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Convener
Constitution, Europe, External Affairs and Culture
Committee
Scottish Parliament
Edinburgh

23rd March 2022

Dear Clare,

Common Frameworks

Following the publication of the Committee's very timely report on the UK internal market – which considered among other matters the implementation and scrutiny of common frameworks and UK ministers' commitment to exclude policy divergence agreed through common frameworks from the effect of the Act – I am writing to provide an update to the Committee. I will of course provide a formal response to the Committee's report in due course.

Common Frameworks Update

The Committee made a number of recommendations regarding the scrutiny and final implementation of common frameworks. I will address all the points raised in my response to the report in due course, but I wanted to provide a brief update on the number of frameworks now published or shared on a confidential basis with lead subject committees.

There have been 18 frameworks relevant to Scotland published since October 2021, and these have been sent by portfolio ministers to the relevant parliamentary subject committees to commence scrutiny. Five frameworks have yet to be published and, while work continues by officials across the four governments to finalise and agree the details of these to enable scrutiny to commence, it is not expected that these will now be published until after the Northern Ireland Assembly election. A summary of the status of each framework is provided in the annex to this letter.

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Exclusions Process

As you know, the Internal Market Act contains provisions, via amendments introduced late in the Act's passage, that makes clear UK ministers can use delegated powers to exclude policy divergence agreed through a common framework from the Act's effect. A process for considering exclusions from the Act was agreed between the four nations and UK ministers committed to its use in a written ministerial statement in December last year¹.

The first test of this commitment came in the form of the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021, legislation laid in the Scottish Parliament in November 2021 to ban the manufacture and supply of certain types of single use plastic items which comes into effect on 1 June 2022. Although the other governments in the UK share similar policy ambitions, the Scottish Government was in a position to move forward with a ban at a faster pace. However, the Internal Market Act would have significantly undermined the policy effect of any Scottish ban, as products produced legally in, or first imported into, other parts of the UK could still be placed on the Scottish market as a result of the Act.

The UK Government has now written to the Scottish Government confirming that it supports an exclusion on bans of single use plastic items covered by the Scottish regulations and existing Scottish and UK bans from the Act's effect.

While the decision by UK ministers to grant an exclusion should allow the Scottish regulations to operate as intended, the fact that an exclusion of this nature is required at all is entirely inconsistent with the principle and practice of devolution built up since 1999 and is a clear demonstration of the way the Act undermines and diminishes the role of Scottish ministers and Parliament in relation to wholly devolved matters.

Now that a decision to grant an exclusion has been reached, the Department for Environment, Fisheries and Rural Affairs is taking forward work to draft the Statutory Instrument (SI) required by the Act.

I am writing to counterparts in the UK Government to highlight a number of issues in relation to the operation of the exclusions process agreed between the four nations to help ensure that the future application of the process is informed by lessons drawn from this case.

It is clear that UK ministers consideration of this issue fell short of the commitments made during the passage of the Bill where Lord Callanan said to the House of Lords on 15 December 2020² that

"...we want to put it beyond doubt that the delegated powers under Clauses 10 and 17 may be utilised to, among other things, make provision to reflect common framework agreements. This can be achieved by excluding specific divergence agreed through the common frameworks process from the operation of the market access principles where all parties to the common framework are in agreement."

¹ <https://questions-statements.parliament.uk/written-statements/detail/2021-12-09/hcws459> . The agreed process can be found here: <https://www.gov.uk/government/publications/process-for-considering-ukim-act-exclusions-in-common-framework-areas/process-for-considering-uk-internal-market-act-exclusions-in-common-framework-areas>

² <https://hansard.parliament.uk/lords/2020-12-15/debates/30D48FC1-D74D-4627-8045-405C01172EAA/UnitedKingdomInternalMarketBill#contribution-96C01693-3370-4CF5-8513-272CFE94EE30>

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In his December 2021 ministerial statement, the Parliamentary Under Secretary of State for the Department for Levelling Up, Housing and Communities made clear that:

“New exclusions from the UK Internal Market Act’s market access principles require the approval of both Houses of Parliament through the affirmative resolution procedure. Accordingly, *where agreement to such an exclusion is reached within a Common Framework, the relevant department and minister will seek that approval by laying a draft statutory instrument before Parliament in accordance with the UK Internal Market Act.*” [emphasis added]

No objective reading of this statement can conclude anything other than that UK ministers will proceed in a timely manner to exclude policy areas from the Act where agreement on policy divergence has been reached through a common framework.

Inevitably, perhaps, consideration of the first request for an exclusion might take longer than intended as new processes are established and operated. However, we are concerned that the process has been subject to considerable delay and a lack of transparency on the part of the UK Government. Under the terms of the process developed with UK ministers, agreement on policy divergence was reached through the provisional Resources and Waste common framework last autumn. An exclusion from the Act was required if the Environmental Protection (Single-use Plastic Products) (Scotland) Regulations 2021 were to be fully effective.

Instead of resting on the evidence and conclusions reached in the common framework, UK Ministers appear to have conducted a wholesale re-examination of the issues over a number of months. Effectively, policy delivery in Scotland could be slowed while UK ministers determine devolved policy for England.

Scottish ministers made the case for a broader exclusion than that unilaterally determined by UK ministers. We were supported in this by the Welsh Government and the evidence gathered in the common framework process. The approach to determining scope is at direct odds with the common framework principles and with the stated policy intent behind the amendment to the Bill.

Consent to the UK Government SI and Notification under the SI Protocol

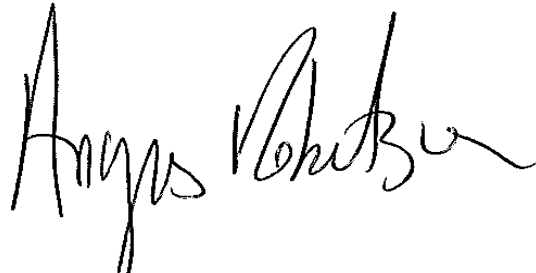
The Internal Market Act requires that the UK Government seeks the Scottish Government’s, and the other devolved governments’, consent before making the exclusion SI. However, as I said in my evidence to the Committee, it is also important to note that the consent request mechanism under the Act is one of consultation only. If consent to the request is not given by any of the devolved governments within the one-month period, the relevant UK Secretary of State may make the regulations without consent.

The exclusion SI is covered by the Protocol on SI notifications agreed by the Scottish Government and Parliament, and formal notification will be provided to Parliament when we have sufficient detail of the SI.

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I hope this information is of use to the Committee. I am copying this letter to Lorna Slater MSP, Minister for Green Skills, Circular Economy and Biodiversity and Dean Lockhart MSP, Convener, Net Zero, Transport and Energy Committee.

Best wishes,



Angus Robertson

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Annex – Summary of current status of common frameworks

<i>Current status</i>	<i>Frameworks</i>
Not yet published	Emissions Trading Scheme; Resources and waste; MRPQ; Services; Zootechnics
Published and sent to legislatures for scrutiny	Late payment; Radioactive substances; Public procurement; Agricultural support; Animal health and welfare; Chemicals and pesticides; Plant health; Plant varieties and seeds; Ozone depleting substances and F-gases; Fisheries management and support; Fertiliser regulations; Organic production; Air quality; Best Available Techniques; Food composition standards and labelling; Public health protection and health security; Blood safety and quality; Organs tissues and cells
Scrutiny by all legislatures complete	Nutrition labelling and compositional standards; Food and feed safety and hygiene
Finalised and fully implemented	Hazardous substances planning

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