

T: 0300 244 4000  
E: [scottish.ministers@gov.scot](mailto:scottish.ministers@gov.scot)

Lewis Macdonald MSP  
Convenor  
Health and Sport Committee

Via email: [healthandsport@parliament.scot](mailto:healthandsport@parliament.scot)

10<sup>th</sup> June 2019

Dear Lewis

## **COMMON FRAMEWORKS**

Thank you for your letter dated the 29<sup>th</sup> of May, requesting an update on progress to date on all of the proposed UK Common Frameworks, including any proposed non-legislative frameworks, within the remit of the Committee.

### **Progress to Date**

As you will be aware, the Scottish Government has previously set out its views on Common Frameworks, including as reported in the Finance and Constitution Committee's inquiry report published on 25 March. The technical work by officials is underpinned by the statement of principles agreed by JMC(EN) in October 2017, and has been taken forward by agreement without prejudice to the ongoing negotiations on the UK's future relationship with the EU. In this spirit, the Scottish Government is continuing to work with the UK Government and other Devolved Administrations, making clear that it will consider future UK frameworks where these are in Scotland's interest. However, we will not accept any new constraints on the powers of the Scottish Parliament or of Scottish Ministers, or any attempt to impose, rather than agree, Common Frameworks.

As you note, the UK Government published a report in April which sets out both the progress made to date as well as a revised analysis of the framework policy areas. This report has been drafted in such a way as to respect the different views and priorities across the Administrations and has therefore been welcomed by Scottish Ministers on this basis, mindful of the need to provide information to respective Parliaments and wider stakeholders about frameworks progress.

There are four areas falling within my portfolio that the UK Government has identified as requiring more detailed discussion on whether a legislative common framework might be needed: Mutual Recognition of Professional Qualifications (MRPQ), Reciprocal Healthcare,

Food and Feed Safety and Hygiene Law, and Food Compositional Standards and Food Labelling. Progress made, so far, in each of these areas is set out below.

## **1. MRPQ**

Further to the Committee's approval on 18 December 2018 of my consent proposal, the amended Department of Health and Social Care (DHSC) Regulations, which set out the legislative framework underpinning MRPQ in the UK, have been made in the Houses of Parliament. In the unwelcome event of a no-deal withdrawal, they will come into force to retain the functional mechanisms through which EEA and Swiss trained nationals can have their qualifications in the regulated health professions recognised for the purpose of registration in the UK.

Officials continue to work with DHSC and the Department for Business, Energy and Industrial Strategy in considering the future shape of recognition arrangements following a potential no-deal exit. This has included engagement work to understand what aspects of the recognition process are most important to UK and devolved stakeholders across the regulatory field. This learning could be expected to inform potential negotiation lines in the absence of a reciprocal agreement. However, devolved officials have been clear and unanimous with UK counterparts that official frameworks beyond those that currently exist in legislation are unlikely to be required for the continued effective operation of intra-UK recognition arrangements, where the regulation of professions is devolved.

## **2. Reciprocal Healthcare**

The Revised Framework Analysis report lists EU reciprocal healthcare as an area where future legislation may be needed to implement common rules and ways of working, alongside a non-legislative framework agreement and, potentially, a consistent approach to retained EU law. The Scottish Government's efforts to-date have been focused on ensuring that, if Scotland is forced to leave the EU without a deal, reciprocal healthcare can continue. We have worked closely with the UK Government on the introduction of UK-wide primary and secondary legislation to make this possible, as far as it can be achieved. If there is a deal, then future arrangements will be the subject of further negotiations between the UK and EU during the transitional period.

In broad terms we are content for the UK Government to lead on EU reciprocal healthcare and to continue to fund and administer such arrangements. Indeed, the Healthcare (EEA and Switzerland Arrangements) Act 2019, which was granted legislative consent by the Scottish Parliament, provides them with the vires to do so. However, we are clear that the Scottish Government and the Scottish Parliament must be consulted upon, and agree to, any future legislative proposals that impact on devolved competence.

The Scottish Government, together with the UK Government and the other Devolved Administrations, are in the process of finalising a Memorandum of Understanding (MoU). This will set out agreed arrangements between DHSC and the other Devolved Administrations to support meaningful consultation and agreement. There must be recognition that Scotland has a significant role to play and must be fully involved in arrangements to facilitate treatment outside the UK and in the implementation of healthcare agreements that have an effect on devolved matters.

### **3. Food and Feed Safety and Hygiene Law**

This framework will agree common approaches, where necessary, for the regulation of food and feed legislation currently determined at EU level. This includes both detailed requirements for food and feed additive approvals, import controls, general and detailed requirements for food products and establishments, as well as an overarching framework for official controls. Agreement between officials has been achieved to ensure that the scope of the framework is restricted to those areas where powers are returning from the EU (i.e. are not already matters of subsidiarity), and also to exclude from scope matters which are Scottish specific and do not therefore engage with the internal market or wider international obligations. Arrangements for risk analysis, framework governance and dispute resolution are being developed. There is a pre-existing MoU between Food Standards Scotland and the Food Standards Authority on joint working and information sharing, and it is anticipated that the framework will complement these arrangements.

### **4. Food Compositional Standards and Food Labelling**

This framework will maintain a common approach on food labelling and compositional standards across the UK, in areas where harmonised EU law currently exists, to facilitate the functioning of the internal market, whilst recognising existing policy flexibility and respecting the ability of Ministers in Devolved Administrations to take different approaches in future, where this is proportionate and meets specific needs of those countries. Initial drafts of a framework document have been produced, but more work is required, including a decision on whether or not both food labelling and composition standards could be combined within one framework.

#### **Non-legislative Framework Areas**

There are seven non-legislative framework areas within my remit: (1) elements of the regulation of tobacco and related products; (2) good laboratory practice; (3) nutrition health claims, composition and labelling; (4) blood safety and quality; (5) tissues and cells (apart from embryos and gametes); (6) organs; and (7) public health (serious cross-border threats to health) (notification system for pandemic flu, Zika etc).

Although work across these areas remains at a much earlier stage, in some we have been able to capitalize on well established, joint working arrangements to begin discussions. For example, the UK Government has drafted a Common Framework on tobacco control which will shortly be the subject of discussions between DHSC and the other Devolved Administrations. While we have not yet seen the draft agreement we have been kept informed of progress in its development and its likely contents.

With respect to the proposed framework on good laboratory practice, initial contacts and discussions have taken place with DHSC, the Medicines and Healthcare Products Regulatory Agency and the other Devolved Administrations. In terms of nutrition health claims, composition and labelling, this policy area includes legislation on nutrition and health claims made on food, food for special medical purposes and weight control, food intended for infants, the addition of vitamins and other substances to food, and food supplements. The Nutrition Framework outlines proposals on how to manage the transfer of EU functions to the UK, and progress has been made at official level regarding framework governance, risk assessment, decision making and dispute resolution.

There have also been a number of initial discussions towards possible MoUs in relation to organs, tissues and cells and blood safety and quality. On public health, work is on-going

between the four nations to explore whether a non-legislative framework would be beneficial in the event that we no longer have access to the reporting systems associated with the European Centre for Disease Control. Representatives met to discuss this issue in February and a further meeting is scheduled for June.

### **Next steps on wider engagement on the frameworks (i.e. phase three of the development process)**

The guidance provided to policy teams makes it clear that the timings set out for the phased approach to frameworks development are indicative. The intention is to provide sufficient flexibility for policy teams in different areas to move through Phases 2 – 5 at different speeds, depending on the dependencies and circumstances of particular policy areas. While the process is being managed through clear and agreed project management disciplines, in reality the development of frameworks is emerging as a complex ongoing intergovernmental process with significant impacts and interdependencies, including the outcome of negotiations with the EU.

Officials from all 4 UK Administrations have been working together to develop proposals for joint engagement with a range of stakeholders. The intention is for the plan to be rolled out over the next few months as frameworks start to move into phase 3 of the development process. The plan will inform stakeholders about frameworks, allow their input into the development process and increase transparency.

Engagement is proposed on 3 levels:

- to raise general awareness with umbrella organisations whose members will have an interest in the process and progress of frameworks;
- proactive parliamentary engagement at Westminster and the devolved legislatures to inform both clerks and elected representatives about frameworks, including key milestones and the progress being made; and
- technical engagement by policy teams with sector specific stakeholders, including parliamentary committees, on the detail of individual frameworks.

We expect this engagement to begin shortly.

### **How the Scottish Government intends to engage meaningfully with the Scottish Parliament on each of these proposed Common Frameworks**

As set out in our response to the Finance and Constitution Committee's report on Common Frameworks, the Scottish Government recognises the crucial role parliamentary scrutiny will play in the development, implementation and oversight of any future Common Frameworks.

The Scottish Government is committed to working with the Parliament to develop a suitable scrutiny procedure and would welcome the views of the parliamentary committees, drawing on their experience of the current existing examples of agreed processes, such as:

- the protocol agreed between the Scottish Government and the Scottish Parliament to ensure adequate scrutiny of the large number of statutory instruments required to ensure a functioning statute book on EU exit<sup>1</sup>;

---

<sup>1</sup> [http://www.parliament.scot/S5\\_Delegated\\_Powers/20180911CabSec.pdf](http://www.parliament.scot/S5_Delegated_Powers/20180911CabSec.pdf)

- the written agreement between the Scottish Parliament and Scottish Government on inter-governmental relations<sup>2</sup>: and
- existing processes for parliamentary scrutiny of concordats, MoUs and similar agreements.

I hope that this letter provides you with a useful update at this early stage. I will aim to provide you with a further update in the autumn, once discussions have progressed.

A handwritten signature in black ink, appearing to read 'Jeane Freeman', with a long horizontal flourish extending to the right.

**JEANE FREEMAN**

---

<sup>2</sup> [http://www.parliament.scot/20160309\\_IGR\\_Agreement3.pdf](http://www.parliament.scot/20160309_IGR_Agreement3.pdf)