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Our Reference: 202200286211

Your Reference: Letter from Convener of EFW Committee - Common Frameworks

22 March 2022

Dear Claire Baker MSP,

Thank you for your letter of 4 March concerning the Economy and Fair Work Committee's consideration of the provisional common frameworks on public procurement and late payments (commercial transactions).

The Committee raises the question of ongoing scrutiny. The Parliament will play a crucial role in ongoing scrutiny, starting with the programme of formal scrutiny that is now getting underway. Frameworks are essentially intergovernmental arrangements, and we will look to engage the parliament on how best to scrutinise them as part of the wider programme of work on developing effective mechanisms for scrutiny of post-EU intergovernmental arrangements in Scotland and across these islands.

The public procurement framework notes that the parties have not diverged significantly in the transposition of EU Directives. That is to say that the Public Contracts (Scotland) Regulations 2015, which transpose the public procurement Directive in Scotland, are very similar in substance to the Public Contracts Regulations 2015, which transpose that Directive in the rest of the UK - though there are some notable differences: the Scottish Government took up the option in the Directives to set out that contracts must not be awarded on the sole basis of lowest price or cost; and that a breach of the Employment Relations Act 1990 (Blacklists) Regulations 2010 amounted to a mandatory ground for excluding a bidder from a competition, for example.

This is not to say that there has been no broader policy divergence. The Committee asks about the Scottish Model of Procurement. This sets out the principals of: embedding sustainability in all we do; improving supplier access to public contracts; maximising efficiency and collaboration; and delivering

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savings and benefits. It is about achieving the optimum balance of cost, quality and sustainability. This is relevant to, and already extends to, contracts worth both more than and less than the financial thresholds covered by the EU Directives and now the common framework. It is partly given effect through policy, and partly through the Procurement Reform (Scotland) Act 2014. This is clearly having an impact - in a recent survey of suppliers to the public sector in Scotland, 87% of respondents reported being asked to consider environmental impacts or concerns either 'always' or 'sometimes'; and 79% reported being asked to consider community benefits in public contracts either 'always' or 'sometimes'. These are positive developments, and not indicative of any issues of concern relating to divergent policy.

The Late Payment (commercial transactions) Common Framework covers the Late Payment Directive (2011/7/EU), designed to protect European businesses against late payment of monies owed in commercial transactions. The Framework and the current level playing field across the UK with regards to late payment legislation ensures that business are not operating to multiple regulations across the four nations. The Framework also offers working arrangements in case of divergence from current late payment legislation.

There is a commitment to review each framework post-finalisation. Whilst the details of what the reviews will cover are still being worked on by officials, it is expected that the views of stakeholders will be taken into account as appropriate, should they wish to engage. These reviews will be public documents and therefore open to normal scrutiny measures from Parliament, Committee and stakeholders.

External stakeholders remain able to engage with officials and Ministers on late payment issues more broadly. The Scottish Government understands the importance and value of prompt payment to businesses, particularly small and medium enterprises. We aspire to a 10 day target for paying bills to suppliers and include a standard clause in contracts requiring prompt payment of valid invoices within 30 days, down the supply chain. Alongside this, the Procurement Reform (Scotland) Act 2014 requires Scottish public bodies with an estimated annual regulated spend of £5 million or more (excl. VAT) to set out in their procurement strategies how they intend to ensure that, so far as reasonably practical, payments are made no later than 30 days after receipt of a valid invoice to contractors, sub-contractors and sub sub-contractors.

Alongside the Late Payment Framework, stakeholders and businesses from across the UK can also engage with the office of the Small Business Commissioner. The Small Business Commissioner aims to help small businesses resolve contractual payment disputes with larger organisations and helps to highlight and improve the culture of poor payment practice in the UK. Whilst accountable to the UK Parliament, I regularly meet with the Commissioner and discuss the challenges facing businesses in Scotland regarding late payment.

As with other frameworks, the Late Payment Framework was developed and agreed on a four nations basis. We believe the dispute resolution mechanism to be robust and proportionate. The regular review and reports is likely to include disputes raised through the Framework and when disputes are escalated to Ministers. Enforcement, including further consideration, will be taken into account and updates provided as appropriate.

Yours sincerely,



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**IVAN MCKEE**

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