



The Scottish Parliament
Pàrlamaid na h-Alba

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Finance and Constitution Committee

By e-mail only

**Rural Economy and Connectivity
Committee**

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Dear Convener,

IMPLICATIONS OF BREXIT FOR DEVOLUTION

Thank you for your letter of 30 October 2020 concerning implications of the Brexit process for the future role of the Scottish Parliament and its committees.

As I am sure you will appreciate, the process of the UK leaving the European Union has particularly significant implications for a number of policy areas falling within the remit of the Rural Economy and Connectivity Committee, including agriculture, fisheries and the wider rural economy.

As a consequence, the REC Committee has taken an ongoing close interest in the implications of Brexit for policy areas within its remit. Most recently, we took evidence from the UK Secretary of State for Environment, Food and Rural Affairs George Eustice and subsequently from the Cabinet Secretary for Rural Economy and Tourism Fergus Ewing where Committee members sought to address these matters directly.

Drawing partly on the answers we have heard during those exchanges, I will address in turn each of the issues raised in your letter as they relate to the work of the Rural Economy and Connectivity Committee.

The keeping pace power

The REC Committee recognises the importance of the EU market for Scotland's food and drink sectors with nearly 40% of Scottish food and drink exports currently traded with the EU. In that context, there is a recognition that maintaining alignment with EU standards will be important to allow Scotland to continue to be able to sell food and drink produce and products into the EU marketplace.

The REC Committee raised the issue of keeping pace with EU standards with the UK Secretary of State and, in particular, asked whether the provisions of the Internal Market Bill would limit the ability of Scottish Ministers to keep pace with EU law or to adhere to EU environmental principles, for instance.

The Secretary of State gave the following answer:

"There would be nothing to prevent the Scottish Government from [keeping pace with EU law] insofar as this is consistent with the devolved settlement...

"Broadly speaking it's open to the Scottish Government to slavishly follow EU law if that is what they wish to do. I suspect it won't be a strategy that can be maintained in the long term because it is only a matter of time before the EU would bring forward policy proposals that would be manifestly against Scottish interests and it then does become a moot point of do you elevate the pursuit of EU law above the interests of Scotland? I think that would leave any Scottish Government in quite a difficult quandary."

Based on the evidence it has gathered on these matters, the REC Committee is of the view that **a careful balance will need to be struck between maintaining alignment with EU law to enable the continuation of exports into the EU marketplace and setting standards that continue to meet the specific needs and circumstances of Scotland's food and drink industry and agriculture and fisheries sectors.**

This is an area where the Committee and any future successor Committee would wish to have a continuing scrutiny role. At the same time, the Committee is concerned that **any expectation that it should undertake ongoing monitoring and horizon-scanning of the EU policy-making process in areas within its remit would have major capacity implications for parliamentary services.**

Common frameworks

In recent months, the REC Committee has already scrutinised the notification of a large volume of UK Statutory Instruments related to common frameworks without having had the opportunity firstly to scrutinise the detail of the associated common frameworks.

Asked what ongoing role he foresaw for UK Parliaments in scrutinising the operation of common frameworks, Secretary of State George Eustice responded:

"I think the common frameworks are more a matter between the devolved administrations and obviously each will raise and address questions raised by their respective parliaments. The important thing to state is that none of those

frameworks have legislative force. They are... memorandums of understanding between the devolved administrations on modes of working and sharing best practice and notifying one another of changes they might make.”

Notwithstanding the evidence it has received from UK and Scottish Ministers, **the Committee shares the concerns of the Finance and Constitution Committee that common frameworks should not be effectively imposed on the Parliament and stakeholders without meaningful consultation and the opportunity to propose amendments.**

In particular, the Committee is very concerned that, **if not approached carefully, the introduction of common frameworks could represent a shift towards a greater degree of intergovernmental decision-making where the scrutiny role of parliaments is significantly diminished.**

UK Internal Market Bill

The Committee has ongoing questions and concerns about the practical implementation of the UK Internal Market Bill and, in particular the Market Access Commitment and the principles of mutual recognition and non-discrimination which underpin that commitment.

Applying the Market Access Commitment, there are potential risks that England, due to its relatively larger size, will heavily influence the operation of the internal market and the Committee is concerned that, as Professor Michael Dougan of the University of Liverpool has pointed out in recent written evidence to the CTEEA Committee, this could render the exercise of many devolved powers redundant in practice.

Giving evidence to the Committee, the UK Secretary of State has claimed that the UK Internal Market Bill will enhance the powers of the Scottish Parliament compared to the level of influence it was previously able to exert over rules underpinning the EU single market:

“...the principle of mutual recognition which is the essence of the UK Internal Market Bill will mean that we have coherence within the UK internal market and that... trade within the four nations cannot be frustrated... and that’s obviously very different to what we had in the EU – in the EU you had regulatory harmonisation where the Scottish Parliament and the UK Parliament were disempowered under the 1972 Act and where the European Commission directly regulated on our behalf and where it was unlawful for us to legislate in an area that was occupied by the European Union. What we’re going into now is a much looser system where the Scottish Parliament will be empowered and able to make its own regulations in a way that it wasn’t previously... and the way that we will manage those differences is not by centralisation and harmonisation but by regulatory coordination.”

Notwithstanding the claims the UK Secretary of State has made about the enhanced powers he believes the Scottish Parliament will have through the UK Internal Market Bill, the REC Committee considers that **its implementation will create new challenges that make it extremely important that the Committee’s role in**

scrutinising the impact of the operation of the UK internal market in policy areas falling within its remit is maintained and safeguarded.

In connection with this, the Committee seeks further clarity about the proposed UK Shared Prosperity Fund and the extent to which this will be used to replace current EU funding for important rural development programmes such as Leader.

Trade Agreements

Given that international agreements are reserved, the precise involvement of Scottish Ministers, of industry stakeholders and, indirectly, of the Scottish Parliament in future negotiations will be dependent on intergovernmental relations.

Asked specifically by the REC Committee about what role he foresaw for the Scottish Parliament in scrutinising future trade agreements, the UK Secretary of State responded:

“...these trade negotiations are a reserved matter so ultimately the UK Government leads on them. However, through the Trade and Agriculture Commission, we have Scottish stakeholders directly engaged in that process... Very important that we have them engaged in these discussions. But of course..., when we get towards the end state of these trade agreements, the Department for International Trade will also be reaching out and engaging with the devolved administrations as well on what’s proposed.”

Asked by the Committee what role he foresaw for the Scottish Parliament in future negotiations on fisheries, the UK Secretary of State acknowledged the importance of the fisheries sector to Scotland and gave an ongoing commitment to involve the Scottish Government closely in these negotiations at an official and ministerial level. However, the Secretary of State did not address what future role, if any, he thought the Scottish Parliament might have in relation to the negotiation of international fisheries agreements.

The REC Committee shares the Finance and Constitution Committee’s view that it is essential that the devolved institutions, including the Scottish Parliament, are involved at all stages of the trade negotiation process, including the future negotiation of international fisheries agreements, and has been concerned by the lack of recognition from the UK Secretary of State for the important role of the Scottish Parliament and its Committees in this regard.

Governance

Although recent evidence sessions with UK and Scottish Government Ministers have not addressed these matters directly, the REC Committee shares the Finance and Constitution Committee’s view that the Scottish Parliament has an important role in scrutinising how new and pre-existing bodies and agencies with governance responsibilities related to the UK’s departure from the EU discharge those responsibilities in a manner consistent with the devolution settlement.

In this context, the Committee considers that, **insofar as those responsibilities relate to policy areas falling within its remit, it and any successor Committee would want and expect to have an ongoing role in scrutinising their impact.**

Resource implications

As already stated, the REC Committee is concerned that an expectation that Committees would undertake ongoing monitoring and horizon-scanning of the EU policy-making process in areas within their remit has significant implications for Scottish Parliament staffing and resources.

At the same time, the Committee shares the concerns of other Committees that parliamentary scrutiny of other aspects of the new structures and processes created as a consequence of the UK's exit from the European Union will require significant additional resource to be undertaken effectively.

Kind regards



Edward Mountain
Convener
Rural Economy and Connectivity Committee