



Mr Bruce Crawford MSP
Convener
Finance and Constitution Committee
Scottish Parliament
Edinburgh
EH99 1SP

17th October 2017

Dear Bruce,

I wrote to you and to the Convener of the Culture, Tourism, Europe and External Relations Committee on 12 October 2017 to alert your committees to the fifth meeting of the Joint Ministerial Committee on EU Negotiations [JMC (EN)] on 16 October.

I am now writing to report on the Scottish Government's actions at that meeting and provide you with a copy of the Joint Communiqué agreed at the meeting, which includes a statement of principles to underpin work on common frameworks.

The other Ministers attending were:

- From the UK Government: the First Secretary of State, Rt Hon Damian Green; Secretary of State for Exiting the EU, Rt Hon David Davis; the Secretary of State for Scotland, Rt Hon David Mundell MP; the Secretary of State for Wales, Rt Hon Alun Cairns MP; and, Parliamentary Under Secretary of State for Northern Ireland, Lord Bourne of Aberystwyth.
- From the Welsh Government: Cabinet Secretary for Finance and Local Government, Mark Drakeford AM.
- From the Northern Ireland Executive: in the absence of Ministers a Northern Ireland senior civil servant attended the meeting.

During the meeting the Committee discussed matters related to negotiations with the EU and progress in agreeing a statement of principles to shape discussions within the UK on common frameworks.



Throughout the meeting, I sought to understand better the outcomes that the UK Government has been seeking to achieve in its negotiations with the EU and the prospects for achieving those. I reiterated the Scottish Government's view that the only means of mitigating the damage of leaving the EU is to remain in the European Single Market and EU Customs Union. I asked for urgent clarity on the rights of EU citizens in the UK following exit.

I also pressed the need for the devolved administrations to be properly involved in the UK Government's decision-making process for Brexit including in the development and publication of UK Position Papers, as was originally envisaged in the Terms of Reference for JMC (EN) and as has so far been lacking.

On the domestic implications of Brexit, I made it absolutely clear that the Scottish Government cannot recommend the Scottish Parliament gives consent to the EU (Withdrawal) Bill unless significant changes are made. Nothing has changed in that respect.

Where progress was made was in relation to a set of agreed principles to guide negotiations around any potential UK or GB wide frameworks in the event the UK leaves the EU. A copy of those is attached. Importantly those principles include respecting the devolution settlement. Respect for devolution must mean that powers in devolved areas of responsibility currently exercised at EU level should revert to the Scottish Parliament.

The Scottish Government has never been opposed in principle to UK-wide frameworks where they make sense, but we have made it repeatedly clear these can only be implemented through agreement not imposition.

No date has yet been set for a further meeting of JMC(EN) although the UK Government has agreed that will be before Christmas. I will continue to share what I can with you in keeping with the Written Agreement on Inter-Governmental Relations between the Scottish Parliament and the Scottish Government.

I am writing in similar terms to the Convenor of the Culture, Tourism, Europe and External Relations Committee.

Yours Sincerely

Michael Russell

JOINT MINISTERIAL COMMITTEE (EU NEGOTIATIONS) COMMUNIQUE

16 October 2017

The fifth Joint Ministerial Committee (EU Negotiations) met today in 70 Whitehall. The meeting was chaired by the Rt Hon Damian Green MP, First Secretary of State and Minister for the Cabinet Office.

The attending Ministers were:

From the UK Government: the First Secretary of State and Minister for the Cabinet Office, Rt Hon Damian Green MP; the Secretary of State for Exiting the EU, Rt Hon David Davis MP; the Secretary of State for Wales, Rt Hon Alun Cairns MP; the Secretary of State for Scotland, Rt Hon David Mundell MP; and, Parliamentary Under Secretary of State for Northern Ireland, Lord Bourne of Aberystwyth.

From the Welsh Government: Cabinet Secretary for Finance and Local Government, Mark Drakeford AM.

From the Scottish Government: the Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell MSP.

In the absence of Ministers from the Northern Ireland Executive, a senior civil servant from the Northern Ireland Civil Service was in attendance.

The Chair opened the meeting by summarising the bilateral engagement and political developments that had taken place since JMC(EN) last met. The Secretary of State for Exiting the EU provided an update on the previous rounds of negotiations with the EU and the Committee discussed forthcoming priorities and the future relationship with the EU. The Committee discussed the establishment of common frameworks.

Ministers noted the positive progress being made on consideration of common frameworks and agreed the principles that will underpin that work (attached).

Common Frameworks: Definition and Principles

Definition

As the UK leaves the European Union, the Government of the United Kingdom and the devolved administrations agree to work together to establish common approaches in some areas that are currently governed by EU law, but that are otherwise within areas of competence of the devolved administrations or legislatures. A framework will set out a common UK, or GB, approach and how it will be operated and governed. This may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued. Frameworks may be implemented by legislation, by executive action, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.

Context

The following principles apply to common frameworks in areas where EU law currently intersects with devolved competence. There will also be close working between the UK Government and the devolved administrations on reserved and excepted matters that impact significantly on devolved responsibilities.

Discussions will be either multilateral or bilateral between the UK Government and the devolved administrations. It will be the aim of all parties to agree where there is a need for common frameworks and the content of them.

The outcomes from these discussions on common frameworks will be without prejudice to the UK's negotiations and future relationship with the EU.

Principles

1. Common frameworks will be established where they are necessary in order to:
 - enable the functioning of the UK internal market, while acknowledging policy divergence;
 - ensure compliance with international obligations;
 - ensure the UK can negotiate, enter into and implement new trade agreements and international treaties;
 - enable the management of common resources;
 - administer and provide access to justice in cases with a cross-border element;
 - safeguard the security of the UK.

2. Frameworks will respect the devolution settlements and the democratic accountability of the devolved legislatures, and will therefore:
 - be based on established conventions and practices, including that the competence of the devolved institutions will not normally be adjusted without their consent;
 - maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as is afforded by current EU rules;
 - lead to a significant increase in decision-making powers for the devolved administrations.

3. Frameworks will ensure recognition of the economic and social linkages between Northern Ireland and Ireland and that Northern Ireland will be the only part of the UK that shares a land frontier with the EU. They will also adhere to the Belfast Agreement.