



Scotland Office

An Oifis Albannach

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Our ref: FOI DB 409

25 May 2012

Dear [REDACTED]

FREEDOM OF INFORMATION

Thank you for your request for information which we received on 27 March 2012. In your request you asked for:

All published and unpublished documents, emails, evidence, legal advice, advice to ministers, plus any other relevant material The Scotland Office, Ministers, Civil Servants, Special Advisers and other staff have sent or received regarding Scotland's position in Europe in the event of a yes vote to independence.

I have written already to confirm that the Scotland Office holds information falling within the terms of your request. I attach three items alongside this letter, namely:

- A relevant extract of a speech by the Secretary of State for Scotland to the Institute of Chartered Accountants of Scotland, delivered on 10 November 2011.

- An excerpt from an email sent by a Scotland Office official to a counterpart at HM Treasury, dated 29 September 2011.

- Briefing provided to the Parliamentary Under Secretary of State for Scotland ahead of his appearance at the Scottish Parliament's Europe and External Relations Committee on 20 March 2012. This briefing was also provided for Europe Minister David Lidington before his appearance at the same committee a month earlier.

Some of the information you asked for is subject to exemption under the Freedom of Information Act. The specific exemption that applies in this case is Section 35 – Formulation of Government Policy.

According to the ICO's official guidance, Section 35 provides a qualified exemption for information relating to: the formulation or development of government policy; Ministerial communications; the advice of the law officers; and the operation of a Ministerial private office.

This guidance explicitly states that the exemption is applicable in instances where 'the threat of public exposure of this information will lead to less candid and robust discussions about policy' and where 'the quality of government policy making could be undermined'. To release some of the information you have requested would be detrimental both to discussions about live policy issues and to the overall quality of existing Government policy. For these reasons, the Scotland Office has judged that the public interest lies in favour of exempting some of the information that you requested from release in this case.

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If you are not content with the outcome of your complaint, you may then apply directly to the Information Commissioner for a decision. Generally, the Information Commissioner cannot make a decision unless you have exhausted the complaints procedure provided by the Scotland Office. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Yours sincerely,


Policy Officer
Scotland Office

FOI Request – [REDACTED]

Item 1 – Relevant extract of speech by the Secretary of State for Scotland to the Institute of Chartered Accountants for Scotland, delivered on 10 November 2011 at Balmoral Hotel.

Scottish Government Plans Re: Currency and Independence

These are some of the actions the UK Government is taking to safeguard Scotland's economy – our jobs, our families, and our businesses.

In the current economic climate, that kind of decisive, grown-up Government is absolutely vital. It is the only way that we will weather the current storms facing our European partners.

Now let me draw a contrast between the picture I have just painted – one of a Government taking difficult decisions on the basis of careful analysis of the facts on the ground – with an aspect of Scottish Government policy that is also relevant to this debate.

Specifically, the SNP's policy on independence, membership of the EU, and the currency that they say would be used in an independent Scotland.

In August, I set out six of many questions for the Scottish Government on what an independent Scotland would look like.

One of the key questions was about currency – a fundamental issue for any modern economy.

Specifically, I asked: "Which currency would Scotland adopt, and how could entry and influence be guaranteed?"

Another was: "How would membership of international organisations – including the EU – be assured?"

The Scottish Government's response has, sadly, been less than fulsome.

They have waved their roadmap to independence at us, and claimed: "The questions are answered!".

But when one actually reads "Your Scotland, Your Future", you don't find the detail.

There is a great deal about the EU in it – and indeed it makes clear that "Membership of the EU is hugely important" to Scotland.

But on my first question – how membership of the EU will be assured – the closest thing to an answer is the bald statement: "With independence, we will remain part of the EU."

And on currency, it states that Scotland would continue to operate within the Sterling currency area, and that any decision to join the Euro would be taken following a referendum and when the economic conditions are right.

That's all very well, and might be a respectable position to hold if the alternative to joining the Euro were in fact the status quo.

But as soon as one scratches the surface of these positions, it becomes clear that they raise more questions than answers.

The SNP are calling for the break-up of the United Kingdom – the very entity that currently provides Scotland’s currency system, and Scotland’s membership of the EU.

If the United Kingdom were to break up – and let me say that I, along with the majority of Scots, am determined it should not – what would that mean in practice?

It seems clear to me that Scotland would have to reapply to join the EU. The Scottish Government say “no”, but on what basis do they make that claim, other than hopeful assertion?

Do they have a substantive response to the report by the House of Commons library this week, which found that it was “not clear” that an independent Scotland would automatically become a member of the EU?

And if Scotland would have to reapply, what makes the SNP think it could negotiate an opt-out from the general requirement to adopt the Euro as its currency?

If they believe an independent Scotland’s influence over EU policy making on that and many other issues would be as great as it is now – with the international weight of the UK behind it – they are sadly mistaken.

And if the Pound Sterling were retained, which institutions would the Scottish Government expect to set monetary policy for an independent Scotland? The Bank of England?

There is not a word about any of these substantive issues in “Your Scotland, Your Future” – just some wording about an independent Scotland having a seat at the top table.

And this is, sadly, a running theme with many of the arguments put forward for independence. As soon as one digs below the surface, there is precious little detail.

We’ve seen the same with Scottish Government demands for Corporation Tax to be devolved as part of the Scotland Bill.

An issue that ICAS, as well as other business organisations and the Treasury, have raised questions about.

The Scottish Government must address these issues if they want to be taken seriously.

Conclusion

Ladies and Gentlemen, I have spoken this morning about the huge challenges facing us all as we seek to turn around Scotland’s economy, and return Scottish businesses and families to prosperity.

Those challenges are not made any easier by the uncertainty generated by the Scottish Government’s hazy plans for a referendum on independence, and their seeming inability to

answer questions on what independence would actually mean – including for Scotland's currency and our membership of the EU.

But the UK Government will not allow itself to be diverted from the task at hand.

Resolution of the Euro area debt crisis would be the biggest single boost to confidence that could happen to the Scottish and UK economy this year.

In all our negotiations on the subject, the UK is speaking decisively and its voice is being heard – just one of the benefits for Scotland of being part of the United Kingdom.

We will continue our work to ensure that Scotland's interests, and those of the rest of the UK, are protected in the coming months.

Item 2 – Email from Scotland Office official to HM Treasury official, 29 September 2011

An Independent Scotland's place in Europe

What the SG say:

The SG argue that an independent Scotland would be a 'normal European state'. Extracts from 2009 White Paper include:

[definition of independence, p5]: independence: Scotland would assume all the responsibilities and rights of a normal European state, including membership of the European Union and other international bodies, the ability to determine economic policy, including the currency, and full responsibility for defence and security.

[p 44] As a full member of the European Union, Scotland would continue to have access to its markets.

[p 52] Citizens of European Union member states are entitled to freedom of movement within the single market. As a full member of the European Union, Scottish borders would remain open to European Union nationals, just as Scots are free to move throughout the European Union.

As you can see an independent Scotland's place as a separate Member State is asserted. There is no part of the paper where this is explained or justified. The SG assert this as fact.

[Item redacted]

Lines to take:

I'd suggest:

- Wrong to assert that independent Scotland would automatically become a Member State in Europe
- Misleading to people of Scotland to suggest this
- European Union is made up of a set of complex and considered Treaties and acquis, all of which would have to be examined in the event of independence
- When will the SG answer Michael Moore's question on the EU: How would membership of international organisations - including the EU - be assured?

Item 3 - Briefing provided to the Parliamentary Under Secretary of State for Scotland ahead of his appearance at the Scottish Parliament's Europe and External Relations Committee on 20 March 2012.

Would an independent Scotland be an EU Member State?

- There are no previous examples of a region of an existing Member State separating from a Member State and becoming an independent State in its own right. Such an event is without precedent and would therefore be a first for the EU. Membership of the EU for an independent Scotland would therefore depend on the terms of any eventual Constitutional settlement and the political negotiations that follow, including negotiations directly with the EU.

Would an independent Scotland be able to keep Sterling if it joined the EU?

- This would depend on the outcome of any constitutional settlement and negotiations with the EU on the terms of Scottish participation. However, as a general principle, any State applying to join the EU has to negotiate its own terms of membership. It is reasonable to assume that the only way that an independent Scotland could participate in the EU without making a commitment to join the Euro would be for it to negotiate such an exemption as part of its terms of membership.

Would an independent Scotland be able to keep the same terms of EU membership as the UK?

- It cannot be assumed that an independent Scotland would be able to negotiate the same opt-outs which the UK enjoys. An independent Scotland would have to negotiate its own terms of membership if it applied to join the EU. This means that an independent Scotland would need to renegotiate agreements on issues such as fish quotas, the rebate and JHA opt-ins as well as an opt-out from the Euro. The UK enjoys terms of membership which it has negotiated with its EU partners over a long period of time. An independent Scotland may not necessarily enjoy such beneficial terms of membership.