Dear Joan

Thank you for your letter, dated 30 April 2020, requesting an update in four areas of the EU-UK future relationship negotiations. I hope the information below is sufficient at this stage for the purposes of the committee. I note your invitation to attend the committee in person and look forward to providing more evidence once those arrangements are in place.

Extending the transition period
As you will be aware, the UK Government have made clear through a range of channels, that they will not extend the EU exit transition period despite the fact that the time available for future relationship negotiations has been seriously curtailed, and that the Withdrawal Agreement, sensibly in our view, explicitly provides for an extension by mutual agreement. This is an issue of very serious concern for the Scottish Government. It was already our position that the deadline for negotiations was unnecessarily short and required extending. The impact of the ongoing Covid-19 pandemic has only served to strengthen this position.

We are not alone in calling for an extension. Business leaders have made clear that many sectors will find it impossible to be ready for the end of 2020 in relation to EU exit, with the majority of businesses already in survival mode. Similar views have been expressed by political commentators, individual trade experts and politicians within member states. The Scottish Government continues to engage with the UK Government on this issue and have made clear that we believe the EU and UK should agree the longest possible extension to the transition period.
Our understanding is that the UK Government continue to aim for a simple Free Trade Agreement based on existing EU precedent. This would fall far short of the Scottish Government position in many areas and its economic impact would be little better than that of no deal. And the differences between the EU and UK positions are so great that a no deal outcome is still a very serious threat.

It is clearly now impossible for either governments or businesses to be ready for an end to transition on 31 December – bearing in mind that the arrangements to be implemented are still under negotiation. There is also a compelling economic argument for extending transition by the maximum two years. Given that the UK government is only seeking a basic Free Trade Agreement at best, it is inevitable that the end of transition will lead to a loss of economic growth, whether or not a deal is eventually reached. That loss will be unwelcome whenever it arises, but ending transition on 31 December will mean that this additional economic hit will come when the economy is still reeling from the impact of the COVID-19 crisis. I believe it is reckless to knowingly inflict this damage on an already fragile economic recovery, when it can easily be avoided.

Scottish Government involvement in shaping the UKG negotiating position

The Scottish Government continues to seek meaningful engagement with the UK Government to develop a UK negotiating position that reflects the needs and interests of Scotland. We have focused effort in areas of devolved competence, where there is a specific Scottish interest, and/or where implementation of an agreement will be delivered by the Scottish Government.

It is to my deep regret, despite innumerable contacts at official level and significant ministerial pressure from all the devolved governments, that we have fallen significantly short of what we think necessary. Whilst engagement at official level continues – punctuated with ministerial engagement by telephone and occasionally around the Joint Ministerial Committee (European Negotiations) – we remain very much in the dark as to the UK Government’s negotiating position and how it intends to make strategic choices in the final stages of negotiations. To illustrate the point, we were sent UK Government legal texts for the negotiations on 18 May, only hours before they were made public, and those texts were decided upon by UK ministers alone.

A meeting of the Joint Ministerial Council (European Negotiations) was held on 21 May, the first time since January this year. Despite the understandable impact of Covid-19 on ministerial availability, we have made clear to the UK Government during this hiatus that whilst negotiations were continuing the JMC(EN) should continue to meet, albeit virtually. As is customary, I shall write to the Committee separately regarding this meeting.
In recent weeks, as rounds of negotiation have taken place, the UK government has made arrangements for devolved administrations to receive summarised readout of the talks after the event. There has been no attempt in advance of each round to agree, or even discuss, the positions the UK intends to take with ministers from devolved administrations, all of whom have called for this. In summary, despite the obvious legitimate Scottish interests in the negotiations and the fact that many aspects of them will fall to the Scottish Government to be implemented, UK ministers continue to make all decisions on the UK’s position unilaterally.

**No-deal contingency planning**

As with all areas of government, no-deal contingency planning has been undoubtedly impacted by Covid-19.

The UK Government has failed to engage adequately with devolved administrations on EU exit preparations and in particular on those related to Northern Ireland Protocol. In late March the UK Government informed the devolved administrations that it was operating a portfolio of some 200 readiness projects, but no information was shared with us until mid-May and then only in limited form so far. The Scottish Government and other devolved administrations must not continue to be excluded from decision-making on issues of critical importance to their interests or remain unable to access vital information to inform our own preparations.

I have made clear that it is not acceptable that major policy and operational decisions which impact on Scotland and our own preparations are being taken by the UK Government without consultation.

Despite the restricted means of doing so, we have continued to seek to engage constructively with the UK Government and continue to make preparations for the possibility of a damaging no deal exit. To do so we have established a readiness team which covers both Covid 19 and no deal readiness so as to tackle any areas of overlap in the challenges these both raise. I will provide more detail as to the work of this team as part of my oral evidence to the Committee.

**Checks at Cairnryan and Loch Ryan Ports**

Specifically, we are aware that the UK Government’s Border Delivery Group is considering practical arrangement for ports, including those on the Irish sea, but there is no clarity yet over what that will be required in practice. The operation of any border / customs checks at Cairnryan will primarily be the responsibility of Border Force / HMRC to implement, whilst the ports themselves will need to work with UKG on understanding infrastructure requirements placed on them as a result of the implications of the Northern Irish Protocol. Transport Scotland will continue to monitor...
traffic management requirements in the Dumfries and Galloway area alongside our local resilience partners to ensure appropriate facilities are in place.

The impact of the coronavirus outbreak is not only undermining the UK-EU negotiations. It is also impacting on necessary legislative preparations for the end of the implementation period as a result of the UK’s withdrawal from the EU.

**Impacts of the Northern Ireland Protocol on Scotland**

During the most recent JMC (EN), I took the opportunity to discuss the progress of ongoing negotiations and domestic readiness, including the implementation of the Northern Ireland Protocol. I also strongly raised concern regarding the UK Government planning to publish implementation plans without sufficient Devolved Government involvement. I should make clear that the Scottish Government had no involvement in the drafting of the UK Government’s Command Paper on the Protocol published on 20 May.

I, as well as my officials, continue to press UK Government for proper involvement in the discussions around how the Northern Ireland Protocol will be implemented, in order to understand Scottish interests and, in devolved areas, plan for implementation. At the January JMC (EN) meeting, there was agreement that a distinct workstream on the Protocol would be established, comprising all the Devolved Governments. However, this has not yet materialised.

The implementation of the Northern Ireland Protocol may result in additional costs for both government and industry, for instance any infrastructure or compliance requirements for additional checks at Scottish ports of entry. The increased burden of tariffs and non-tariff barriers, such as catch certificates and export health certificates for products moving from Scotland to Northern Ireland which are at risk of entering the EU, is expected to increase industry costs. It is unclear at this point in time what the additional burden will be of these resources, as this is in part, dependant on the conditions of an EU trade deal.

In conclusion, there is no reason why the Brexit process has to be conducted in this way. Other joint programmes of work, such as that on post-exit UK frameworks, have shown that substantive progress can be made where the four governments come together as equals, and proceed on the basis of agreement, not imposition.

However, the impact of Covid-19 means that we must refocus available resources on what can reasonably be delivered by the end of year, recognising that the only responsible course of action is to extend the transition period.
Thank you again for invitation to provide oral evidence to your enquiry. If you require anything further in advance please let me know.

MICHAEL RUSSELL