



The Scottish Parliament
Pàrlamaid na h-Alba

Culture, Tourism, Europe and External Affairs Committee

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BY E-MAIL

9 May 2019

Dear Bruce,

Thank you for your letter of 25 March regarding the urgent need for a transparent and consultative debate about whether the devolution settlement is robust enough to deal with Brexit. Your letter is highly salient to many issues which the Culture, Tourism, Europe and External Affairs Committee (CTEEA) has scrutinised since the result of the June 2016 referendum but, in particular, with regard to the lack of transparency which has been a hallmark of many facets of the Brexit process to date. In that regard, the CTEEA Committee strongly endorses the emphasis that the Finance and Constitution Committee has placed upon the need for a transparent and consultative debate regarding the implications of the Brexit process for the devolution settlement. In your letter, you specifically seek views with regard to three aspects of this process namely, International Treaties, Common Frameworks and scrutiny of Brexit related legislation.

International Treaties

The CTEEA Committee has taken a significant amount of evidence in relation to the issue of International Agreements resulting from the Brexit process. In recent weeks, our focus has been upon the 'roll-over agreements' which the UK Government has either signed, or is seeking to sign, to replace existing EU agreements. This process has raised a wide range of issues particularly with regard to the importance of scrutiny and transparency to successfully negotiating International Agreements.

Given the potential implications of International Agreements that the UK Government has signed, or is seeking to enter into, the CTEEA Committee is concerned at the lack of information and consultation which the UK Government has undertaken to date. To date, the only official source of information that the Committee has had in relation to these agreements has come from the House of Lords EU Select Committee.

Furthermore, we note that there is no such legal concept in international law as a 'roll-over agreement' and that these agreements will in many cases be different from the current EU agreements and therefore potentially raise significant issues with regard to devolved competences and Scottish interests. Similarly, we are unaware of any consultation which the UK Government has undertaken with the Scottish Parliament in regard to the tariff schedule which was to take effect in the event of a No Deal Brexit. Given that this is potentially the beginning of a process of the UK Government seeking to negotiate International Agreements then the Committee considers that it is imperative that a process for parliamentary scrutiny of International Agreements be put in place as a matter of urgency.

The evidence that the Committee has taken from a wide range of trade experts has emphasised the importance of devolved input into the negotiating mandate which forms the initial statement of priorities before any trade agreement. This should then be complemented by on-going dialogue and input into the process throughout the negotiating period. In this regard, the Committee would expect to be able to scrutinise the position of the Scottish Government during the formulation, negotiation and agreement stages of International Agreements. The Committee would also expect to be able to take evidence from UK Government Ministers. We are aware that the European Parliament's Trade Committee currently undertakes scrutiny of EU trade negotiations and that the UK and Scottish Government's have both published documents outlining proposals with regard to scrutiny arrangements. The CTEEA Committee considers that, as a minimum, the scrutiny procedures that the Scottish Parliament adopts in relation to International Agreements should be equivalent to those in the UK Parliament.

The CTEEA Committee are currently taking evidence on this issue. Accordingly, we intend to set out a more detailed position with regard to International Agreements and the issues you raise prior to the summer recess.

Common Frameworks

The CTEEA Committee has not taken a significant amount of evidence on the issue of common frameworks as the Committee has sought to focus on the implications of the Article 50 negotiations process rather than the internal constitutional processes within the UK. However, in recent weeks, the Committee has taken evidence on the issue of how the EU State Aid regime will be dealt with in the UK in a post-Brexit environment. As you will be aware, the issue of State Aid is an area where there is no agreement between the UK Government and the devolved administrations. However, we are aware that the UK Government has introduced regulations at Westminster which would, in effect, reserve State Aid policy to the Competition and Markets

Authority. This would clearly be an issue of concern in relation to public procurement by devolved public authorities. This is an issue which the Committee intends to continue to scrutinise in the coming months.

Although not directly related to common frameworks, the CTEEA Committee also wishes to highlight the lack of information which is available with regard to what will replace current EU funding streams. For example, the CTEEA Committee has concerns about replacement schemes for EU policies such as Erasmus+, Horizon 2020 and the European Structural Funds. Clearly, ensuring that appropriate scrutiny arrangements are in place for issues of this kind will be of critical importance.

Legislation

The CTEEA Committee has, to date, not been required to consider any Brexit related LCMs and only one item of Brexit related subordinate legislation under the protocol agreed between the Scottish Government and Scottish Parliament. The CTEEA Committee does not therefore consider that it would be appropriate to comment on this issue. Nevertheless, we endorse the principle that the Scottish Parliament, as a minimum, must be consulted prior to consent being given by Scottish Ministers to the exercise of any powers conferred on UK Ministers to legislate in non-reserved matters currently subject to EU law.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Joan McAlpine', with a long horizontal line extending to the right.

Joan McAlpine
Convener
Culture, Tourism, Europe and External Affairs Committee