



The Scottish Parliament
Pàrlamaid na h-Alba

Bruce Crawford
Convener
Finance and Constitution Committee

**Public Audit and Post-legislative
Scrutiny Committee**

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The Scottish Parliament
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Dear Convener

New powers arising from the UK's withdrawal from the EU: role of the Scottish Parliament

Thank you for your letter of 25 March seeking the views of the Public Audit and Post-legislative Scrutiny Committee on the role of the Scottish Parliament in relation to the new powers arising from the UK's withdrawal from the European Union.

The Committee notes that you are seeking the views of the Committee on the scrutiny of Scottish Ministers' consent to the exercise by UK Ministers of powers to make subordinate legislation in areas within the legislative competence of the Scottish Parliament which previously were within the competence of the EU. This Committee has not been involved in scrutinising any of the Legislative Consent Memoranda that have been lodged in connection with the various "Brexit Bills". As such, it is unable to comment on lessons to be learned or the processes that should be in place.

Nonetheless, as a matter of principle, the Committee agrees that, as a minimum, the Scottish Parliament should be consulted prior to consent being given by Scottish Ministers to exercise of the powers.

Your letter also seeks the views of the Committee on the role of the Scottish Parliament in scrutinising common frameworks. In this regard, the Committee thought it might be

helpful to briefly set out its recent experience of scrutinising the audit and accountability arrangements under the Scotland Act 2016.

The Committee's consideration of these arrangements can be traced back to work undertaken by the session four Public Audit Committee on the then Scotland Bill.¹ The Committee wanted to understand whether the audit and accountability arrangements that would accompany the further powers would enable the Scottish Parliament to hold to account those who collect or spend public money. The Committee published a response to the Scotland Bill 2015 as introduced, which set out three key principles to underpin audit reporting to the Scottish Parliament; that it should be proportionate, transparent and robust.² As such, both the UK and Scottish Governments were aware of the clear interest of the Committee in such arrangements.

From the beginning of session five, this Committee requested and received written updates on the proposed audit and accountability arrangements from both the UK and Scottish Governments.³ However, an update in May 2017 advised that a "draft framework" would be discussed by officials from both Governments in June 2017, prior to formal agreement by Ministers.⁴

At that point, the Committee wrote to the Scottish Government noting that there did not "appear to be a specified role for the Committee in this process"⁵ and requesting a briefing from Scottish Government officials (a request to which the Scottish Government agreed).⁶

The Committee was provided with a copy of the draft Framework in advance of the subsequent evidence session in February 2018. Following that session, the Committee set out its concerns on the draft Framework in writing to both the Scottish and UK Governments, having sought the views of other committees including those of the Finance and Constitution Committee.⁷

The Committee subsequently wrote to the Scottish Government seeking an update on the Framework and the extent to which the Committee's concerns had been addressed and indicating that it would like a copy of the updated draft Framework.⁸ In response, the Cabinet Secretary indicated that progress was being made in "some of

¹ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/87478.aspx>

² [http://www.scottish.parliament.uk/S4_PublicAuditCommittee/Public_Audit_Committee_-_Scotland_Bill_Response\(2\).pdf](http://www.scottish.parliament.uk/S4_PublicAuditCommittee/Public_Audit_Committee_-_Scotland_Bill_Response(2).pdf)

³ <https://www.parliament.scot/parliamentarybusiness/CurrentCommittees/106876.aspx>

⁴ https://www.parliament.scot/S5_Public_Audit/2017_05_12_EE-PAPLS_Audit_Accountability.pdf

⁵ http://www.parliament.scot/S5_Public_Audit/General%20Documents/Letter_from_convener_to_Eleanor_Emberson.pdf

⁶ http://www.parliament.scot/S5_Public_Audit/General%20Documents/PAPLS_Audit_and_Accountability_Letter_28062017.pdf

⁷ https://www.parliament.scot/S5_Public_Audit/Inquiries/20180405_Letter_to_Cab_Sec-Chief_Secretary_to_the_Treasury.pdf

⁸ https://www.parliament.scot/S5_Public_Audit/General%20Documents/20180925_Letter_to_Cab_Secretary.pdf

the areas that the Committee has highlighted” and that he would provide the Committee with the Framework once it had been finalised.⁹

The Committee was provided with a copy of the final document in February 2019. At that point, the Committee learned that the “Framework” had been confined to a set of principles.¹⁰

It is clear from the Committee’s experience that the Parliament’s scrutiny role in respect of the development of intergovernmental arrangements requires to be both strengthened and formalised. As such, the Committee agrees that it would be helpful to establish a protocol between the Scottish Government and the Scottish Parliament on the process for scrutiny of legislative and non-legislative common frameworks. In particular, it is suggested that such a protocol should include a commitment from the Scottish Government—

- to provide regular written and oral updates to the relevant Parliamentary committees on the development of any such framework;
- for such updates to address progress on any specific concerns raised by the committees, including setting whether the issues have been resolved or remain outstanding;
- to provide the relevant committees with a draft of the framework at certain key points in its development.

I trust these comments are helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jenny Marra', with a long horizontal line extending to the right.

Jenny Marra MSP
Convener of the Committee

⁹https://www.parliament.scot/S5_Public_Audit/General%20Documents/Correspondence_from_the_Cabinet_Secretary_for_Finance_Economy_and_Fair...pdf

¹⁰https://www.parliament.scot/S5_Public_Audit/General%20Documents/Framework_for_audit_and_accountability.pdf