IMPACT OF BREXIT ON DEVOLUTION

Dear Bruce,

Thank you for your letter of 30 October 2020. Membership of the European Union represents a key pillar of the devolution settlement in Scotland and indeed all of the devolution settlements in the UK. The process of the UK Government seeking to restructure the territorial governance of the UK as a result of leaving the European Union has already had a substantial impact on the scrutiny roles of Scottish Parliament committees including the Culture, Tourism, Europe and External Affairs committee. In terms of this Committee, the process of seeking to understand and scrutinise the nature of the relationship between the European Union and the UK Government post-transition has formed a substantial proportion of this Committee’s workload during the current parliamentary session.¹

Your letter, rightly, addresses the impact of Brexit upon the devolution settlement primarily arising from policy proposals that the UK has sought to legislate for as a consequence of preparing for Brexit and which result in substantial changes to the nature of the devolution settlement. However, I wish to also highlight that many of the consequences of Brexit which the Scottish Parliament will need to scrutinise following the end of Brexit will not have been directly subject to these processes. For example, the ending of freedom of movement will have substantial impacts on the Scottish economy and society. Similarly, it remains unclear to what extent, if at all, Scottish institutions will be able to participate in the Horizon Europe or Erasmus+. In addition,

¹ Dean Lockhart MSP and Oliver Mundell MSP are not signatories to this letter.
the replacement for European Structural and Investment Funds at a UK level are of critical importance as well as the funding proposals contained in the Internal Market Bill enabling the UK Government to spend in devolved areas.

With regard to the specific issues that you raise in relation to the Internal Market Bill, the Committee has written to you recently regarding the Bill. I do not wish to repeat the Committee’s concerns with regard to this Bill except to state that the Committee remains committed to the position set out in our letter to you of 2 October 2020. However, I do wish to re-iterate the principles which we stated, in our letter to you, should underpin governance in the UK post-Brexit. These are transparency, consent, trust and respect for existing constitutional arrangements for jurisdictions that are subject to internal market provisions. This approach must include the establishment of robust governance mechanisms alongside opportunities for genuine debate and scrutiny including individuals and non-governmental actors is also essential.

This raises the wider question that the European Union has an open, democratic decision-making process which allows for stakeholder engagement and relies upon the democratic consent of Member States and the European Parliament. The critical governance question remains what democratic processes will be put in place in a post-Brexit governance context that provides for a process that does not just include governmental actors.

With regard to the ‘keeping pace’ power, the Committee has not directly scrutinised this power. However, the Committee notes that tracking progress of EU legislation which the Scottish Government decides to ‘keep pace’ with, and indeed not to ‘keep pace’ with, will represent a significant scrutiny challenge in the next session of Parliament. Currently, the Scottish Government and Parliament are heavily reliant upon the UK Government for monitoring EU legislation. Monitoring EU legislation will represent a significant capacity issue in the next session of Parliament. It may well be that this an area where inter-parliamentary co-operation with other legislatures across the UK and the European Parliament would be beneficial.

In terms of trade agreements, this Committee has sought to scrutinise the content of trade agreements the UK Government has entered into to date. At present, there are very limited formal powers to scrutinise these agreements for the UK Parliament and no formal role for the Scottish Parliament. Nevertheless, these trade agreements as well as the EU and UK future relationship and the Protocol on Ireland / Northern Ireland will have implications for devolved competences both directly and indirectly. Scrutiny of these agreements should be an important priority for the Scottish Parliament in the next session of Parliament. The Committee has taken evidence from trade experts, including former international trade negotiators, who observed that the complex nature of modern trade agreements requires that legislatures should be engaged at an early stage, ideally before a negotiating mandate has been agreed. Expert witnesses consistently stress that non-tariff barriers are as important, if not more important area of scrutiny, than tariffs.

The Committee does not consider that it would be appropriate to propose how that approach to scrutiny should be structured however, we stress that this is a new area.

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2 Dean Lockhart MSP and Oliver Mundell MSP were not signatories to this letter.
of scrutiny for the Parliament and will result in additional resource implications and the requirement to bring in expertise in trade policy to the scrutiny process. This is also an area where inter-parliamentary co-operation could be beneficial.

The Committee is not in a position to assess the resource implications of the impact of Brexit. However, the resource implications will be significant and likely to be particularly acute in the months immediately following the end of transition. In this regard, the Committee notes that the process of Brexit will not conclude following the end of transition. Indeed, in many respects, the end of transition marks only the beginning of the process of Brexit. Whether a deal is agreed or not, the EU-UK relationship is likely to be subject to further negotiation and adaption in the medium to long-term. Leaving in a no-deal scenario may leave UK-EU relations in a negative place in the short term whilst even with a deal there will be a substantial process of adaptation and change. Scrutiny of this on-going, and no doubt evolving, relationship between the EU and UK will be an on-going scrutiny challenge and the implications for devolved competences therein.

The process of Brexit to date has re-emphasised that the current system of inter-government relations is not ‘fit for purpose’. The Committee is aware that this has been the conclusion of numerous parliamentary committees in legislatures across the UK. Nevertheless, processes such as common frameworks intensify the need for reform of IGR and for transparency, consent, trust and respect to underpin these processes.

Can I take this opportunity to thank you for your letter which is extremely well timed and highlights the significant scrutiny challenge which Brexit has already presented to date and which will further intensify at the end of the transition period and continue through the next session of Parliament. I hope this response is helpful and note that many of the issues you raise, the Committee intends to address further in our legacy report. In the meantime, I welcome the bid for Chamber time that your Committee has made to further consider the issues you raise and in which I would be happy to participate on behalf of the Committee.

Yours Sincerely,

Joan McAlpine MSP
Convener, Culture, Tourism, Europe and External Affairs Committee