February 2017

Dear Bruce

I wrote to you on 19 January to alert members to the impending Plenary Session of the Joint Ministerial Committee, which was subsequently held on 30 January. I am now writing to report on the Scottish Government’s actions at that meeting and to furnish members with a copy of the Joint Communique.

The meeting had two substantive items on the agenda – the UK’s exiting of the EU and the role of devolved governments, through the JMC and bilaterally, in formulating a UK approach; and a discussion on Trade and Investment Policy. The meeting also covered a standing item on the state of relations.

We highlighted the lack of progress towards agreeing a common position on the triggering of article 50, which was a fundamental part of the remit of JMC(EN). The Minister for UK Negotiations on Scotland’s Place in Europe asserted that the forum should be the place where Ministers can safely exchange information, discuss planning and contribute to elements like the impending White Paper on the Great Repeal Bill. From the Scottish Government perspective and experience, this is not how the forum is working in practice. It is increasingly clear that Brexit must result in a fundamental reconsideration of where power lies in the UK. The UK is no longer a unitary state, as it was on joining the EU, and devolution is now a fundamental element of its constitutional make up. I stressed that it will not be sufficient to guarantee the powers that are already devolved; we must see a clear indication from the UK Government that there will be a major transfer of powers to the Scottish Parliament once the UK leaves the EU.

During our discussion on Trade and Investment policy I made clear that, whilst I welcome the opportunity for the Scottish Government to continue to contribute to and cooperate in developing any new approach, there would have to be genuine consideration given to the specific identities and requirements of the constituent parts of the UK and the diversity of our respective economies in doing so. There will be a need to work together on trade...
agreements and there must be a meaningful way for the Devolved Administrations to be involved in the formulation of any new provisions.

Given the pending election in Northern Ireland, the JMC(P) remitted further work on inter-governmental mechanisms and the review of the Memorandum of Understanding back to officials in the Secretariat. Ministers will revisit discussions, at a future date.

There was agreement that the JMC(P) should convene again later in 2017. I expressed my intense disappointment that there was no firm commitment to hold a Plenary prior to triggering Article 50. Both the Minister for UK Negotiations on Scotland’s Place in Europe and I made clear our view that this first key action could not be conducted unilaterally and that a Plenary is the place to bring together any work done in the JMC(EN) and to agree a truly UK approach and objectives for negotiations, as the Prime Minister committed to when she visited Edinburgh last July.

I stressed to the Prime Minister that the UK Government needs to intensify joint work on the Scottish Government’s proposals, and the proposals from the Welsh Government and Plaid Cymru and this was agreed. However, I’m clear that the UK Government must demonstrate how it will incorporate the Devolved Administrations’ interests into a UK negotiating position. This, for me, would mean a significant improvement in the quality of exchange, with due consideration and genuine discussion of the proposals we have advanced.

The Withdrawal from the European Union (Article 50) Bill 2017 will of course be debated at Westminster. It refers to a reserved policy decision and that Parliament should rightly have the opportunity to scrutinise and amend provisions as necessary. However, this should not preclude the Devolved Administrations from influencing the broad approach and fundamental principles and provisions that will have a direct and lasting impact on devolved competencies.

The Scottish Government believes that should the UK Government persist with its plans for the hardest of Brexits and remain unwilling to incorporate into its position the needs of the devolved administrations then there would be no choice but to give the people of Scotland an opportunity to have their say on the matter. That is why the next few weeks will be crucial in terms of demonstrating the intentions of the UK Government.

NICOLA STURGEON