



T: 0300 244 4000

E: scottish.ministers@gov.scot

Joan McAlpine, MSP  
Convener, Culture, Tourism, Europe and  
External Relations Committee  
Scottish Parliament  
Holyrood  
Edinburgh  
EH99 1SP

4 May 2017

Dear Joan,

Thank you again for providing the Scottish Government with a copy of the Committee's report, *Determining Scotland's Future Relationship with the EU*, published on 5 March 2017. As I highlighted in my remarks at the CTEER Committee's debate on 15 March, the Scottish Government appreciates the Committee's contribution to wider evidence on the Implications of the EU Referendum for Scotland.

Before I address the specific points raised in your report, I believe it is worth reiterating the Scottish Government position on the UK Government's decision to leave the European Union and the European Single Market. Since the EU Referendum vote – in which Scotland delivered a unequivocal vote to remain in the EU – the Scottish Government has worked extensively to reach a compromise on a UK wide position before Article 50 was triggered. That compromise was reflected in our paper *Scotland's Place in Europe*, in which we produced detailed proposals for Scotland to remain in the European Single Market if the UK chose not to, and for substantial changes to the current devolution settlement to mitigate the impact of the UK's Brexit decision for Scotland's economy and society.

Whilst the UK Government has failed to give meaningful consideration to our compromise proposals and involve Scotland in the pre-Article 50 deliberations, the Scottish Government remains committed to engage in good faith with the UK Government to ensure that Scotland's interests are represented within the UK's negotiations with the European Union. The First Minister has said that she wishes the UK Government well in the negotiations which lie ahead, because a good Brexit deal for the UK is in Scotland's interests.



## Scotland's current position in the European Union and its access to international markets

The Scottish Government believes that Scotland is, and remains, an attractive place to do business. However, there is no doubt that Brexit represents a significant challenge to our economy both now and in the future. We agree with the report's emphasis on the importance of access to the European Single Market and believe that the Brexit process has already created deep and widespread uncertainty with jobs and investment likely to come under threat.

As the UK Government is considering arrangements to take account of the particular circumstances of Northern Ireland and Gibraltar, then they should also do so for Scotland. The Scottish Government has embraced the so called four freedoms and believes that, short of EU membership, full membership of the European Single Market and remaining as part of the customs union is the best outcome not just for Scotland but for the whole of the UK.

Whilst the UK Government has rejected both continued membership of the EU Single Market and our compromise proposals for differentiated membership for Scotland set out in SPiE, we remain of the firm view that continued membership of the Single Market is essential to protect the future of Scotland's economy.

### The Scottish Government's proposal

The Scottish Government welcomes the recognition by the Committee of the proposals set out in *Scotland's Place in Europe* as a serious contribution worthy of detailed consideration. The Scottish Government also shares the Committee's disappointment that there has been limited engagement with our proposals from the UK Government and that there was no commitment to their consideration through the negotiations with the EU in the Article 50 letter. Whilst we acknowledged that these compromise proposals were challenging they were based on firm precedents, and nothing in either the evidence given to the committee or in our engagement with the UK Government, has identified any areas of technical inoperability in our proposals if the political will to negotiate them was present. As the Committee members know, I set this out in my reply to the UK Government's formal response to Scotland's Place in Europe.

The Scottish Government will continue to pursue all options open to us to protect Scotland's interests in the negotiation of the UK's exit from the EU including through a bespoke solution for Scotland. We will continue to engage in the process of negotiation with UK Government and other partners to seek to protect our long term interests.

### The UK's Government proposal

The Scottish Government understands the UK will, once formally outside of the EU, lose access to the EU's trade agreements, both existing and under negotiation, until such time as UK specific replacements have been negotiated. We fully understand that the UK will need to negotiate new trade agreements with other countries, with the EU as part of wider exit negotiations, with countries like South Korea where there is currently an EU agreement, and with others.

The Scottish Government expects to be fully involved in UK negotiations with the EU and between the UK and others on trade and investment agreements to ensure Scottish priorities and interests are taken on board. We believe that it is important that any such agreements

deliver maximum benefit for the Scottish economy and especially the sectors where we have strengths. These include areas such as financial services, energy, life sciences and food and drink, especially whisky given its export value.

We are concerned about the implications of any period which may arise between the UK no longer being part of an EU trade agreement whilst negotiations with other countries are on-going. In these circumstances, the report correctly states that our trade relationships with those countries would be set at WTO levels. It is important to note that whilst the UK remains a member of the EU it is legally unable to negotiate trade agreements with 3<sup>rd</sup> countries or through the WTO. Furthermore, the UK's future relationship with the EU, especially the European Single Market and the Customs Unions, will determine the UK's scope for negotiation with other countries; and those other countries will want to know the terms of the UK's trade relationship with the EU before entering in to an agreement with the UK. This therefore means that in theory, all negotiations need to wait until the conclusion of the Article 50 process. Nonetheless, the Department for International Trade and other UK Ministers have already begun sounding out other countries, such as Brazil, China, the US and Canada, about possible agreements.

### Withdrawal from the EU and the impact on the devolution settlement

The Scottish Government shares the Committee's concerns regarding repatriated EU competencies and continuity of support currently provided by EU competitive finding streams.

The Scottish Parliament was established in 1999 to enable the government and laws of Scotland to reflect the values, needs and priorities of the people of Scotland, in a context underpinned by EU law. As a result of the EU referendum, these previous assumptions underlying devolution no longer hold. The economic, social and democratic benefits that Scotland enjoys as a result of its place in the EU are all now at risk.

On subjects where Holyrood already holds responsibility, such as environment, justice and agriculture, when EU law ceases to apply on withdrawal, the Scottish Parliament and Government will continue to have full responsibility. It is mistaken to characterise this as "new" powers coming to the Scottish Parliament; they do not signify a change in devolved competence, but to the wider framework provided by EU law within which this competence is exercised.

Powers in these areas cannot go to Westminster unless the UK Government attempts through legislation to reserve them. The Scottish Government would not expect the Scottish Parliament to consent to such a proposal.

In addition to already devolved powers, we need additional powers over currently reserved matters to protect rights and social protections currently provided by EU law, in areas such as employment, equalities and health and safety. Some powers in these areas are already partially devolved, such as the new powers over aspects of equality law in the Scotland Act 2016.

The Parliament also needs powers in areas such as trade, migration and international engagement to protect our relationship with Europe as best we can, and address Scotland's distinctive economic and demographic needs in a constitutionally changed UK.

We are therefore concerned that, thus far, the UK Government has refused to guarantee even our existing powers in devolved areas. UK Ministers have repeatedly refused to confirm that they will not try to take these powers back to Westminster, nor that they recognise the need for the consent of this Parliament to any such attempt. That is the real risk to devolution posed by the Brexit process – reducing our powers and ignoring the Sewel Convention.

The UK Government's February's White Paper is very carefully worded to leave open the possibility of an attempt to centralise at Westminster any moves to develop and implement common frameworks to replace those provided by EU law. We are happy to discuss where there may be a need for a cross-border framework within the UK, for example in relation to animal health, but that must be a matter for agreement, not imposition.

On continuity of funding, the Scottish Government is clear that the UK Government must ensure future financial support for initiatives that currently receive European funds is protected. Decisions cannot be imposed on us by the Treasury. There must be agreement on how money is allocated.

EU funding benefits Scotland significantly, supporting jobs, delivering infrastructure, sustaining rural communities, providing valuable support for the farming and fishing industries and delivering research funding for universities.

On leaving the EU, Scotland stands to lose EU funding towards CAP direct payments, market measures, the rural development programme and new research proposals beyond Horizon 2020. While the UK Government has offered some assurances for funding commitments in the short term, which the Scottish Government has agreed to pass on in full, there are still more questions than answers regarding longer term funding.

This continued uncertainty could have a devastating impact on farmers and communities across Scotland who heavily rely on this investment and need to plan beyond the point that the UK is expected to leave the EU. It puts at risk significant investment and jobs, revealing the reality of Brexit and demonstrates that the best way to guarantee the jobs, investment, services and projects which depend on this funding is by maintaining Scotland's relationship with the EU and our place in the European Single Market.

### Intergovernmental Relations

We welcome the Committee's assertion that the mechanisms for intergovernmental relations need to be effective. It is disappointing that the Joint Ministerial Committee on EU Negotiations (JMC (EN)) failed to agree a UK approach and objectives for the Article 50 negotiations prior to the triggering of those negotiations, as per its terms of reference. There was no discussion or sharing of the contents of the Article 50 notification with the Scottish Government prior to its publication. The Welsh First Minister Carwyn Jones has also expressed his disappointment with the way in which the UK Government engaged with the devolved administrations before the triggering of Article 50.

We have consistently sought to hold genuine discussion with the UK Government on the strategic choices to be made in taking forward the UK's exit from the EU. However, the UK Government has appeared unwilling to engage in those discussions in a spirit of openness and good faith. A striking example of that came in the Prime Minister's Lancaster House speech on the 17 January 2017, in which without any discussion of that choice with the

devolved administrations, she ruled out the option of the UK remaining inside the European Single Market. Furthermore, the Prime Minister's speech came just two days before the JMC (EN) was due to meet to discuss *Scotland's Place in Europe*, in which we had proposed precisely that the UK should remain within the European Single Market.

Despite our disappointment at the conduct of discussions to date, the Scottish Government remains committed to working with the UK Government and other devolved administrations to further Scotland's interests within the negotiations with the European Union. The JMC (EN) must be placed on a more meaningful footing, so there is a genuine opportunity for us to influence the UK's detailed negotiating positions.

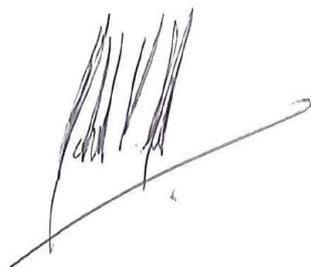
We have asked the UK Government how they plan to involve us in those negotiations, we await a response. We will inform the Committee when an agreement with the UK Government is found on the role of the Scottish Government in the negotiations with the European Union.

We believe that it is vital that Scotland is fully involved in all Brexit negotiations and future discussions on trade. The report mentions the contact that the Cabinet Secretary for Economy, Jobs and Fair Work has had with the Secretary of State for International Trade and the Scottish Government expects to continue and intensify this contact and that between respective Government officials.

With regard to Committee's recommendation to augment the Written Agreement between the Scottish Government and the Scottish Parliament, the Scottish Government believes that there is currently no need to expand it, as it is operating effectively. The Scottish Government has rigorously applied the terms of the Written Agreement, reporting on meetings of the JMC(P), JMC(EN), JMC(E), Joint Exchequer Committee, Finance Ministers' Quadrilaterals and the Joint Ministerial Group on Welfare.

The report acknowledges at paragraph 211 that there has been "*an improved flow of information to the Parliament and its committees on the work of the various formal intergovernmental forums.*" We would expect this to continue after Article 50 is triggered. If, as the report suggests, other forums such as a Joint Ministerial Committee on International Trade were to be established, Scottish Government officials would ensure the terms of the Written Agreement would be appropriately applied.

Finally, I would like to thank the Committee members for their insightful work to date and I look forward to updating their members at my appearance on 11 May 2017.



**Michael Russell**

