



## Department for Levelling Up, Housing & Communities

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Dear Clare,

Thank you for writing to the Secretary of State for Levelling Up and Minister for Intergovernmental Relations, highlighting the commitment made by the previous Chancellor of the Duchy of Lancaster to provide a response to the Committee's report on EU Exit and devolution, as well as drawing our attention to the publication of the Committee's report on the Northern Ireland Protocol Bill. I am writing in response to the points made on intergovernmental working in both your reports. I apologise for the speed of this response and hope my written response goes some way towards helping the Committee in its work.

I am aware that you have also previously written to the Foreign, Development & Commonwealth Office on the points you raised in your committee's recent publication on the Northern Ireland Protocol Bill and have since received a response from the Minister for Europe, Leo Docherty MP. While I will not comment in detail as it is outside of my direct portfolio, I am pleased to note that through the Windsor Framework, the UK and EU have found a sustainable basis on which we can consider key concerns to have been addressed.

In respect of the areas for which I am responsible, I would like to highlight that significant engagement takes place between the UK Government and devolved governments on many of the issues you mention in your report. This engagement now takes place through the intergovernmental ways of working we have jointly operationalised and covers a range of issues including regulatory alignment and legislation. To this end, there were over 270 ministerial meetings between the UK Government and the devolved governments on a wide range of issues throughout 2022. In addition, I want to make clear that the UK Government remains committed to the Sewel Convention and will continue to seek legislative consent and work with the devolved governments on all bills that engage the legislative consent process. I also recognise the strong interparliamentary feeling about the importance of constitutional issues such as this and remain grateful for the continued interest by the UK's respective legislatures in their approach towards scrutiny.

As the committee will be aware, the UK's departure from the EU has resulted in significant repatriation of powers, enabling us to deliver on a range of priorities that matter for people across the UK. These returning powers have an impact on both reserved and devolved responsibilities. The Common Frameworks programme was set up in 2017 to help the UK and devolved governments manage divergence across the UK by agreeing common approaches for this purpose and Frameworks were set up in 32 out of 152 possible areas. To date, one of the 32 is fully implemented and a further 29 frameworks have received provisional confirmation and are operational, 27 of which have been published for scrutiny.

Hopefully you will find my detailed written response on the findings of the report useful, and I remain grateful for your consideration of these important issues.

Yours ever,

A handwritten signature in dark ink that reads "Felicity Buchan". The signature is written in a cursive, flowing style.

**Felicity Buchan MP**  
Minister for Housing and Homelessness

**Response to the Scottish Parliament CEEAC Select Committee reports: “*The impact of Brexit on Devolution*” and “*The Northern Ireland Protocol Bill Legislative Consent Memorandum*”**

1. *The committee asserted a need to re-set the constitutional arrangements within the UK following EU withdrawal, both in respect of relations between the UK Government and the devolved governments and between the four legislatures and governments across the UK.*

Response:

- All four governments are operating under new and improved ways of working. The new intergovernmental system ensures that ministers and officials are working together, across all areas, maintaining open channels of communication for discussion even when views may differ.
- Strong working and close cooperation have been vital in the UK response to responding to cost of living and inflationary pressures, the conflict in Ukraine, and establishing the Homes for Ukraine Scheme.

2. *The committee questioned to what extent there might be regulatory divergence within Great Britain and to what extent the devolution settlements are robust enough to accommodate post EU-Exit divergence. The committee was also interested in the extent to which the UK is able to accommodate four different regulatory environments within a cohesive internal market, while complying with international agreements.*

Response:

- Leaving the EU has meant that powers within devolved competence as set out in the Devolution Acts, that were previously exercised at EU level, are now exercisable by the devolved governments.
- One benefit of devolution is that it enables decision making to happen at the right level, and for devolved governments to bring to bear their nuanced understanding of what works best in their areas. It enables devolved governments to take a localised understanding and balance it with issues of national or economic importance. In many cases, the UK Government and devolved governments will consider that a common UK-wide approach to regulation is the best approach. The Common Frameworks programme was set up in 2017 for this purpose, with the governments agreeing to set up Frameworks in 32 out of 152 possible areas where unmanaged divergence could harm one or more part of the UK. (For the residual areas, regulatory divergence was considered unlikely, minimally impactful, or adequately governed by existing ways of working).
- Where the UK Government and devolved governments agree on a common approach, either through the mechanisms provided by a Common Framework or otherwise, the UKIM Act Market Access Principles are unlikely to be engaged. Where they are engaged, this application (jointly with agreed common approaches) serves to provide for the integrity of the UK internal market through mutual recognition and non-discrimination which applies equally to each of the four home nations. The Act allows for exclusions from these principles to be granted such as to support the Scottish Government’s ban on the sale of single use plastics.

3. *The committee questioned whether the existing institutional mechanisms are sufficient to resolve any differences between the four governments within the UK where there are fundamental disagreements regarding alignment with EU law and while respecting the devolution settlement.*

Response:

- We are confident that the strengthened ways of working between the UK Government and devolved governments, including the new dispute resolution mechanism, will ensure that engagement takes place on these important issues, and that disagreements are considered and resolved in a fair and timely manner. The existing institutional mechanisms for resolving intergovernmental disagreements are principally: the dispute mechanism set out in the Intergovernmental Relations (IGR) Review, and the individual mechanisms within the Common Frameworks which themselves 'dock' into the IGR mechanism.
- The IGR mechanism ensures clear steps for dispute escalation, independent chairing arrangements, options to seek third-party advice, and a role for the impartial secretariat in assessing that all the appropriate steps have been taken to resolve a dispute. These mechanisms are designed to function in relation to policy disagreements, including around alignment with the EU - questions of EU alignment is no different in principle from any other policy proposal that would give rise to regulatory divergence. They are grounded in the principle of subsidiarity, whereby disagreements are resolved at the lowest possible level.
- It is not expected that questions of EU alignment will routinely give rise to disputes. For instance, the Scottish Government recently made some Water Supply regulations under the vires of the Continuity Act in order to align with current EU law in this area. This did not give rise to a dispute.

4. *The committee noted that it believes the Sewel Convention is under strain following Brexit and noted witnesses were concerned that it is in jeopardy without reform. This was reiterated by the committee's report on the NI Protocol Bill LCM*

Response:

- The UK Government remains committed to the Sewel Convention and will continue to seek legislative consent and work with the devolved governments on all bills that engage the legislative consent process. Whilst I note that concerns have been raised as part of your evidence gathering, I would highlight that through considered and diligent intergovernmental working, the UK Government has legislated with the consent of the devolved legislatures on hundreds of occasions over the last 23 years of devolution.
- Legislating without consent has been a rare occurrence and proceeding without consent is never a decision that the UK Government takes lightly, nor is it ever the first option. However, it is necessary that the UK Government can fulfil the role of the UK's national government.
- The Sewel Convention allows for devolved matters to be included in UK Parliament legislation in a manner that respects the devolution settlements of each devolved government whilst enabling the government to create consistent UK-wide legislation in a range of areas which is to the benefit of all four home nations. This also has benefits for devolved governments and legislatures, for example in saving parliamentary time in devolved legislatures.

5. *The committee held the view that there is a need for a much wider public debate about where power lies within the devolution settlement following the UK's departure from the EU – and in particular its view that said debate needs to address the extent of regulatory autonomy within the UK internal market.*

Response:

- The UK Internal Market plays a vital role in maintaining equality of opportunity for businesses no matter where they are located in the United Kingdom, ensuring that all four parts of the UK will level up together. The UK Internal Market Act helps prevent new regulatory barriers to trade within the UK as our market continues to evolve across all its diverse sectors, providing the certainty business, consumers and investors need.
- Devolved governments received significant new powers in areas of devolved competence when the UK left the European Union, and the UK Internal Market Act ensures that there are no new regulatory barriers to UK internal trade that arise from the exercise of these new powers.

6. *The committee asserted that any reform of the Convention needs to take account of inter-parliamentary views.*

Response:

- As the committee well knows, interparliamentary discussions, how they are organised, and the subjects for discussion are a matter for the respective legislatures. The UK Government will continue to welcome any such group's interest and efforts in strengthening our Union and the machinery of devolution, and we remain grateful for the interest such groups have shown to date.

7. *The committee made several references to the powers and approach of the UK Government for making Statutory Instruments in devolved areas, the impact on delegated powers following the UK's departure from the EU, and assertions of constitutional implications thereafter. This is reinforced in the committee's report on the NI Protocol Bill LCM. The committee have also further questioned:*

- a. to what extent there is a risk to the Scottish Parliament's legislative and scrutiny function from the post-EU increase in the size and use of delegated powers both at a UK level in devolved areas (reinforced in the NI Protocol Bill LCM report).*
- b. how the perceived post-EU limitations of the Sewel Convention need to be addressed in considering the effectiveness of legislative consent mechanisms for secondary legislation.*

Response:

- Powers for the UK Government to make statutory instruments (SIs) in devolved areas are not new and have been used across a wide range of policy areas since the advent of devolution. This is because it is often appropriate for the UK Government to amend existing or introduce new UK-wide regulations, including in devolved areas, as it can be more efficient, or to ensure coherence across the UK and make it easier for our stakeholders. For example, in recent months, the UK Government has made SIs for

Scotland using a variety of existing powers including in the Energy Act 2004 and Climate Change Act 2008, all with the support of the Scottish Government.

- In relation to concerns around the Scottish Parliament's ability to scrutinise UK Government SIs in devolved areas I would highlight that arrangements for scrutinising and being notified of Scottish Ministers' consent to UK Government SIs are of course a matter for the Scottish Government and Scottish Parliament. This includes the scope of the Scottish Parliament's SI Protocol 2.
- I note your further interest in the extent to which delegated powers for UK Ministers to make SIs in devolved areas should be subject to a requirement for the Scottish Minister's consent. The UK Government already seeks the consent of Scottish Ministers for SIs in devolved areas both when there is a statutory requirement or an existing political commitment to do so. This approach to secondary legislation is consistent with long standing practice. It has worked well for over 20 years and continues to do so. Our approach to secondary legislation is consistent with long standing practice. Imposing a blanket consent procedure and lengthy process on future secondary legislation is unnecessary, creating additional administrative burdens and risks delaying the making of legislation in the future.
- Whether or not to include statutory consent requirements is considered on a case-by-case basis as each policy area has a different legislative context. UK Government officials regularly engage with their Scottish Government counterparts and share information on any upcoming UKG secondary legislation that legislates on devolved matters in Scotland. We will continue to engage constructively with the Scottish Government and the other devolved governments to develop future secondary legislation on devolved matters in the spirit of the Devolution Memorandum of Understanding.