



# HOUSE OF LORDS

Common Frameworks Scrutiny Committee

House of Lords

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17 December 2020

The Rt Hon Chloe Smith MP  
Minister of State for the Constitution and Devolution  
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Dear Chloe,

Thank you for giving evidence to the Common Frameworks Scrutiny Committee on 1 December. At that meeting, you told us that you are keen to learn from our experience of the scrutiny process, and in that spirit we would like to outline our views of the strengths and weaknesses of the common frameworks programme to date. We also have a number of questions about the programme and the parliamentary scrutiny process in the new year.

The development of common frameworks began in 2017 after the four governments of the UK recognised the necessity of cooperation in managing returning EU powers that fall into areas of devolved competence. They have been designed to both enable the functioning of the UK internal market and respect the devolution settlements by allowing the four governments to agree some regulatory divergence. On 17 September 2020 our Committee was set up to scrutinise these frameworks as they are presented to Parliament, and since then we have considered ten Framework Summaries and three Provisional Frameworks.

## **Delivering the common frameworks**

We believe that the principles agreed by the Joint Ministerial Committee in October 2017 clearly set out the purpose of the common frameworks programme. They provide a good guide to assessing the frameworks and have proved a successful foundation for this work. We have consistently heard of good official-level working between the four governments of the UK, which has demonstrated their ability to cooperate and develop policy in these areas. However, the programme has experienced major delays, with only two frameworks published in time to complete our scrutiny process before the end of the transition period. We recognise that COVID-19 has understandably taken up government capacity in all parts of the UK, and that has caused much of this delay.

We have found that the introduction of the Internal Market Bill has had a detrimental impact on the development of the frameworks programme. In many cases the frameworks were clearly drafted without proper understanding of the Bill and it has created uncertainty about how the frameworks will operate in practice. We received evidence from the Welsh and Scottish Governments that they were unaware of the details of the Bill until shortly before it was published, which has led to disagreement between governments on the

content of individual frameworks. Indeed, two of the three Provisional Frameworks published to date have disclaimers indicating that they will need to be reviewed in light of the proposed legislation.

The market access principles in the Internal Market Bill also undercut the frameworks process and undermine the ability of the frameworks to “enable the functioning of the UK internal market, while acknowledging policy divergence”, as foreseen in the October 2017 principles. The evidence we have received is clear that the common frameworks are able to provide the legal certainty businesses need without requiring the market access principles in these areas.

### **Parliamentary scrutiny to date**

Common frameworks are a new endeavour and we recognise that it will take time to develop effective processes to facilitate parliamentary scrutiny. As discussed in our previous exchange of correspondence, effective scrutiny requires departments to provide committees with adequate information and to submit Framework Summaries to help us prepare for this. However, the quality of these summaries has not been sufficient. The Department for Transport, in particular, provided a number of summaries that were lacking in detail and on one occasion sent near-identical summaries for two different frameworks. While we recognise that these summaries are not subject to scrutiny themselves, they are vital for us to effectively prepare to scrutinise the actual Provisional Frameworks. We must decide whether scrutiny can be completed within the suggested 21 sitting day time limit and whether we will need to call external witnesses. Although departments have supplied further information in response to our letters, not including this information within the summaries has limited our ability to make these decisions and prepare effectively for our scrutiny.

There should be a clear template that is used by departmental officials and all involved in negotiating frameworks setting out what Framework Summaries must include in order to help committees prepare for scrutiny. We believe that this template should be shared with committees and that the summaries should include:

- a clear explanation of the policy area that the framework will cover;
- an outline of the operation of the proposed framework;
- the EU legislation the framework will replace and the UK legislation that will be involved in implementing the framework;
- what changes there will be in the policy area covered by the framework;
- if there is an intersection with the Northern Ireland Protocol or any effect on the relationship between Northern Ireland and the Republic of Ireland;
- how the dispute mechanism will function;
- the stakeholder engagement that has been done in preparing the framework;
- and information on future scrutiny arrangements.

Three Provisional Frameworks have now been published. However, not all of these have been of a high standard. The Nutrition Labelling, Composition and Standards (NLCS) Provisional Framework had serious deficiencies and was, as we identified in our letter, clearly an unfinished document. It also made no reference at all to the Northern Ireland Protocol, despite nutrition rules falling within its scope. Both the Food and Feed Safety and Hygiene (FFSH) and the Hazardous Substances (Planning) Provisional Frameworks are

substantial improvements and we hope that future Provisional Frameworks are of a similar, or higher, standard.

However, we do have some concerns across these Provisional Frameworks. None of them have considered future scrutiny of these frameworks, despite these forming a key part of UK policymaking in these areas after the end of the transition period. Parliamentary scrutiny is an essential part of this process and so future Provisional Frameworks should consider how they will facilitate ongoing scrutiny, such as by publishing reports or updates. Transparency more generally, in particular stakeholder engagement, is an area where the entire common frameworks programme could be improved. Future Provisional Frameworks should include plans for stakeholder engagement in planned reviews and frameworks still in development should engage much more widely with stakeholders.

There is also a need for much greater detail in the Provisional Frameworks, particularly on the role of Northern Ireland in the frameworks and the implications of the Northern Ireland Protocol. In Provisional Frameworks seen to date there has been either silence or ambiguity on Northern Ireland's participation and how the rest of the framework will respond to policy changes that occur through the Protocol. The implications of the Protocol should now be clearer following the recent agreement at the UK-EU Joint Committee. Provisional Frameworks should also include a draft version of the concordat and any relevant Memorandum of Understanding. These documents are the method for implementing the frameworks and provide additional insight into how they will work in practice, so it is important that they are also subject to scrutiny.

## **Looking ahead**

On 1 December you told us that there will be 33 frameworks which will be delivered by the end of the transition period. However, it is unclear when these will be published and subject to scrutiny, and we have heard from officials that some Provisional Frameworks will not be submitted for scrutiny until Easter next year. What is the reason for this delay between frameworks being provisionally agreed and being submitted for scrutiny? How many frameworks will be published in late December/early January and how many can we expect to be delayed? How detailed are the frameworks that are being provisionally agreed but not submitted for scrutiny, and are these only skeleton frameworks? Will committees still receive Framework Summaries ahead of the text that has been agreed at the JMC(EN)?

We also have concerns about the timetable for scrutiny in the new year. If we receive a large number of Provisional Frameworks in a short period of time, the suggested 21 sitting day scrutiny timetable may prove insufficient. This suggested scrutiny period is not shared by other legislatures across the UK: Michael Russel MSP told us that the Scottish Parliament is being offered a 28-day scrutiny period and Jeremy Miles MS told us that there is no such limit in the Senedd. These different timetables suggest that framework scrutiny between different legislatures may become increasingly out of sync with one another, which could be compounded by the dissolution of the Scottish and Welsh Parliaments before their elections. Does the Government intend to continue the scrutiny process for the UK Parliament during the Scottish and Welsh election period? If so, how will it ensure that committee recommendations from across different legislatures can be fed back into the frameworks process and inform the frameworks? Will there be greater flexibility on the 21 sitting day period for scrutiny by the UK Parliament?

The Government has stated that it will publish the Dunlop Review before the end of the year and is continuing to make progress on the review of intergovernmental relations. We understand the challenges the Government faces in representing both the UK and England in intergovernmental discussions and look forward to new proposals in this area. How do you think these proposals will impact the common frameworks process? Will the body considering the suggested framework amendments after 1 January still be the Joint Ministerial Committee for European Negotiations, or will there be a successor body performing this role?

We believe that the common frameworks are an important programme of work and demonstrate the ability of the four governments to work together effectively across a range of policy areas. They are an innovative process that enable the functioning of a UK internal market, bringing together the four governments in common purpose, and provide certainty for businesses whilst managing potential divergence. However, we have a number of questions and would appreciate detailed answers that will inform and facilitate our future scrutiny. Legislatures are an essential part of this process and must be given the opportunity to conduct effective scrutiny of UK policymaking in these areas after the end of the transition period.

We look forward to receiving your response by the end of this year.

Yours sincerely,

Baroness Andrews  
Chair of the Common Frameworks Scrutiny Committee