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Rt Hon Alister Jack MP
Secretary of State for Scotland
Dover House
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By email

18 September 2020

Dear Alister,

UK INTERNAL MARKET BILL

The First Minister has asked me to respond to your letter of 11 September.

Your letter contains a number of false assertions about the Internal Market Bill. It does great harm to businesses, consumers and citizens to misrepresent the Bill's true impact as your letter does. Given the UK Government's desire to rush the Bill through Parliament, allowing minimal opportunity for scrutiny, I want to put the record straight.

Contrary to the points in your letter, the Internal Market Bill will, in fact, have the following effects.

The Internal Market Bill will open the way to a 'race to the bottom' in food standards and environmental protections

The UK does indeed currently enjoy high environmental and food standards by virtue of the fact that EU laws still apply during the Transition Period. Under your proposals, should Scotland wish to maintain these standards, or develop them further, we would be forced to recognise lower standards set elsewhere in the UK: that is the express purpose of the mutual recognition and non-discrimination provisions in Parts 1 and 2 of the Bill.

The UK Government has blocked every proposed move to provide legal guarantees that high environmental, animal welfare and food safety standards will be maintained in the future. You personally, along with your colleagues, voted against a cross-party amendment to the UK Agriculture Bill which would have ensured sub-standard food could not be imported into the UK in any future trade deals. I would be grateful if you could explain why your Government

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has so far resisted any moves to make legally binding commitments that would provide assurances to consumers and businesses across Scotland and the UK.

You note that “the UK Government and all devolved administrations have agreed a common framework on food and feed safety and hygiene law which clearly sets out the rules and regulations related to the production and distribution of food and feed”.

You suggest that this framework can guarantee a shared commitment to high standards across the UK. I agree. Why, in that case, are your internal market proposals necessary? And why introduce a mutual recognition regime that removes any incentive to manage policy difference by agreement through common frameworks?

You are right that chlorine-washed chicken is illegal in the UK – something welcomed by businesses and consumers across Scotland. Why has your Government resisted every attempt to write assurances in to law making it clear that this will continue to be the case?

The UK recently dropped Anti-Microbial Resistance as an objective for the Japan Free Trade Agreement, showing that public health matters will be traded away in order to reach a trade deal. It is hard to feel reassured that concessions will not be made elsewhere that undermine the standards for goods and services - that the mutual recognition principle would require to be freely marketed in Scotland.

The US Government has been absolutely clear that animal welfare and food standards will be within the scope of any future trade deal signed with the UK. That is set out in black and white in its mandate for trade negotiations.

You say that “the UK Government has been clear we will not sign a trade deal that would compromise our high standards of food safety, animal welfare and environmental protection.” Last Tuesday, a Minister of the Crown stood at the despatch box and informed the UK Parliament that the UK Government intends to break international law. Can you explain, in circumstances where the UK Government is not prepared to honour international commitments entered into at the start of this year, why businesses and consumers in Scotland should take any comfort from verbal assurances on future food standards?

The Bill's spending powers could indeed divert funding from schools and hospitals in Scotland

Part 6 of the Bill confers broad new powers on UK Ministers to allocate funding in devolved areas in Scotland. You state that “the Bill will complement existing Scottish Government spending powers”. But there is no guarantee in the Bill that existing funding arrangements for devolved spending will be maintained. Are we seriously to believe that Treasury will allow increased spending on devolved areas by the UK Government without an equivalent reduction to the Scottish Parliament's budget?

The Scottish Government has been clear, in respect of replacement of current EU funding:

- that Scotland should not lose out financially compared with the current level of funding that it receives from the EU;
- that the devolution settlement must be respected and the UK Government must make no attempt to take back powers that the Scottish Government and Parliament have exercised to date;

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- That any replacement schemes should be operational in time to be implemented in early 2021, so that recipients do not suffer difficulties as a result of a funding cliff edge.

As it stands the Bill would also allow the UK Government bypass devolution in allocating money in devolved areas in Scotland without the oversight or consent of the Scottish Parliament and Ministers.

As we approach an economically disastrous no- deal Brexit – or a low-deal Brexit that will be little better – in the teeth of a global pandemic and the worst recession in centuries, what binding assurance can we have that UK Ministers will not seek to bypass the scrutiny of the Scottish Parliament and Scottish Ministers in deciding where and how funding is allocated in future?

Had the Bill been in place at the time it would undoubtedly have undermined the Scottish Parliament in legislating to introduce a minimum price for alcohol

I should not need to have to explain how your own legislation would work.

The Bill's mutual recognition requirements at Clause 3(2)(a) refer to "a statutory requirement in the part of the United Kingdom concerned which ...prohibits the sale of the goods or, in the case of an obligation or condition, results in their sale being prohibited if it is not complied with".

Minimum unit pricing (MUP) would indisputably be caught by this provision, and the requirement at Clause 2 that a good made in line with statutory requirement in one part of the UK "should be able to be sold in any other part of the United Kingdom, free from any relevant requirements that would otherwise apply to the sale" (Clause 2).

Had the Scottish Parliament legislated for MUP at a time when the Bill's mutual recognition principle was in place the legislation would have had "no effect" in respect of alcoholic drinks produced elsewhere in the UK? This would have clearly undermined the policy and the will of the Scottish Parliament.

There is no doubt that the Bill is a naked power grab and an attack on the devolution settlement

One of the most dispiriting aspects of this debate has been the UK Government's continued insistence – in the face of overwhelming evidence to the contrary – that this bill will increase the powers of the Scottish Parliament. If that is the case, can you explain why there is no mention – none at all – of these "scores of new powers" in the Bill's explanatory notes?

Indeed the explanatory notes make clear (paragraph 75) that "the Bill's provisions *create a new limit on the effect of legislation made in exercise of devolved legislative or executive competence*. For example, clause 2(1) *disapplies any legislative requirements that do not comply with the mutual recognition principle*".

In other words, a new, blanket constraint on the exercise of the Parliament's powers would be introduced, and the scope of the constraints could be adjusted at any time at the discretion of UK Ministers, regardless of the views of the Scottish Parliament. Moreover, the Bill would simply nullify any law passed by the Scottish Parliament that was deemed in breach of the mutual recognition principle.

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Your assertion that your internal market proposals are analogous with the European Single Market is wholly mistaken.

The development of the European single market has been based on the principles of equality, co-operation, co-decision, subsidiarity, proportionality and consent, and setting a baseline of minimum agreed standards with which all member states' own rules must be compatible. The UK Government's proposals are based on unilateral decision-making and imposition, with no minimum standards or guarantees.

The European single market rules recognise and allow for policy objectives alongside pure market economic considerations; for example, the health benefits of minimum unit pricing. The European single market principles ensure that decisions are taken as close as possible to affected citizens, that member states abide by the rules agreed to by the EU, and that rights can be enforced by individuals and companies against their own governments if necessary. The institutions of the EU also ensure that regional variations are taken into account.

To date, the Scottish Parliament has exercised its legislative competence within the European single market rules and has benefited from the protections which those rules provide to all member state legislatures. This Bill has none of those protections. Instead, the UK Government is proposing the opposite of the European single market approach. The Bill includes no mechanism for negotiation or agreement between the four governments of the UK. Instead, the mutual recognition mechanism would allow the UK Government to decide its standards for England, which would have to be accepted by the other nations of the UK. In practice, it would reserve the right, under the doctrine of Westminster sovereignty, to undo any decisions taken by the devolved Governments that might be considered a constraint on the decision-making powers of the UK Parliament. As the Explanatory Notes to the Bill say:

77 It remains possible for a future Act of the UK Parliament to expressly disapply the operation of the Bill in future.

This Bill will constrain the Scottish Parliament's powers in a way which EU membership never has.

The Bill would cause fundamental damage to devolution, altering, and weakening, beyond recognition the devolved institutions that were created with overwhelming support in the Referendum held in 1997

The Bill's provisions are, for all the reasons I have set out, incompatible with the devolution settlements. The weight of academic and expert opinion on this issue is overwhelming. The Labour Government in Wales agrees.

You are of course right that the Scottish Government believes that Scotland's interests are best served as a sovereign independent EU member state. The UK Government's behaviour in respect of this Bill, flouting international law and overturning domestic constitutional norms, only injects greater urgency to the need for Scotland to take a different, better path.

Finally allow me to make a personal observation, based on more than a dozen years in ministerial office. The tone and approach of your letter was, in the view of myself and many others, incompatible with the office you hold.

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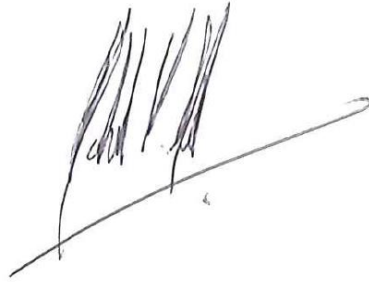


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However it does not damage, as it was intended to do, the reputation of the recipient but instead yours, as the sender.

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

MICHAEL RUSSELL

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