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Graeme Dey MSP

Convener

Environment, Climate Change and Land Reform

Committee

c/o Clerk to the Committee

By email: ecclr.committee@parliament.scot

22 February 2018

Dear Graeme,

Thank you for your letter of 31 January, following your Committee's meeting on 23 January, requesting further information on a number of areas relating to the environmental implications for Scotland of the UK exiting the EU. I have set out a response below to each of the questions you have asked in your letter. Thank you also for sharing the official report from that meeting. I read with interest the views expressed by the academics and stakeholders.

I would like to begin by re-iterating my commitment to protecting and enhancing the environment and to ensuring Scotland continues to play our leadership role in addressing global challenges, including on climate change and, increasingly, on issues like single-use plastics. The UK's, and Scotland's, future relationship with Europe raises a considerable set of issues for environmental policy as the Committee has identified.

1. What progress is the Scottish Government making in identifying areas where common frameworks covering environmental issues will be required?

- **Over what timescale would the Scottish Government like to see such common frameworks in place?**
- **Has the Scottish Government identified any environmental issues where the development of a common framework should be prioritised?**

The Scottish Government has made clear that, in the absence of shared frameworks provided by EU law, common approaches across the UK in some areas may be necessary or desirable. At the current time, it is not possible to say conclusively when frameworks must be in place.

This is because consideration is dependent upon on-going discussions with other devolved administrations and the UK Government about transition arrangements. It is also dependent upon knowing the shape of the UK's final exit agreement and future relationship with the EU.

Where the need for frameworks is agreed, this must be on the basis of the principles agreed by the four UK administrations at the meeting of the Joint Ministerial Committee (EU Negotiations) ('JMC (EN)') in October 2017. In particular, it has been agreed that any

frameworks must respect the devolution settlements and the democratic accountability of the devolved legislatures.

In December 2017, the JMC (EN) agreed that work should continue at official level to consider the range of returning EU powers identified by the UK Government as intersecting with devolved competence. These include, as you are aware, a range of powers relating to the environment, which is an almost wholly devolved matter. Scotland's environmental ambitions exceed those of the UK Government in a number of areas and I have made very clear that, in future, Scotland must have the power to set and raise environmental standards in the future if we wish.

That work to compare and test the four administrations' priorities is on-going, and I hope to be able to provide an update to the Committee in due course. It is important to stress that this current activity is designed to test the JMC (EN) framework principles and the issues and challenges that might emerge in designing and implementing future common frameworks. They are not a negotiation mechanism and will not be used to agree the terms of future common frameworks.

2. What consideration has the Scottish Government given to enshrining key principles of EU environmental law, such as polluter pays, animal sentience and the precautionary principle, in Scottish statute?

I have been clear that the Scottish Government's commitment is to carry through not just the letter of EU environmental law but also its spirit. That spirit is captured in the underlying principles of precaution, prevention and rectifying pollution at source, as well as the 'polluter pays' principle. It is my intention to ensure that these principles sit at the heart of Scotland's approach to environmental policy in the future, regardless of our future relationship with the EU.

There is on-going consideration on how best these aims can be achieved and this is an issue I have been discussing with stakeholders. The options for ensuring these principles continue to inform Scotland's approach in future will depend on a number of issues such as the outcome of the current negotiations on the EU (Withdrawal) Bill, the terms of any potential transition period and any exit agreement, and the UK's future relationship with the EU.

On the specific issue of animal sentience, the principle of animal sentience has been recognised in Scottish legislation for over a century. I assured the Scottish Parliament on 30 November 2017, in a written response to a question from Mark Ruskell MSP (S5W-12975), that the Scottish Government fully accepts the principle of animal sentience. We will, of course, take appropriate action to safeguard animal welfare standards in Scotland, in the face of the disruption and confusion caused by the Brexit process.

3. What challenges does the Scottish Government foresee in the development of common frameworks and what steps is it taking to mitigate these?

There are a range of issues to be addressed in developing any common frameworks. Among these are:

- how agreement will be reached on where a common approach is necessary or desirable, and why;
- what form any future common approaches should take – for example, whether there is a need for new arrangements set in statute, or if it is possible to rest on current arrangements, or new or refreshed non-statutory underpinnings;

- governance arrangements for implementation and oversight, including dispute resolution mechanisms; and
- how intergovernmental relations more generally are reformed, as is clearly necessary as a result of leaving the EU?

4. What is the Scottish Government's position on the future governance and enforcement of environmental standards in Scotland and across the UK including:

- **What structures and organisations will be required?**
- **What resources will be required?**

The Scottish Government is actively considering where there may be environmental governance gaps in Scotland, should the UK leave the EU. This is an important and complex issue and how any gaps are addressed in order to maintain our commitment to maintain high environmental standards may require a mix of solutions.

It is not possible at this point to say what structures, organisations and resources may be required. Any potential options around future environmental governance will, of course, need to align with Scotland's distinct legal and regulatory systems. We should also ensure that any solution fully respects the accountability of the Scottish Government to the Scottish Parliament and the Scottish people.

I have asked the Roundtable on the Environment and Climate Change ('the Roundtable') to carry out work to identify the potential gaps for Scotland and develop a range of options on how best to address those gaps.

5. Can the Scottish Government provide further detail on the work of the Roundtable on the Environment and Climate Change?

The role of the Roundtable is to identify, consider and offer advice on any issues arising from the changing relationship of Scotland with the EU as they affect Scotland's environmental and climate change legislation, policies and practice, including consideration of future consequences and the implications of change.

As set out above, the Roundtable is currently taking forward work to identify governance gaps in Scotland which might be created should the UK leave the EU, as well as considering potential options going forward. It is due to report on its findings around mid-March, and members are now in the process of considering their future work plan.

A list of the current members of the Roundtable is included in an Annex to this letter.

6. How are stakeholders being involved in discussions about the creation of common frameworks on environmental issues and how have these been informing progress?

As I have indicated, the current official-level consideration of future frameworks agreed by JMC (EN) is designed to test the JMC framework principles and help identify the key issues upon which the successful implementation and management of any new arrangements will depend. The Scottish Government recognises the importance of ensuring that stakeholders' views and interests appropriately shape this consideration.

As well as my on-going stakeholder engagement, I have held two stakeholder events at Battleby since the EU Referendum in June 2016 to hear from stakeholders on their concerns for the environment following the UK Government's decision to exit the EU. I have also met

with environmental stakeholders in Scotland, throughout the UK and in Brussels to discuss the potential implications on the environment of the UK's exit from the EU and to share Scotland's position on environment and climate change policy in the context of the EU-UK negotiations. Feedback from these discussions is directly informing our approach to preparing for the UK's exit from the EU.

I have also appointed Ian Jardine as Scotland's National Adviser on the Environment and one of his key roles is to engage with stakeholders and interested parties on the potential impact on the environment of the UK's exit from the EU.

As noted above, I hope to be able to provide an update to the Committee in due course and look forward to discussing how we can best ensure stakeholders' views continue to inform work on preparing for the UK's exit from the EU.

7. What is the Scottish Government's view on the role that the Joint Ministerial Committee could play in the development and implementation of common frameworks?

The JMC is the current overarching mechanism supporting intergovernmental relations. JMC (EN) oversees the work in practice, including agreeing the statement of principles.

I hope this additional information is helpful.

I am copying this letter to the Minister for UK Negotiations on Scotland's Place in Europe, Michael Russell MSP; the Convener of the Finance and Constitution Committee, Bruce Crawford MSP; and to the Convener of the Culture, Tourism, Europe and External Relations Committee, Joan McAlpine MSP.

Yours,

ROSEANNA CUNNINGHAM

CURRENT MEMBERS OF THE ROUNDTABLE ON THE ENVIRONMENT AND CLIMATE CHANGE

Professor Dame Anne Glover	University of Aberdeen
Professor Campbell Gemmell	Canopus Scotland
Lloyd Austin	RSPB Scotland
Sam Gardner	WWF Scotland
Mark Williams	Scottish Water
Patricia Hawthorn	Shepherd and Wedderburn
Dr Elisa Morgera	University of Strathclyde
Professor Pete Smith	University of Aberdeen
Richard Dixon	Friends of the Earth Scotland
Jonathan Hughes	Scottish Wildlife Trust
Dr Antonio Cardesa-Salzmann	University of Strathclyde
Dr Annalisa Savaresi	University of Stirling