



The Scottish Parliament
Pàrlamaid na h-Alba

Cabinet Secretary for
Rural Affairs, Land Reform and
Islands

Rural Affairs and Islands Committee
c/o Clerk to the Committee
The Scottish Parliament
Edinburgh
EH99 1SP

rural.committee@parliament.scot

20 December 2023

By email only

Dear Cabinet Secretary,

UK common frameworks

I am writing to provide the Rural Affairs and Islands Committee's view on the eight common frameworks for policy areas within our remit. I apologise for the delay in providing this response.

Our response is based on the [14 responses to our consultation on the frameworks](#) and [evidence session with you on 2 November 2022](#).

We have also referred to the [Constitution, Europe, External Affairs and Culture \(CEEAC\) Committee's report, *How devolution is changing post EU-exit*, published in October 2023](#).

At the outset of this letter, we reflect that all responses to our call for views welcomed the common frameworks process as a valuable mechanism to “maintain coherent approaches to regulation across the UK at the end of the transition period, whilst enabling the UK and devolved administrations to make different choices on how to implement rules in some policy areas” (NFUS).

When you gave evidence to the Committee, you set out the Scottish Government's commitment to working collaboratively with the UK Government on common frameworks and highlighted them as a “really positive model” for inter-governmental relations.

Clarity around the purpose of common frameworks

The Committee notes the [communique from the Joint Ministerial Committee \(JMC\) \(EU negotiations\), dated 16 October 2017](#), which minuted ministers' agreement of the principles which would underpin common frameworks. The definition of a common framework was agreed as [emphasis added]—

“As the UK leaves the European Union, the Government of the United Kingdom and the devolved administrations agree to work together to establish common approaches in some areas that are currently governed by EU law, but that are otherwise within areas of competence of the devolved administrations or legislatures. *A framework will set out a common UK, or GB, approach and how it will be operated and governed. This may consist of common goals, minimum or maximum standards, harmonisation, limits on action, or mutual recognition, depending on the policy area and the objectives being pursued.* Frameworks may be implemented by legislation, by executive action, by memorandums of understanding, or by other means depending on the context in which the framework is intended to operate.”

The Committee notes this definition assumes a common policy approach may be agreed as part of a framework and that, for example, both the animal health and welfare framework and the plant health framework include minimum standards.

In general, respondents seemed to assume the frameworks would have referenced an agreed policy position and would detail the scope for divergence by way of, for example, minimum standards; many commented on the absence of this detail. Respondents also highlighted a lack of detail about how this shared policy position would be reflected in trade negotiations and UK legislation. The UK Environmental Law Association commented that—

“... the provisional common frameworks are oblique in addressing the issue of non-regression of environmental standards, and commitments to environmental protection generally. They generally suggest that environmental standards are not to fall across the UK but do not provide a legal guarantee against non-regression of environmental standards.”

When you gave evidence to the Committee, however, you told us that the purpose of common frameworks is to establish an inter-governmental process of engagement rather than provide for any policy substance—

“It is important to note at this point that the frameworks are policy neutral. They are inter-governmental arrangements for managing policy divergence and are not, in themselves, policy innovations.”

You also told us that these inter-governmental arrangements “essentially replicate mechanisms that were already in place”. Officials provided further detail about how these intergovernmental arrangements are operating—

“In the DEFRA space, we have the inter-ministerial group. Below that, there are a number of structures, such as a senior officials’ programme board and policy collaboration groups. ... One of the bits that had to be created specifically because of Brexit was the market monitoring group, whose function was previously carried out by the European Commission. We had to create a domestic version of that.”

You later explained that the purpose of these inter-governmental arrangements was so that, in circumstances where “it looks as though there might be policy divergence, the common frameworks ensure that we discuss at an early stage what the impact might be and how it might be managed”. Officials stated that frameworks “are there to enable us to anticipate, notify and manage potential issues around intra-UK regulatory hearings at the earliest possible opportunity”.

The Committee notes the CEEAC Committee’s conclusion of a “lack of clarity around purpose with little evidence that frameworks are delivering common goals, maximum or minimum standards or harmonisation as initially intended”.

Clarity, consistency and detail in the common framework documents

In our consultation, we asked for views on whether the framework documents were clearly drafted. Some respondents thought they were; for example, the Scottish Fishermen’s Federation told us the fisheries framework “is largely clearly drafted with regard to purpose and scope”. Other stakeholders, however, raised concerns about the clarity and consistency of drafting; for example, the Law Society of Scotland told us that “the common frameworks within this group and more generally are not uniform” which “means that it is difficult to compare and contrast” them. The Law Society of Scotland gives the example of the use of different diagrams to illustrate the decision making and dispute avoidance/resolution structures: “for example, the Plant Varieties and Seeds Provisional Common Framework diagram (page 37) is quite different from that for the Animal Health and Welfare Common Framework (page 21)”. The Law Society of Scotland suggests “common frameworks should be edited to produce a single style resulting in frameworks being more easily accessed and understood”.

QMS refers to the “confusion” when reading the agricultural support framework, “drafted with the objective of outlining processes for intergovernmental working”, and reading the animal health and welfare framework, “focused on setting out common approaches and minimising diversion as far as possible”. QMS states “it is not clear whether this is deliberate and due to differing areas of policy or as a consequence of being drafted by different teams”.

QMS’s response also details “several contradictions and/or errors” in the agricultural support and animal health and welfare frameworks. QMS concludes that, “although these errors seem trivial, it makes an already complex document ambiguous or opaque, leaving the reader doubting their understanding”.

Some respondents also told us that the framework documents do not set out sufficient detail about how they will be used to manage policy divergence. NFUS told us that it—

“... is concerned the frameworks do not clearly set out measures for assessing whether divergence will be acceptable or not. The precise decision criteria and relative weightings to be applied in the case of policy divergences are not specified. Consequently, it is not clear what would trigger a

disagreement or a dispute, nor how evidence and analysis would be used to seek a resolution.”

The Trade and Animal Welfare Coalition argued that transparency around decision making, both at official and ministerial level, is key and added that “it is also not clear how the process at ministerial level will operate or exactly how the dispute resolution mechanism will function in practice”. On the issue of transparency, Scottish Land and Estates referred to the common frameworks process as “an almost entirely private inter-governmental process”.

Stakeholder engagement

Some stakeholders raised concerns over the extent to which the Scottish Government has engaged with them over the content and development of frameworks. Agricultural Industries Confederation Scotland articulated the view of many of the other respondents when it told us that—

“By having stakeholder input embedded within the process business can highlight any practical issues associated with divergence, but of equal importance help to develop workable solutions where divergence does occur. Likewise, the review and amendment mechanism could also benefit from stakeholder input as processes are refined.”

Many responses also highlighted the loss of access to academic and scientific experts as a result of EU exit.

When we raised this with you, you recognised these concerns but confirmed that the common framework process “does not, and is not intended to, replace the stakeholder engagement” that the Scottish Government undertakes as part of bringing forward legislative proposals or developing policy. You confirmed that these inter-governmental arrangements, the common frameworks process, “is another mechanism which sits alongside that [stakeholder engagement]”.

You also referred to “the need to strike a fine balance, because the different governments need space for free and frank discussion”.

Impact of the UK Internal Market Act 2020 and other UK legislation

The potential impact of the UK Internal Market Act 2020 (UKIMA), the Subsidy Control Act 2022 and the Retained EU Law (Revocation and Reform) Bill was highlighted in responses to our consultation and we discussed this further with you.

A number of respondents expressed strong concerns about the impact of this UK legislation on the common frameworks process. For example, QMS told us that UKIMA and the Subsidy Control Act “threaten to undermine the decision-making processes that the common frameworks are striving to achieve”.

You spoke of the Scottish Government’s “serious concern” that this legislation “constrains the policy choices that we can make”.

The Committee discussed the impact of the Subsidy Control Act 2022 on the Agriculture and Rural Communities (Scotland) Bill (then forthcoming, now introduced). The Committee notes officials’ position, set out during the [bill team’s evidence to the Committee on 29 November 2023](#), that they “do not envisage the legislation [the Subsidy Control Act 2022] being used as a vehicle to frustrate devolved policy” and that, “as matters stand, we think that what is proposed [in the Agriculture and Rural Communities (Scotland) Bill] can be delivered within the law, including applicable UK laws post-Brexit such as the subsidy control and UK internal market legislation”.

We also discussed with you the impact of UKIMA and the two market principles. You and officials stressed the importance of the process whereby devolved administrations can seek an exclusion to UKIMA and argued that these inter-governmental arrangements provide a strong model for these discussions.

Parliamentary scrutiny of common frameworks and the common frameworks process

We sought views on what role the Scottish Parliament – and other UK legislatures – should play in scrutinising the operation of individual common frameworks or the overall common frameworks process as part of our consultation.

Half of the respondents replied to our consultation question about parliamentary scrutiny. All supported mechanisms to allow scrutiny and some made detailed suggestions; these included regular evidence sessions with the relevant minister(s) and a requirement on the administrations to report annually to their legislatures.

We asked you how the Scottish Parliament will be kept informed about common frameworks. You confirmed that committees are informed about the inter-ministerial group, including being sent “a note of some of the items that have been discussed”. In response to a question about Parliament’s on-going role scrutinising and monitoring the common frameworks process, officials confirmed they were engaging directly with the CEEAC Committee clerks on future reporting and notification.

In relation to UKIMA, you confirmed that the Scottish Parliament would be informed of exclusions to the UKIMA “at the point at which the secondary legislation would go through” the agreed [protocol on scrutiny by the Scottish Parliament of consent by Scottish Ministers to UK secondary legislation in devolved areas arising from EU exit](#). I shared the Committee’s on-going concerns relating to the detail and timescales around secondary legislation.

A notification at the point at which the (UK Government) lays secondary legislation would be at the end of the process for an application for an exclusion to UKIMA. The Committee notes the UK Environmental Law Association’s comments that “parliamentary scrutiny at the legislative stage comes far too late, long after formative choices have been made and, to the extent that legislation is made at

Westminster, offers no direct route for the Scottish Parliament (or Senedd or NI Assembly) to play a role”.

The Committee also notes the commitment set out in the [Scottish Government's response to the CEEAC Committee's report on the UK internal market, dated 22 February 2022](#) that, “where an exclusion from the provisions of the UK Internal Market Act is necessary to ensure the policy effect of devolved legislation, that will be made clear by the Scottish Government to the Scottish Parliament, in order to allow for proper consideration of the exclusion by interested parties”.

Officials identified that a scrutiny “gap would exist if an exclusion were to be sought by one administration but not agreed to” but their expectation was that “it might become a fairly significant feature in the notes from inter-ministerial groups”.

More generally, the Committee notes the CEEAC Committee's report also recommended that "any proposal for a UK or GB wide policy approach within a common framework that constrains, albeit on a voluntary basis, the exercise of devolved competence, should require the approval of the Scottish Parliament". The report referred to a "weight of evidence in this report which suggests that UKIMA undermines the devolution settlement"

Conclusions and recommendations

The Committee notes the general support for the common frameworks process and welcomes the opportunity it provides to facilitate policy divergence within the scope of the devolution settlement in the post-EU exit governance landscape.

The Committee notes, however, a lack of clarity over the purpose of common frameworks. The purpose you set out – of frameworks as inter-governmental arrangements which essentially replicate those previously in place when the UK was an EU member state – seems at odds with the purpose agreed by the four administrations in 2017 – of providing a common, or agreed, policy approach in areas previously within EU competence. In the responses to our consultation, some stakeholders told us that they had assumed some commitment to a common, or agreed, policy position or minimum standards and scope for divergence as an outcome of this process. The Committee notes that two frameworks, the animal health and welfare framework and the plant health framework include minimum standards and an agreed policy approach.

The Committee agrees that clarity on the purpose of common frameworks is essential to understand the role they play within the post-EU exit constitutional landscape. The Committee notes the CEEAC Committee's conclusions and recommendations on this point.

The Committee also agrees that it is not possible to take a view on whether the level of stakeholder engagement or process for parliamentary accountability are appropriate without this clarity of purpose.

The Committee believes that, in order to be useful and effective, the framework documents should be clearly drafted and accurate and notes with regret, therefore, the comments made by some respondents about the lack of clarity and consistency of drafting across the framework documents under consideration. The Committee asks the four administrations to reflect on the specific comments and revise the documents as soon as is practicable. The Committee supports the Law Society of Scotland's suggestion that common framework documents should be drafted in a uniform style, insofar as is possible.

The Committee discussed the impact of the UKIMA and other UK legislation as part of its consideration of common frameworks. The Committee recognises the potential broader impact of the UKIMA and other UK legislation. If the common frameworks process is now to be considered as inter-governmental arrangements rather than a common or shared policy position, however, it is not clear what impact the UKIMA will have on the common frameworks process itself.

Notwithstanding this, the Committee understands that any exclusions to the UKIMA may be sought through these inter-governmental arrangements. The Committee agrees that the Scottish Parliament and other UK legislatures should be notified at the point at which one of the three devolved administrations applies for an exclusion under the UKIMA. This notification should set out the reasons why an exclusion is being sought and the anticipated implications for the four parts of the UK. Legislatures should also be notified of the UK Government's decision whether to agree to the exclusion as soon as possible.

The Committee agrees that, following ministers' agreement of the final common framework documents and the Scottish Government's response to this letter, a further evidence session with the Cabinet Secretary may be helpful to assist members' understanding of some of the issues explored in this letter.

The Committee draws this response to the attention of the CEEAC Committee to inform its continuing consideration and scrutiny of the common frameworks process and wider post-EU exit issues.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Finlay Carson', with a long horizontal flourish extending to the right.

Finlay Carson MSP
Convener
Rural Affairs and Islands Committee