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Economy, Energy and Fair Work Committee  
The Scottish Parliament  
Edinburgh  
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Dear Gordon,

Thank you for your letter of 4 April. The Committee has asked for an update on the progress of discussions on those common frameworks that fall within my portfolio.

The Scottish Government has previously set out its views on common frameworks in its own publications and to the Parliament, including as reported in the Finance and Constitution Committee's inquiry report published on 25 March. The Scottish Government is continuing to work with the UK Government and Devolved administrations and has made clear that it will consider future UK frameworks where these are in Scotland's interest. However, we will not accept any new constraints on the powers of the Scottish Parliament or of Scottish Ministers, or any attempt to impose, rather than agree common frameworks.

In recent months, however, the Scottish Government has had to give priority to mobilising for a possible "no deal" exit from the European Union, averted twice in the past fortnight. As Ministers have made clear to the Parliament, such a scenario would have serious consequences for Scotland.

Notwithstanding this, good progress has been made with legislative frameworks and officials are working with UK Government and the other devolved administrations on their further development. The next phase of work will provide a review of progress to date, to include wider engagement and consultation with stakeholders.

There are two areas falling within my portfolio that the UK Government has identified as requiring more detailed discussion on whether a legislative common framework might be needed: The Services Directive and Mutual recognition of professional qualifications (MRPQ).

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## The Services Directive

The Services Directive aimed to develop the single market in the services sector by breaking down barriers to cross-border trade within the EU, making it easier for service providers to set up business or offer their services in other EU Member States. As service providers, regulators and customers in Scotland and across the UK benefit from and are used to working under the Regulations, the UK and Scottish Governments agreed that the mechanics of the Regulations are beneficial and should be retained, with their application limited to the UK. The Committee has agreed that it was content with the Scottish Ministers' proposal to consent to the provisions set out in the notification, in relation to the Provision of Services (Amendment etc.) (EU Exit) Regulations 2018, being included in a UK SI. The Provision of Services (Amendment etc.) (EU Exit) Regulations 2018 was laid on 12 December 2018, to enact these changes on exit day. Official-level discussions are continuing on the potential for a common framework in this area.

## MRPQ

Further to this Committee's consideration on 18 December 2018 of my consent proposal, The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2018 was made on Tuesday 19 February. In the unwelcome event of a no-deal exit they will come into force to retain a functional system that gives professionals arriving in the UK after exit day the means by which to seek recognition of EEA and Swiss qualifications in all professions not otherwise regulated by specific UK or devolved legislation, for example veterinary surgeons, lawyers and the health and social care professions. Officials have continued to work with the Department for Business, Energy and Industrial Strategy (BEIS) in considering the potential future shape of recognition arrangements following a no-deal exit. This has included engagement work to understand what aspects of the recognition process are most important to UK and devolved stakeholders across the regulatory field. This learning could be expected to inform potential negotiation lines in the absence of a reciprocal agreement; however, DA officials have been clear and unanimous with UK counterparts that official frameworks beyond those that currently exist in legislation are not required for the continued effective operation of intra-UK recognition arrangements where the regulation of professions is devolved.

In addition, there are four non-legislative framework areas within my remit: public procurement; late payment (commercial transactions); recognition of insolvency proceedings in EU Member States, and; statistics. Whilst these areas are not "day 1" critical, some areas have been able to capitalize on well established, effective joint working arrangements to progress official level development of a framework.

## Public procurement

The UK Government originally named public procurement as one of the areas which it considered should be subject to discussion to explore whether legislative common frameworks might be needed. The Scottish Government has always taken the view that public procurement is devolved and that there is no need for a legislative common framework. All parties have now agreed that there is no need for a legislative common framework, and discussion is focused on how the four governments of the UK will work together when appropriate to shape and implement the UK's international obligations, principally the World Trade Organization's Government Procurement Agreement.

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## **Late payment (commercial transactions)**

The UK Late Payment of Commercial Debts (Interest) Act 1998 was devolved in Scotland (under the Scotland Act 1998). The existing body of late payment legislation implemented the Late Payment Directive (2011/7/EU). In doing so, a common UK approach has been maintained to date, ensuring a level playing field that provided consistency for businesses across the UK. The Scottish Government will continue discussions with BEIS on this matter.

## **Recognition of insolvency proceedings in EU Member States**

As outlined to the Committee in the notification and SSI, planning for 'no deal' has been progressed through statutory instruments laid in both the UK and Scottish Parliaments dealing with deficiencies and the introduction of appropriate jurisdiction tests within domestic legislation. In a "deal" scenario, the future relationship to be agreed with the EU is expected to deal with these issues, and continue to provide a common set of rules on cross-border insolvency. There is an existing UK framework in the reservation of various matters connected with insolvency, and the administrations have worked together as demonstrated in this area most recently on common working on the corporate insolvency rules, and on cross-border insolvency. We anticipate that in any event continued cooperation in this area will be straightforward and by agreement.

## **Statistics**

There are a wide range of EU regulations that require the devolved administrations to produce particular statistics to a common, harmonised standard. An existing concordat was reviewed in September 2018 at the Inter Administration Committee, and will be reviewed again in September 2019. There are no immediate plans to update the concordat, though it is expected that references to EU legislation may be removed in preparation for EU-exit, and a review of existing international obligations, such as the provision of data to the EU, will be undertaken.

## **Energy frameworks**

There are three common frameworks that fall within the energy portfolio: EU Emissions Trading System (ETS), efficiency in energy use and high efficiency cogeneration/Combined Heat and Power (CHP).

The UK Government has not suggested any other areas for common frameworks at this stage, however discussions are ongoing. There are, nevertheless a number of outstanding areas where further Ministerial discussion is needed, covering the Energy portfolio that are within existing EU legislative provisions under the umbrella of the EU's '2030 climate and energy framework' (also linked to the 'Clean Energy for All Europeans' package). This includes Climate instruments such as the Effort Sharing Regulation (as well as the Emissions Trading System Directive), the EU and UK joint fulfilment of pledges under the Kyoto Protocol and Paris Agreement, and Energy instruments such as the Renewable Energy Directive, Energy Efficiency Directive, and the overarching Governance of the Energy Union & Climate Action Regulation.

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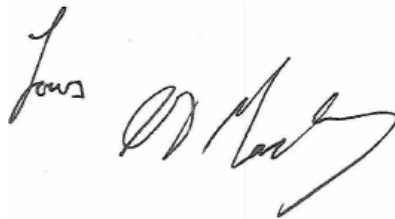
The Minister for Energy, Connectivity & the Islands is working jointly with the Cabinet Secretary for Environment, Climate Change & Land Reform to ensure that future governance in these areas is discussed at Ministerial level with UK and devolved administration counterparts, before any decisions are taken on the need for any common frameworks, given the complex mix of devolved and reserved powers, and importance of ensuring accountability to devolved governments and legislatures. However, as these frameworks do not form part of my portfolio, I do not believe it appropriate for me to answer questions directly on these areas at Committee. The Minister for Energy, Connectivity & the Islands will be happy to keep the Committee updated on these discussions as they progress.

The technical work by officials on common frameworks is underpinned by the statement of principles agreed by JMC(EN) in October 2017, and has been taken forward by agreement without prejudice to the ongoing negotiations on the UK's future relationship with the EU.

This month the UK Government published a [report](#) which sets out both the progress made to date as well as a revised analysis of the framework policy areas. This report has been drafted in such a way as to respect the different views and priorities across the administrations and has therefore been welcomed by Scottish Ministers on this basis, and mindful of the need to provide information to respective parliaments and wider stakeholders about frameworks progress.

The Scottish Government welcomes the Parliament's scrutiny of the UK Government's proposals in relation to common frameworks, and is committed to providing further evidence and updates in relation to its work with the UK Government on such frameworks.

I look forward to a more detailed discussion on common frameworks with the Committee on 30 April.



**DEREK MACKAY**