



Department for Levelling Up,
Housing & Communities

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Do we,

23.1 January 2024

Thank you for your letter of 27 October regarding your Committee's report on how devolution is perceived to be changing following the UK's exit from the European Union.

Regrettably, on this occasion, I must decline your invitation to appear before the Committee due to significant diary pressures. I, or one of my Ministers, would be delighted to address any further questions the Committee has by correspondence.

This report is well timed, given the passing of a quarter century since devolution in Scotland and Wales. Devolution should be celebrated and protected. It has provided greater accountability and allows for policy to be tailored to the differing needs of people and businesses in different parts of the UK, all while contributing to a political and economic Union that is greater than the sum of its parts.

While the Committee recommends *'the need for a new Memorandum of Understanding and supplementary agreements between the UK Government and the Devolved Governments'*, it remains the Government's focus to ensure that the machinery of intergovernmental relations, as set out in the joint 2022 Review of Intergovernmental Relations, works effectively to deliver the best possible outcomes for citizens across the UK.

Common Frameworks

The Committee notes that the understanding of the intended purpose and role of Common Frameworks has evolved since the 2017 principles. This is a positive development, as Common Frameworks are a key component of the intergovernmental architecture. I recognise the need for greater clarity around the dispute resolution processes in Common Frameworks.

The Committee will appreciate that any thinking around a new Memorandum of Understanding and any Common Frameworks element is something that would need shared development by and the agreement of relevant ministers in each administration. Officials are currently working closely, across the governments, to provide advice.

The vast majority (30 of 32) Common Frameworks are operational; these are the right mechanisms for managing divergence in the areas they cover. They have been used for discussing and agreeing approaches to issues ranging from the registration of nutrients to the reform of retained EU law. Of course, although Common Frameworks do not currently refer to the UKIM Act, some regulatory divergence that falls within Frameworks could also engage the Market Access Principles of the Act. The Government's position, therefore, continues to be that for clarity we should refer to the UKIM exclusions process in Framework Outline Agreements. We will continue to make the case for this in our regular discussions with the devolved administrations.

Ministers with overall responsibility for the programme have already agreed that annual reporting on fully implemented Common Frameworks will take place and the Hazardous Substances Common Framework's first report was shared last year – with the second report to be shared in due course. In the interim, the programme evaluation led by DLUHC will help fill this potential gap when published in 2024. My officials have been working closely with colleagues in the devolved administrations to ensure that those Frameworks that have been scrutinised in all legislatures are “send ready” for when the NI Executive returns. I note that scrutiny of Common Frameworks remains outstanding not only from the NI Assembly but also from the Senedd and the Scottish Parliament.

Raising awareness of Common Frameworks is an important task, and one for which all the governments – who have jointly been taking this forward through programme management structures – are responsible.

The role of the UK Government and working with the Devolved Administrations

You ask both for clarity on the role of UK Government as the government of the UK and whether the Government still stands by the statement (made December 2016 in the Supreme Court) that the UK Government considered the Sewel Convention to be “*essentially a self-denying ordinance*” on the part of the UK Parliament.

The UK Government, as the Executive and accountable to the UK Parliament, governs in the interests of the whole of the UK. In the majority of cases the devolved legislatures also vote to support this legislation and there are various occasions when it is vital for one coherent system to operate across the whole of the UK. To address some of the most critical challenges facing the UK today, it would not always be sensible to apply one rule in one part of the United Kingdom and another elsewhere. This is entirely feasible in some matters; in others, for example when passing legislation to address the legacy of the Troubles in Northern Ireland, it is not. It must, therefore, be the case that the Government can make sure that necessary and appropriate legislation is in place for the benefit of citizens and businesses across the UK and we must be pragmatic about this.

None of this precludes our continued commitment to the Sewel Convention, noting this is a parliamentary convention implemented via the processes and practises outlined in the Devolution Guidance Notes and Memorandum of Understanding between the UK Government and devolved administrations. It is never the case that the Government sets out to legislate

without consent. Where the legislative consent process is engaged, we always intend to legislate with the support of the devolved administrations and the consent of the devolved legislatures.

Through considered and diligent intergovernmental working, the Government has legislated with the consent of the devolved legislatures on hundreds of occasions since the beginning of devolution and will continue to do so. This has been demonstrated in the past few months by reaching agreement on, for example, the recent Levelling Up and Regeneration Act 2023, Energy Act 2023, and the Economic Crime and Corporate Transparency Act 2023. The occasions where the Government has proceeded without consent are exceptional – they are explicitly not normal situations. As set out previously, these have generally related to the UK's exit from the European Union.

You note in reference to the Memorandum of Understanding between UK Government and the devolved administrations from September 2012 that *“there does not appear to be any reference in the MoU to the UK acting in its role as the government for the whole of the UK.”* I must restate the Government's role in governing for the whole of the UK and in being accountable for this to the sovereign UK Parliament, at which Scottish constituencies are represented by Members of Parliament. Mature governance allows devolution to flourish both with strong devolved administrations (and the successful establishment of metropolitan mayoralities) – ensuring a blend of local and national leadership. This Government will not abdicate its responsibility to any citizen, resident, community or business in the UK.

The mechanisms set out in the jointly agreed 2022 Review of Intergovernmental Relations are the best route to formalise regular engagement between the Government and the devolved administrations. All the devolved administrations have indicated that they believe the engagement offer set out in the IGR Review is an improvement to previous arrangements.

Delegated Powers

Your report recommends *“there should also be a supplementary agreement on the use of delegated powers by UK Ministers in devolved areas”*. Such a document would need to be jointly developed and agreed by the Government and all devolved administrations. It is not something that the UK Government can, or should, deliver unilaterally. Regardless, much of this information – such as the existence of any statutory consent or consultation requirements – already exists in the underlying primary legislation and is described in the accompanying Delegated Powers Memorandum.

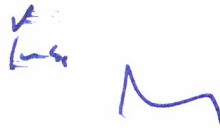
You further recommend *“that the Scottish Government publishes guidance setting out the issues which officials consider when advising Ministers on consent/consultation in relation to the use of delegated powers by UK Ministers in devolved areas.”* I agree that the publication of guidance on how Scottish Government officials advise Scottish Government Ministers is a matter for the Scottish Government, not the UK Government.

Regulatory Environment Following EU Exit

I note the Committee's assessment that devolution functions differently following the UK's exit from the EU; while devolution structures have themselves not changed, it has indeed been necessary to ensure that powers returned from the EU can be managed effectively. This is, of course, true of many areas of government.

Managing the UK's regulatory environment post-EU exit is very different to doing so as an EU member state. Many areas of policy that were effectively set at EU level can now be managed by the UK Government and the devolved administrations with considerably more flexibility. This increases our freedom to regulate as suits the UK context but also increases the importance of policy coordination.

As we enter the 25th year of devolution in Scotland and Wales, the Government remains committed to devolution as the best platform for Scotland, Wales, England and Northern Ireland to thrive – both as individual nations as well as critical parts of the strongest political and economic Union the world has ever seen. The next 25 years may see further development, but I trust that, with good faith and collaboration between our governments, it will serve the best interests of all in the United Kingdom.

A handwritten signature in blue ink, consisting of a stylized 'M' followed by a horizontal line and a small flourish.

RT HON MICHAEL GOVE MP

*Secretary of State for Levelling up, Housing and Communities
Minister for Intergovernmental Relations*