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Dear Michael,

‘UK INTERNAL MARKET’

I am writing following reports that it is the UK Government’s intention to consult on proposals that would dramatically undermine devolution and the democratic choices made by the Scottish Parliament. I do so prior to their publication because I want to make it crystal clear at the earliest possible moment, that the Scottish Government could not, and would not, accept any such plans. Nor would we co-operate with them.

We understand that it is now likely that your government wishes to introduce legislation before the end of the year that would enshrine in law what you call the ‘UK internal market’.

However, the information to hand leads the Scottish Government to believe that the purpose of such plans is not economic but is instead purely political. Moreover it appears that you have been pursuing such a scheme, alongside the reckless action of refusing to extend the Brexit transition period, at the very time when all the focus of the Scottish Government has been on tackling the COVID-19 crisis.

There are two particular concerns I wish to raise.

Firstly, I understand that one of the possible proposals is for the UK Government to establish an unelected, external body that would determine whether or not a bill in the Scottish Parliament has met a new ‘test’: whether the Scottish Parliament’s legislation would impact on the UK internal market.

The establishment of such a body with functions and powers to determine and second guess what is and is not acceptable for the Scottish Parliament to decide is completely undemocratic and could not be accepted.

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The Scottish Parliament itself is the appropriate place for any concerns about the market impact of legislation to be addressed – not an unelected panel appointed by UK Ministers. Any such proposals will be vigorously opposed by the Scottish Government and, I am sure, by others who will see these proposals for what they are, namely a deliberate attempt to place unacceptable and unnecessary constraints on the operation of the devolved settlement.

Our initial assessment is that if such a market impact ‘test’ had been available in previous years, there would have been a significant risk that important and successful policies, which have attracted widespread public support, such as the imposition of minimum unit pricing, tuition fees policy and the ban on smoking in public places, would have been among the devolved policy measures that could well have been caught up in these new arrangements. Indeed they could still be challenged, depending on the powers and functions of the proposed body.

We also understand that your proposed legislation will include provisions for a new mutual recognition regime that could require regulatory standards in one part of the UK to be automatically accepted in others, regardless of whether those standards are lower than those the Scottish Parliament might find acceptable. As you will be aware, there is widespread concern that the UK Government may compromise on regulatory standards in pursuit of trade deals, which makes the suggestion of a mutual recognition scheme a matter of great concern.

In my letter of 25 September last year, I made clear that UK Ministers’ apparent intention to renege on level playing field commitments in areas such as environmental, social and employment law – despite the undertakings in the Withdrawal Agreement and Political Declaration – makes the challenge of agreeing common standards and approaches across the UK much more difficult. Consequently, instead of trying to drive down standards in areas which value them, I would have thought some re-consideration of keeping to high EU standards would be a better step for the UK Government at this time.

The introduction of a mutual recognition regime of the type we understand you wish to bring forward would mean that a reduction in standards in one part of the UK would have the effect of pushing down standards elsewhere in the UK, in direct contradiction of the preferred approaches of stakeholders and decisions taken by the devolved parliaments. Mutual recognition could be applied to a range of devolved policy choices such as food standards.

This proposal is not only unacceptable: it also ignores the reality and history of devolution. These have shown that the market can successfully operate across the UK with variations in standards, in ways that allow for positive differences in ambition to be pursued by the four nations. It would be extremely damaging if these freedoms were lost, or we could no longer make choices. Your approach would work against the interests of producers and consumers, and ignore the need to reflect natural variations in our geographies, sectors and communities which is a cornerstone of devolution.

Moreover, in more than four years of discussion with you and your predecessors, no examples have ever been furnished of where the ‘internal market’ is at risk from devolution. There is no need nor demand for additional measures beyond the agreement of Common Frameworks under the programme of work agreed in 2018 and which we will enter into where they are in Scotland’s interest. The Scottish Government has been working with you in good faith on those frameworks but your new proposals will undermine both the agreed principles and the likely successful practice of such frameworks.

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Common Frameworks are designed to manage cross-UK divergence where EU law and devolved competence intersect, including in relation to the functioning of the UK's domestic market together with existing processes for regulatory impact assessment and existing structures for regulatory co-operation and information sharing. They do not need to be supplemented, still less undermined, by the type of ideas you now seem to wish to impose.

You will be aware that it is likely that any primary legislation you bring forward on these matters would require the consent of the Scottish Parliament, as it will concern devolved matters, and may also affect the competence of the Scottish Ministers and Parliament. That consent is, to say the least, very unlikely to be forthcoming as it would be impossible for the Scottish Government to recommend consent to any proposals that undermine devolution as these proposals will, fundamentally and profoundly.

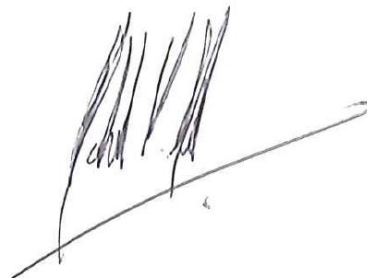
On a related issue, I am concerned at the near absence of detailed information from UK Ministers about how the Shared Prosperity Fund – as the proposed successor to EU Structural Funds (ESF) programmes across the UK – will operate and that there may be an intention to erode devolved responsibilities in that area too.

I must again stress to you that unless these funds are to be available for the Scottish Government and our partners to spend at our discretion in the same areas as ESF and as the scheme currently operates, we will have no option but to see that decision as a further example of an attempt by UK Ministers to 'grab powers', constraining, for purely political reasons, the authority of Scottish Ministers and Scottish Parliament; and very significantly damaging all those areas of national life which have been helped by EU programmes for many years. It would be ideological vandalism which would have an impact in every part of Scotland.

Consequently, I urge you to drop all of these ill-conceived plans and instead to respect devolution and the democratic choices of the people of Scotland.

I would of course be happy to discuss these matters with you at an early date and to stress our intention to oppose any attempt to foist them on Scotland and our fellow citizens.

I am copying this letter to Jeremy Miles, Alok Sharma and the First and deputy First Ministers of Northern Ireland.



MICHAEL RUSSELL

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