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13 July 2017

Dear Convener

EUROPEAN UNION (WITHDRAWAL) BILL

I have written to all Members of the Scottish Parliament today to draw their attention to the UK Government's European Union (Withdrawal) Bill that has been introduced by the UK Government to the House of Commons today.

Given the constitutional implications I am sure that the Finance and Constitution Committee will want to consider the bill and its implications. Please contact my office if I can be of any assistance.

I am copying this letter to the Presiding Officer and the Conveners of the Culture, Tourism, Europe and External Relations and Delegated Powers and Law Reform Committees.

MICHAEL RUSSELL





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Members of the Scottish Parliament

13 July 2017

Dear Colleagues

EUROPEAN UNION (WITHDRAWAL) BILL

Today the UK Government introduced the European Union (Withdrawal) Bill to the House of Commons.

This is a complicated and significant piece of legislation. It has fundamental implications not only for the UK's membership of the EU, but also for the powers and role of the Scottish Parliament. I am therefore writing to all Members to draw it to your attention.

The published version of the bill can be found via the following link:
<https://publications.parliament.uk/pa/bills/cbill/2017-2019/0005/18005.pdf>

The Bill does four main things. Firstly, it repeals the European Communities Act 1972. Secondly, it saves and incorporates EU law into domestic law as it exists on exit day, which it refers to as "retained EU law". Thirdly, the bill gives UK Ministers powers in reserved and devolved areas to correct deficiencies in retained EU law arising as a result of withdrawal, prevent or remedy breaches in any international agreements arising from withdrawal and implement the withdrawal agreement. The Bill also gives Ministers from the devolved administrations their own versions of these three powers, although those are subject to a number of detailed restrictions. Finally, the bill imposes a new constraint on all of the devolution settlements which prevents the devolved administrations from modifying retained EU law, in policy areas that are otherwise devolved, unless what they are doing is in line with pre-existing EU law.

The Scottish Government has serious concerns about the bill in a number of areas.

Firstly, and most fundamentally, the competence restrictions imposed by the bill are asymmetrical. The bill lifts from the UK Government and Parliament the requirement to comply with EU law, but does the opposite for the devolved legislatures by imposing a new

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set of strict restrictions - restrictions which make no sense in the context of the UK leaving the EU.

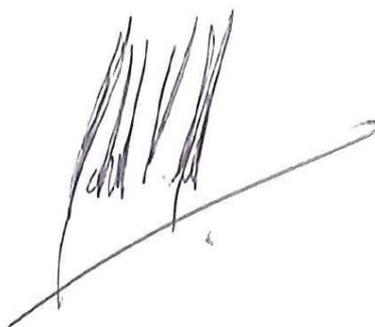
To put it simply, in reserved areas that are currently subject to EU law, the UK parliament regains the ability to legislate without restriction. In devolved areas, the Scottish Parliament does not - it will only be able to do so in future if the UK government grants permission by Order in Council.

The result of those asymmetrical competence restrictions, will be to leave the ultimate decisions on UK-wide frameworks on matters that are otherwise devolved to the UK Government and Parliament. While the Scottish Government recognises that common frameworks to replace EU laws across the UK may be needed in some areas, the competence in matters that are otherwise devolved should revert to the Scottish Parliament, enabling the scope and content of any UK-wide frameworks to be agreed between the UK Government and the devolved administrations, rather than imposed.

We are also concerned that the scheme in the bill for correcting devolved law is unlikely to be workable in its current form. It creates a complex division of decision-making responsibility that does not reflect the reality of devolution. In particular, it empowers UK Ministers to make changes in devolved policy areas without ANY involvement of either the Scottish Government or the Scottish Parliament. This includes policy areas, such as the Scottish justice system, where the Scottish Parliament has primary responsibility.

We have made clear to the UK Government that we are prepared to work with it to ensure that there is coherence and stability for both Scotland and the rest of the UK on the day the UK withdraws from the EU. We will take forward discussion of the bill and the UK Government's proposals for implementation on that basis. However, we have also made clear that, in light of the concerns set out above, the Scottish Government would not be able to support the bill as it currently stands.

The Scottish Government's concerns are shared by the Welsh Government. Members may wish to note that a joint statement was made today by the First Ministers of Scotland and Wales setting out the position of the two governments on the bill. I have attached a copy of that statement as an annex to this letter.



MICHAEL RUSSELL

13/07/17 12:32

EU (Withdrawal) Bill

Responding to the introduction of the European Union (Withdrawal) Bill, First Minister of Scotland Nicola Sturgeon and First Minister of Wales Carwyn Jones have today issued the joint statement below.

“This week began with the Prime Minister calling for a constructive and collaborative approach from those outside Whitehall to help get Brexit right. Today’s publication of The European Union (Withdrawal) Bill is the first test as to whether the UK Government is serious about such an approach. It is a test it has failed utterly.

“We have repeatedly tried to engage with the UK Government on these matters, and have put forward constructive proposals about how we can deliver an outcome which will protect the interests of all the nations in the UK, safeguard our economies and respect devolution.

“Regrettably, the Bill does not do this. Instead, it is a naked power-grab, an attack on the founding principles of devolution and could destabilise our economies.

“Our two governments – and the UK government – agree we need a functioning set of laws across the UK after withdrawal from the EU. We also recognise that common frameworks to replace EU laws across the UK may be needed in some areas. But the way to achieve these aims is through negotiation and agreement, not imposition. It must be done in a way which respects the hard-won devolution settlements.

“The European Union (Withdrawal) Bill does not return powers from the EU to the devolved administrations, as promised. It returns them solely to the UK Government and Parliament, and imposes new restrictions on the Scottish Parliament and National Assembly for Wales.

“On that basis, the Scottish and Welsh Governments cannot recommend that legislative consent is given to the Bill as it currently stands.

“The Bill lifts from the UK Government and Parliament the requirement to comply with EU law, but does the opposite for the devolved legislatures: it imposes a new set of strict restrictions. These new restrictions make no sense in the context of the UK leaving the EU.

“We have explained these points to the UK Government and have set out what we consider to be a constructive way forward in the spirit of co-operation, based on the involvement of, and respect for, devolved institutions.

“Unfortunately, the conversation has been entirely one-sided. We remain open to these discussions, and look forward to coming to an agreed solution between the governments of these islands.”

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