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Dear Convener

I am writing to provide you with an interim update on the Scottish Government's consideration of the Committee's response to the draft report laid on 27 October, in accordance with the Scottish Government's obligations under Section 11 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, and our respective officials' ongoing efforts to support scrutiny of the increasingly complex post-Brexit landscape.

The pursuit of post-Brexit legislation by the UK Government, often in the absence of consent from the Scottish Parliament, has undoubtedly created significant challenges for both the Scottish Government and the Parliament; with the responsibilities and competences of each being either ignored or overridden. I am committed to working closely with the Parliament, and your committee specifically, to respond to these challenges robustly.

I am sorry it has taken me longer than I would have wished to answer your letter. On reading your concerns, I asked my officials to consider carefully our approach to alignment in the round, in the light of both the Committee's views and developments on the UK Retained EU Law (Revocation and Reform) Bill. This letter reflects the conclusions I have drawn. In particular, whilst I remain firmly committed to aligning with EU law wherever possible, I intend to ensure that we provide significantly more information than hitherto on how that policy is being pursued.

As set out in the Scottish Government's statement of policy in accordance with Section 6 of the Act and agreed by Parliament in June 2022, the Section 1(1) power provides Ministers with flexibility in maintaining alignment with the EU in particular policy areas. However, I acknowledge the Committee's concerns regarding scope, engagement and transparency and understand your desire for greater information to support scrutiny.

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In this regard I am pleased to note that our officials are progressing work to consider the information provided by the Scottish Government when implementing alignment decisions. We will henceforth ensure that relevant policy notes in support of Scottish statutory instruments include information on their relevance to the Scottish Government's commitment to align with the EU. Noting that it may sometimes be more appropriate to bring forward a Bill to align with EU law rather than secondary legislation, policy memoranda accompanying relevant Bills will similarly include information on their relevance to alignment.

Further, internal guidance will be updated to ensure that policy notes and memoranda developed by Scottish Government officials reflect whether the legislation in question is relevant or not related to our policy of EU alignment, and if so provide further detail. This will include where legislation will result in a measure of divergence from EU law as well as information where Ministers assess that alignment could result in unintended or undesirable consequences including, where appropriate, consideration of the potential relevance of the Trade and Cooperation Agreement with the EU and the UK Internal Market Act at an appropriate level of detail to assist scrutiny.

Internal guidance will also be updated to support Scottish Government officials developing relevant Bills.

Taken together the above changes will assist relevant policy committees to easily identify and scrutinise the Scottish Government's consideration of alignment when bringing forth legislation. I also note that our officials will consider how such an approach might be relevant to ongoing work to review the UK Statutory Instruments Protocol, and that Parliament may wish to similarly consider where the Legislative Consent Process might be updated in Standing Orders to include relevant alignment information.

Turning to future, specifically annual reports in respect of both our obligations under the Continuity Act and the wider application of EU alignment. Our intention is to include a submission from the Scottish Government setting out our policy priorities for the EU over the next year, reflecting upon the European Commission's strategic priorities and their current annual work programme. This will include our high-level alignment priorities for the year ahead, in addition to the information provided on intended uses of the Continuity Act, which will further aim to support work on legislative scrutiny.

Again, acknowledging the Committee's desire for further information to help understand the Scottish Government's approach to EU alignment, we will also provide additional information detailing how alignment has been implemented through legislation over the reporting year alongside our statutory annual report under the Continuity Act. My officials will continue to progress this work with yours over the spring, and the progress made will be reflected in the explanatory document which we will bring forward alongside a finalised version of last year's draft annual report. This will set out how the Scottish Government has considered fully the representations the committee has made. I am confident this process will allow us to agree the further information that we shall provide alongside future annual reports starting with the 2022-23 report due at the end of October.

As I mentioned, the progress we are making together is against the backdrop of a changing and challenging landscape. The Scottish Government EU Alignment policy is threatened by the deregulatory and divergent intent of the UK Government's Retained EU Law (Revocation and Reform) Bill which is creating significant uncertainties for our country during an ongoing economic crisis. It inevitably means that the focus of the Scottish Government's alignment

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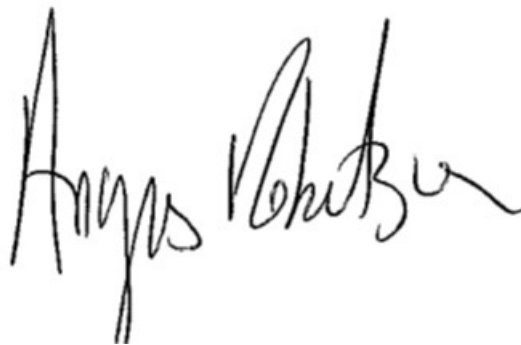
efforts in the months ahead will be primarily on preventing important standards being undermined by the loss of retained EU law provisions. In order to give the Committee the full picture we will include information on this in our reporting.

I welcome that the Scottish Parliament withholding of legislative consent recognises this fact. By ignoring both the Scottish Parliament and Government's concerns, the UK Government continues to undermine devolution and threaten a substantial democratic deficit. Our work to consider alignment with the EU must now also consider how we can respond to this threat, and we continue to press in discussion with UK Government the importance of appropriate time being allowed for the Scottish Parliament to perform their scrutiny role in retained EU law decisions.

To support improved transparency requested by the Committee we are reviewing existing arrangements such that we can continue to forward all relevant Explanatory Memoranda produced by the UK Government. We will also provide advance notice of any meetings of the Withdrawal Agreement Joint Committee and provide a report back from these meetings on our contributions.

We will similarly also provide advance notice and report on Partnership Council and wider Trade and Cooperation Agreement governance meetings where relevant, and following meetings of the Partnership Council, Scottish Ministers can give oral or written evidence to the Committee. In return it would be helpful if the Committee could share information on the Parliamentary Partnership Assembly. I trust our officials can formalise this process and report back to us both shortly.

As indicated above our intention is to finalise last year's annual report and further proposals for increased scrutiny by summer recess ahead of the next annual report in the autumn. I want to finish by reiterating my commitment to supporting improved transparency and scrutiny of the post Brexit landscape, and that I look forward to my next meeting with the Committee.



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