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Bruce Crawford MSP
Convener of the Finance and Constitution Committee
The Scottish Parliament
Edinburgh
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Dear Bruce,

I enclose the UK Government's response to the recommendations in the Scottish Parliament Finance and Constitution Committee's Report on Common Frameworks.

We welcome the Committee's timely report and recognise its use in supporting progress on common frameworks. The UK Government is committed to working with the devolved administrations to create frameworks that offer stability and certainty to businesses and individuals as decision-making powers return from the EU to Westminster, Edinburgh, Cardiff and Belfast.

The Committee makes some important points regarding the progress on common frameworks. These will be carefully considered as we continue to work closely in partnership with the devolved administrations to take forward the joint programme of work on common frameworks.

I am grateful to you and the other members of the committee for producing the report and its recommendations.

Rt Hon David Lidington CBE MP

UK Government response to the Scottish Parliament Finance & Constitution Committee Report on Common Frameworks

1. The Scottish Parliament Finance & Constitution Committee published a report on Common Frameworks on 25 March 2019. The report, based on a range of written and oral evidence, commended the progress made on common frameworks through the use of negotiation and agreement while also making recommendations on the frameworks programme and asking questions of clarification on both frameworks and cross-cutting issues including intergovernmental relations and the UK internal market. It emphasised that frameworks should be agreed and not imposed.

The UK Government thanks the Committee for its timely report and recognises its use in supporting progress on common frameworks. We are committed to creating common frameworks that deliver against the principles agreed by the Joint Ministerial Committee on European Negotiations (JMC (EN)) in 2017, ensuring common UK approaches in necessary policy areas, offering stability and certainty to businesses and individuals as decision-making powers return from the EU to Westminster, Edinburgh, Cardiff and Belfast. Common frameworks will create a consistent approach across the UK in a range of policy areas. At the JMC (EN) in 2017 the UK Government and devolved administrations agreed that common frameworks will provide a number of benefits, including keeping it simple for businesses from different parts of the UK to trade with each other, helping the UK to fulfil its international obligations, safeguarding our common resources and enabling the functioning of the UK internal market. Common frameworks form a joint programme of work with the devolved administrations and we continue to work closely and constructively with the Scottish and Welsh Governments, as well as seeking the input of the Northern Ireland Civil Service, to seek the best solution to meet the specific needs of each policy area.

The revised frameworks analysis published by the UK Government on 4 April 2019 reflects the good progress that has been made on common frameworks jointly by the UK, Scottish and Welsh Governments and the Northern Ireland Civil Service. Publishing a revised version of this analysis represents our commitment to transparency and accountability and provides a platform for a more detailed programme of engagement with external stakeholders.

The UK, Scottish and Welsh Governments and Northern Ireland Civil Service recognise the importance of engaging Parliament, the devolved legislatures and wider stakeholders in the work on common frameworks. We are currently developing a wider programme of stakeholder engagement, to ensure that proposals for future frameworks meet the needs of those who will be impacted by them.

The UK Government thanks the Committee for its recommendations and will consider them carefully. Our responses are set out below.

Trade agreements, international treaties and obligations

2. We therefore seek confirmation from the UK and Scottish Governments of how they plan to ensure consistency across common frameworks and agreements in other spheres. Where non-legislative common frameworks require revision to reflect subsequent agreements such as trade agreements or international treaties, we seek clarification of the process for making such revisions including an opportunity for Parliamentary scrutiny and agreement. (Paragraph 86)

The UK Government agrees that in order for frameworks to remain relevant and functional for all administrations there must be mechanisms to review the non-legislative aspects of frameworks to reflect developments over time. These developments may include new trade opportunities and international agreements. We are working closely across the UK Government and with the devolved administrations to develop appropriate structures and processes for each policy area that will ensure the framework can be effectively governed in the future. In addition, the cross-cutting programme of work on the UK internal market is continuing. All work so far has been undertaken without prejudice to ongoing negotiations and future trade agreements. The frameworks programme is managed jointly between the UK Government and the devolved administrations, and so it will be the responsibility of the Scottish Government to consider the role of Scottish parliamentary scrutiny where relevant throughout this process.

Intergovernmental relations

3. We note the on-going review of IGR initiated by the JMC, however, progress with this review appears to have stalled. One of the principles for common frameworks is to, by agreement, ensure compliance with international obligations whilst respecting the devolution settlement. We agree with witnesses that it is vital therefore that there is a robust and trusted process of intergovernmental relations, especially in relation to dispute resolution if this principle is to be delivered upon. We recommend that the review of IGR is taken forward urgently and request clarification from the UK Government of the timetable for completing this review. (Paragraph 87)

The review of intergovernmental relations is a joint review between all four administrations, with leads from each administration charged with taking forward each of the five thematic workstreams. It is not owned or led solely by the UK Government - all four administrations are responsible for progress and driving the timetable for completing this review. UK Government officials continue to work closely with counterparts in the devolved administrations to take this work forward.

On 19 December, the Joint Ministerial Committee (Plenary) reviewed the progress made so far on the review. They remitted work back to officials from the four administrations to make progress against the five workstreams. It was agreed that the governments will continue to work together to:

1. Develop a set of **principles** to provide the context for future relations, and we recognise that these in turn will continue to shape the work of the review;
2. Ensure that the **governance of common frameworks** are being developed to ensure they can function effectively. These should be designed to facilitate agreement and provide clarity on the roles and responsibilities of each party, and should strengthen intergovernmental working on a substantial number of policy areas;
3. Ensure that the existing **dispute resolution** mechanism in the overarching MoU on Devolution is adapted to manage the range of policy differences that may arise as the UK leaves the EU, including those involving third parties;
4. Maintain and build upon existing **machinery**, including the Joint Ministerial Committees, reflecting the range of views on the effectiveness of the current arrangements. We are considering the machinery required in relation to:
 - a. The coordination of relevant domestic issues, particularly the governance of future common frameworks;
 - b. Ongoing EU business and the UK's future partnership with the EU; and
 - c. The UK's wider international interests.

5. Ensure that there are effective arrangements for **engagement on international matters**. This work continues to be informed by further thinking on the machinery and principles for effective intergovernmental working.

This is a live body of work that has many interdependencies. In some areas we need to make progress more quickly than others, for example in those areas related to the UK's exit from the EU. In many areas, the four administrations are already taking significant steps to outline new processes for the devolved administrations, such as the enhanced role of the devolved administrations in the next phase of EU negotiations and the work on establishing common frameworks. The latter includes the arrangements needed to govern common frameworks in the future and promote effective intergovernmental working. So to say progress has stalled is simply not true.

We would like to thank the Committee for specifically highlighting the importance of **dispute avoidance and resolution** in the context of the UK's exit from the EU. The UK Government is committed to the principles of dispute avoidance and believe that this should inform all aspects of intergovernmental relations. The existing Memorandum of Understanding (MoU) for devolution contains long-standing procedures for avoiding and managing disputes between the administrations.

The formal dispute process has been rarely required in the past - only four times - largely because all administrations work together behind the scenes to manage disputes before they arise. The majority of our differences are resolved through dialogue rather than detailed procedures, which we believe is the best way to conduct effective intergovernmental relations. However, while we expect the principle of dispute avoidance to remain central to managing disputes in the future, we recognise that the UK's exit from the EU requires us to look afresh at ways to best support intergovernmental relations in the future.

Officials are working together to ensure that the existing dispute resolution mechanism can therefore be adapted to manage the range of differences and unique circumstances that may arise as the UK leaves the EU. The principles of good communication and consultation will remain key to managing our differences and we are actively building additional support into frameworks in order to bolster dispute avoidance.

Policy areas subject to common frameworks

4. We note the ongoing work to refine the policy areas that will be subject to common frameworks but, to date, no information has been made available about why certain areas have been identified over others as being subject to common frameworks. This has meant that Parliament and others have had no opportunity to understand how and why these areas are regarded as requiring common frameworks. We recommend that the further iteration of policy areas to be consulted on clearly identifies and explains the reasons for any changes. (Paragraph 97)

The UK Government notes the Committee's recommendation and is committed to ensuring transparency in the frameworks programme. The JMC (EN) in October 2017, recognising the need for common UK approaches in certain policy areas after EU exit, agreed upon principles that have formed the basis of all work on the common frameworks programme. These principles were used by individual policy teams to decide whether they needed to produce common frameworks. The JMC (EN) in October 2017 defined that any framework should respect the devolution settlements and the democratic accountability of the devolved legislatures and that frameworks should ensure recognition of the economic and social linkages between Northern Ireland and Ireland. Frameworks must also respect the Belfast Agreement. These principles have guided the work on frameworks to date and have been the basis for decisions on which policy areas are subject to common frameworks.

Following collaboration between the UK, Scottish and Welsh Governments and the Northern Ireland Civil Service, the UK Government published a provisional common frameworks analysis in March 2018, which set out the initial thinking by the UK Government on which areas would require frameworks.

On 4 April 2019 the UK Government published a revised version of the frameworks analysis to share the collaborative progress that has taken place over the last year, and to provide an update on changes that have happened in frameworks categorisation ahead of EU Exit. This version has been developed in collaboration with the Scottish Government, Welsh Government and Northern Ireland Civil Service, who have welcomed the report. There is a reduction in the number of policy areas where primary legislation is being considered, from 24 to 21, in these areas only some of the elements of the framework are expected to be in legislation. In the majority of areas (reduced from 82 to 78), non-legislative arrangements, such as a concordat, are being considered. There are now only four areas where competence is disputed (reduced from twelve in the first publication), and conversations between the UK Government and devolved administrations continue, demonstrating the significant progress made in this area. As with the first version, the second version of the analysis is provisional and subject to further revision but it is being published to

ensure transparency and accountability on the development and progress of the common frameworks programme. As with the first publication, the classification of each policy area is based on its specific needs in meeting the JMC (EN) 2017 principles. As mentioned in the second publication, underpinning any changes is a discussion of the relevant policy issues and agreement that new arrangements should be implemented according to the needs of the particular area. These changes demonstrate the careful and considered joint work underway to establish common frameworks, which in some areas has led to reclassification.

5. We recognise that both legislative and non-legislative approaches may be necessary to securing agreement in different policy areas. However, given the number of frameworks that could arise over time (and the time frames over which they could endure) greater transparency over the reasons why a particular approach has been adopted for each common framework would support more effective scrutiny. We recommend that the Scottish and UK Governments include this information as part of each agreed framework. (Paragraph 98)

The UK Government notes the Committee's recommendation and recognises the importance of accountability and transparency in the frameworks programme. We agree that as frameworks develop further, and we engage on specific frameworks, there will be a need to clarify for each framework the reasons why a particular approach has been adopted.

From the inception of the common frameworks programme the specific needs of each policy area have had to be considered when creating a framework that would adhere to the principles agreed by the JMC (EN) 2017. On 4 April 2019 the UK Government published a revised second version of the frameworks analysis to share the collaborative progress that has occurred between administrations over the last twelve months, and to provide an update on changes that have happened in frameworks categorisation prior to EU Exit. Any changes in frameworks categorisation has been underpinned by a discussion of the relevant policy issues and agreement that new arrangements should be implemented according to the needs of the particular area.

Following the publication of this analysis, we aim to hold a series of engagement sessions together with the devolved administrations, on the overall common frameworks programme with key stakeholders, in addition to sessions on the technical detail of the ongoing policy development process of individual frameworks with sector specific stakeholders.

Governance arrangements

6. Whatever the final governance arrangements for each framework we consider that, in order to respect the devolution settlement, those who exercise oversight in relation to devolved areas should be accountable to the Scottish Parliament. This is irrespective of whether those functions are undertaken by new or existing Scottish or UK bodies. We therefore request confirmation from the UK and Scottish Governments that common frameworks will reflect this approach. (Paragraph 165)

The UK Government notes this recommendation.

Common frameworks are being developed jointly between the devolved administrations and the UK Government. Future governance arrangements will need to reflect this shared responsibility for the effective operation of these frameworks.

However it is important to note that, at this stage in the frameworks programme, many policy teams are yet to develop their plans for governance and dispute resolution in detail.

The plans for governance of individual frameworks is in its initial stages. Some frameworks are likely to rely on the use of multiple pre-existing bodies, including a technical experts group made up of technical officials from each country within the UK. Others may rely on new independent bodies, especially where independent subject matter expertise may be beneficial, appointed by agreement between all parties on an ad hoc basis. Such a body may be able to publish public reports with an independent and impartial assessment policy alignment with the common frameworks principles agreed by JMC(EN).

The UK Government and devolved administrations will consider accountability arrangements as the progress on frameworks develops. Such arrangements will clearly be influenced by the form of each framework.

7. As we did in our report on the Trade Bill LCM, we recommend that any frameworks which propose UK wide oversight agencies should also recommend diverse representation to ensure that they are viewed, both domestically and internationally, as credible and transparent. The Committee therefore recommends that the need for diverse representation, including as a minimum knowledge of the relevant Scottish, Welsh and Northern Ireland sectoral area, should be reflected in any appointment process. (Paragraph 166)

The UK Government notes the Committee's recommendation. As above, we must note that many policy teams are yet to develop their plans for governance and dispute resolution in detail and therefore this area is still under consideration. Governance arrangements must suit specific policy areas and consideration is being given to the degree to which a consistent approach is required in areas such as information sharing, decision making, dispute resolution and, in some cases, the role of expert opinion or technical advice. The UK Government intends to continue working closely and constructively with Scottish and Welsh Governments and the Northern Ireland Civil Service in this area.