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Margot James MP  
Minister for Digital and Creative Industries  
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21 December 2018

Dear Margot,

## **CONSULTATION - NEW BUILD DEVELOPMENTS: DELIVERING GIGABIT-CAPABLE CONNECTIONS**

I welcome this opportunity to respond to this consultation from the Department for Culture, Media and Sports (DCMS) on proposals to deliver gigabit-capable connections to new build developments.

It is my ambition for Scotland to become a truly digital nation; one that is underpinned by high quality connectivity which supports innovation and growth. To this effect, the Scottish Government has committed to ensuring that 100% of premises in Scotland have access to future-proofed digital infrastructure, so that everyone can share in the benefits that this brings.

Telecommunications is, of course, an area reserved to Westminster and, in principle, we welcome any measures that would help us achieve our ambitions in Scotland. Our officials have been working together on several issues that impact delivery and deployment of telecoms infrastructure in Scotland, including early conversations on these proposals to support new build connectivity. I welcome this collaborative approach to tackling the challenges inherent in addressing both specific barriers and wider deployment of next generation technology.

In general terms, the consultation proposals align with our wider connectivity ambitions though greater clarity on a number of matters will be required before implementation. Appreciating that proposals may be further developed and refined following consultation responses from industry and other interested parties, I nevertheless provide some early thoughts.

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Given telecommunications is a reserved matter, I would have expected proposed legislation to relate to reserved powers, but I note references to several devolved competences. It is crucial, therefore, that I have a clear understanding of the legislative vehicle that will underpin these proposals, and that DCMS provides a clear and early assessment of any implications for devolved matters and the associated expectations of both the Scottish Government and Scottish Parliament, promptly following conclusion of this consultation.

It is vital that any legislative action taken by the UK and Scottish Parliaments are synchronised, and that any requirements of the Scottish Parliament are fully provided for, to ensure that any UK wide policy does not disadvantage Scotland. To achieve this, it is crucial that we understand the relevant timetables and any dependencies on the Scottish Government and are provided with early sight of any associated draft documents, to ensure we can adequately prepare to legislate cohesively, and in the event that a legislative consent motion may be required.

I am aware, however, that the consultation suggests that changes to Building Regulations could be required, which of course, is a devolved area. Less clear is whether and how the requirements might relate to Planning and, in particular, the role of Local Authorities and any associated powers; which are of course also devolved. As well as considering any possible effect on devolved legislation, we will need to ensure that the possible implications for local authorities are understood and discussed with relevant stakeholders. Furthermore, I would expect the UK Government to meet any costs associated with such legislative changes or any new burdens on the Scottish Government, devolved agencies, or devolved functions.

As you are no doubt aware, the Scottish Government is prioritising rural connectivity through our Reaching 100% programme. In the Future Telecoms Infrastructure Review, the UK Government adopted our 'outside in' approach to the deployment of next generation infrastructure, a principle outlined as a policy priority in this consultation. If strict cost caps are adhered to, the nature of costs associated with deployment in rural areas could mean that the policy impacts – in some areas of the UK – would be negligible.

Given Scotland's unique geography and population dispersion, we have a higher proportion of developments where deployment of infrastructure could not be achieved within the relevant cost caps. As a result of these distributional issues, therefore, there is potential for this to be even more pronounced, leaving Scotland's rural communities behind. I would look for the UK Government to consider a differentiated approach and play a role in supporting connectivity to rural and isolated locations, and would welcome joint working on this issue.

The principle of a backstop is useful to ensure no development is 'left behind'. On the whole, the proposed caps would represent an improvement at the very bottom end for developers using the latest Openreach ratecard, which is to be welcomed. However, key to acceptance from the sector is likely to be reassurance of methods for calculating operator and developer caps. There may also be concerns from the SME sector if the requirement on developers to engage two provider operators is fixed rather than adjustable for areas with lower or no competition (rural/non-urban areas).

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Additionally, there are potential unintended consequences associated with these proposals, largely that these measures may guide developers to areas of easier compliance skewing local development. Conversely, this could provide a mandate for telecoms operators to inflate prices to encourage developer contributions. The roll out of a full fibre network in other areas, most notably Jersey, also suggests a substantial increase in monthly subscription charges which risks low uptake of services in some new build and the potential of another digital divide.

I would welcome the opportunity to discuss your views on this, once you have had time to consider responses and as per my invitation of 4 December.

*Kind regards*



**PAUL WHEELHOUSE**

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