bills.

Bute House Agreement Implications

21. The issue is not an excluded matter under the Bute House Agreement. Green Ministers' Special Advisors confirmed that there is support for the Bill's aims.

Legal Considerations

22. [REDACTED]

Financial Implications

23. We do not anticipate any costs for the Scottish Government.

Resource Implications

24. There are no resource implications beyond those set out in the previous submission.

Parliamentary Considerations

25. We understand that Parliamentary time before recess is limited and therefore it is unlikely that a debate on this could be secured. It is anticipated that this LCM would therefore be considered only at Decision Time.

26. Otherwise, there are no additional parliamentary considerations to those set out in the previous submission.

Parliamentary Handling

27. Parliamentary handling considerations are as per the previous submission.

Recommendation

28. [REDACTED] is invited to:

- **Note** that amendments to the Bill, related to delegated powers, have been tabled on 7th June 2023, with the intention that they will be taken at Public Bill Committee hearings on the 19th of June.
- **Note** that while the amendments to the Bill are imperfect, officials assess them as reasonable – particularly when weighed against risks of withholding consent to the Bill and the desirable policy intent of the Bill.
- **Agree** the supplementary legislative consent memorandum should be lodged recommending that the Scottish Parliament gives legislative consent.

[REDACTED]

6.	Briefing_Richard_Lochhead Evidence Economy and Fair Work Committee_Electronic Trade Documents Bill LCM	13/06/2023
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Date and time of Engagement	Wednesday 14 th June, 2023 09.30-10/15
Where	The Scottish Parliament Committee Room 4 (First Floor)
Who	Economy and Fair Work Committee Members can be found here
Key purpose or message	The Minister has been invited to give evidence on an LCM for the Electronic Trade Documents Bill.
Top facts/ figures	A 'key lines' sheet is provided in this briefing. Officials will support on technical detail.
Sensitivities	The LCM has been lodged late as officials negotiated to secure UKG amendments to the Bill relating to delegated powers. ANTICIPATED QUESTIONS: <ul style="list-style-type: none"> o We anticipate Committee will enquire as to the late lodging of the LCM. o We suggest being openly apologetic about this. In hindsight we would have taken a different approach. Lines are provided. o We anticipate the focus of the Committee will be on the delegated powers: <ul style="list-style-type: none"> o Why initially the presentation of delegated powers was unacceptable o What the Scottish Government's position is on the amendments that have been tabled

	<ul style="list-style-type: none"> o Why this is different from other Bills where delegated powers have been concerning. <p>Lines are provided.</p>
Official support	<p>David Barnes, Deputy Director, Trade Policy Directorate for International Trade and Investment Tel: [redacted]</p> <p>[redacted]</p>
Dress code	Business attire
Greeting party and specific meeting point on arrival	N/a
Specific entrance for ministerial car/parking arrangements	N/a

Briefing Contents:

Annex A	Key Lines
Annex B	Opening Statement
Annex C	Additional Information (from pre-meet discussion)

Annex D	Detailed Background Briefing
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Annex A – KEY LINES

What the Bill does

- The Bill positions electronic trade documents on the same legal footing as paper documents.
- At present, documents used for the purposes of trade must generally be physically possessed. These documents cannot therefore be used effectively in electronic form unless there has been an agreement between commercial enterprises that creates a workaround.
- The Bill will allow businesses the choice to transition from paper-based to digital-based transactions.
- This removes the need for associated paperwork and bureaucracy.

The policy intent of the Bill

The Scottish Government position on policy content

- The Scottish Government supports the policy of the Bill which aligns with our ambitions for modernising trade. There are advantages in ensuring there are common arrangements UK wide.
- The Bill is aligned with the Scottish Government’s Vision for Trade.
- This is a law reform Bill. By nature, law-reform Bills are highly technical and the policy content uncontroversial.

Delegated powers

- As introduced, due to the Bill’s provisions on delegated powers, the Scottish Government was unable to recommend that the Scottish Parliament gave legislative consent to the Bill.
- As drafted, UK Ministers must consult with, but do not require the consent of, the Scottish Ministers in exercising powers in devolved areas.
- Scottish Ministers can express concern or disapproval, but cannot prevent the UK Government from legislating in devolved areas in a way which it does not agree with.

Tabled Amendments

- On Tuesday 7th June, UKG tabled amendments to the Bill. These are intended to be taken at Public Bill Committee hearings on the 19th of June.
- The amendments confer the power on the Scottish Ministers in devolved areas. This is an improvement on the Bill as introduced which conferred powers on UK Ministers only.
- However, UKG is still able to act in devolved areas
- This is by a regulation-making power conferred on the Secretary of State, exercisable 'in any case' subject to a consultation mechanism.
- Our assessment is that this power is extremely limited – only enabling the Secretary of State to remove a type of document from the Scope of the Bill.
- **[REDACTED]**
- **[REDACTED]**

The Scottish Government's position given the amendments

- The Scottish Government's assessment is that, while the amendments to the Bill are imperfect, they are reasonable.
- This Bill is a technical law-reform Bill, that is non-contentious. It has been welcomed by Scottish Stakeholders.
- We must weigh up the risks of withholding consent to the Bill against the desirable policy intent of the Bill.
- Due to the complex interactions of devolved and reserved matters on this Bill, it is not in the same category as the major pieces of post-Brexit legislation.
- RISK: **[REDACTED]**

- RISK:

Should the Scottish Parliament withhold legislative consent for the Bill, it is possible – even likely – that UKG will remove Scotland from the scope of the Bill, in line with the Sewel convention.

This would create divergence in the trading landscape between Scotland and the rest of GB.

- Therefore, on Tuesday 13th June, a Legislative Consent Memorandum was lodged in the Scottish Parliament, **with the Scottish Government now able to recommend legislative consent to the Bill.**

The late lodging of the LCM

- We are aware that Rule 9B.3 of the Standing Orders of the Scottish Parliament states that:

A member of the Scottish Government shall lodge... [an LCM] normally no later than 2 weeks after introduction

- This Bill was introduced on the 12th of October 2022, with an LCM lodged on 16 May 2023 – considerably late.
- We apologise unreservedly to the Committee for this.
- We have been working to defend the interests of the Scottish Parliament and Ministers, but the process of seeking amendments has taken longer than anticipated.
- With the benefit of hindsight, had we understood the extent of negotiations with UKG, we would have lodged an LCM within that timescale.
- Our current situation is regrettable and we can assure the committee that we will learn from this experience.
- I am pleased to be speaking to you after we have seen reasonable amendments tabled by UKG and with a legislative consent memorandum lodged with the Scottish Parliament that recommends consent due to these amendments.
- This is a positive development that enables us to secure the benefits of this Bill for Scottish Traders while protecting our constitutional position.
- Let me stress that I, and my officials, recognise the role that Parliament and your committee must play in scrutinising the Bill as part of the legislative consent process.

Next Steps:

- The Legislative Consent Memorandum was lodged with the Scottish Parliament on Tuesday 13th June.
- We look forward to the report from Committee and subsequent parliamentary procedures.

ANNEX B – [REDACTED]

[REDACTED]

ANNEX C – Additional Information (from pre-meet discussion)

[REDACTED]

How documents are used:

- A variety of documents are transferred to multiple parties – sometimes across jurisdictions - as part of trade and cross-border trade. They are used to perform, or to evidence performance, of contractual obligations. These documents and practices have evolved over hundreds of years creating a complex system.
- For example, a ‘contract of sale’ may require a seller to load goods onto a ship, by a certain date, bound for a certain destination. ‘Bills of lading’ can be signed and issued by a carrier to evidence that these stipulations have been fulfilled^[1].
- The exact way documents are used depends on various factors, including:
 - o The entities performing the transaction (an individual purchasing from a commercial entity will use documents differently from commercial-commercial exchange. The way Banks use documents for the purposes of trade can differ from commercial trading enterprises)
 - o Geography (a domestic transaction will differ from a cross-border transaction)
 - o Local regulations (documents may be required to show that goods meet local product standards)
- Different jurisdictions have their own laws regarding trade documents, but The Law of England and Wales is often chosen as the law governing cross-border transactions.
- Under the current state of the law, the default position is that, in order to be legally enforceable, documents have to be on paper and not electronic (although that default would not apply if, for example, a buyer and a seller had agreed between them to accept electronic documents).
- So a company in, say, Dundee exporting products would likely have to use paper documents unless arrangements were in place between that company and the buyer to say that electronic documents were acceptable.

Business Support

- This Bill is principally a UKG initiative, and we would expect therefore that key communication and awareness raising programmes will be delivered by UKG.
- However, the Scottish Government will:
 - o Ensure active outward focused communications – including media releases – to advertise the changes
 - o Liaise with the Enterprise Agencies, to ensure they are aware and can best use their structures to advise businesses of changes.

- The policy objectives of this Bill will reduce costs and burdens for traders, to the benefit of Scottish businesses.

LCM Debates: Process

- **Where consent is recommended, the Scottish Government needs to lodge a Legislative Consent Motion seeking the Parliament’s consent.** Standing Orders set out that a Legislative Consent Motion should not normally be lodged until the lead committee has reported and will not normally be taken earlier than the fifth sitting day after the lead committee’s report has been published. A legislative consent motion may either be the subject of a debate or may be taken directly at decision time. For this Bill, given the lack of Parliamentary time and assuming the committee’s report does not raise any concerns, it would be appropriate to vote directly without a debate.
- **Where the Scottish Government is recommending withholding consent, Parliament’s Standing Orders are silent** on the process to be followed beyond committee consideration. It has however become customary to hold what is known as a “Non-9B debate”. Which is a debate held in the chamber on a motion, that if agreed, would make it clear that the Parliament is withholding consent to the relevant provisions in the Bill in question.

ANNEX D – Detailed Background Briefing (also provided to officials)

What is a Law Commission Bill?

1. The Law Commission of England & Wales (LCEW) is a statutory Body and recommends law reform to ensure the law is fair, modern, simple and cost effective.
2. As LCEW Bill follows an expedited procedure at Westminster. It gives effect to LCEW recommendations. This includes various committee hearings where UKG has brought in experts to give evidence regarding the Bill.
3. Law Commission Bills are by convention non-controversial Bills and as such follow an expedited process.

What does the bill do?

4. It positions electronic trade documents on the same legal footing as paper documents.
5. At present, the law of each jurisdiction of the United Kingdom requires that these documents must be physically possessed. These documents cannot therefore be used effectively in electronic form.

6. It will allow businesses to the choice to transition from paper-based to digital-based transaction. This removes the need for associated paperwork and bureaucracy.
7. The Bill will create a framework to enable the conversion of trade documents in paper form to electronic versions of those documents if certain criteria are met, and provide that “control” of electronic trade documents is the electronic equivalent of possession in respect of traditional paper trade documents.

What is a Trade Document?

8. Bill provisions:
 - a) it is in paper form,
 - (b) it is a document of a type commonly used in at least one part of the United Kingdom in connection with—
 - (i) trade in or transport of goods, or
 - (ii) financing such trade or transport, and
 - (c) possession of the document is required as a matter of law or commercial custom, usage or practice for a person to claim performance of an obligation.
9. The Bill list the following as examples of trade documents that would be able to be used electronically if the Bill becomes law:
 - a. bill of exchange
 - b. promissory note
 - c. bill of lading
 - d. ship’s delivery order
 - e. warehouse receipt
 - f. mate’s receipt
 - g. marine insurance policy
 - h. cargo insurance certificate.

What are the benefits of the Bill?

10. The ETD bill can increase efficiency and lower trade administration costs for businesses as processing electronic documents is faster and cheaper than paper equivalents:
 - a. According to CargoX, as cited by Trade Finance Global, transferring a paper-based trade document can take seven to ten days, whereas processing the document electronically will reduce this to as short as 20 seconds.
 - b. The International Chamber of Commerce has estimated that digitalising trade documents could generate £25 billion in new economic growth by 2024, and free up £224 billion in efficiency savings^[2].
11. Most respondents to the Law Commission of England and Wales consultation expect:
 - a. savings for businesses trading internationally of at least five per cent on transaction costs.
 - b. environmental benefits from the reduced use of paper and courier emissions in trade administration.
 - c. that digitising trade documents would reduce the estimated 28.5 billion paper trade documents currently used each year.

Consultation & stakeholder views

12. The LCEW had an Expert Reference Group (ERG). This ERG undertook a consultation regarding Digital Assets in Scots Private Law.
13. In broad terms, stakeholder responses (received June 2022) were supportive of this Bill and its extension to Scotland.
14. The Law Society of Scotland and various law academics responded to the consultation and were supportive including Scotland in the Bill.
15. In its response, The Law Society of Scotland highlighted that the Bill related to devolved matters and the importance of respecting the devolution settlement and that various matters were within devolved competence and therefore this should be subject to legislative consent. [↔](#)
- 17.

Opposition party views and manifesto analysis:

16. A manifesto review highlighted no specific commitments to suggest the overall intent of the Bill would be opposed.
19. Almost all manifestos have broad commitments/statements of support for improving the effectiveness of Scotland's trade.

Mixed nature of Reserved and Devolved matters:

20. The documents used in the course of international trade have developed over the centuries.
21. [REDACTED]
22. [REDACTED]
23. This is recognised in clause 1(2)(c) of the Bill which defines a paper trade document by reference to a requirement of possession "as a matter of law or commercial custom, usage or practice for a person to claim performance of an obligation".
24. Where rules have developed, they have done so to account for the custom and practice across the jurisdictions of the UK for the purposes of International Trade.
25. Scottish Government analysis indicates that due to complex interactions of devolved and reserved matters, a Scottish Parliament Bill could not wholly recreate the effects of this Bill, [REDACTED]

[REDACTED]

Risks of not agreeing to this Bill

31. Principally: competitive disadvantage for Scottish Businesses.

32. [REDACTED]

Delegated Powers (pre-amendment)

36. On introduction, the Bill contained three individual provisions containing delegated. Two are Henry VIII powers. All of the delegated powers are subject to the affirmative procedure.

37. As introduced, clause 5(2)(b) of the Bill grants UK Ministers sole power to make secondary legislation in devolved areas of competence. This would result in Scottish Ministers being unable to make bespoke changes in devolved areas.

38. The provision would also give UK Ministers ability to unilaterally dis-apply parts of the Bill's regime in Scotland in devolved areas.

39. The Secretary of State's power could be used to specify any type of document. As such, this is a power exercisable within devolved competence.

40. Clause 5(4) Bill states that UK Ministers must consult (but does not require the consent of) the Scottish Ministers. The Scottish Ministers can express concern or disapproval about the proposed exercise of powers (via consultation), but cannot prevent the UK Government from legislating in devolved areas in a way which it does not agree with.

41. [REDACTED]

42. The conferral of powers on UK Ministers in devolved areas without the need for the consent of the Scottish Ministers has been an ongoing concern for the Scottish Parliament. Officials have repeatedly raised this power as a significant concern with the UK Government.

43. [REDACTED]

44. Negotiations on the Bill are still ongoing, and the Scottish Government hopes to secure suitable amendments to the provisions on these powers.

Delegated Powers (post-amendment)

45. The amendments confer the powers on the Scottish Ministers in devolved areas. This is an improvement on the Bill as introduced which conferred powers on UK Ministers only.

46. However, the UK Government is still able to act in devolved areas by a regulation-making power conferred on the Secretary of State which is exercisable "in any case" subject to the consultation mechanism under Clause 5(4). The amendments also introduced a parallel option of a joint instrument procedure (the Scottish Ministers and the Secretary of State acting jointly in making regulations) but it is optional. So, the UK Government can legislate in

devolved areas without the agreement of the Scottish Ministers as there is no consent requirement on the face of the Bill.

Assessment of options:

50. There are several factors supporting a recommendation to The Parliament that it consents to this Bill.
51. Firstly, this is a highly technical Bill from the Law Commission of England and Wales (LCEW) which has been welcomed by Scottish stakeholders and which could not be wholly recreated in Scotland by the Scottish Parliament. Scottish Ministers have accepted the principle that a common regime is beneficial.
52. As LCEW Bills progress through an expedited parliamentary procedure which is only available for non-politically contentious law reform Bills, there is a high likelihood that UKG will remove Scotland from the scope of the Bill in the absence of legislative consent, in line with the Sewel Convention. The UKG has indicated this is the case.
53. In that event, equivalent primary legislation in the Scottish Parliament could be extremely challenging. Legal analysis suggests that a Scottish Parliament Bill could not wholly recreate the effects of the Bill as it covers a mix of devolved and reserved matters. Where the framework applies to electronic trade documents which the Scottish Parliament cannot legislate for, then it could not be extended to Scotland^[3].
54. **[REDACTED]**
55. Any scenario where the Bill did not apply to Scotland would create legal ambiguities and additional costs for businesses trading in Scotland.
56. The second factor is the extremely limited nature of the power itself. **[REDACTED]**
57. **[REDACTED]**
58. **[REDACTED]**
59. In a constitutional context, recommending consent for this Bill would demonstrate flexibility and pragmatism over the issue of concurrent powers where the approach was justified by the nature of the Bill and the limited power involved. **[REDACTED]**
60. **[REDACTED]**
61. In this case officials consider that there is good case for making such a recommendation:
 - The policy objective of the Bill is strongly supported by both the Scottish Government and stakeholders.

- There is no current legislative opportunity at Holyrood to make equivalent provision for Scotland, and any such legislation would not be as comprehensive as the UK Bill
- The power involved is extremely limited, and unique to this Bill.
- The amendments provide equivalent powers for Scottish Ministers and the opportunity to reverse, or threaten to, any changes not supported.
- In practice it is highly unlikely for Scottish Ministers to want different arrangements for trade documents to apply in Scotland.

62. [REDACTED]

Lateness of the LCM

63. It is recognised that there has been a significant delay in lodging this LCM.
64. Officials have been working on this matter consistently for some time, however an initial delay was caused by UKG sharing the drafting of the delegated powers within the Bill late in the process. This required SG officials to conduct policy, legal and constitutional analysis.
65. There have also been lengthy negotiations with UKG on possible amendments.

Current Position

66. On Tuesday 13th June, a Legislative Consent Memorandum was lodged with the Scottish Parliament, recommending consent on the basis of the amendments shared.

Timeline

2019

- o Law Commission of England and Wales (LCEW) Expert Reference Group (ERG) convened in 2019, but did not meet until March 2022 due to COVID.

2021

- o 30 April: LCEW publishes 'Digital assets: electronic trade documents: A consultation paper' ("the consultation paper") which included a draft "Electronic Trade Documents Bill"

2022

- o [REDACTED]
- o 12 October: Bill introduced to the House of Lords at 1st Reading. Until this point officials were unaware of the precise drafting of delegated powers in clause 5(2)(b).
- o [REDACTED]

2023

- o [REDACTED]
- o [amendments shared with officials on 24th January 2023, subsequently revised]
- o [amendments shared with officials on 16th February 2023]
- o [REDACTED]

- o [REDACTED]

- o 16 May: Electronic Trade Document Bill Memorandum lodged with Scottish Parliament.
- o [REDACTED]
- o [REDACTED]
- o 7th June: Amendments Tabled by UKG
- o [REDACTED]

- o 8th June: Supplementary Legislative Consent Memorandum submitted to CSCL for review
- o [REDACTED]

Overview of the Bill clauses
[REDACTED]

Hansard

2. Electronic Trade Documents Bill, debated on Monday 20 February 2023,
Special Public Bill Committee:
[Electronic Trade Documents Bill \[HL\] - Hansard - UK Parliament](#)

Lord Parkinson of Whitley Bay (Con):

“The Government have taken every opportunity to ensure that the Bill works across our devolved legislatures. On Scotland specifically, the Government have

undertaken significant legal work, including by engaging independent legal counsel, to analyse and ensure the compatibility of the Bill with both English and Scots law, including that related to the Moveable Transactions (Scotland) Bill”

“The Government are working closely with the with the Scottish Government to secure legislative consent from the Scottish Parliament. To be clear, this may require minor amendments to the delegated powers in the Bill to ensure that areas of reserved and devolved competence are satisfactorily covered”

^[1] Law Commission, [Electronic trade documents: Report and Bill](#)

^[2] Law Commission, [Electronic trade documents - Law Commission](#)

^[3] For example, certain devolved documents are used for and regulated in a reserved space, such as the Carriage of Goods at Sea Act 1992.

PART TWO - EMAILS:

1.	CSCL Submission: Legislative Consent Memorandum (LCM) for the UK Electronic Trade Documents Bill	02/05/2023
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From: [REDACTED]
Sent on: Tuesday, May 2, 2023 4:53:48 PM
To: [REDACTED]
Subject: CSCL Submission: Legislative Consent Memorandum (LCM) for the UK Electronic Trade Documents Bill

Dear Cabinet Secretary,

CSCL Submission: Legislative Consent Memorandum (LCM) for the UK Electronic Trade Documents Bill

Copy for portfolio interest:
Minister for Small Business, Trade and Innovation

You will remember being recently briefed by trade policy officials on the above Bill.

While Mr Lochhead's portfolio is directly related to the policy area covered by the Bill, convention is that a Cabinet Secretary submits proposals to the Cabinet Sub-Committee on Legislation.

In your previous briefing, [REDACTED] given the technical nature of this Bill. We have now been made aware of a UKG delay to tabling amendments, not likely coming forward until some time in June.

Given our parliamentary timeline, officials advise that we proceed with the legislative consent process on the basis of the Bill as introduced. Therefore, a CSCL submission recommending withholding consent – on the basis of the current drafting of delegated powers in the bill - is attached.

Should amendments be tabled, a supplementary LCM can be taken forward with revised analysis and advice.

Ask: That you signal whether you are content with the outlined approach.

I would be happy to take any questions,
[REDACTED]

2.	Submission: Legislative Consent Memorandum (LCM) for the UK Electronic Trade Documents Bill	05/05/2023
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From: David Barnes [REDACTED]
Sent on: Friday, May 5, 2023 1:39:19 PM
To: Richard Rollison [REDACTED]
CC: [REDACTED]
Subject: FW: Submission: Legislative Consent Memorandum (LCM) for the UK Electronic Trade Documents Bill
Attachments: [REDACTED]
Categories: CC'd

Richard - no need to read the attachment but to make you aware of the approach we have plumped for. We had been holding off starting the formal stages of the legislative consent process (intra-SG and then with the Parliament). This is because as the Bill stands we have to recommend refusing consent, but UKG has been promising to table amendments which should make it tolerable enough for consent to be given. Because of repeated delays at the UKG end, this has unfortunately become extremely late.

Eventually UKG confirmed a week ago that we will not get the amendments until June at the earliest, and so we have decided to start the process even though it means we will have to do it twice - withholding consent first of all based on the Bill as it stands, but then a second iteration granting consent once the amendments are tabled (assuming of course UKG keeps its promise). In effect we have decided that the downside of having to make two iterations, which is what we were trying to avoid by waiting for the amendments, is outweighed by the downside of making the process even later and Parliament even more angry than it will already be. I am fully expecting that ministers, and officials (me) if there is a committee hearing, will have to eat humble pie and apologise for the lateness.

With the benefit of hindsight it would have been better to play this with a straight bat from the start and table the memorandum refusing consent immediately, rather than trusting UKG's repeated claims that if we'd only wait a bit longer then the Bill would be amended. A learning point for the next Bill we have to deal with.

David

Sent with BlackBerry Work
(www.blackberry.com)

[REDACTED]

3.	Submission	11/05/2023
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From: David Barnes [REDACTED]
Sent on: Thursday, May 11, 2023 4:46:57 PM
To: [REDACTED] >
CC: [REDACTED] >; [REDACTED] >;
[REDACTED] >
Subject: [REDACTED]

Categories: CC'd [REDACTED]

[REDACTED]

From: [REDACTED] >
Sent: 05 May 2023 08:59
To: [REDACTED]; [REDACTED] >; [REDACTED] >; [REDACTED] >; [REDACTED] >; Rogers D (David) (Constitution and Cabinet Director) [REDACTED] >; Cameron DA (Donald) (Constitution and UKR) [REDACTED]; [REDACTED]; [REDACTED]; F [REDACTED] >
Cc: Barnes D (David) [REDACTED] >; [REDACTED] >
Subject: CSCL Submitted - Electronic Trade Documents Bill

All,

Yesterday marked a significant milestone as, after over 50 iterations of the CSCL submission and Memorandum, it has been submitted to Ministers –attached. As you are all aware, but for the sake of clarity – the recommendation is that consent is withheld on the basis of the current drafting, but the submission is clear that we anticipate amendments. Mr Gray and Mr Lochhead have been made aware of the situation in a recent verbal briefing.

Firstly, I'd like to extend my thanks to you all for your efforts on this to date. It's certainly been a far from straightforward process which I know has taken up a significant amount of your time.

You'll all appreciate that this version has balanced a range of final views, but given our ever-pressing parliamentary timescales, I trust it strikes a balance that we all find acceptable.

In terms of next steps:

1. I will update UKG today. [REDACTED]
2. We now of course await a final view from the Cabinet Secretary. PLU advise me that once this is given, they – and the Cabinet Secretariat, will get the wheels in motion to get the paper to CSCL.

3. Beyond that, trade policy continues to engage with committee clerks and I will keep you updated.

As ever, I'm happy to take any questions, but in the meantime – enjoy your weekend.

[please also note, bar a short appearance on Tuesday I'm largely on leave for the next two weeks – I'll be leaving you in the capable hands of other trade policy colleagues].

Best,

[REDACTED]

From: [REDACTED]

Sent: 28 April 2023 14:18

To: [REDACTED] >; [REDACTED] >; [REDACTED] >; [REDACTED] > [REDACTED] [REDACTED] >; David Rogers < [REDACTED]>; Donald Cameron [REDACTED] [REDACTED] [REDACTED] >; [REDACTED]; [REDACTED] >

Cc: David Barnes < [REDACTED]>

Subject: FOR REVIEW - URGENT Electronic Trade Documents Bill

All,

Following my below email, please find:

- An amended CSCL submission, recommending withholding consent: [REDACTED]
- A draft email to the Cabinet Secretary

Given the pressing timescales, I'm keen that we send this up on Tuesday 2nd – so very grateful if you can indicate your sign-off and limit any comments to deal-breakers.

With apologies for the tight turnaround, and my best wishes to you for the bank holiday weekend when it comes!

Best

[REDACTED]

From: [REDACTED] **Sent:** 28 April 2023 10:13

To: [REDACTED] ; [REDACTED] ; [REDACTED] ; [REDACTED] [REDACTED]; [REDACTED] ; [REDACTED] ; [REDACTED] >; P [REDACTED]; [REDACTED] [REDACTED] **Cc:** David Barnes [REDACTED]

Subject: IMPORTANT UPDATE: Electronic Trade Documents Bill

All,

UKG shared with me last night that their timetable has slipped. They will no longer be tabling amendments on 8th May. June is more likely, but they can't say when.

This puts us in an unenviable position.

I've had a conversation today with David Barnes and we have agreed the following approach:

- We cannot risk a further delay to submitting a CSCL, especially when we have no confirmation that the amendments will be tabled (despite strong working level commitments)
- I will therefore make one final revision to the CSCL paper – recommending consent is withheld on the current drafting. In that paper, though I won't detail amendments, I will note the constructive

progress in negotiating with UKG and that if/when amendments are tabled we will come back to parliament.

- Though we are constrained in what can be said, I will retain language on the length of negotiations.
- Given the timeline, I would like to put this to Ministers on Tuesday. **Given this is a contraction of the memorandum, and I will be building from previously agreed drafts, my assumption is that there will be no substantive comments from this group. Nonetheless, please be aware that I will circulate documents for a rapid sign-off in the near future.**

@ [REDACTED] – I'd welcome a chat around logistics to ensure I'm clear on process.

Thanks all,
[REDACTED]

From: [REDACTED]

Sent: 25 April 2023 08:33

To: [REDACTED] ; [REDACTED] [REDACTED] >; [REDACTED] ; [REDACTED]; David Rogers [REDACTED]; Donald Cameron [REDACTED]; [REDACTED]; [REDACTED] >; [REDACTED]>

Cc: David Barnes < [REDACTED] >

Subject: RE: Electronic Trade Documents Bill: CSCL Submission for Review

Hi all,

Thanks for your comments, I'll review the CSCL and circulate round one final time in the coming days.

@ [REDACTED] to your question (though others may wish to jump in as this was agreed at a meeting that I think you and I both missed) – the approach is to allow us to table the CSCL as soon as we are formally sighted on amendments – likely when they are tabled, and before they are necessarily accepted at Westminster.

With this approach, we acknowledge amendments are expected though not necessarily agreed, and can speak to them, but we leave the door open for the option that amendments are not voted through.

The approach is also designed not to further compress the timeline by waiting for the amendments to be accepted. I'm sure we're all very conscious of giving parliament time.

Finally, please note that the correspondence shared in draft previously in this chain as now been issued from Mr Adam. Trade Policy is engaging with committee clerks further now that has been issued.

Best,

[REDACTED]

From: [REDACTED]

Sent: 21 April 2023 10:34

To: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; David Rogers [REDACTED]; Donald Cameron [REDACTED]; [REDACTED] >; [REDACTED] >; [REDACTED] >

Cc: David Barnes <[REDACTED] >

Subject: RE: Electronic Trade Documents Bill: CSCL Submission for Review

Hi [REDACTED]

I have added a few comments / suggested changes, most of which relate to why, if we are waiting for the amendments to be tabled before the approach to CSCL, the paper still includes the option of recommending withholding consent to an unamended Bill?

If these are government amendments then, the tabling of the amendment would normally trigger the requirement for a supplementary LCM, so suggest the CSCL paper should cover the Bill as amended and therefore recommend consent.

Regards

[REDACTED] | Parliament and Legislation Unit, Scottish Government | [REDACTED]

From: [REDACTED]

Sent: 21 April 2023 09:29

To: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];

[REDACTED]; Donald Cameron [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED] >

Cc: David Barnes <[REDACTED]>

Subject: RE: Electronic Trade Documents Bill: CSCL Submission for Review

[REDACTED],

I've updated CSCL paper and LCM to reflect the amendments which are to be tabled. The final thing needed for the LCM is a draft Motion which is what the Parliament will vote on.

From a presentational perspective, the CSCL paper is now quite long considering that the recommendation is to consent. You may wish to consider cutting some of it down but happy to leave that to your discretion. I appreciate that we're now onto the umpteenth draft of these documents so I expect they would benefit from a third pair of eyes check for consistency and readability.

Happy to discuss any of this.

Thanks

[REDACTED [REDACTED] | [SGLD](#) | [REDACTED]

From: [REDACTED]

Sent: 18 April 2023 16:44

To: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; L [REDACTED]; David

Rogers [REDACTED]; Donald Cameron [REDACTED]; [REDACTED]; [REDACTED];

[REDACTED] >

Cc: David Barnes <[REDACTED]>

Subject: Electronic Trade Documents Bill: CSCL Submission for Review

Hello everyone,

I hope you enjoyed some time away from your screens over the Easter Break.

As you will be aware, work on the ETD's Bill has continued to progress.

Recap:

Following an exchange of Ministerial letters (attached), the Cab Sec and Mr Lochhead were briefed (submission attached).

This group agreed that:

- UKG's revised amendments, while not ideal, are an improvement on the original Bill

- Parliamentary handling will be tricky given: the wider landscape around delegated powers, the late lodging of the LCM (though for good reason), changeable and compressed timelines at Westminster.

You will wish to be aware that the Economy and Fair Work Committee convenor, Claire Baker MSP, has written to George Adam requesting an update. A short response, currently with Mr Adam's office for sign-off, is attached.

The group agreed to draft a CSCL submission as per the recommendation in the submission to Ministers:

- Withholding consent to an unamended Bill
- Granting consent for an amended Bill (with a motion carefully worded to reflect the fine balance here and to ensure this doesn't prejudice future decision-making)

The plan is to lodge this CSCL as soon as amendments are tabled.

ACTION:

I have revised the CSCL to reflect this latest position. It needs:

- [REDACTED]
- Input from PLU on parliamentary considerations [REDACTED] would be glad for your input, and do let us know if there's anyone else in PLU we should bring in given [REDACTED] departure.

Of course, comments from the wider group warmly received – particularly grateful for a steer on how much we go into the fine balancing act with this one in the CSCL sub vs the parliamentary memo. I'm sure many of you are better versed on the protocol than I am!

You can find the draft here: [REDACTED]

Given the compressed timeline, and anticipation that amendments could be tabled in early May, **I'd be grateful for any input by the end of the week (COP 21ST).**

As ever, happy to discuss and to convene a meeting of this group if that's helpful too.

Best,

[REDACTED]

4.	CSCL Submitted – Electronic Trade Documents Bill	17/05/2023
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From: [REDACTED]
Wednesday, May 17, 2023 12:03:57 PM

Sent on:

To: [REDACTED]; [REDACTED];
[REDACTED]; [REDACTED];
[REDACTED]; [REDACTED];
[REDACTED]; [REDACTED]; David
Barnes [REDACTED]

CC: [REDACTED]; [REDACTED]

Subject: RE: CSCL Submitted - Electronic Trade
Documents Bill

Apologies, I understand that the amendments will be published on 15th June in advance of a vote on 27th June (that's it what the Bill team is currently planning on).

[REDACTED]

Kind Regards,
[REDACTED]

[REDACTED]

From: [REDACTED] >
Sent: 09 May 2023 10:54
To: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; David Rogers [REDACTED]; Donald Cameron [REDACTED]; [REDACTED]; [REDACTED] >; [REDACTED] >; [REDACTED]
Cc: [REDACTED]; [REDACTED]; [REDACTED] >
Subject: RE: CSCL Submitted - Electronic Trade Documents Bill

Hi [REDACTED]

- o We can proceed to lodge the supplementary LCM as soon as the amendments are tabled (assuming they are Government amendments).
[REDACTED]

Regards

[REDACTED]

From: [REDACTED] >

Sent: 09 May 2023 10:40

To: [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];
[REDACTED]; Donald Cameron [REDACTED]; [REDACTED]; [REDACTED]; [REDACTED];
David Barnes [REDACTED]

Cc: [REDACTED]

Subject: RE: CSCL Submitted - Electronic Trade Documents Bill

All,

The Cab Sec has advised he is content to proceed with the LCM – so it should be that papers will make their way to CSCL for consideration.

(You'll note in the attached email, which has been responded to, that he has some requests about UKG engagement (underway) and parliamentary handling.

In the meantime, I have updated UKG on our latest position on the Electronic Trade Documents Bill LCM.

UKG reports two critical things:

4. The Bill Manager indicated the amendments should proceed unchanged as anticipated.
5. The exact date for amendments to be tabled remains opaque, but **the voting slot is likely to be 27th June**. My understanding – though others will keep me right – is that the Scottish Parliament can only vote on amendments once voted for at Westminster.

The good news is that should the amendments come forward as anticipated, our analysis is already done – so I expect we could escalate a revised CSCL submission rapidly. The challenge of course is that a UKG Vote on the 27th creates real time constraint if we are to secure parliamentary time this side of recess.

@ [REDACTED] – grateful for your view of the process and logistics from this point forward. Is it in our interests to try and secure a session on the 28th/29th/30th June – rather than have it slip into the next session?

I'm on leave from later this morning, returning on the 19th of May.

I'll pick up on my return but grateful if you can all give this some consideration in the meantime!

[REDACTED]

5.	Submission: Supplementary Legislative Consent Memorandum (LCM) for the UK Electronic Trade Documents Bill	07/06/2023
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From: [REDACTED]
Sent on: Wednesday, June 7, 2023 3:04:07 PM

To: Cabinet Secretary for Wellbeing Economy, Fair Work & Energy <CabSecWEFWE@gov.scot>
Minister for Small Business, Innovation & Trade <MinisterSBIT@gov.scot>; David Barnes <
CC: [REDACTED] >; [REDACTED]
; [REDACTED]
; Cabinet Secretariat Inbox [REDACTED]>; Cabinet Secretariat Inbox [REDACTED][REDACTED]>
Subject: Submission: Supplementary Legislative Consent Memorandum (LCM) for the UK Electronic Trade Documents Bill

Urgent: High

Attachments: [REDACTED]

Categories: CC'd

Dear Cabinet Secretary,
CC, Minister for Small Business, Innovation & Trade
CSCL Submission: Supplementary Legislative Consent Memorandum (LCM) for the UK Electronic Trade Documents Bill
Priority: Urgent
ASK: That you signal whether you are content to put this supplementary LCM to CSCL

Today (7th June 2023) , UKG tabled amendments to the above Bill. They can be viewed [here](#) and are attached. [Note officials recommend sending both documents to CSCL].

In your previous briefing, you [REDACTED] given the technical nature of the Bill and risks associated with withholding consent.

I therefore attach to this email a supplementary CSCL submission which recommends that, on balance, the Scottish Parliament gives legislative consent.

Additionally, officials recommend that Ministers should also write to the UK Government noting that Scottish Ministers recommendation for consent is justified by the nature of this unique, technical Bill and is without prejudice to the approach to future Bills.

This development comes ahead of Mr Lochhead's scheduled appearance at the Economy and Fair Work Committee to discuss the Bill on Wednesday 14th June. I would be happy to take any questions,

[REDACTED]

[REDACTED]

6.	AMENDMENTS TABLED ETC BILL RE: Commission: For Action, ETD Bill Correspondence and revised CSCL submission for review	12/06/2023
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From: [REDACTED]
Sent on: Monday, June 12, 2023 9:21:23 AM
To: [REDACTED]
Subject: FW: AMENDMENTS TABLED ETD BILL RE: Commission: For Action, ETD Bill Correspondence and revised CSCL submission for review

Follow up: Follow up
Start date: Monday, June 12, 2023 12:00:00 AM
Due date: Monday, June 12, 2023 12:00:00 AM

[REDACTED]

From: [REDACTED]
Sent: Wednesday, June 7, 2023 9:09 AM
To: [REDACTED], David Barnes [REDACTED]
Subject: AMENDMENTS TABLED ETD BILL RE: Commission: For Action, ETD Bill Correspondence and revised CSCL submission for review
Importance: High

All,

Amendments to the Bill have been tabled early. You can find them [here](#).

1. My read is that they are as anticipated, but **could SGLD confirm this please?** [REDACTED]
2. Yesterday you discussed the Minister writing to Claire Baker (committee convener) once amendments were tabled – I'll action that this morning
3. I am aware that [REDACTED] are looking at the CSCL. Towards the end of the day I will revise and send up to the Cab Sec
4. I will get in touch with PO regarding Mr Lochhead's briefing. We will want to revise this, and may require a little more time to look at the amendments.

Trust that makes sense, happy to take any questions.

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent: 31 May 2023 20:10

To: [REDACTED] ; [REDACTED] ; [REDACTED] ; [REDACTED] ; [REDACTED] ; David Rogers [REDACTED]

; Donald Cameron [REDACTED]

[REDACTED] ; [REDACTED] ; [REDACTED] ; David Barnes [REDACTED]

Cc: [REDACTED]

Subject: Commission: For Action, ETD Bill Correspondence and revised CSCL submission for review

All,

I have two documents for your review:

1. ALL – a revised CSCL submission - [REDACTED]
2. SGLD – a letter from Stuart McMillan, Convener of the Delegated Powers and Law Reform Committee asking some questions. *Attached.*

Detail:

3. Last week [REDACTED] and I met with UKG and received an update on timelines. Officials now anticipate to table amendments on the 12th of June (at which point they will become public) with PBL hearings on the amendments on Monday 19th June. The amendments are expected to remain as previously shared with us and to be voted through without controversy – meaning they are anticipated to form part of the Bill by Tuesday 20th June.

This gives us marginally more time to secure an LCM.

While there remains a small risk that amendments aren't tabled, we now have some clarity on the timetable through which amendments will come forward. We therefore propose a revised CSCL submission, attached.

Grateful for advice as to what we need to submit at this stage? Is a full template required or can we update as per the attached? Presumably we also need to them adapt the Memorandum?

4. [REDACTED] has passed on this correspondence. Mr McMillan asks two questions, one on whether the power conferred in clause 5(2)(b) falls within areas formerly within EU competence, and one on parliamentary scrutiny. **I think these questions are best answered by SGLD and would be grateful**

if you could consider a response. You will note Mr McMillan's intention to write to UKG.

Happy to discuss,

[REDACTED]

7.	WGoB: D Agenda & Updates: WGoB 14th June 2023	13/06/2023
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[REDACTED]

5. **Electronic Trade Documents Bill** – After months of negotiation, we were successful in securing UKG Amendments to the Electronic Trade Documents Bill. While imperfect, they are a significant improvement on the delegated powers originally presented and have enabled us to ‘go again’ to the Cabinet Sub-Committee on legislation recommending consent. In tandem, The Minister for Small Business, Innovation and Trade is giving evidence on the Bill to the Economy and Fair Work Committee on Wednesday – with preparations for that keeping my team busy this week too!

[REDACTED]