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Mr Michael Russell
Cabinet Secretary for Constitution, Europe
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Scottish Government

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Dear Mike,

Thank you for your letter of 1 November.

When you wrote to me on 21 October you raised concerns that “the failure to have any serious ministerial engagement, never mind a JMC(EN) ahead of the European Council, is particularly regrettable”. I am pleased that we were able to arrange a meeting of the Joint Ministerial Committee (EU negotiations) - JMC (EN) - on 29 October, which was the sixth such meeting so far this year, and I look forward to a further JMC(EN) discussion in the weeks ahead. As ever those private discussions between the UK Government and ministers from the devolved administrations were useful and constructive. I am also glad that - following the extensive details I shared about the level of ministerial and official engagement with the Scottish Government - you now admit that “there is no dispute about the quantity of meetings held between us”.

I was disappointed, however, to hear that you have not appreciated the extensive engagement we have conducted around the negotiations. You raised specific concerns about both the timing and quality of our engagement. Let me reassure you that the UK Government greatly values input from the Scottish Government, and all the devolved administrations, at ministerial and official levels. As you will know, JMC(EN) is the principal route for devolved administration ministers collectively to input into the UK’s approach to negotiations, given that international relations are a reserved matter.

In terms of the timing of discussions, as I outlined in my last letter the UK Government has consistently provided an opportunity for timely discussions on the EU negotiations. Where possible, we have organised meetings of the JMC(EN) to ensure the devolved administrations can raise questions or concerns before formal negotiating rounds. The JMC(EN) has met regularly this year - on 9 and 28 January, 21 May, 16 July and 3 September, as well as 29 October. I have also explained that despite my desire for the JMC(EN) to meet in late September, and concerted efforts to find a suitable date, we were unable to agree a mutually-acceptable day. My letter of 27 October outlined further ministerial-level discussions, alongside many official discussions, as well as when the Scottish Government, and other devolved administrations, preferred to meet with officials rather than UK Government ministers (such as ahead of the recent European Council meeting).

In terms of the quality of our engagement, I note that the letter from your official (dated 13 October) which was annexed to your letter of 21 October specifically observes that UK officials “are more than familiar with the SG’s [Scottish Government’s] overall position on the future relationship negotiations (and with our specific priorities)”. It also acknowledges the quality of our engagement. For example, on fisheries - which the official rightly describes as a “fundamental Scottish interest” - the official says “we appreciate the ongoing engagement between DEFRA and devolved officials”.

The JMC(EN)’s agenda is set collaboratively by UK Government and devolved administration officials, through the JMC(EN) Secretariat. Officials help set the agenda following consultation with their respective administrations. This enables the meeting to respond to, and provide meaningful engagement on, issues of importance to the devolved administrations related to the negotiations. Senior officials from Task Force Europe and the Transition Task Force attend JMC(EN) to provide timely insight into the negotiation rounds. All of this supports the UK Government’s commitment set out in the Plenary meeting of the JMC in October 2016 to provide the devolved administrations with an effective oversight of the negotiations with the EU. In general, as I outlined in my letter of 14 June, the UK Government has benefited greatly from deep engagement with ministers and officials from the devolved administrations. Our private discussions have always been constructive but also frank, including on areas where we disagree.

At official level, the Deputy Chief Negotiator and other senior officials from Task Force Europe regularly provide immediate updates on negotiations, often straight from the negotiating room. These calls have increased in frequency in response to a request by your official in a letter of 13 October. Furthermore, we have responded to requests from your officials, and the Welsh Government and Northern Ireland Executive, for more than a dozen discussions on specific priority areas of interest to devolved administrations. This is in addition to regular engagement by UK Government departments with devolved administration counterparts. Your officials have communicated that our official level engagement has been valuable in providing up-to-date, detailed and cross-cutting information. In terms of responding to your specific points on the negotiations, on 28 October the Deputy Chief Negotiator responded in great detail to the letter of 13 October from your official. I attach that response.

As you also know the UK Government is committed to reforming our Intergovernmental Relations and we very much hope that the Scottish Government will engage fully on this review so we can further improve the quality of our engagement.

Your letter claims that there was “no engagement...ahead of the publication of the UK Government negotiating principles”. In fact we discussed the proposed scope and timeline of the FTA negotiations, as well as the strategic choices and the role of the devolved administrations, at the JMC(EN) in Cardiff on 28 January.

Your letter asks about “the extent to which the UK negotiating positions have or have not accommodated our [the Scottish Government’s] concerns”. As I have set out previously, the Ministerial Code places limits on the extent to which ministers can disclose the process of collective agreement of policy. Let me reassure you however that across the issues on which

we are negotiating, the views of the devolved administrations have been taken into account. When I appeared in front of the Scottish Parliament's Culture, Tourism, Europe and External Affairs Committee on 25 June, I mentioned several specific areas where the UK's approach to negotiations has included the stated priorities of the devolved administrations. This includes the importance of livestock production and Geographical Indications for Scotland and the value the Scottish Government puts on participation in EU programmes. You will also appreciate that the views of the devolved administrations are not always as one, for example the Welsh Government has advocated the UK Government making concessions on fisheries while the Northern Ireland Executive takes a different view.

You raised the matter of collaborative work on the Northern Ireland Protocol. The UK Government is engaging devolved administrations on Protocol implementation through various fora, including JMC(EN), quadrilateral meetings chaired by the Paymaster General, and senior and working level official engagement, in addition to the group you mention which was itself established five months ago. It was also discussed at the XO Cabinet Committee when Scottish Government ministers were present. With regard to your concern that the UK Government is "falling far short" of providing information needed for preparations, I would observe that the UK Government has shared a great deal of information but that - as you will be aware - some matters are dependent on ongoing discussions in the Joint Committee, about which your administration has been and will be kept up to date.

You return to the question of extending the transition period. This was discussed extensively in public and private, as I detailed in my letter of 14 June, but the UK Government's position was always clear, and the deadline for extension has passed.

As the Government of the whole UK, the UK Government represents the interests of people right across the country, including in Scotland, and is negotiating with the EU on a UK-wide basis. The Scottish Government accepts that international relations, including with the EU, is a reserved matter, and remains the sole responsibility of the UK Government. For this reason, I should record that we have been disappointed by the political level contacts that the Scottish Government, including the First Minister, have had during the period of the negotiations with the EU's UK Task Force and specifically the EU's Chief Negotiator. In the view of our officials, this kind of contact, and specifically the discussion of sensitive issues under negotiation is, and has been, detrimental to the overall UK position and has negatively affected the negotiating dynamic. In particular, the EU appears to have concluded from these contacts that EU offensive asks (for example on fisheries access and the permanent maintenance of the status quo on unfair Common Fisheries Policy quotas) are outcomes the Scottish Government, and perhaps even more damagingly, Scottish stakeholders, support. This is highly regrettable and damaging to UK interests including in Scotland.

As you know, intensive negotiations with the EU are ongoing. Both parties are committed to concluding a deal that goes well beyond the WTO baseline. Nonetheless, as a responsible Government, we want to ensure all parts of the UK are prepared for the end of the transition period. HM Treasury has provided the devolved administrations with considerable funding to make necessary preparations. The Scottish Government received £1.2 billion additional funding from Spending Round 2019, which included Barnett consequentials in relation to preparations for the end of the transition period. The Scottish Government will also receive a further £19.5 million of Barnett consequentials from the recent borders funding exercise. I

would be grateful for an update on how this money has been allocated for the benefit of citizens and businesses in Scotland to support their preparedness.

Please allow me to also take this opportunity to thank your colleagues: Roseanna Cunningham, Cabinet Secretary for the Environment, Climate Change and Land Reform; Fergus Ewing, Rural Economy Secretary; and John Swinney, Cabinet Secretary for Education and Skills. All have been constructive and helpful in our discussions on environmental principles, fish and farming, and Erasmus+ and higher education respectively. I am also pleased that the Universities Minister, Michelle Donelan, has spoken to Minister Richard Lochhead, the Scottish Government's Minister for Further Education, Higher Education and Science, to ensure we are engaged on various matters, including Erasmus+. May I also take this opportunity to thank your officials for their recent engagement regarding the possibility of UK Government officials attending the operational readiness meetings of the Scottish Government.

With every good wish,

A handwritten signature in black ink, reading "Michael Gove". The signature is written in a cursive style with a prominent flourish at the end.

**Rt Hon Michael Gove MP
Chancellor of the Duchy of Lancaster
and Minister for the Cabinet Office**