

Pete Wishart MP
Chair
Scottish Affairs Committee
House of Commons
London
SW1H 9ND

15 December 2016

Dear Pete,

Thank you for the opportunity to attend the Committee yesterday to discuss the Government's work to prepare for the UK leaving the EU. It was a constructive session and I look forward to further engagement with the Committee.

I committed to write with regard to the position set out by the Lord Advocate during the Supreme Court case on the triggering of Article 50. During his representations to the Court, the Lord Advocate said:

Or if that consent were not to be given, and one should not prejudge any of these things, or if that consent were not to be given, whether or not it would be for the United Kingdom Parliament to determine whether or not to legislate without -- in the face of that refusal of consent. There would be no legal sanction should the United Kingdom Parliament choose to do that.

We discussed the representations put to the court by the Advocate General for Scotland with regard to the devolution elements of the case. As I said to the Committee, the points raised by the Government in its case to the Supreme Court are not new. These points were debated extensively during the Scotland Act 2016's passage through Parliament – and indeed many of these points were considered during the parliamentary passage of the Scotland Act 1998.

Our discussion also touched on the Scotland Act 2016 provisions on the permanence of the Scottish Parliament and legislative consent. Section 63A of the Scotland Act 1998 delivers paragraph 21 of the Smith Commission Agreement which stated "UK legislation will state that the Scottish Parliament and Scottish Government are permanent institutions." This provision demonstrates the commitment of the UK Parliament and Government to the Scottish Parliament and Government.

Section 28 (8) of the Scotland Act 1998 delivers paragraph 22 of the Smith Commission Agreement which stated that “The Sewel Convention will be put on a statutory footing.” Both the Scottish Parliament and the UK Parliament can legislate for devolved matters. This is clearly stated on the face of the Scotland Act 1998 and is set out in the Memorandum of Understanding between the UK Government and the devolved administrations. The matter which Lord Sewel was addressing was that the UK Government will proceed in accordance with the convention that the UK Parliament would not normally legislate with regard to devolved matters except with the agreement of the Scottish Parliament. This has been part of the normal working arrangements between the UK and Scottish Governments since the inception of devolution.

During the session I referred to the number of staff working in the Scotland Office and the Office of the Advocate General. I thought it would be helpful to confirm to the Committee that, at the time of writing, the Scotland Office has 68.6 full time equivalent staff and the Office of the Advocate General has 48.5 full time equivalent staff.

**Rt Hon DAVID MUNDELL MP
SECRETARY OF STATE FOR SCOTLAND**