

Minister for UK Negotiations on Scotland's Place in Europe  
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27 April 2017

**UK Government response to “Scotland’s Place in Europe”**

Thank you for your letter of 25 April. Please see attached copy of the Secretary of State for Exiting the EU’s letter to me dated 29 March 2017. I am also including for completeness my response to the Secretary of State for Exiting the EU sent on 12 April 2017.

The UK Government has to date indicated – including, as I understand it, in considering Freedom of Information requests – that the letter from Mr Davis should not be released into the public domain, despite the fact that it represents a UK Government policy position on Brexit.

In light of the Secretary of State for Scotland’s statement in the House of Commons on 19 April, which completely misrepresented the Scottish Government position regarding the public release of this letter – and in light of the continued refusal of the UK Government to publish – I believe the public interest best served by the release of these letters, and therefore am enclosing them for your information.

The Scottish Government will also be publishing both letters on our website.

**MICHAEL RUSSELL**



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29 March 2017

Thank you for your letter of 13 March and for our discussion on Monday. As both I and the Prime Minister made clear on Monday, we have been carefully considering the proposals you set out in the Scottish Government's White Paper Scotland's Place in Europe, including responding through the formal Joint Ministerial Committee processes and bilateral meetings.

Before I turn to the specific points you raised in your letter, I wanted to set out where I believe we have common ground as we approach the invocation of Article 50 and move into the next phase of the process of leaving the European Union.

It is my firm belief that we can enter these negotiations with confidence that, as a strong United Kingdom, we can achieve far more if we pull together than if we are divided. We have an opportunity to shape negotiations with the EU that deliver for the UK as a whole, and for Scotland in particular.

The intergovernmental engagement that has taken place within the UK between the four governments since the referendum result has been unprecedented. The Prime Minister has chaired two plenary meetings of the JMC, and we have met four times in the JMC(EU Negotiations). Underpinning these has been a significant amount of bilateral engagement at Ministerial level, alongside official level working. As you have acknowledged, this engagement has intensified over the past two months, specifically in response to the Scottish Government proposals.

It is my belief that we agree on the large majority of subjects we have discussed in the past few months. In many we agree in totality; in a few we agree on the ends, even if there is some difference in the means. I do not believe that there are any substantial points of difference between the principles we wish to adhere to in entering these negotiations. We have a shared interest in the future success of the

UK as an open, successful trading nation, outside the EU but with as close as possible a partnership with our European partners and allies.

The Scottish Government and the UK Government agree that achieving the freest and most frictionless trade with the EU, and maintaining the deeply integrated trade and economic relationship with the EU, is in both Scotland's and the UK's interests. You have called specifically for membership of the Single Market as the means of delivering that end; as the Prime Minister has made clear, this is simply not possible if we wish to take back control of borders and immigration in the way people in Scotland and the rest of the United Kingdom desire, nor if we wish to enjoy the supremacy of our domestic courts. However, we share the same goal in terms of the outcome.

We are aiming to agree a bold and ambitious free trade deal with the EU that is more ambitious than any other trade deal agreed to date. We want to ensure that UK companies have the maximum freedom to trade with and operate within European markets – and to let European businesses do the same in the UK. I believe that this is an outcome that is good for the European Union as much as it is for the United Kingdom.

The Scottish Government and the UK Government agree that we will always want immigration, especially high-skilled immigration, from EU countries. Our Governments agree that workers' rights cannot be eroded as we leave the EU, and this Government has made a clear commitment to protect workers' rights and ensure that they keep pace with the changing labour market. I want to be very clear: this Government will not roll back EU rights in the workplace, and this Government will protect and enhance the rights people have at work.

Both Governments agree that UK exit should not lead to an erosion of environmental standards. The UK Government stands by our manifesto commitment to be the first generation to leave the natural environment in a better state than we found it, and we will uphold our obligations under international environmental treaties. We agree that we should continue our existing deep co-operation with European Member States on security issues, including in those areas that are devolved to the Scottish Government, such as policing. The UK is a major global player in the fight against threats to security, and we will work constructively to find the right mechanisms for continuing this collaboration with Europe after we leave the EU.

We, like the Scottish Government, would welcome continued collaboration with the EU on major science, research and technology initiatives which will be of benefit to the whole of the UK, and indeed is in the interests of the EU too. We will approach the upcoming negotiations with the EU on this basis.

Let me turn to your paper on Scotland's Place in Europe. You presented your white paper at the January meeting of JMC(EN) and we have had a number of further conversations on the proposals it contains. We jointly tasked our officials to conduct a programme of intensive discussions to better understand the proposals in the paper, and to report back to us. This has been a substantive programme of work,

and has required the investment of a good deal of resource. That was justified: the proposals you set out are complex and unprecedented, and it was right that we prioritised building a better understanding of them before discussing their viability. I am disappointed that the Scottish Government has called for another referendum on independence before we were able to discuss the outcomes of this joint work, that was entered into in good faith.

As I have already set out, we share many of the same objectives. However, there are clear barriers to making your proposals a reality. Scotland's accession to EFTA, and then the EEA, would not be deliverable and, importantly, would require the consent of all EFTA and EU member states. Any divergence between EU and UK law - as a result, perhaps, of new EU regulation - could lead to the creation of new barriers to trade within our Union, which could take the form of additional controls and checks on trade within the United Kingdom. Given that trade with the rest of the UK is worth four times trade with the EU, I do not believe that such significant disruption to the internal UK market is in Scotland's - or the UK's - best interests. And Scotland's businesses could face a confusing mix of regulatory regimes.

There is a better way to achieve the objectives we have in common. Even on the question of the EU single market, central to your own proposals, we agree that securing the freest possible trade is a core objective. This is why the Prime Minister has set out her intention to seek a new, bold and ambitious free trade agreement, which may take in elements of existing Single Market arrangements, where it is in our interests to do so.

We seek a new economic relationship with the European Union, one which delivers for the whole of the UK and delivers the benefits of the freest and most frictionless possible trade with the EU while regaining control of our own laws and allowing us to strike new trade deals to the benefit of businesses across Scotland.

### **Engagement through negotiations**

As we have discussed a number of times, we do not yet know the precise shape of the negotiations. We are committed to continued close engagement with the Scottish Government and other devolved administrations as we move into a new phase of our preparations to leave the EU.

We will achieve a better deal for all if we are united in our approach - and from our wider engagements I believe this is what the Scottish people want too.

### **Repatriation of powers**

In our meetings, we have also discussed the repatriation of powers from the EU and the implications for the devolution settlements. As powers are repatriated from the EU, we must work together to ensure that stability and certainty are not compromised, and that the effective functioning of the UK single market is maintained. There will be areas where common frameworks may be required, for example where they are necessary to protect the freedom of businesses, including

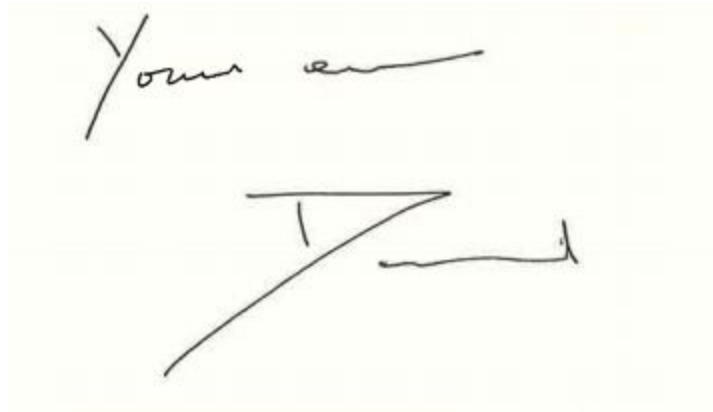
businesses in Scotland, to operate across the UK single market and to enable the UK to strike free trade deals. Our guiding principle will be to ensure that no new barriers to living and doing business within our own Union are created as we leave the EU.

You will know that the process must be a considered one and cannot be done without intensive discussions with the devolved administrations about where common frameworks will need to be retained in the future, what these should be and where common frameworks covering the UK are not necessary. We will work closely with you and the other devolved administrations to deliver an approach that works for the whole of and in each part of the UK. The starting point for the discussions on any new common UK frameworks should be to seek consensus. I hope that we can start this important work as soon as possible, while recognising that the need for common frameworks will also depend on the nature of any agreement with our EU partners.

This will be an opportunity to determine the level best placed to take decisions on these issues, ensuring power sits closer to the people of the UK than ever before. It is the expectation of the Government that the outcome of this process will be a significant increase in the decision making power of each devolved administration.

I very much hope that we can continue to work together in the interests of the entire United Kingdom as we enter into negotiations with the EU.

I am copying this letter to the Prime Minister, the Secretary of State for Scotland, the Minister for the Cabinet Office and the First Minister of Scotland.

A handwritten signature in black ink on a light yellow background. The signature is written in a cursive style and appears to read 'Yours' followed by a horizontal line, and then a large, stylized 'D' followed by a horizontal line.

**RT HON DAVID DAVIS MP**  
**SECRETARY OF STATE FOR EXITING THE EUROPEAN UNION**





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Secretary of State for Exiting the EU  
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13<sup>th</sup> April 2017

Thank you for your letter on 29 March, I wanted to write in order to clarify some important points you raised in your letter as a basis for a discussion with you on how we move forward constructively from here.

The First Minister has said she wishes the Prime Minister well in the negotiations with the EU that lie ahead. I very much hope you will succeed in realising your ambitions for the terms of the UK's future relationship with the EU.

However, it is important to re-state the fundamental importance the Scottish Government places on membership of the European Single Market as distinct from the UK Government's ambition of having access – or partial access - to this market. Scotland's Place in Europe clearly sets out this distinction and the damage to Scotland's economy and society that will occur if Scotland's Single Market membership is jeopardised.

As you will be aware the Scottish Parliament has now agreed an independence referendum should be held once there is clarity over the outcome of the Brexit negotiations so that the people of Scotland have an informed choice over their future.

In relation to the specific points you raise regarding the proposals in *Scotland's Place in Europe*, there is every reason to suggest that with the necessary political will and commitment these issues could have been addressed. Indeed there were no insurmountable issues raised in the engagement between officials that took place over the last two months.

However, looking ahead, there must be adherence to the terms of reference of the JMC (EN) and for the devolved administrations to have the opportunity to meaningfully contribute to the negotiation process.

While there has undoubtedly been a number of meetings held through the JMC process I have repeatedly expressed my disappointment that the substance of those meetings has not

enabled proper discussion or engagement on strategic choices we face. The result is a negotiating position reached solely by the UK Government rather than what was set out in the terms of reference, namely to agree a UK approach.

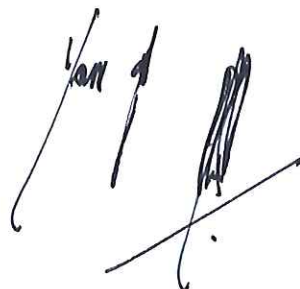
You will be aware of the frustration expressed by ministers from all three devolved administrations with the way the process has been carried out so far.

You are also aware from our telephone conversation on Wednesday 29 March that I do not concur with your view that we have reached agreement on the "large majority of subjects we have discussed in the past few months". Even a cursory examination of the agendas for the four JMC (EN) meetings held to date show that this is not the case. Therefore, whilst we welcome your commitment to "close engagement with the Scottish Government and other devolved administrations" we must reiterate our view that these should be meaningful, based on trust, openness and a genuine sharing of options and policy positions as well as data and must give real opportunities to influence the process.

It is moreover essential that, as the JMC (EN) terms of reference make clear, all four UK Governments should have oversight of the negotiations to ensure, as far as possible, that outcomes - negotiated and agreed in advance - are secured.

I understand that our officials are presently exploring the means to re-set the JMC (EN) with a view to rendering it useful and influential in the coming months and years. I look forward to the results of this exploration and hope that a meaningful forum can be established. Given the pressing timetable of UK-EU negotiations, it would be helpful if a JMC (EN) was held before the General Affairs Council endorses the EU's negotiating directives.

I would be very happy to expand on these issues when we meet to discuss. I have asked my office to arrange that meeting.

A handwritten signature in black ink, appearing to read 'Michael Russell', written over a horizontal line.

**MICHAEL RUSSELL**