



The Scottish Parliament
Pàrlamaid na h-Alba

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Dear Maree,

Provisional Common Frameworks

1. The Committee has recently completed scrutiny of the following three provisional Common Frameworks for which you have lead responsibility within the Scottish Government:
 - On Blood Safety and Quality
 - On Organs, Tissues and Cells (apart from embryos and gametes); and
 - On Food Compositional Standards and Labelling
2. Having completed this scrutiny exercise, I am writing to you now to set out the Committee's concluding findings and recommendations.

Previous scrutiny of common frameworks

3. 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.
4. 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.”

Common Frameworks on Blood Safety and Quality; and on Organs, Tissues and Cells (apart from embryos and gametes)

5. You wrote to the Committee on 9 December 2021, sharing both of these provisional Common Frameworks for scrutiny.

6. The explanatory cover page accompanying your letter describes the purpose of both Common Frameworks as being:

“to maintain a compatible minimum set of safety and quality standards between the UK Government, Scottish Government, Welsh Government and the Northern Ireland Executive to make it easier for blood components, organs and non-reproductive tissues and cells to continue to be shared across the UK.”

7. The Committee issued a request for written evidence in relation to these Common Frameworks on 21 December 2021 but received no responses. As the Minister responsible for both Common Frameworks, the Committee subsequently took oral evidence from you at its meeting on 1 February 2022.

8. The Committee notes that there is a consensus amongst key stakeholders involved in this particular policy area which is strongly supportive of these common frameworks and their role in facilitating the continued sharing of blood components, organs and non-reproductive tissues across the UK.

Common Framework on Food Compositional Standards and Labelling

9. You shared this provisional Common Framework for scrutiny in a letter to the Committee dated 22 February 2022.

10. The explanatory cover page accompanying your letter describes the purpose of this Common Framework as follows:

“The FCSL Framework is an agreement between UK administrations committing parties to using common, collaborative approaches when developing food labelling, composition and standards policy. The framework proposals acknowledge that, for FCSL policy in Northern Ireland, final decisions on proposals for regulatory change within scope of the Framework rest with the EU.

“The Framework sets out processes for the four countries to follow when developing policy in this area (these commitments are common across all framework areas):

“• Common working practices, requiring engagement on a four-country basis at all stages of policy development.

- “• Processes for managing divergence.
- “• Decision-making processes for Ministers.
- “• Dispute resolution processes for both officials and Ministers.
- “• Governance arrangements, such as how the framework will be reviewed and amended.”

11. The Committee issued a request for written evidence in relation to this Common Framework on 31 March 2022 and received two responses. Both responses expressed the view that the Common Framework is fit for purpose. As the Minister responsible for this Common Framework, the Committee subsequently took oral evidence from you at its meeting on 3 May 2022.

Escalation of decision-making to Ministers

12. The provisional Common Framework on Food Compositional Standards and Labelling describes the hierarchy of decision-making responsibility under the Framework as follows:

“It is anticipated that most routine decisions will be made at Official level, however in some instances Officials may be required to defer decision making to Senior Officials or Ministers. The level of decision-making responsibility required will be assessed on a case-by-case basis and in line with each Party’s ordinary working practices including agreeing work and resource planning and obtaining the necessary clearances for proposals. Where decision-making responsibility needs to be escalated, Officials will be responsible for ensuring that this is done in a suitable manner, involving the appropriate individuals, and ensuring that decision makers have access to the full extent of evidence and information.”

13. Both the Organs, Tissues and Cells (apart from embryos and gametes) and Blood Safety and Quality provisional Common Frameworks describe circumstances in which a decision might be escalated to Ministers as follows:

“If an agreement is not reached at senior official level and all alternatives have been exhausted, the proposal can be escalated to be discussed at Ministerial level.”

The dispute resolution process

14. The provisional Common Framework on Food Compositional Standards and Labelling describes circumstances in which the dispute resolution process would be triggered, stating that, in the event an issue cannot be resolved by referral to Ministers:

“If an agreement can still not be found, then the dispute will be referred to the dispute resolution process in the overarching MoU on Devolution, which is under review.”

15. It is notable that, as currently drafted, the MoU on Devolution makes no reference to the role of UK parliaments in undertaking scrutiny of the dispute resolution process.

16. Both the Organs, Tissues and Cells (apart from embryos and gametes) and Blood Safety and Quality provisional Common Frameworks describe the dispute resolution process as follows:

“A disagreement between parties of this framework becomes a ‘dispute’ when it enters the formal dispute avoidance and resolution process through the appropriate intergovernmental structures.”

Reinforcing the scrutiny role of parliaments

17. Giving evidence to the Committee at its meeting on 3 May 2022, you responded to a question about Parliament’s scrutiny role in relation to the Common Framework on Food Compositional Standards and Labelling as follows:

“In terms of scrutiny, Parliament will engage with the framework through the decisions that it will be asked to take on any change of legislation that is proposed in the policy area.”

18. The Committee accepts that day-to-day decision-making under these Common Frameworks 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.
19. In this context and as you outlined in oral evidence, the Committee recognises that the Parliament would have a formal scrutiny role in relation to any legislation arising from decisions reached by Ministers or as part of the dispute resolution process. However, it is not clear from the documentation whether all decisions reached in these circumstances would necessarily result in legislative change. In those circumstances, the scrutiny role of parliaments remains much less clear.
20. In this context, 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 these and other Common Frameworks.
21. In the interests of enhanced transparency, the Committee is firmly of the view that these Common Frameworks 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.

Conclusion

22. Based on its scrutiny of these three provisional Common Frameworks, the Committee specifically requests that:

- Prior to commencing operation, these Common Frameworks be amended to include a requirement that all UK parliaments should receive an annual report on their 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 these Common Frameworks and that Ministers make themselves available to give oral evidence to the Committee on the back of that update.

23. 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.

24. On behalf of the Health, Social Care and Sport Committee, I trust these recommendations are helpful to the process of finalising these three Common Frameworks prior to commencing operation. The Committee looks forward to receiving further updates on progress in this area.

Yours sincerely,



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