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First Minister of Scotland



Scottish Government
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Rt Hon Theresa May MP
Prime Minister
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24 April 2018

Dear Theresa

At JMC on 14 March I set out the Scottish Government's position on the EU Withdrawal Bill.

Substantial progress has been made since then and I should acknowledge the work of David Lidington, Michael Russell, Mark Drakeford and officials in securing that. However, the issue of consent that I set out has not yet been resolved and therefore the Scottish Government is not yet in a position to recommend consent to the Bill to the Scottish Parliament.

Discussions will continue of course and I very much hope that we can yet reach agreement.

I understand that the UK Government is required to table amendments to the Bill this week. The Scottish Government will in turn put before the Scottish Parliament the further changes to these amendments that we consider to be necessary. In line with constitutional convention, the UK Government will be expected to bring forward changes at Third Reading in the Lords to reflect any decisions on legislative consent that are taken by the Scottish Parliament.

We have made substantial progress in agreeing the areas where devolved competence intersects with EU law where common frameworks may be required and in agreeing that as we work through the detail of those frameworks, existing EU rules should be maintained on a temporary basis after withdrawal. I am confident that this provides a robust basis upon which to proceed to make the arrangements necessary to ensure continuity and co-operation across the UK upon EU exit.

The key remaining issue is clause 11 and the imbalance and lack of trust that it represents between the governments, given the proposal to place a legislative constraint on the devolved administrations but only a voluntary one on the UK Government. The process of withdrawal from the EU will require many negotiations and agreements between the governments of the UK. It is vital that we set the right tone and approach for these from the outset in order to secure the consent of the Scottish Parliament to the Bill. That must be based on equity of treatment in keeping with repeated assurances made to the people of Scotland during and after the 2014 referendum and as part of the 2016 Referendum campaign.

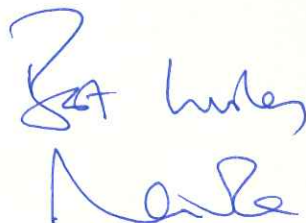
The proposed draft amendments that were shared with officials on Friday underline the difficulty of proceeding as currently proposed. The UK Government proposes a further political commitment to not *normally* make regulations without the consent of the Scottish Parliament - however, it will be for the UK government, and ultimately the House of Commons, to determine what is normal and what is not, and whether or not it considers that the Scottish Parliament is acting reasonably on any occasion on which it opts to withhold consent. Indeed, the terms of the amendments underline the lack of substance to the commitment to seek consent in that they make it normal to proceed to make regulations following a 'consent decision', regardless of what that decision would be.

In summary, the effect of the amendments and the draft agreement is that the Scottish Parliament's powers could be restricted (for a period of up to seven years according to the proposed sunset provisions) without its consent. I am sure you will appreciate, given the clear statements of the Scottish Government's position, that this is not something I can recommend to the Scottish Parliament for approval.

Michael Russell has set out in separate correspondence to David Lidington the further changes that are needed. The best approach will be to remove Clause 11 entirely and for all parties to enter into a written agreement based on trust and respect for devolution. Alternatively, if the UK Government continues to insist upon clause 11, then the exercise of that power must be subject to the consent of the Scottish Parliament in line with the practice used under section 30 and section 63 of the Scotland Act and as I set out at JMC.

There remain a number of weeks to consider these issues and I very much hope that it proves possible to continue by agreement. I stand ready to discuss these issues with you.

I am copying this letter to David Lidington, Carwyn Jones and to Michael Russell.



NICOLA STURGEON