Cabinet Secretary for Environment, Climate Change and Land Reform
Roseanna Cunningham MSP

T: 0300 244 4000
E: scottish.ministers@gov.scot

Scottish Government
Riaghaltas na h-Alba
gov.scot

Darren Jones
Chair of the BEIS Committee
House of Commons
London
SW1A 0PW

Baroness Andrews
Chair of the Common Frameworks Scrutiny Committee
House of Lords
London
SW1A 0PW

16 November 2020

Dear Mr Jones and Baroness Andrews,

THE UK EMISSIONS TRADING SCHEME AND CARBON EMISSION TAX

I understand that both these Committees in the House of Lords and House of Commons have questioned the UK Government on several occasions about the devolved administrations 'involvement in a Common Framework to maintain carbon pricing after EU Exit. I note that Minister Kwarteng replied to the House of Commons Committee on 29 October, and gave evidence in person on 12 November. I am taking the unprecedented step of writing to set out the Scottish Government's position on this matter directly.

Given that the provisions within an emissions trading scheme are predominantly devolved, I have worked with the UK Government and other devolved administrations in good faith over the past four years on developing a UK ETS under the Common Frameworks programme, according to the principles agreed by all four administrations at JMC(EN) in October 2017. Over that time I have consistently expressed the Scottish Government's preference for a UK ETS linked to the EU ETS (since, regrettably, the UK Government's position means remaining in the EU ETS was not an option available to us). I agreed with the UK Government on the design of the UK ETS in the joint government response in June, and laid legislation in the Scottish Parliament in July concurrently with the three other administrations. This legislation has been approved by all four legislatures and became law at the 12 November Privy Council.

I am therefore increasingly alarmed that the UK Government continues to prepare for an alternative Carbon Emission Tax (CET), and continues to prevaricate over the decision between it and a UK ETS – a decision which the UK Government insists is reserved, despite it cutting across devolved competence and relating to two policies designed to deliver decarbonisation. My position is that a standalone UK ETS remains preferable, deliverable and effective in the event that the EU-UK negotiations do not produce an agreement to link

INVESTOR IN PEOPLE

to the EU ETS. Therefore it is unnecessary, and detrimental, to contemplate a CET as a fallback instead of a standalone UK ETS. The UK Government's insistence on leaving the door open to introduction of a CET, when we are only 7 weeks away from 1 January, has created unnecessary confusion for scheme participants and for regulators who need certainty about their obligations.

The UK Government's refusal to rule out CET, despite the legislation for a UK ETS now being approved and in force, demonstrates its complete disregard for the will of the Scottish Parliament (and other legislatures). I wrote to Minister Kwarteng and the Exchequer Secretary to the Treasury on 10 November expressing my concerns.

My concerns are both constitutional and in policy terms:

- **devolution settlements and Common Frameworks** – the tax would not be accountable to Scottish Ministers or the Scottish Parliament, removing oversight for a key mechanism to decarbonise 28% of Scotland's emissions. The UK Government is already threatening to undermine Common Frameworks with its unnecessary and damaging Internal Market Bill. Any move to unilaterally impose a reserved CET in place of the UK ETS framework, legislation for which the Scottish Parliament has approved, would further call into doubt the UK Government's commitment to the Common Frameworks process.

  The UK Government's prevarication is also affecting the Scottish Parliament's ability to scrutinise the Common Framework in the time left before elections next year. Likewise, it does not provide Scottish Ministers with much confidence in the proposed Common Framework governance structures for decision-making, if the UK Government behaves in a unilateral manner that ignores the interests of the three other administrations.

- **Contribution to net zero** – I consider that a UK ETS is the best policy approach, both for businesses and for climate to reduce emissions in the traded sector. And not least as the tool to demonstrate our commitment to international climate action in the year when COP 26 will be held in Glasgow, and where negotiations will focus on rules for global carbon markets under the Paris Agreement. For the UK Government to close the door on emissions trading when the rest of the world arrives in Glasgow to discuss it, seriously undermines the UK's credibility as Chair of the COP. Removing the UK ETS also at a stroke removes the potential to link to these emerging global markets – at precisely the moment when we should be showing our commitment and leadership on international action.

  The Scottish Government's updated Climate Change Plan is predicated on the emissions cap in a UK ETS – which is jeopardised by a reserved tax which has no such emissions cap, over which Scottish Ministers have no say, and on which the UK Government has not sought advice from the Committee on Climate Change for consistency with Net Zero. I have not had any assurances from HMT that my views will be taken into account in setting a tax rate, to ensure it is commensurate with the net zero trajectory required by Scotland's statutory targets. Depriving Scotland of the means for a key policy mechanism for decarbonising 28% of Scotland's emissions represents an unacceptable risk to our ability to meet our carbon targets.

I am completely clear that a UK ETS can be operational from 1 January 2021, and certainty is long overdue for operators and regulators. In spite of the Scottish Government's opposition to EU Exit, both myself and the Scottish Parliament have worked constructively and in good faith to design a Common Framework and to legislate to ensure an effective ETS mechanism is in place when we leave the EU ETS. The behaviour of the UK Government towards its devolved counterparts leaves the distinct impression that it is running down the clock to secure an alternative outcome to the one agreed and legislated, and is a breach of the trust and goodwill that those governments and legislatures have shown. Should such an outcome materialise, this would represent a significant risk to the devolution settlement, to the contrary of promises that were made in October 2017 in JMC(EN) around ‘a significant increase in decision-making powers for the devolved administrations’, and threaten the Scottish Government’s and Scottish Parliament’s ability to deliver and scrutinise our statutory climate change responsibilities.

Yours Sincerely,

ROSEANNA CUNNINGHAM