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Baroness Andrews  
Chair, Lords Common Frameworks Scrutiny  
Committee  
House of Lords  
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Our reference: MC2020/21570

23 December 2020

Dear Baroness Andrews,

Thank you for your letter dated 17 December 2020, regarding the delivery and parliamentary scrutiny of UK Common Frameworks. I was grateful for the opportunity to appear in front of the House of Lords Common Frameworks Scrutiny Committee on 1 December 2020, during which we discussed the progress made by the Common Frameworks programme and its development into 2021.

I share your view that parliamentary scrutiny is an essential part of the development of the Common Frameworks programme. I am keen that the scrutiny process is taken forward as soon as is practicable so that robust, long-term frameworks can be finally agreed. My department is working closely with Whitehall departments to support them through this process, although as you are aware, each policy department is responsible for ensuring that their frameworks pass through the scrutiny process.

I am encouraged by the progress that we have made so far with the devolved administrations in developing Common Frameworks, and wanted to take the opportunity to re-state the government's commitment to the Common Frameworks programme. The UK Government and devolved administration officials have been working constructively to develop the Common Frameworks programme and will continue to work closely together to successfully deliver the programme, in spite of recent delays caused by the COVID-19 outbreak.

### **Parliamentary Scrutiny to date**

As you have stated in your letter, three frameworks were provisionally confirmed by JMC(EN) earlier in the year (Nutrition Labelling, Composition and Standards (NLCS), Hazardous Substances (Planning) and Food and Feed Safety and Hygiene) and are

currently undergoing parliamentary scrutiny. While recommendations have been received from the UK Parliament with regards to NLCS and Hazardous Substances, these frameworks are only expected to complete scrutiny by all the devolved legislatures early in 2021. For Food and Feed Safety and Hygiene, scrutiny by all four legislatures is expected to be completed next year and the Scottish Parliament have indicated that their recommendations on this Framework will be provided in late February. Contrary to our initial expectation, therefore, no frameworks will be fully implemented before the end of the year. However, no day 1 impacts are expected for these frameworks as they will be in operation from the end of the transition period.

I am grateful for the points you raised regarding the framework summaries and their role in the Committee's preparations. While the summaries are not of themselves intended to be a basis for parliamentary scrutiny, I recognise that the provision of framework summaries is a significant part of your preparations and I have highlighted the importance of maintaining the quality and fullness of the summaries to departmental colleagues, making clear that the necessary information should be submitted to your committee as soon as possible.

Within the UK Government, the UK Common Frameworks programme is coordinated centrally by the Cabinet Office, with individual frameworks being developed by relevant UK Government departments together with devolved administration counterparts. We have been working closely with departments to provide them with the support necessary for them to produce detailed summaries. This has included providing departments with guidance on producing the summaries and the associated documentation that details relevant information pertaining to that framework.

Following your earlier concerns about the quality of some of the framework summaries received so far, my officials have reviewed and audited the summaries agreed between the UK Government and devolved administrations for technical engagement with stakeholders. As part of this audit, we have developed tools - including a template as you have suggested - which will ensure that departmental leads include necessary information specified in your letter in their framework summaries to support the work of Committees in the UK Parliament. This will help to ensure that a consistent level of high-quality summaries are submitted. It should also be noted that we have asked departments to provide details of further relevant issues, such as the Northern Ireland Protocol, when they submit summaries.

However, ensuring that UK Parliament committees receive the additional detail you have requested is likely to give rise to some variance between the versions and timing of the summaries shared with the UK Parliament and devolved legislatures. Any revisions by the UK Government to the earlier versions agreed for technical engagement will be shared with the devolved administrations. We will continue to work closely with departments to ensure that they are fully invested in the progression of the programme and that they are able to participate effectively in the scrutiny process. Similarly, we recommend that committees continue to work with the relevant

departments to ensure that they are receiving the most useful documentation to help prepare for scrutiny.

The issues that you have pointed out regarding the Nutrition Labelling, Composition and Standard (NLCS) framework are primarily a reflection of the fact that, at the time the framework was submitted to you, significant policy uncertainties existed in a number of cross-cutting policy areas where greater clarity has now emerged. As outstanding cross-cutting issues are resolved, these details will be included in the framework and we will update the committee as this process continues.

Any committee recommendations will be considered by the relevant portfolio minister and any changes to the framework will then be agreed jointly between the UK Government and the devolved administrations before the framework is finally agreed by JMC(EN) ministers. Ministers will update the committees on any changes to the Frameworks post scrutiny and pre-implementation. Any requests for further scrutiny will need to be discussed with policy departments and the devolved administrations. Whilst the specifics may differ for each framework, we are continuing to give thought to how departments might facilitate robust scrutiny of their frameworks by relevant Parliamentary committees.

In your letter you indicated an interest in building greater transparency into the Common Frameworks programme. The Government is committed to transparency in this process. The Government lays a statutory report every quarter on the progress of the programme reflecting on the previous three months, the most recent iteration of this was published on 10 December 2020, and produces a Frameworks Analysis on an annual basis, with this year's iteration being published on 24 September 2020. The Government is also continuing to deliver a programme of engagement with key industry stakeholders on individual frameworks. We will continue to assess where there are opportunities to provide greater clarity on how stakeholders will continue to be able to provide input.

### **UK Internal Market Act**

I would like to take this opportunity to thank you and members of your committee for your contributions to the recent debates in the House of Lords on the UK Internal Market (UKIM), and I trust that recent amendments to the UKIM Bill (now Act) have largely allayed the Committee's concerns around its impact on Common Frameworks. The Act is essential for guaranteeing seamless trade and jobs across all four corners of the United Kingdom following the end of the Transition Period, providing the certainty businesses and citizens badly need as we respond to and navigate our recovery from the COVID-19 pandemic. Common Frameworks were never intended to be an all-encompassing solution to the maintenance of the internal market, and as such do not alone provide this certainty; additional legislative protection, now provided by the UKIM Act, is necessary.

All three devolved administrations provided substantial responses during the four week consultation period which took place following the publication of the UKIM White Paper

on 16 July. This was in addition to 286 businesses of all sizes which were engaged with across all four parts of the UK. Furthermore, following the Bill's introduction into Parliament on 9 September, extensive and constructive engagement took place with both the Northern Ireland Executive and the Welsh Government at both official and Ministerial level. This engagement directly influenced several Government amendments to the Bill, not least those concerning Common Frameworks. Such engagement was repeatedly offered to the Scottish Government.

I believe the amendments made to the UKIM Bill concerning Common Frameworks make clear this Government's respect for the Common Frameworks programme and its place in the wider internal market landscape. We have made explicit on the face of the Act that the Government may use delegated powers under Sections 10 and 18 to exclude divergence agreed through the Common Frameworks process from the operation of the market access principles, where all parties to the agreement concur. This will ensure that the market access principles in this Act can work to provide certainty and a seamlessly functioning internal market, whilst divergence agreed under the Common Frameworks programme is respected. In addition to this, in the interests of transparency, under Section 33 of the Act, the Office for the Internal Market (OIM) will now report once every 5 years on the intersect between the market access principles and agreements made under Common Frameworks.

It is important to be aware that to date Common Frameworks have been deliberately drafted to ensure sufficient flexibility to account for wider developments and the resolution of issues which cut across numerous frameworks, including those pertaining to the internal market. In some cases I appreciate this has meant provisional frameworks contain placeholder text. I would like to assure you that all Common Frameworks will be updated as necessary to reflect developments, whether with regard to the UKIM Act or any other cross-cutting issues. The Government will ensure that the committee is aware of these changes. This does not impede the operation of provisional frameworks at the end of the Transition Period. How the process for excluding divergence agreed under a Common Framework is given effect as the provisions in the UKIM Act are implemented will be the subject of discussion and agreement with the devolved administrations, and the Government will provide further clarity on this matter as we move into 2021.

### **Northern Ireland Protocol detail in provisional frameworks**

Different outline framework documents will require different amounts of detail depending on the policy area in question and the degree to which the framework is building on pre-existing arrangements, among other factors. However, I agree that cross-cutting issues will affect many of the frameworks and it is important that they be considered appropriately in the drafting of the framework. You raised the Northern Ireland Protocol specifically. Further to my letter to the Committee on the interaction between Common Frameworks and the Protocol on 9 December, I concur that the recent progress made in Protocol implementation (including the Command Paper published on 10 December) will make the implications of the Protocol for specific Common Frameworks clearer than

was the case when I wrote to you. As stated in my previous letter, the implementation of the Protocol and the outcomes of ongoing negotiations on the UK's future relationship with the EU are likely to have a bearing on the content of specific decisions that relate to policy areas covered by the Protocol once Common Frameworks are operational. I do however agree it is sensible for parties to frameworks to be as prepared as they can in advance regarding what divergence the Protocol may engender and how it may be managed. To this end my officials are planning further stress testing of Protocol implementation consequences for frameworks in partnership with the NI Executive.

Crucial to this management is the robustness of the governance mechanisms in Common Frameworks, since Common Frameworks themselves consist primarily of the governance mechanisms set out in the framework document and, where applicable, the concordat. It is these governance mechanisms that allow joint decision-making to take place in a circumscribed policy area and disputes to be resolved. Once Common Frameworks are operational it will be vital for the parties to relevant frameworks to be clear on the specific Protocol implications for policy which sits under those frameworks. That being said, it is not necessary that these policy consequences be comprehensively set out in each outline framework in advance of the framework being operational.

The relevance of the Protocol to Common Frameworks does vary from framework to framework, but those in which the Protocol is relevant do include standard text referring to the Protocol, and indeed have specific references to those parts of the Protocol which apply to the policy area covered by the Framework. Each Common Framework will need to manage the impact of the Protocol, and I am confident that the mechanisms that have been developed within Common Frameworks are sufficient for this purpose. I note your request for provisional frameworks to include a draft version of the concordat and any relevant Memorandum of Understanding to aid scrutiny, while recognising that any decisions on including accompanying documentation is a matter for individual Framework-owning departments.

## **Looking ahead**

We are currently working closely with departments and the devolved administrations in order to provisionally confirm frameworks by year end and I will write to update you on the position in the new year. Once provisional confirmation by JMC(EN) Ministers has been provided the departmental leads will work on preparing the frameworks for parliamentary scrutiny. I am sure officials will be happy to engage with committee clerks on this next stage of the process.

In addition to the provisional frameworks already provided, I understand UK Parliament committees have been sent framework summaries for the frameworks within the Department for Transport remit, as well as Public Procurement, Public Health, Blood Safety and Quality, Organs, Tissues and Cells and the Emissions Trading Scheme. Due to the need to ensure the remaining summaries contain the required information it is unlikely they will be provided before the end of this year. Work is continuing apace on submitting the summaries to UK Parliamentary committees as soon as possible.

You referred in your letter to the number of days for UK Parliamentary scrutiny. We have advised 21 sitting days for the scrutiny of a framework by UK Parliamentary committees, and this roughly aligns with the 28 calendar days provided for by the Scottish Parliament. Should additional time be required, I would suggest that committees explore this with the relevant department to see what can be accommodated to enable full scrutiny. 21 days has been advised as it strikes a balance between providing committees with the best opportunity to scrutinise frameworks, and allowing frameworks to develop at a rate that facilitates timely implementation. There is no precedent for scrutiny of this type of document and the UK Government wishes to ensure that legislatures are given sufficient time without detriment to frameworks' progress. If there are any specific pressures relating to the provision of time for scrutiny, my officials will be very happy to liaise with committee clerks to determine the most constructive way forward.

As you highlight, due to the Scottish and Welsh parliamentary elections in 2021, the Welsh and Scottish Governments do not expect their legislatures' committees to make significant progress scrutinising additional frameworks until September 2021. It has been agreed between the UK Government and devolved administrations that once a provisional framework is ready (further developed and consulted upon as required) that they should be forwarded to the UK Parliament and Northern Ireland Assembly to initiate scrutiny. This is likely to mean that UK Parliament scrutiny will take place ahead of that in the Welsh and Scottish legislatures. Arrangements in place will mean that all committees consider the same version for scrutiny, but where the framework has changed, this will be noted to those committees. Recommendations will not be considered until all legislatures have had an opportunity to scrutinise.

### **Dunlop and Common Frameworks**

As you know, it has been our ambition to publish Lord Dunlop's review of Union Capability, alongside the successful joint conclusion of the review of intergovernmental relations (IGR). I am pleased by the progress all four administrations have made in developing a package of reforms for IGR and we are close to achieving a mutually agreeable conclusion to that review, though in the context of wider events, it has not been possible to do that before the end of this year. Our ambition of course remains to formally conclude the IGR review jointly at the earliest opportunity in the New Year, and publish that alongside the Dunlop report and the Government's Response and at a time where public and parliamentary attention can be given to it.

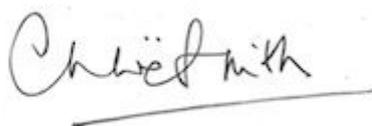
Common Frameworks will be underpinned by strong overarching intergovernmental structures. These will facilitate consultation and collaboration between administrations and, when necessary, a route to escalate and resolve disputes. The final IGR recommendations will build on the existing structures and dispute avoidance and resolution processes in place for common frameworks. Governance structures and guidance for departments are being designed to facilitate agreement and provide clarity

on the roles and responsibilities of each party, and to strengthen intergovernmental working on a substantial number of policy areas.

We very much hope we can move into new structures that are more representative and collaborative, as proposed by the joint review of intergovernmental relations. Sensible implementation methods for the new structures will be important, and I intend to ensure it is as smooth as possible. I aim for there to be no gap in intergovernmental relations while we make the changes, as we are committed to continued engagement with the devolved administrations on EU relations and much more.

Thank you again for your letter and I look forward to continuing our work together.

Yours sincerely,

A handwritten signature in black ink that reads "Chloe Smith". The signature is written in a cursive style and is underlined with a single horizontal line.

**Chloe Smith MP**

**Minister of State for the Constitution and Devolution**