

T: 0300 244 4000
E: scottish.ministers@gov.scot

Rt Hon Steve Barclay MP
Secretary of State for Exiting the European Union
9 Downing Street
London
SW1A 2AG

24 January 2020

Dear Steve

Thank you for your letter of 17 January 2020. I have also seen Michael Gove's letter of 23 January, and his Written Ministerial Statement of the same date.

The Scottish Parliament considered legislative consent on the Withdrawal Agreement Bill at the normal point in the legislative cycle, that is before the last amending stage in the first House in the UK Parliament.

The timing of the consent decision is intended to allow the UK Government to reflect the views of the Scottish Parliament in amending the Bill in its remaining stages. However, it has long been clear that the UK Government had no intention of accepting any amendments to the Bill on any matters, demonstrated by your rejection of the modest and sensible amendments made by the House of Lords.

It has also been clear that there was no consent decision that could have been taken by the Scottish Parliament, on any matter in the Bill, at any point in the Bill's Parliamentary stages, that would have affected in the slightest the terms of the legislation the UK Government was determined to pass. I do not therefore accept that you have respected the spirit and letter of the devolution settlement, or upheld the Sewel Convention. On the contrary, there is little reason to believe the UK Government would have respected the views of the Scottish Parliament on this Bill, even for provisions for which you sought consent.

Indeed the views of the Scottish Parliament on both the UK's withdrawal from the EU and the future relationship have been ignored by the UK Government throughout the Brexit process.

The UK Government was even unwilling to make simple changes to the Bill to that would have demonstrated, at least, some respect for the devolution settlement: for example, requiring actual consent to appointments to the IMA; excluding modifications to the Scotland Act from the scope of powers in the Bill; and excluding provisions from protected enactment status, which directly affects the competence of the Scottish Parliament. These examples also refute the claim that the Scottish Parliament refused consent solely on reserved grounds.

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An indication of good faith and respect for devolution is early sharing of the Bill before introduction. I remind you that we only saw the Bill in its final form after it had been sent to Westminster to begin its parliamentary process. There were important changes to the Bill from its previous version, including provisions that required, in our view, legislative consent (notably clause 26).

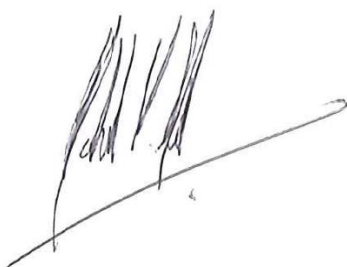
On the particular issue of transfer of functions from the IMA, again a simple change to the Bill would have ensured that the role of the devolved administrations was secured in any such transfer. Again the UK Government did not make such a change, and it is now entirely at the discretion of UK Ministers to decide whether to preserve the role of the devolved administrations where the functions are transferred. Again this is hardly respecting the spirit and letter of the devolution settlement.

For the first time all three devolved legislatures have refused consent for a piece of UK legislation, consent that the UK Government sought under the rules of our constitution. In any effective system of government, this unprecedented stance by democratically accountable legislatures would have some impact, or at least cause the UK Government to reflect. In our system, however, neither is true and nothing is done .

You describe these circumstances as unique but I see no steps being taken by you or your colleagues to find ways to ensure that is the case and that they cannot recur.

At the very least you should be demonstrating a much greater commitment by the UK Government to effective and binding reform of Sewel Convention from this moment on . An unequivocal determination established in statute, to ensure it is respected and the views of the devolved administrations acted on and not ignored, is the least you and your colleagues should be offering.

I am copying this letter to the Chancellor of the Duchy of Lancaster, the Secretary of State for Scotland, Jeremy Miles and the First Minister and Deputy First Minister of Northern Ireland.



Michael Russell MSP

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The Scottish Parliament, Edinburgh EH99 1SP
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