



T: 0300 244 4000

E: scottish.ministers@gov.scot

Mr Bob Doris MSP

Convener

Local Government and Communities Committee

The Scottish Parliament

EDINBURGH

EH99 1SP

By email: LGCCommittee@parliament.scot

Our ref: 2017/0018040

1 June 2017

Dear Bob

Thank you for your letter of 25 January concerning points raised with the Committee at its roundtable evidence session of 14 December on the implications for Scottish local government of the United Kingdom leaving the European Union. I have included the text of your specific questions below alongside my replies.

- *What consideration the Scottish Government is giving to how European Structural Funds and other sources of European funding might be replaced following the UK's departure from the European Union?*

While we welcome the assurance that funding contracts for structural funds, fisheries and farming projects that are entered into before the UK leaves the EU will be paid in full, there are no guarantees on European Union funding streams after the UK leaves the EU. The Scottish Government has confirmed that it will be passing on the current UK Government guarantees on EU funding in full to Scottish stakeholders to provide stability and certainty for these key sectors of the Scottish economy.

The Scottish Government is however concerned about the lack of certainty on what will replace European Union funding streams after the UK leaves the EU. We will continue to discuss with the UK Government the areas of EU Funding that still do not have any guarantees attached and we will negotiate with the UK Government to ensure that future financial support for initiatives that currently receive European funds is allocated on a fair and equitable basis across the UK post-Brexit.

- *Given that local authorities are lead delivery agents for around £107 million of structural fund projects for the 2014-2020 programmes (around 30% of funding drawn down to date), is the Scottish Government confident that, during a financially challenging period*

for local government, the necessary match funding will be available to allow Scotland to commit its full structural fund allocation before the UK leaves the EU?

The Scottish Government is concluding an early review of Structural Funds to consider the practical steps needed to fully commit the Programmes prior to exiting the EU and there is currently an active dialogue with local authorities as part of that process. Issues with match funding have been identified and a set of recommendations to assist delivery will be considered by the Joint Programme Monitoring Committee in June. These recommendations include extending projects, expanding eligibility rules, adjusting the scope of the programme to assist local authorities and increasing some grant rates.

- *What consideration the Scottish Government has given to how powers which will no longer be areas of EU competence will be devolved and whether this devolution will extend to giving new powers to Scotland's local authorities?*

When the UK leaves the EU, this clearly raises issues about what happens in relation to those matters that are currently areas of exclusive or shared EU competence. Areas of exclusive EU competence include the Common Fisheries Policy and competition and trade rules necessary for the functioning of the European Single Market. Shared EU competencies include large areas of environmental, agricultural (including CAP), justice, transport, energy and social policy, among others. Other areas, such as health are largely outside EU competence, but are nevertheless shaped by EU directives and regulations.

Clearly, these do not map neatly onto the current division of competencies in reserved and devolved areas in Scotland. Some matters are substantially devolved, such as agriculture, fisheries and the environment. On other matters, for example transport, responsibility lies partly with Westminster and partly with the Scottish Parliament. Other areas may be largely reserved, but with some exceptions, or may be matters, such as energy, which have particular economic importance for Scotland.

Nevertheless, for Scotland, competence must transfer in areas for which the Scottish Parliament is wholly or partly responsible, such as agriculture, fisheries, environmental policy and justice. There can be absolutely no question of the UK Government attempting to reserve powers in devolved areas and the Scottish Government would not recommend the Scottish Parliament consents to such proposals. Where it is sensible or desirable to introduce a common UK framework to replace that provided by EU law, this must be achieved through agreement and negotiation.

The UK Government's proposals for a "Great Repeal Bill" leaves many important questions unanswered, such as the nature of the powers for the Scottish Parliament, and the need for the consent of the Scottish Parliament under the Sewel Convention. The UK Government now needs to work closely with the Scottish Government on the detail of the Bill as it develops. The UKG is proposing common UK frameworks, but again there is no specific proposals and a need for proper engagement and agreement. Legislative consent from this Parliament would also be required for frameworks that involve devolved powers.

Whatever the eventual relationships between Scotland, the rest of the UK and the EU, Brexit also alters the fundamental basis for the current devolution settlement. EU law is a major source of devolved functions, rights and powers for the people of Scotland. Our devolution settlement will therefore need to change to reflect these changed circumstances. On the UK leaving the EU, Scotland must have the necessary powers to protect its five key interests (democracy, economy, solidarity, social protections and influence), and our relationship with

Europe. These should include significant new powers in areas like immigration and the ability to strike international deals.

The UK Government has promised significant new powers as a result of withdrawal from the EU. However, it has provided no specific proposals. Indeed, UKG has so far refused to confirm that powers coming back from Brussels in devolved areas will come to the Scottish Parliament. Its formal response to Scotland's Place in Europe, including the proposals for significant further devolution, which is a small part of a four page letter which, again, fails to set out any detail on which additional powers it believes should be devolved as a result of the UK leaving the EU.

The UK Government's lack of clarity makes speculation on potential new powers for Scotland's local authorities difficult. However, the Scottish Government is actively working with local government to develop our understanding of the impact of leaving the EU on councils and their communities.

- *What consideration the Scottish Government has given to the potential impact on Scottish local government – both in terms of local economies and labour supply - of reduced migration in the event of changes to freedom of movement rules when the UK leaves the EU?*

The Scottish Government's longstanding policy and commitment has been to membership of the European Union. That remains our position. As set out in Scotland's Place in Europe, (which represents a compromise on the part of the Scottish Government), if we are not in the EU, Scotland should remain members of the European Single Market and the EU Customs Union, and retain the benefits of co-operative policies with our European partners, which includes retaining free movement of persons. In the event that the UK Government does not pursue the option of retaining membership of the EEA, the Scottish Government is committed to exploring mechanisms whereby Scotland can remain within the EEA and the European Single Market even if the rest of the UK chooses to leave.

The Scottish Government greatly values both the contribution that EU migrants bring to our economy and society. EU nationals are vital for public services - approximately 3% of health and social care staff in Scotland are from other EU countries.

- *What impact leaving the EU might have with regard to Scotland's requirement to observe EU State Aid and Public Procurement rules and whether the Government considers changes in procurement rules could provide an opportunity to benefit local business and workers?*

The extent to which it might be possible to change the public procurement rules will depend on the precise detail of any trade deals which Scotland is party to. For example, a lot of the European procurement rules actually have their origins in the WTO's Government Procurement Agreement (GPA), which requires contracts to be advertised and prevents discrimination between companies from countries with reciprocal access arrangements. It is worth remembering, however, that the Procurement Reform (Scotland) Act 2014 already requires public bodies to comply with the sustainable procurement duty - this includes a requirement to consider how, in conducting a procurement exercise, they can improve the economic, social and environmental wellbeing of their areas, and facilitate the involvement of SMEs, third sector bodies and supported businesses. Any future trade deal struck with the European Union is likely to include competition law in some form including State aid.

In addition to your specific questions, you also ask about our dialogue and engagement with COSLA, SOLACE and the STUC.

I met the COSLA President on 25 January and emphasised that we wish to work closely with local government to achieve the best possible outcome for Scotland following the EU Referendum result. I recognised that COSLA can provide valuable information on the impact of the EU Referendum result on local government and that Scottish Ministers wish to explore shared priorities and identify possible opportunities for working together on these. In addition, SOLACE, COSLA and SG senior officials have met on a number of occasions to discuss the consequences of the EU Referendum and continue to have regular contact.

The First Minister was pleased to invite Malcolm Burr, Chief Executive of Comhairle nan Eilean Siar, to join the Standing Council on Europe following discussion involving SOLACE and COSLA. Mr Burr's expected role on the Council includes bringing a rural and local government perspective.

The First Minister has discussed the implications of the EU Referendum result with the STUC General Council at their last two bi-annual meetings. In addition the STUC is represented by Grahame Smith on both the Standing Council on Europe and the Scottish Business Growth Group.

The latter met for the first time in April, recognising a broad consensus on the rationale for more regular and focused meetings to explore the economic and business implications of the EU Referendum vote, to represent Scotland's interests, ensure a continuing relationship with Europe, and both optimise our economic performance and support businesses as they pursue new commercial opportunities as they arise. The STUC and Business organisations want to represent their members interests fully in discussions about SG/UK and UK/EU dialogue and negotiations, and that has been welcomed. The group will ensure that the voice of business, employers and employees is ever present as together we work through all the implications of the Referendum result. It will provide space for constructive dialogue and, where relevant and agreed, partnership working about:

- overcoming economic, commercial and labour market challenges and seizing opportunities,
- post-Referendum business-related policy development within government; and
- communications.

I trust that the Committee will find this response useful.

Michael Russell