



The Scottish Parliament
Pàrlamaid na h-Alba

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Dear Cabinet Secretary,

Provisional Common Framework on Public Health Protection and Health Security

1. I am writing further to your letter of 21 October 2021 in which you shared the provisional Common Framework on Public Health Protection and Health Security for scrutiny by the Health, Social Care and Sport Committee.
2. The Committee took evidence on this provisional Common Framework late last year and in early 2022.
3. In the intervening period, the Committee has been continuing to undertake scrutiny of a number of other provisional Common Frameworks falling within its remit. Given that this scrutiny has now been completed, I am writing to you to set out the Committee's concluding findings and recommendations.

Purpose of the Common Framework

4. The Cover Page accompanying the provisional Common Framework describes its purpose as being "to ensure continued cooperation on serious cross-border threats to health within the UK following the end of the Transition Period and a robust UK-wide regime on public health protection and security".

Previous scrutiny of common frameworks

5. On 30 October 2020, the Session 5 Finance and Constitution Committee wrote to all subject committees, including this Committee's predecessor. This letter raised a number of important issues and concerns about the impact of Brexit on devolution, which relate directly to the establishment and operation of common frameworks.
6. Responding to the letter on 24 November 2020, the Session 5 Health and Sport Committee made reference to the scrutiny it had commenced in relation to the provisional UK Common Framework on Nutrition labelling, Composition and Standards, stating in particular:

“Another strand to our scrutiny of the provisional framework will be to consider whether there is scope to build into the framework a greater role for the Parliament in scrutinising its on-going operation. One area we are seeking clarity upon is whether there are currently any requirements for reports to be made by the policy group to the relevant Ministers and whether such a reporting requirement could or indeed should be extended to the Parliament. Building in these requirements would we consider act as a trigger for the Parliament to engage with frameworks in a timely and proportionate manner.”

The scrutiny role of parliaments

7. There is a section of the Framework Outline Agreement headed “Parliamentary and stakeholder communication and engagement” which provides details of engagement undertaken with the UK's four public health agencies and “technical stakeholders” during the development of this Common Framework. However, contrary to its title, it is notable that this section provides no information whatsoever about parliamentary communication and engagement.
8. Similarly, the section that follows, headed “Roles and responsibilities of existing or new bodies”, provides no information about the role of parliaments in scrutinising decision-making under this Common Framework.
9. Based on these observations and its recent scrutiny, the Committee continues to have concerns about the extent to which the Parliament will be in a position to undertake ongoing, timely and meaningful scrutiny of policy decisions that may be reached using the structures agreed under this and other Common Frameworks.
10. In relation to the scrutiny role of the Parliament, while giving evidence to the Committee on 18 January, you said:

“I expect that the Parliament will have no less of a role than it had under the previous system. The Scottish Government is absolutely open to that role being enhanced where possible, but I suspect that that will become clear only as the framework is embedded in our public health infrastructure. A review period is built into the framework and might provide a good hook for Parliament to consider its operation and whether it delivers as well as we hope that it will.

“Ultimately, those are questions for the Parliament, as opposed to the Government, to answer. However, if the Parliament wanted further scrutiny and thought that the

review was the correct point at which to invite me, as the Cabinet Secretary for Health and Social Care, and my officials to comment, or if the committee wanted to undertake a detailed review or scrutinise work plans, I would be open to any role that the Parliament wished to have in the agenda, because it is so important.”

11. In response to these comments, the Committee has questions as to whether the level of parliamentary scrutiny allowed for under the previous system, when the UK was still a Member of the European Union, is a suitable benchmark for determining the appropriate level of scrutiny to be afforded UK Parliaments in relation to similar decision-making post-Brexit. It could be argued that the Brexit process offers an important opportunity to enhance transparency in decision-making and to reinforce parliamentary scrutiny rather than simply duplicating those arrangements that were in place prior to Brexit.

Escalation of decision-making to ministers

12. In relation to the process for resolving disagreements under the Common Framework, the Outline Agreement states:

“The parties to this framework have decided that if there is a disagreement, every effort will be made to resolve the matter at the lowest possible level. The intention is to resolve the majority of issues through either the Four Nations Health Protection Oversight Group, or the UK Health Protection Committee, depending on the nature of the disagreement (policy or technical), only seeking the views of senior officials where necessary. Disagreement will only be escalated to Ministers where a decision at official level cannot be reached.”

The dispute resolution process

13. The Outline Agreement describes the dispute resolution process under this Common Framework as follows:

“A disagreement between parties of this framework becomes a ‘dispute’ when it enters the formal dispute avoidance and resolution process set out in the overarching MoU on Devolution, that is currently under review.”

14. The text of the MoU on Devolution is provided as an Annex to the Outline Agreement. It is notable that, as currently drafted, the MoU makes no reference to the role of UK parliaments in undertaking scrutiny of the dispute resolution process.

Reinforcing the scrutiny role of parliaments

15. The Committee accepts that day-to-day decision-making under this Common Framework will be largely technical in nature and undertaken at an official level and that, in these circumstances, the scope and necessity for parliamentary scrutiny and oversight will be very limited. At the same time, the Committee has specific concerns around parliamentary scrutiny of decision-making in those more limited instances where there is disagreement at official level and decision-making has therefore been escalated to a ministerial level. The Committee is similarly concerned about the role of parliaments in scrutinising the dispute resolution process.

16. In the interests of enhanced transparency, the Committee is firmly of the view that the Common Framework must set out a clearer role for parliaments in scrutinising ministerial decision-making and the dispute resolution process. As a minimum, the Committee believes that parliaments should be periodically informed of any matters that have been escalated to a ministerial level or referred to the dispute resolution process, the nature of discussions that have taken place in those circumstances, the reason for any disagreement and how the matter was ultimately resolved and a decision reached.

The review process and regular reporting

17. In relation to the review process, the Public Health Protection and Health Security Framework Outline Agreement states:

“The operation of the framework will be reviewed at six months, one year, three years from the date it comes into operation.”

18. The Committee wishes to highlight the comments made by its predecessor as detailed above on the potential merits of introducing a requirement for regular reporting to parliaments about the ongoing operation of this and other Common Frameworks.
19. The Committee is also grateful for your own willingness to make yourself available to answer questions on the operation of the Public Health Protection and Health Security Common Framework as part of the review process.

Conclusion

20. On this basis, the Committee specifically requests that:
- Prior to commencing operation, the Common Framework be amended to include a requirement that all UK parliaments should receive an annual report on its operation, focusing in particular on process, policy content and outcomes in those instances where decision-making has been escalated to a ministerial level or where the dispute resolution process has been triggered;
 - The review process includes an assessment of whether procedures for parliamentary scrutiny of decision-making are suitably robust or whether these need to be further reinforced;
 - As part of the review process, the Scottish Government undertakes to send the Committee a written update setting out its own experience of the operation of the Common Framework and that Ministers make themselves available to give oral evidence to the Committee on the back of that update.
21. Given the nature of the Committee's conclusions, I am copying this letter to the Convener of the Constitution, Europe, External Affairs and Culture Committee and to the Cabinet Secretary for Constitution, External Affairs and Culture.
22. On behalf of the Health, Social Care and Sport Committee, I trust these recommendations are helpful to the process of finalising the Public Health Protection

and Health Security Common Framework prior to commencing operation. The Committee looks forward to receiving further updates on progress in this area.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Gillian Martin', with a stylized flourish at the end.

Gillian Martin MSP
Convener, Health, Social Care and Sport Committee

Cc.

Cabinet Secretary for Constitution, External Affairs and Culture

Convener of the Constitution, Europe, External Affairs and Culture Committee