



The Scottish Parliament
Pàrlamaid na h-Alba

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Dear Bruce

Return of EU power post-Brexit

Thank you for your letter of 25 March 2019 on behalf of the Finance and Constitution Committee asking whether the current devolution settlement is robust enough to deal with the return of competencies to the UK and Scottish Governments following Brexit. The Committee's response is informed by three years' evidence-taking on diverse matters where the implications of Brexit have arisen. This includes a roundtable session on 16 December 2016 on the implications of Brexit for local government in Scotland.

In addition, following receipt of your letter, the Committee held a 1 May 2019 evidence session with experts and local government stakeholders, focussing on the implications of Brexit on two issues: procurement and regional funding. The Committee chose these topics because of their clear importance to local government; as a public sector purchaser bound by EU procurement rules, and as the annual recipient or distributor of around 25-30% of all EU structural funding invested in Scotland.¹

Evidence from COSLA received after the evidence session², however, lists no fewer than 18 policy areas currently within EU competence (these within the UK Government's list of 153 returning powers) which COSLA has assessed as having a "high impact" on local government, plus another 46 having some impact. This underlines the far-reaching implications that Brexit would have for the local government sector and that, whilst it may bring new opportunities, it certainly

¹ [Local Government and Communities Committee. Official Report 1 May 2019, Col 22](#)

² [Letter from COSLA to the Committee of 14 May 2019](#)

presents risks, especially if there were to be a “hard” or no-deal Brexit, and preparation to mitigate its impact had not been optimised.

In this context, the Committee asks you to note the serious concerns of our 1 May witnesses as to the lack of evidence of UK Government post-Brexit scenario planning and consultation in relation to either of the two returning competencies on which we took evidence – this at a meeting taking place more than a month after the original “Brexit day”.

In subsequent correspondence, COSLA expressed disappointment at a lack of engagement with either the UK or Scottish Governments on the impact of returned competencies on Scottish local government, whilst expressing hope of constructive dialogue with the Scottish Government in the near future.”

Brexit-related legislation

The Committee’s direct experience of Brexit-related legislation has been limited. However, we are content to agree with the general principle that the Scottish Parliament should be consulted before the Scottish Ministers consent to the UK Government legislating in a devolved area that was formerly within EU competence. Where any such new laws may impact significantly on local government, it is important that the local government sector should also be consulted and have had the opportunity to help shape policy, in line with what COSLA has labelled the “no detriment” principle. (COSLA told us that it currently has “a strong voice in Europe” in terms of policy development and consultation and considers that, as a minimum, this should continue following Brexit in relation to returned powers.)

It is open to question whether this requirement needs to be expressly written into any new parliamentary procedure or protocol. But we believe it is a sound principle that the Scottish Parliament should be hesitant to endorse legislation using a returned power that would be likely to impact heavily on the local government sector, absent evidence that the sector had a meaningful opportunity to engage in policy development at the pre-legislative stage.

International treaties

The Committee is not in a position to comment in detail of whether and how this Parliament should scrutinise proposed international treaties after Brexit, this not being an issue to have arisen often during our Brexit scrutiny in this session. Again, the Committee would express support for the general proposition that, where a treaty materially affecting Scottish interests is being negotiated, the Scottish Parliament should have a real opportunity to scrutinise treaty proposals and, if necessary, express objections before any deal is agreed.

The Committee notes concerns from COSLA that neither the Scottish nor the UK Government envisages local government having a direct say in future trade deals likely to impact on local government (for instance deals affecting procurement powers). Again, we suggest it is a good general principle that this Parliament should have a presumption against expressing support for such deals if it is clear that local government had no opportunity for meaningful engagement before they were signed.

Common frameworks

The Committee agrees that the Parliament should have the opportunity to consent to proposed common frameworks prior to these being agreed between the UK and Scottish Governments. The Committee notes that Parliamentary scrutiny of the practical operation of no-legislative frameworks (i.e. in the creation of policy) would, by definition, appear quite limited. This suggests a need for a Parliamentary, or inter-Parliamentary mechanism to review regularly how such frameworks are operating in practice and for subject committees to have the opportunity to have input into it.

In relation to the question on whether it is appropriate for the Scottish Government to have committed not to create divergent policy in areas to be covered by common frameworks, this would seem to be in large part a political question. The Committee envisages the Scottish Parliament being able to take a view as to whether particular instances of the Scottish Government applying this approach in specific policy areas are appropriate or not in the normal way (e.g. by debating and having the opportunity to vote on a motion on a particular matter).

However, we also draw to your attention evidence from witnesses at our 1 May session that are of possible general relevance to this question. They spoke to the importance of there being as much certainty and predictability as possible to assist long-term planning in areas such as structural funding, which currently operates in seven-year cycles. The Committee acknowledges that it would be possible for Scottish Government policy to be divergent from UK Government policy and yet to be relatively stable and predictable. Nonetheless, it could be argued that the commitment that the Scottish Government has given may be at least of some assistance in engendering stability in a post-Brexit context in matters such as regional economic planning. Of more fundamental importance, however, is that there is greater engagement between all three tiers of government as to the future direction of policy, post-Brexit, in procurement, regional funding and other “high impact” matters for local government that COSLA has identified.

Finally, the Committee asks you to note that whilst procurement is on the list of topic areas identified by the UK Government as intersecting with devolved competence and requiring a common framework, structural funding is not. The Committee is not certain whether the UK Government considers that there are clear reasons why structural funding should not be on the list and, if so, whether these have been set out and discussed in a political forum. We invite you to consider whether there is any need to have this matter clarified with the UK Government as part of your ongoing work on common frameworks.

Your sincerely

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Convener of the Local Government and Communities Committee