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19 March

Dear Daniel,

### **Late Payment Common Framework**

I am writing in follow-up to the letter of 22 March 2022 from Ivan McKee MSP, in reply to your letter of 4 March 2022, which detailed the Committee's observations and recommendations following its scrutiny of the Late Payment Common Framework.

I am pleased to confirm that the final agreed Framework documents have now been published on [Late payment common framework - GOV.UK](#) and I attach a copy for reference.

The Scottish Government's updated responses to each of the Committee's recommendations are presented in the annex to this letter. They are accompanied by a summary of the significant changes to the Framework since its earlier publication. These take into account the recommendations from all legislatures.

Officials across the four governments have jointly agreed the changes to the Framework documents and have undertaken a process of quality assurance prior to their final sign-off by ministers.

Finalisation of the Common Frameworks programme has been delayed due to the ongoing impact of the UK Internal Market Act (IMA). As set out in recent correspondence to the Constitution, Europe, External Affairs and Culture Committee, the IMA continues to constrain the operation of certain frameworks and careful consideration has been required before any sign-off could proceed.

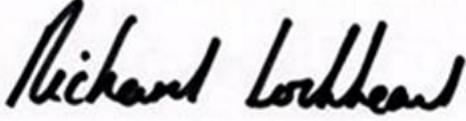
The frameworks currently being notified to Committees are those where the Scottish Government is satisfied that the IMA presents no significant impact to their effective implementation at this time.

I would like to take the opportunity to thank the Committee's members for their valued contribution to the development of the Common Frameworks.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

I am copying this letter and all attachments to Clare Adamson MSP, Convener of the Constitution, Europe, External Affairs and Culture Committee due to the Committee's interest in the UK Common Frameworks programme.

Yours sincerely

A handwritten signature in black ink that reads "Richard Lochhead". The signature is written in a cursive style with a large initial 'R'.

**RICHARD LOCHHEAD**

**Annex - Scottish Government responses to the Economy and Fair Work Committee recommendations following scrutiny of the Late Payment Common Framework**

**Recommendation 1: There is no commitment in either provisional framework [Public procurement and Late Payment] to publish updates on how the framework is functioning (e.g. meeting notes from the Working Group or Programme Board, review outcomes). There is also no commitment to provide updates to the four legislatures. The Committee seeks such a commitment from the Scottish Government to provide regular updates.**

*The review points specified in the Framework Outline Agreement (1 year after implementation and 3 years thereafter) will provide the opportunity for the individual policy teams to formally assess the functioning of the Framework. In addition, there is also the provision for ad hoc reviews to be requested. Any significant changes to the Framework as a result of any review will be notified to the Committee, and give the opportunity for the Committee to provide feedback to improve the operational functioning of each framework. In addition, to support legislative and public scrutiny of frameworks, the Interministerial Standing Committee (IMSC) has agreed an annual reporting process which will be used to inform the Scottish Parliament and other stakeholders of key developments – including any disputes or divergence - once the frameworks have been finalised. This commitment to consistent reporting on frameworks post-finalisation will include a review of the decision-making across frameworks, as part of the wider assessment of their operational effectiveness.*

**Recommendation 2: The late payments (commercial transactions) framework includes no provision for the ongoing involvement of external stakeholders in the development or review of proposals. How is it intended that those affected by late payments policy can make their views known? The framework has a clear dispute resolution process. However, it explicitly states that further consideration is needed around “enforcement” (section 11, page 12). It is unclear how intergovernmental enforcement in this context might operate. The Committee asks the Scottish Government to provide further detail.**

*Jointly with the UK Government and other devolved governments, we have engaged with interested technical stakeholders throughout the development of the Late Payment Common Framework. Generally, we have seen varied levels of interest from stakeholders, with more interest shown towards associated policy, rather than the intergovernmental working arrangements outlined in the frameworks. Therefore, we are approaching future engagement post implementation on a case by case basis. The dispute resolution process as set out in the intergovernmental report published in January 2022 is the agreed approach by the four governments for the programme and will therefore be the process for all frameworks. This Framework sets out the dispute resolution process in detail as follows: The framework is based on excellent working relations between officials at all four governments. Where more senior engagement is required senior officials will be engaged as required and on an ad hoc basis. In exceptional circumstances and where the works has been remitted to senior officials but remains unresolved, the issue may be escalated to ministers. Where ministers are considering issues as part of the framework’s dispute avoidance and resolution mechanism this could be via several media, including inter-ministerial meetings or by correspondence. Escalations, if necessary, should be done first at official level via a working group containing policy leads from each of the administrations. This working group will meet on an ad hoc basis when required, for example for information sharing, decision making or dispute resolution purposes.*

Summary of Significant Changes to the Late Payment Common Framework	Page No.
<p>Legislative Consent Motions were required for the Enterprise Act 2016 and the Small Business, Enterprise and Employment Act 2015 as they pertain to Payment Reporting and the Small Business Commissioner.</p> <p>Accordingly, it is the view of DBT Legal that this constitutes devolved competence. Deleting the referenced paragraph will ensure the legal accuracy of the framework.</p> <p><b>The advice from DBT Legal is to remove the following paragraph:</b></p> <p><i>“The Reporting on Payment Practices and Performance Regulations 2017 and Small Business Commissioner (Scope and Scheme) Regulations 2017 are out of scope for this Framework, as they are not within devolved competence.”</i></p>	<p>3</p>