

PACAC (Public Administration and Constitutional Affairs Committee)

House of Commons · London SW1A 0AA

Tel 020 7219 3268 Email pacac@parliament.uk Website www.parliament.uk/pacac

Bruce Crawford MSP
Chair of the Finance and Constitution Committee
Finance and Constitution Committee
The Scottish Parliament
Edinburgh
EH99 1SP

4 June 2019

The Public Administration and Constitutional Affairs Committee (PACAC), welcomes the request from the Finance and Constitution Committee set out in your letter of 26 March 2019, to address some of the issues which our respective committees have both given their attention to recently. Please find below PACAC's response to the questions raised under the three headings in your letter.

Legislation

In its Report *Devolution and Exiting the EU: reconciling differences and building strong relationships*, PACAC said it was "highly regrettable" that there was so little consultation between the UK and devolved governments in advance of the publication of European Union (Withdrawal) Bill. The UK Government accepted our recommendation that draft legislation should be shared far enough in advance with devolved governments to identify and work through any issues. We would expect that this time would allow a devolved government to consider and gauge the opinion of the devolved legislature, in the same way that the UK Government would gauge the opinion of member of the House of Commons in advance of publishing legislation. Following the publication of the Bill, devolved governments produce legislature consent memoranda. We are aware your Committee has spent considerable time and effort examining and reporting on these memoranda. However, unless the devolved government brings forward a legislative consent motion the opportunities for the whole devolved legislature to consider the issues and formally report their views on legislation are extremely limited. Added to this there is currently no formally way for the legislatures of the UK or their committee's to formally communicate. In *Devolution and Exiting the EU* we recommended that mechanisms and procedures for the different parliaments and assemblies of the UK to communicate formally with one another should be established. Setting up such mechanisms would allow better communication to become part of the devolution architecture, it would also help to build greater public trust in the way the representative parts of the UK political system are working together.

As the sovereign law-making authority for the UK, the Houses of Parliament must be aware of when they are legislating in areas of competence which they have devolved to legislature in Northern Ireland Scotland and Wales. In order to aid this, PACAC recommended that "a procedure to acknowledge more clearly that a Bill is in an area

that requires legislative consent and whether that consent has been given by a devolved legislature; and where such consent cannot be obtained, what procedures should follow” should be established. Part of this procedure could include a formal message being sent from devolved legislatures to the UK legislature. Such a procedure of sending a message could also be used by a devolved legislature to debate and if agreed signal concern about the exercise of a power by a UK minister to legislate in non-reserved matters currently subject to EU Law.

PACAC agrees that devolved legislatures should expect in principle to be consulted by their respective governments before consent is given by devolved government Ministers. As with other principles or convention in the UK political system, we would recommend that this principle is insisted on and protected jealously from governments seeking to make exceptions, even in areas where the legislature may be in agreement with the devolved government.

PACAC also suggested that the voice of devolved legislatures could be greatly enhanced through the discussion of these issues in an interparliamentary body. We note the initial success of the Interparliamentary forum on Brexit in bringing together colleagues from the UK legislatures (with the unfortunate exception of the Northern Ireland Assembly members while there is no agreement on re-establishing an executive) to discuss common issues. We would be in favour in this Forum being formalised and expanded to allow such issues to be raised and discussed.

International Treaties.

PACAC is currently considering whether to examine the issue of Parliament’s role in regards to treaties as part of *The Role of Parliament in the UK constitution* inquiry series, as such we are not yet in a position to fully engage or address this question. The Committee is however fully cognisant of the issues and questions surrounding the role of the devolved legislatures.

International relations including foreign affairs, as your letter notes, are reserved matters. There has previously been scope for devolved governments to assist the UK Government in areas relating reserved matters. This is a common-sense arrangement, which we would expect at the very least to continue. We would hope that a more robust discussion forum would be part of a revised inter-government relations system, to come out of the current IGR review. All though we note that there is unlikely to be any immediate indication of what this might look like as the Chancellor of the Duchy of Lancaster, Rt Hon David Lidington MP, recently told us the review would not be completed until the end of 2019.

Discussion of treaties and treaty scrutiny is an area where inter-parliamentary work may be very fruitful, and an inter-parliamentary body could play an important role in coordinating scrutiny and communicating concerns between the UK legislatures. With this in mind, the House of commons is hoping the Secretary of State for International Trade will attend the next interparliamentary forum on Brexit, this will give colleagues in devolved legislatures and opportunity to talk directly the UK Government about how future free trade agreements might be reached, and the role the UK Government envisages for devolved governments and legislatures in this process.

PACAC (Public Administration and Constitutional Affairs Committee)

House of Commons · London SW1A 0AA

Tel 020 7219 3268 Email pacac@parliament.uk Website www.parliament.uk/pacac

Common Frameworks

PACAC shares the Finance and Constitution Committee's concern on how Common Frameworks will be established and operate. In *Devolution and Exiting the EU* PACAC raised strong concerns that there does not appear to be a common strategy or policy of how Common Frameworks will operate. If Common Frameworks are developed independent of one another, there is a risk of a disparate set of Frameworks with no consistent or coherent rational or operational logic being established. This will make the task of scrutinising the frameworks, far more difficult and this should be an issue of concern for members of all the UK legislatures. The UK Government has told us that there is strong central oversight of the Common Frameworks workstream overseen by the JMC(EN), however, this is not the same as having a common strategy or policy for how they operate.

With this in mind, we recommended that the Government publish a set of principles for the governance and operation of Common Frameworks. The UK Government in response to our Report has pointed to the principles for identifying Common Frameworks. However, it now appears that the creation, governance and operation principles may be part of the IGR review currently being carried out. We would encourage the Finance and Constitution Committee to press the Scottish Government on whether they are aware of what the governance and operation principles for Common Frameworks will be.

On the question of whether there is a need for parliamentary consent prior to the UK and devolved governments agreeing legislative and non-legislative common frameworks, PACAC is clear that the UK Government needs to be more transparent in regards to Common Frameworks. Both legislative and non-legislative frameworks should undergo full and detailed scrutiny. Legislative frameworks will have to undergo a legislative process and as such will require the consent of legislatures in order to come into and continue in effect. While non-legislative frameworks may not require prior consent, they must be open to prior scrutiny, and legislatures should think carefully about how they might effectively act if that scrutiny raises concerns.

While ability to scrutinise and where appropriate consent to particular Common Frameworks arrangements within a legislature's competence must remain, Common Frameworks are a whole UK issue and so PACAC recommended that serious consideration be given to establishing inter-parliamentary body to scrutinise UK Common Frameworks. We recommended that the Clerks of the Four UK legislatures draw up proposals for such a body. We understand that work has begun on such proposals alongside the interparliamentary forum on Brexit, but this progress has been somewhat hindered by not knowing what the reform of the Inter-governmental relations will look like.

Sir Bernard Jenkin MP

Chair, Public Administration and Constitutional Affairs Committee