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Pete Wishart MP
Chair, Scottish Affairs Committee
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31 May 2018

Dear Pete,

Thank you for your letter of 16 May in connection with the Scottish Affairs Committee inquiry into *Immigration and Scotland*. There is no difference between the statements referred to and the position as set out in our discussion paper, *Scotland's Population Needs and Migration Policy*, however I am glad to be able to reassure the Committee in response to your questions.

The Scottish Government believes the evidence shows that the economic, demographic and social impact of migration to Scotland is distinct from other parts of the UK, and that there should therefore be a tailored approach to migration to Scotland to help ensure those beneficial impacts are maximised.

The proposal set out in the discussion paper *Scotland's Population Needs and Migration Policy* and which I outlined to the Committee in March, is that powers over migration should be devolved so that Scottish Ministers, accountable to the Scottish Parliament, can develop additional migration routes to meet Scotland's needs.

The paper sets out options for powers to be exercised within a UK framework, where any routes implemented for Scotland would be in addition to current and future migration routes offered by the UK Government. It proposes an outcome where Scottish and UK Ministers exercise concurrent competence over migration. Migrants who enter the UK through a UK route would be free to live anywhere in the UK, including Scotland, according to criteria and conditions set by the UK government. Migrants who enter the UK through a Scottish route would be required to live in Scotland while they are under immigration control, as part of the conditions the Scottish Government would set.

The paper is clear this would not address all of the issues we have identified, nor would it give effect to a fully differentiated migration system for Scotland but it would give Scottish

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Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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Ministers some ability to address the most acute issues Scotland faces now and would represent a milestone towards more comprehensive devolution by building institutional capacity and capability in the Scottish public sector.

That more comprehensive devolution would allow Scottish Ministers, accountable to the Scottish Parliament, to take further control over migration to Scotland allowing the Scottish Parliament to design and implement a new system for all categories of migration.

The answer given by the First Minister in the Scottish Parliament on 3 May makes the distinction clear, when she said: “In February, we published a paper demonstrating why migration is essential to Scotland’s prosperity and how a different approach with new powers for the Scottish Parliament could operate. We outlined options for devolution within a UK framework to create a new route for people who want to settle in Scotland. That proposal would be additional to the current routes that the UK has in place.”

The First Minister’s answer reflects the position we published in February in our discussion paper that limited devolution in the first instance “could form the core of wider subsequent devolution... allowing the Scottish Parliament to design and implement a new system for all categories of migration.” This would remain part of a UK-wide framework for migration, with powers exercisable by both the UK and Scottish Government, and in which we propose agreeing common standards on important questions of control and enforcement for the parallel routes open to prospective migrants.

I have enclosed with this letter an extract from the Official Report of the Scottish Parliament, and references to our discussion paper, which I hope will be helpful to the inquiry the Committee is undertaking.



ALASDAIR ALLAN

Tha Ministearan na h-Alba, an luchd-comhairleachaidh sònraichte agus an Rùnaire Maireannach fo chumhachan Achd Coiteachaidh (Alba) 2016. Faicibh www.lobbying.scot

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**EXTRACT FROM THE OFFICIAL REPORT
MEETING OF THE SCOTTISH PARLIAMENT
THURSDAY 3 MAY**

FIRST MINISTER'S QUESTION TIME

Mairi Gougeon (Angus North and Mearns) (SNP):

To ask the First Minister whether the Scottish Government will seek the devolution of all immigration powers. (S5F-02308)

The First Minister (Nicola Sturgeon):

Yes, we will. The United Kingdom Government's immigration policy not only is inhumane but is harming Scotland's interests. It is damaging communities, breaking up families and, if targets for reducing net migration to tens of thousands are pursued, could cost Scotland's economy up to £10 billion a year by 2040.

In February, we published a paper demonstrating why migration is essential to Scotland's prosperity and how a different approach with new powers for the Scottish Parliament could operate. We outlined options for devolution within a UK framework to create a new route for people who want to settle in Scotland. That proposal would be additional to the current routes that the UK has in place.

The numerous scandals that have come to light in recent weeks, which have been caused under consecutive Tory Home Secretaries, reinforce the urgency for Scotland to have its own system and have control over immigration.

Mairi Gougeon:

In the past week, the Home Office has backed down after threatening to deport a family in Fulton MacGregor's constituency by mistake, and the Home Secretary has resigned for misleading Parliament and the public over the setting of immigration targets. There is also continuing fallout from the Windrush scandal, and there are claims that the Prime Minister herself blocked requests from her own Government to allow more doctors from overseas into the UK. Nevertheless, we are expected to believe that the Home Office can handle the more than 3 million applications for settled status from European Union citizens. That is not to mention those who already have settled status and felt compelled to leave the country or now just do not want to come.

That situation leaves shortages across farms in Angus, for example, where there is expected to be a shortfall of around 15 to 20 per cent in the number of seasonal workers this summer. How bad does it have to get before the Tories accept that they are failing the people of Scotland on immigration and put the powers in this Parliament's hands?

The First Minister:

Mairi Gougeon is absolutely right, and I hope that members around the chamber will support those calls. I had the opportunity briefly to meet the family from Fulton MacGregor's constituency when they attended First Minister's question time a couple of weeks ago. I heard directly from them about the stress and anxiety that they have suffered because of Home Office ineptitude. The other scandals that have come to light in recent weeks underline the fact that such cases are just the tip of the iceberg.

I said "ineptitude" a moment ago, but much of what we are talking about is not just ineptitude; it is the result of deliberate policies that the Tory Government is pursuing. The hostile environment policy, which is the policy of the Prime Minister—who was previously the Home Secretary—is dehumanising migrants to this country and is casting suspicion over anybody who chooses to make this country their home. It is absolutely despicable, and it must end. I hope that the new Home Secretary will change the culture and policy fundamentally. Above all, I hope that more powers over immigration come to this Parliament soon, so that we can exercise them humanely and in the interests of the country's economy.

SCOTLAND'S POPULATION NEEDS AND MIGRATION POLICY SELECTED REFERENCES

86. We present this approach to encourage discussion within Scotland, and with the UK Government, about how to respond now to the clear and growing need for a different solution for Scotland. It would not address all of the issues the evidence identifies, nor would it give effect to a fully regionally differentiated migration system. But it would give Scottish Ministers some ability to address the most acute issues Scotland faces and would represent a milestone towards more comprehensive devolution by building institutional capacity and capability in the Scottish public sector.

87. The UK Government and the Scottish Government could, through bilateral negotiation, reach agreement on limited devolution within the current UK immigration system. This section explores how devolution within the existing framework of the UK points-based system, in a way that restricts migrants to living in Scotland and enables Scottish Ministers to determine criteria and thresholds, could start to meet Scotland's needs. It also addresses how the Scottish Government would work in partnership with the UK Government and agencies on control and enforcement of migration.

88. There are a number of legal mechanisms to give effect to such limited devolution, including Section 30 or Section 63 Orders under the Scotland Act 1998, or primary legislation at Westminster with the consent of the Scottish Parliament as necessary.

89. The Scottish Government believes that the Scottish Ministers, accountable to the Scottish Parliament, should have the power to control migration to ensure that it plays an appropriate part in ensuring Scotland's demographic sustainability and economic growth. Therefore, as previously stated, Scotland should not be constrained by the UK net migration target. Equally it would not be appropriate for Scotland to be allocated a quota under the UK system, or a cap on the number of visas it could issue, driven by the UK net migration target.

90. There are a range of possible outcomes where negotiation with the UK Government could arrive at a mutually-agreeable solution. In the short term, the priority for the Scottish Government is a mechanism to attract high value migrants who can contribute to Scotland. This could operate under the UK immigration system with powers devolved to Scottish Ministers, accountable to the Scottish Parliament, to determine and vary criteria and thresholds according to Scotland's needs. This might include, for instance salary, assets, education, skills, age, language level or affinity with Scotland in order to ensure that the characteristics and volume of migrants entering the country under this route would be in keeping with defined economic and demographic requirements. This could take similar form to the previous points-based system 'General Migration' visas which are no longer issued by the UK Government.

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94. If a Scotland-specific visa were to be created within the UK immigration system, prospective migrants and sponsoring employers would still have a choice about which route through the immigration system to pursue. Individuals who meet the requirements of any of the other visas within the UK points-based system who wish to live or work in Scotland would be free to do so, while retaining the flexibility to resettle elsewhere within the UK. No barriers to movement between Scotland and the rest of the UK would be created for UK nationals or for those who are resident in the UK under the UK immigration rules. The Scottish approach would be an option open to migrants and employers that may meet individual needs by offering different eligibility criteria in one aspect, with different restrictions in another.

95. Scottish Ministers under this scenario would therefore exercise concurrent competence with UK Ministers on immigration matters. Scottish and UK Ministers currently share competence on issues such as economic support and there are other areas, including international development, where Scottish Ministers have the ability to pursue independent objectives through agreement with the UK Government in an otherwise reserved area of policy.

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101. The Scottish Government would accept, under this approach, that border control and enforcement remain the responsibility of the UK Government, through Border Force and Home Office Immigration Enforcement, with the involvement and engagement of relevant Scottish and UK law enforcement and intelligence agencies. Scottish Ministers also accept there is a reasonable requirement for a common standard across the UK on questions of good character, criminality and related matters in the migration system. They would therefore exercise their devolved decisions on migration under the UK framework of general grounds for refusal, subject to the necessary engagement between the Scottish and UK Governments on determining those grounds.

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108. The previous section tested how relatively limited devolution of powers to the Scottish Parliament could operate. This would not represent a fully devolved or regionally differentiated approach to migration, but it could form the core of wider subsequent devolution. Scottish Ministers, accountable to the Scottish Parliament, could take further control over migration to Scotland allowing the Scottish Parliament to design and implement a new system for all categories of migration. A points-based migration system is one that many territories, including the UK, have adopted. While the Scottish Government remains open to considering other approaches, a variation of a points-based system is likely to be the most effective at ensuring migration policy meets Scotland's needs.