



Department for Levelling Up,
Housing & Communities

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Rt. Hon Michael Gove MP
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Per Ave,

Thank you for your letter of 25 May, please accept my apologies for the delayed response.

The UK Government is immensely grateful for the Constitution, Europe, External Affairs and Culture Committee's interest and work on devolution. The Committee plays an essential scrutiny role and, as the Minister for Intergovernmental Relations, I been following your inquiry into 'How is Devolution Changing post EU' with interest.

You have made valuable comments around the transparency of the intergovernmental working, which, as part of the joint intergovernmental relations review, is something that my devolved counterpart and I have worked to improve. As you know, this is a central facet of the Government's approach and I would draw your attention to quarterly and annual reports available on gov.uk .

You raise a number of detailed questions in your letter and I have responded to these in the attached annex. I look forward to seeing the conclusions of your work.

With every good wish,

*Yours,
Michael*

Rt Hon Michael Gove MP
Secretary of State for Levelling Up, Housing & Communities
Minister for Intergovernmental Relations

1. Views on whether there have been negative relations at an intergovernmental level and whether this could be addressed to some extent through legislation.

Across the last year, there has been successful collaboration between the UK Government (UKG) and devolved administrations (DAs). There are, of course, areas where administrations will have opposing views, but the intergovernmental structures provide mechanisms for engagement, ensuring the governments come together to discuss issues in a constructive way. The Government's view is that placing intergovernmental structures in statute will limit the ability of participating administrations to adapt their. Arrangements must remain flexible enough to address the Government's and devolved administrations' interests at any given time.

2. Why does the dispute resolution process (including in relation to the process for considering UKIMA exclusions in Common Framework areas) not appear to have been used despite a number of intergovernmental disagreements?

Collaboration and engagement underpinned by intergovernmental relations structures does not mean that the UKG and DAs will always agree. The new intergovernmental arrangements promote dispute avoidance by ensuring there are effective communication and governance structures at all levels, from working-level officials to ministers. Disagreements are considered at the lowest appropriate level possible and in most cases are resolved before requiring escalation to ministerial level and the dispute resolution process. All governments have the option of raising a dispute under the dispute process, including around any aspect of how Common Frameworks decision-making processes are being used.

3. The Committee would also welcome an update on progress at an inter-governmental level in delivering appropriate levels of transparency around the operation of common frameworks including the process for considering UKIMA exclusions.

Ministers agreed at the Interministerial Standing Committee (IMSC) that legislatures should be provided with a report on Framework operation once Frameworks are fully implemented. This report is usually annual. This report will be jointly agreed and shared with each legislature by its respective government. To date, one report has been shared, on the Hazardous Substances (Planning) Common Framework (as the only fully implemented Common Framework).

The published Common Frameworks set out how decisions are considered and escalated within the Framework. They enshrine a principle of subsidiarity where decisions are taken at the lowest appropriate level (such as, the relevant working group of the Framework) with routes for escalation to senior official level groups (e.g. the Environment, Farming and Rural Affairs Senior Officials Programme Board) and thereafter to ministers.

Common Frameworks are the right place for discussing UK internal market (UKIM) related divergence within their scope, including exclusions to the Market Access Principles. These discussions are no less transparent than any other Frameworks discussions. As Common Frameworks become increasingly a business-as-usual way of working they are used more and more for clear communication between parties to the Framework at, and between, each

stage of the decision-making process.¹ The jointly agreed UKIM exclusions process provides that administrations will have to go through their internal processes and the details of these deliberations remain internal. This process is under constant review by the four administrations.

4. The Committee would welcome your views on whether you agree that the doctrine of parliamentary sovereignty might constrain the constitutional change which may be necessary to ensure that devolution works effectively outside of the EU. And if so, what can be done?

The Government does not agree that the doctrine of parliamentary sovereignty and having effective devolution settlements are at odds with one another. The concept of parliamentary sovereignty is the most important part of the British constitution and this was always clearly understood at the time of the creation of the devolution settlements. For more than two decades the devolved administrations and legislatures have been able to take decisions and legislate effectively for their own responsibilities in their territories in harmony with this fundamental constitutional principle.

5. The Committee would welcome your views on whether you agree that the Sewel Convention is under strain and whether, and how, it could be strengthened in law and be subject to judicial review or whether, and how, it could be strengthened on a non-statutory basis.

The Government is committed to the Sewel Convention and does not plan to alter its status. The UK Government will continue to seek legislative consent from the devolved legislatures when introducing Bills at Westminster that legislate within areas of devolved competence or alter devolved competence. It will always consider the impact on a devolved administration. UKG officials work closely with counterparts in the DAs to discuss Bills' content and provisions, along with Bills' devolution analysis.

In this vein, the Government welcomes that the Scottish Government is recommending legislative consent for the Economic Crime and Corporate Transparency Bill. This comes after a great deal of working level and ministerial engagement and is an example of where collaborative work can deliver shared ambitions, particularly to send a united message that "dirty money" is not welcome in any part of the UK, and help legitimate business thrive. There are many other examples of successful joint working on a wide range of areas.

The Government will legislate to include devolved matters when it is beneficial to create consistent UK-wide legislation. The UK Government always takes account of DA views on these issues, including in reserved policy areas and it is always the aim of the UK Government to legislate with the support of the DAs and the consent of the devolved legislatures. There are, however, inevitably differences of approach between administrations both politically and in terms of policy. It will therefore not always be possible to reach agreement.

¹ Ranging from agreeing a common position on food additives (e.g. the GB-wide approach to titanium dioxide under the Food and Feed Safety and Hygiene Common Framework) to discussing the governance for CO2 emissions trading (Emissions Trading Scheme Common Framework).

It is sometimes necessary for the UK Government to act in its role as the government for the whole of the UK and introduce legislation that works to ensure coherence across the UK. This is consistent with the Sewel Convention and indeed the overarching devolution settlements. The instances where the Government has proceeded without legislative consent have been limited – these are, after all, not normal. They have generally related to EU Exit (about which there was and is a fundamental disagreement between the Government and DAs) and international policy. For example, the Trade (Australia and New Zealand) Act 2023. In this case the UK Government did its utmost to secure consent for the bill, but it would not have been appropriate to make the requested amendments to the bill, given the risk posed to the Government's ability to agree and implement international agreements.

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6. The Committee would welcome your view on the impact on devolution of the increasing conferral of powers on UK Ministers to make legislation within devolved competence including the impact on effective parliamentary scrutiny.

The Government considers a variety of factors when seeking delegated powers in devolved areas. Each bill is drafted according to its specific policy intent and the most appropriate way to affect those policy changes. 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 legislation or introduce new UK-wide regulations, including in devolved areas. This can be more efficient or ensure coherence across the UK, which reduces burdens on businesses.

The Government seeks the agreement of devolved administration ministers for SIs in devolved areas when there is an existing statutory requirement or a political commitment to do so. 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.

Arrangements for scrutinising and being notified of DA ministers' agreement to UK Government SIs are of course a matter for the devolved administrations and devolved legislatures. UKG SIs are scrutinised in the UK Parliament and engagement with stakeholders is conducted in the usual way by the relevant Government department.

7. The Committee would welcome your views on whether there is a need for more clarity on the extent to which UKIMA may act as a practical constraint on regulatory divergence, the reasons for this, and the impact on the ability of the devolved governments to develop policy and legislation tailored to meet local needs and circumstances.

Common Frameworks are governance mechanisms used primarily to help the administrations agree common UK-wide approaches (in which case the Market Access Principles would not be relevant) and discuss how to manage divergence where it happens. The UKIM Act enables free trade because it has the effect that a business importing or producing goods or services into one part of the UK can be confident that it can be sold elsewhere in the UK, except in

exceptional circumstances. This is vital to ensure that our shared UK internal market continues to attract the investment on which the prosperity of all our nations depend. The devolved administrations' concerns about the UKIM Act are noted but the UK Government would emphasise that there is no asymmetry or bias in its principles; they apply to the UK Government in the same way as the devolved administrations.