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The Rt Hon David Lidington CBE MP
Minister for the Cabinet Office and
Chancellor of the Duchy of Lancaster
Cabinet Office
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3 July 2019

Dear David,

We welcomed the opportunity at JMC(EN) on 28 June to consider progress on the Intergovernmental Relations Review commissioned by JMC(P) on 14th March last year and your intention to publish the draft principles for relations as set out in your statement today. However, the proposed principles for relations bear little meaning without any firm commitments for further reform. It has taken far too long to make this limited progress. Delay now poses a serious risk to UK governance, for example by holding up the fruitful collaboration on common frameworks, which so far is making an important contribution to the development of relations.

The review is taking place against the backdrop of three years of mismanaged negotiations with the European Union. Those have led to a situation in which we are likely to be facing the prospect of a catastrophic no-deal Brexit, unless the UK Government alters course and offers people a choice. The Welsh and Scottish Governments are clear that the decision on EU exit must now be put back to the people and we have called on the UK Parliament to legislate for a referendum. If such a referendum is held we will argue strongly that the UK should remain in the EU.

Whether or not the UK leaves the EU, there is an urgent need for fundamental reform of the relationship between our governments. Even before the referendum there was a widespread consensus that the intergovernmental structures are weak and ineffective. The experience of repeated failures to involve the devolved governments properly in the negotiations further demonstrates how urgent that task of reform has become.

Given this background, it is deeply disappointing that the intergovernmental relations review commissioned fifteen months ago has made so little progress. This, in our view, is almost entirely due to the lack of a commitment to reform on the part of the UK Government. The

Welsh Government set out a comprehensive set of proposals over two years ago. The Scottish Government has set out its own proposals on a number of occasions and will shortly do so again in a dedicated publication.

Against this backdrop, we therefore urge that a meeting of Heads of Government at JMC(P) be convened as soon as practicable in order to discuss these proposals and agree a programme of reform with a clear timetable. That programme will of course be essential if the draft principles are to have any practical effect.

That programme of reform must include:

- reformed machinery which is robust enough to bear the weight of intergovernmental working now required and as replacement for the current inadequate architecture;
- a strengthened dispute resolution process which both reflects the discussion on the use of independent advice and arbitration and delivers real parity of participation – a fundamental shortcoming of the current arrangements;
- arrangements which guarantee respect for devolved responsibilities, in contrast to the statements being made by candidates for leadership of your party which are clearly incompatible with devolution and threaten to undermine co-operation between our governments;
- arrangements to provide certainty that decisions made by devolved institutions, including in relation to legislation on devolved matters, are fully respected.

The Supreme Court judgment in the Reference of the UK Withdrawal from the European Union (Legal Continuity) (Scotland) Bill put beyond doubt that legislating to regulate the domestic consequences of international agreements is within devolved competence. There is therefore a need for our involvement in agreeing UK-wide positions; our governments and our legislatures must be fully involved in the negotiation and agreement of any international agreements which will affect devolved interests.

We need to make real progress on the international relations element of the Review. This is urgent: by early November, the UK could be embarking on the future relations negotiations with the EU27, or new international trade agreements, or both. Indeed discussions are already under way with trading partners which will have an impact on future trade arrangements. The Scottish and Welsh Governments have made clear how we expect to be involved in these matters now and into the future. It is absolutely vital that we have agreed the way forward before any UK negotiating mandates are set, and any negotiations proceed.

There is, of course useful precedent to draw upon in the current practice of joint working to agree a UK-wide approach on EU business as a reasonable starting point. Though not by any means perfect, this recognised that, given the way EU law impacts on devolved competence, the UK position needs to be negotiated with the devolved administrations to ensure it fully reflected the interests of all parts of the UK in terms of the development of critical EU policies like the Common Agricultural Policy or the Structural Funds. Negotiations on the future relationship will be fundamentally different in scale, scope, intensity and pervasive impact on devolved interests and therefore arrangements for our involvement need to recognise this. We must build on those precedents which exist but need to see a step change in approach to the future partnership, and to all international negotiations which impact on devolved competence, so that our roles and responsibilities are fully respected. It is deeply regrettable that the UK Government appears to be resisting its responsibility to agree negotiating mandates with the devolved institutions and to involve us fully in relevant international negotiations as they unfold.

The Scottish and Welsh Governments and our Parliaments cannot be expected to co-operate on implementing obligations in devolved areas where we have not been fully involved in the determination of those obligations.

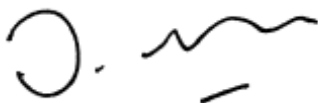
The practical necessity for such arrangements has been at the heart of the devolution settlement since its inception.

Our experience of the JMC(EN) is that it has not lived up to its terms of reference. As the way of working we agreed to has not materialised, an agreed programme for reform must include a specific commitment to secure the substantive improvements in working practice required to give effect to that remit.

More generally, whilst we recognise and are grateful to you for your personal commitment to seeking to ensure positive and constructive relations, it is essential that we are similarly assured that delivery of the reforms we have described are a top priority for the incoming Prime Minister and Cabinet. It will not be possible to establish effective working relations without firm commitments to change the current dynamic.


Delivering reforms which are capable of changing the current dynamic will require a shift of devolution culture and capability across the UK Government. We note reports that the current Prime Minister is to visit Scotland tomorrow to announce a review of the way UK Government departments approach devolution. We sincerely hope that the remit of any review will focus on the step change required within the UK Government, and will fully respect the boundaries of the devolution settlement.

Yours sincerely

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Jeremy Miles AM

Y Cwnsler Cyffredinol a Gweinidog Brexit
Counsel General and Brexit Minister

A handwritten signature in black ink, featuring a series of vertical, parallel strokes followed by a long horizontal line extending to the right.

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