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Convener of the Rural Affairs, Islands and Natural  
Environment Committee  
Scottish Parliament  
Edinburgh  
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28 November 2022

Dear Finlay

## **EVIDENCE TO THE RAINE COMMITTEE, 2 NOVEMBER 2022**

Thank you for your letter of 14 November, following up on the evidence I gave to the Committee on UK Common Frameworks and requesting additional written clarification on a number of points. I have addressed each of these in turn below.

***Please set out specific examples of areas where the common frameworks have or will create opportunities for closer collaboration with regard to regulation and decision-making between the four UK administrations, in comparison to the situation prior to EU-exit.***

As I noted during the evidence session, in many cases the Common Frameworks simply build on and formalise existing mechanisms which have enabled strong collaboration with the other UK administrations. In terms of creating opportunities for closer collaboration, in addition to the example my officials gave during the evidence session one specific example relevant to the remit of the Committee would be under the Chemicals and Pesticides Common Framework. Pesticide officials from all UK administrations are working together with the Health and Safety Executive (HSE) to develop the regulatory reform proposals for inclusion in the UK National Action Plan. At the start of this process, Defra officials were individually progressing proposals for consultation and inclusion in the NAP, without sufficient scope or time for the other UK competent authorities to meaningfully contribute and reflect Ministerial positions across the UK. Scottish Government officials referred their Defra counterparts to the Framework ways of working and dispute resolution process, with the result that subsequent regulatory reform proposal development has been inclusive and cooperative.

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***In relation to the Animal Health and Welfare framework, please clarify the extent to which the Scottish Government has the scope for policy divergence. Please also include information with regard to the Scottish Government's response to the ongoing outbreak of avian flu.***

As with the other Common Frameworks, the Animal Health and Welfare Common Framework does not set specific limits on the possible levels of future policy divergence. The intention is that any proposed policy change will be considered on its merits, and on a case-by-case basis. Specific limits and thresholds for what level of divergence is acceptable and what might trigger the dispute resolution mechanism have not been set to ensure sufficient flexibility to manage the range of policy differences that may arise.

As I noted during the evidence session, animal health issues do not respect borders, and so we have a strong history of collaboration with the rest of the UK, with our response to the avian flu outbreak showing just how vital, and how effective, this can be. The Animal Disease Policy Group (ADPG) is the key strategic policy forum for UK-wide exotic animal disease issues, and forms a core part of the Animal Health and Welfare Common Framework. Scotland's Chief Veterinary Officer participates very actively in this group, which has been standing constantly during the current outbreak, with at least one meeting a week (and often more than that). The function of the ADPG is to reach, where possible, official-level agreement on UK and GB control strategies and informs officials' recommendations to their respective Ministers.

The consensus among members is that ADPG works very well, and has been particularly effective during the AI outbreak.

***Please provide information about the potential implications posed by the Subsidy Control Act 2022 to the fisheries management and support framework.***

Discussions are continuing with Defra officials on the impact of the Subsidy Control Act 2022 on the Fisheries Management and Support Common Framework, which includes funding towards fisheries management. The scope of the discussions with Defra have included the opportunity for non-statutory guidance, and to establish an agreed approach within the Fisheries Management and Support Common Framework, to ensure a common approach to the Act's requirements

Our current understanding is that "legacy schemes", such as the Marine Fund Scotland, are not impacted by the Act's transparency requirements, however new funding mechanisms, where overall scheme budget, or any individual award, is £100,000 or more, is required to meet the transparency requirements of the Act.

***Regarding the return of powers to the UK following EU-exit, please set out the powers previously related to reserved matters that have been conferred to Scotland within the Rural Affairs and Islands remit.***

If I understand the question correctly, the answer is none. EU exit did not in itself alter the balance of competences set out in Schedule 5 of the Scotland Act. Rather, EU exit removed the requirement to exercise devolved powers in relation to policy areas such as environmental standards, animal and plant health, fisheries and agricultural support in a manner compatible with EU law. This requirement of course applied symmetrically to all parts of the UK, including the UK Government acting for England.

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Common frameworks are the agreed means by which these changed circumstances can be managed in a way that avoids any potential for regulatory incoherence within the UK while ensuring the devolution settlements and democratic accountability of the devolved institutions are respected.

The common frameworks principles agreed at the Joint Ministerial Committee (European Negotiations) in October 2017 include a commitment that frameworks will ‘lead to a significant increase in decision-making powers for the devolved administrations’. This does not mean that EU exit has led to a range of “new” powers coming to the Scottish Parliament; rather it is a recognition that devolved matters previously exercised in the context of EU membership remain properly devolved matters and it is for the Scottish Parliament and Scottish Ministers to determine how they are used.

Unfortunately, what we have seen since EU exit is the opposite. The UK Internal Market Act, imposed on the Scottish Parliament without its consent, far from providing for an increase in decision-making powers, undermines the Parliament’s ability to make laws which will have their intended legal effect – goods which meet standards set elsewhere in the UK, even if these are lower than standards set in Scotland, could still be placed on the Scottish market, regardless of laws passed by the Scottish Parliament or the wishes of the people of Scotland.

***In relation to the European Union (Continuity) (Scotland) Act 2021, please clarify how the Scottish Government’s commitment to maintain alignment with EU regulations is accommodated in the operation of the common frameworks.***

As my officials noted during the evidence session, the Scottish and UK Governments’ strategic approach to ongoing regulatory alignment with the EU differs. I would perhaps make two points here. First, it is for the UK Government to explain why it would wish to introduce new regulatory barriers to trade with the world’s largest and most integrated single market right on our doorstep. The Scottish Government’s wish to remain aligned with EU rules where it is in Scotland’s interest is not the source of regulatory friction; rather, the problem lies with the UK Government’s desire to diverge in the interest of ideology rather than the wishes of businesses and consumers.

Second, I would argue that it is precisely in this context that common frameworks can demonstrate their value, by providing the means to engage as equals to ensure that different parts of the UK can take different approaches that speak to local priorities, while maintaining overall regulatory coherence – which is not the same thing as regulatory uniformity. How successful they will be in this will depend in part on whether the UK Government is prepared in future to take proportionate and evidence-based decisions on regulatory policy, or whether it will continue to pursue an ideological hard Brexit.

***Please advise whether the Scottish Government anticipates it may want to apply for any exclusions to the UK Internal Market Act 2020 in relation to the Genetic Technology (Precision Breeding) Bill.***

As I stated in my evidence to the Committee, the UK Government’s Genetic Technology (Precision Breeding) Bill is an example of where the common frameworks process has not been adhered to; the UK Government is only now engaging on the text of the Bill through the three relevant Common Frameworks (Plant Varieties and Seeds, Animal Health and Welfare,

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and Food and Feed), after having introduced legislation which diverges from the UK-wide position on GMOs and with particular impacts on these policy areas. Those discussions remain at an early stage, and the potential value and scope of a UK Internal Market Act 2020 exclusion would depend on how the UK Government proposes to mitigate the impacts of its Bill on devolved decision-making in the areas of each of these frameworks, as well as the implications of its divergence for both UK and international trade.

***Please provide more detail on the implications of EU-exit for the Scottish Government's access to scientific advice.***

To expand on one of the examples I gave during the evidence session, since EU Exit Great Britain (GB) has run a standalone regulatory regime for the regulation of plant protection products (PPPs). We therefore no longer have access to the peer review function, or independent scientific advice, provided by the European Food Safety Authority (EFSA) to EU Member States. Provisions enabling GB competent authorities to take independent scientific advice were included in subsequent EU Exit SIs, and on leaving the EU the UK Expert Committee on Pesticides (ECP) remit was expanded to provide additional independent, impartial advice to the UK governments on the science relating to pesticides, particularly in relation to provision of advice to HSE on pesticide approval and authorisation. The ECP continue to review procedures and refine the process further to improve the arrangements that ensure that GB administrations have access to robust independent scientific advice as part of the decision making process.

I hope the above response answers your questions, and I look forward to hearing the Committee's recommendations on the Common Frameworks.



**MAIRI GOUGEON**

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