

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

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

19 September 2017

Dear Bruce,

In my letter to you of 1 September and my statement to Parliament of 12 September, I set out why the Scottish Government would not be able to recommend that Parliament give its consent to the European Union (Withdrawal) Bill, as it is currently drafted. A particular problem with the Bill is its failure to reflect the principles of devolution. The Scottish Government has been working with the Welsh Government to prepare a set of amendments to the Bill which would, if made, turn the Bill into one that properly respects devolution and ensures that the Scottish Parliament and the National Assembly for Wales do not have their competence restricted by EU withdrawal.

These amendments are attached, along with a note that summarises their purpose and effect. The same amendments have been sent by Professor Mark Drakeford AM, the Cabinet Secretary for Finance and Local Government in the Welsh Government, to Huw Irranca-Davies AM, Chair of the Constitutional and Legislative Affairs Committee.

The restrictions in clause 11 of the Bill apply to many areas of Scottish devolved responsibility vital to the success of our country, such as agriculture, the environment, fisheries, forestry, research, or justice co-operation. The restrictions have the effect that the Scottish Parliament would have no say over what is done with these important policy areas after EU withdrawal.

There is considerable interest in the over 100 areas that I indicated were affected by these restrictions. I have therefore annexed to this letter a working summary of these areas, in order to inform your consideration of these matters. I should be clear that the list represents an initial assessment by the UK Government of where EU competences intersect with devolution and which therefore would be affected by the restrictions in the Bill.

The UK Government prepared the list in order to inform discussion between the Scottish and UK Governments about where it may be necessary to agree common frameworks.

The Scottish Government is clear that any policy areas within devolved competence, carried out at EU level, should return to the Scottish Parliament in the event the UK leaves the EU. Given the way the European Union (Withdrawal) Bill is drafted, the extent of the list presented to the Scottish Government illustrates the scale of potential UK Government control over devolved policy areas.

As I made clear in my statement, the Scottish Government recognises that there may be the need for frameworks in the future and we are in discussion with the UK Government and the other devolved administrations to agree how such consideration might be taken forward. We will, however, only be able to agree frameworks based on respect for devolution, including the existing well established arrangements for co-operation, and not on the basis of the Bill as it stands.



MICHAEL RUSSELL

Powers returning from the EU that intersect with the devolution settlement in Scotland

1. Agricultural Support
2. Agriculture - Fertiliser Regulations
3. Agriculture - GMO Marketing & Cultivation
4. Agriculture - Organic Farming
5. Agriculture - Zootech
6. Animal Health and Traceability
7. Animal Welfare
8. Aviation Noise Management at Airports
9. Blood Safety and Quality
10. Carbon Capture & Storage
11. Chemicals regulation (including pesticides)
12. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments in civil & commercial matters (including B1 rules and related EU conventions)
13. Civil judicial co-operation - jurisdiction and recognition & enforcement of judgments instruments in family law (including BIIa, Maintenance and civil protection orders)
14. Civil judicial cooperation on service of documents and taking of evidence
15. Criminal offences minimum standards measures - Combating Child Sexual Exploitation Directive
16. Control of major accident hazards
17. Cross border mediation
18. Data sharing - (EU fingerprint database (EuroDac))
19. Data sharing - European Criminal Records Information System (ECRIS)
20. Data sharing - False and Authentic Documents Online (FADO)
21. Data sharing - passenger name records
22. Data sharing - Prüm framework
23. Data sharing - Schengen Information System (SIS II)
24. Efficiency in energy use
25. Elements of Reciprocal Healthcare
26. Elements of the Network and Information Security (NIS) Directive
27. Elements of Tobacco Regulation
28. Energy Performance of Buildings Directive
29. Environmental Impact Assessment (EIA) Directive
30. Environmental law concerning energy planning consents
31. Environmental law concerning offshore oil & gas installations within territorial waters
32. Environmental quality - Air Quality
33. Environmental quality - Chemicals
34. Environmental quality - Flood Risk Management
35. Environmental quality - International timber trade (EUTR and FLEGT)
36. Environmental quality - Marine environment
37. Environmental quality - Natural Environment and Biodiversity
38. Environmental quality - Ozone depleting substances and F-gases
39. Environmental quality - Pesticides
40. Environmental quality - Spatial Data Infrastructure Standards

41. Environmental quality - Waste Packaging & Product Regulations
42. Environmental quality - Waste Producer Responsibility Regulations
43. Environmental quality - Water Quality
44. Environmental quality - Water Resources
45. Environmental quality - Biodiversity - access and benefit sharing of genetic resources
46. Equal Treatment Legislation
47. EU agencies - EU-LISA
48. EU agencies - Eurojust
49. EU agencies - Europol
50. EU Social Security Coordination
51. Fisheries Management & Support
52. Food and Feed Law
53. Food Compositional Standards
54. Food Geographical Indications (Protected Food Names)
55. Food Labelling
56. Forestry (domestic)
57. Free movement of healthcare (the right for EEA citizens to have their elective procedure in another member state)
58. Genetically modified micro-organisms contained use
59. Good laboratory practice
60. Harbours
61. Hazardous Substances Planning
62. Heat metering and billing information
63. High Efficiency Cogeneration
64. Implementation of EU Emissions Trading System
65. Ionising radiation
66. Land use
67. Late payment (commercial transactions)
68. Legal aid in cross-border cases
69. Migrant Access to benefits
70. Minimum standards -housing & care: regulation of the use of animals
71. Minimum standards legislation - child sexual exploitation
72. Minimum standards legislation - cybercrime
73. Minimum standards legislation - football disorder
74. Minimum standards legislation - human trafficking
75. Mutual recognition of professional qualifications
76. Mutual recognition of criminal court judgments measures & cross border cooperation - European Protection Order, Prisoner Transfer Framework Directive, European Supervision Directive, Compensation to Crime Victims Directive
77. Nutrition health claims, composition and labelling
78. Onshore hydrocarbons licensing
79. Organs
80. Plant Health, Seeds and Propagating Material
81. Practical cooperation in law enforcement - Asset Recovery Offices
82. Practical cooperation in law enforcement - European Investigation Order
83. Practical cooperation in law enforcement - Joint Action on Organised Crime

84. Practical cooperation in law enforcement - Joint investigation teams
85. Practical cooperation in law enforcement - mutual legal assistance
86. Practical cooperation in law enforcement - mutual recognition of asset freezing orders
87. Practical cooperation in law enforcement - mutual recognition of confiscation orders
88. Practical cooperation in law enforcement - Schengen Article 40
89. Practical cooperation in law enforcement - Swedish initiative
90. Practical cooperation in law enforcement - European judicial network
91. Practical cooperation in law enforcement - implementation of European Arrest Warrant
92. Procedural rights (criminal cases) - minimum standards measures
93. Provision of legal services
94. Provision in the 1995 Data Protection Directive (soon to be replaced by the General Data Protection Regulation) that allows for more than one supervisory authority in each member state
95. Public sector procurement
96. Public health (serious cross-border threats to health)
97. Radioactive Source Notifications – Trans-frontier shipments
98. Radioactive waste treatment and disposal
99. Rail franchising rules
100. Rail markets and operator licensing
101. Recognition of insolvency proceedings in EU Member States
102. Renewable Energy Directive
103. Rules on applicable law in civil & commercial cross border claims
104. Sentencing - taking convictions into account
105. State Aid
106. Statistics
107. Strategic Environmental Assessment (SEA) Directive
108. Tissues and cells
109. Uniform fast-track procedures for certain civil and commercial claims (uncontested debts, small claims)
110. Victims rights measures (criminal cases)
111. Voting rights and candidacy rules for EU citizens in local government elections