

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:

For further information contact:

Video conference via Zoom

Alun Davidson

Meeting date: 25 January 2021

Committee Clerk

Meeting time: 14.00

0300 200 6565

SeneddEAAL@senedd.wales

In accordance with Standing Order 34.19, the Chair has determined that the public are excluded from the Committee's meeting in order to protect public health

This meeting will be broadcast live on senedd.tv.

Registration period

(13.30–14.00)

1 Introductions, apologies, substitutions and declarations of interest

2 Changes to freedom of movement after Brexit: The EU's Ambassador to the UK

(14.00–14.50)

(Pages 1 – 30)

His Excellency João Vale de Almeida – EU Ambassador to the UK

Break

(14.50–15.00)

3 Wales in the world – roundtable discussion with academics

(15.00–16.30)

(Pages 31 – 44)

Professor Catherine Barnard – University of Cambridge

Sir Emyr Jones Parry

Professor Anand Menon – King's College London

Dr Rachel Minto – Cardiff University



Senedd Cymru
Welsh Parliament

4 Papers to note

- 4.1 Paper to note 1: Correspondence from the Chairperson of the Committee for the Executive Office at the Northern Ireland Assembly to the Chair regarding correspondence from the Chancellor of the Duchy of Lancaster – 14 January 2021**

(Pages 45 – 57)

- 4.2 Paper to note 2: Correspondence from the Chairperson of the Committee of the Executive Office at the Northern Ireland Assembly to the Chair regarding Committee scrutiny of common frameworks – 14 January 2021**

(Pages 58 – 69)

- 4.3 Paper to note 3: Correspondence from the Chair of the Legislation, Justice and Constitution Committee to the Secretary of State for Wales regarding the Sewel Convention – 21 January 2021**

(Pages 70 – 72)

- 5 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting**

(16.35)

- 6 Changes to freedom of movement after Brexit – consideration of evidence**

(16.35–16.45)

- 7 Wales in the world – consideration of evidence**

(16.45–17.00)

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Committee for the Executive Office

David Rees MS
Chair
External Affairs & Additional Legislation Committee
Welsh Parliament
Cardiff Bay
CF99 1SN

SeneddEAAL@senedd.wales

14 January 2021

Dear David,

CORRESPONDENCE FROM THE COMMITTEE FOR THE EXECUTIVE OFFICE

At its meeting on 13 January 2021, the Committee for the Executive Office agreed to forward a copy of the attached correspondence from The Rt Hon Michael Gove to the Welsh Parliament External Affairs & Additional Legislation Committee for information.

Yours sincerely

Colin McGrath MLA
Chairperson, Committee for the Executive Office

Committee for the Executive Office
Room 375a, Parliament Buildings, Ballymiscaw, Stormont, Belfast, BT4 3XX
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Rt Hon Michael Gove MP
Chancellor of the Duchy of Lancaster
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Our reference: MC2020/17995

6th January 2021

PO 2021

Thank you for your letter of 11 November.

You asked about governance of the Withdrawal Agreement. The Government takes its commitment to transparency regarding the work of the Withdrawal Agreement Joint Committee seriously and my officials have been considering in detail what future arrangements could look like. Any future system of scrutiny will need to reflect the unique significance of the Withdrawal Agreement for Northern Ireland. Much of the legislation that will apply to Northern Ireland falls under the exclusive competence of its institutions, and it is important that oversight of devolved policy responsibilities continues to rest primarily with the Assembly. Now we have reached an agreement, we look forward to beginning discussions with your committee and other relevant parties in the Assembly on the nature of future scrutiny arrangements.

You asked about the Joint Consultative Working Group. I agree about the importance of the Group. The Rules of Procedure for the Group required agreement by the EU. Please find attached confirmation of the EU Council's decision of 23 October (Council Decision (EU) 2020/1599). We will work with the Commission to set up the Group as a working body, arrange a date for the first meeting, to discuss the modalities of its operation.

At the Ireland/Northern Ireland Protocol Specialised Committee we have set out our commitment to include representatives of the Northern Ireland Executive as part of the UK delegation on the Group. Additionally, as set out in the proposed rules of procedure at Rule 3, where appropriate and by decision of the co-chairs, experts or other persons who are not members of delegations may be invited to attend meetings to provide information on a particular subject.

We remain committed to the proposal in our May Command Paper to hold a dedicated session on Article 2.

Regarding Protocol alignment, Article 13 of the Protocol sets out the process for how new EU acts within the scope of the Protocol are to be considered by the Withdrawal Agreement Joint Committee. We will engage further with the Committee on the means for scrutinising this legislation.

Regarding influencing EU policy, the Withdrawal Agreement and Articles 13 and 15 of the Protocol set out the relationship between the UK and the EU in respect of the ongoing implementation of the Protocol. Officials will continue to work closely with the UK Parliamentary scrutiny committees, the Northern Ireland Executive and Northern Ireland Assembly as we design the overall governance process post-transition period.

On Common Frameworks, these have been developed, and their progress reviewed, jointly by officials from the UK Government and the Devolved Administrations, including officials from the Northern Ireland Executive. Frameworks are drafted with the Protocol and the Belfast (Good Friday) Agreement in mind. The Government committed in the *New Decade, New Approach* agreement to unfettered access for Northern Ireland businesses to the whole UK market, and legislated for it.

The annexes to the Protocol list specific EU laws that will continue to apply in Northern Ireland. The Withdrawal Agreement Joint Committee will be the forum for agreeing changes to the legislation in the annexes to the Protocol.

Common Frameworks, once operational, will provide the mechanism by which any divergence resulting from the legislation listed in these annexes can be appropriately managed, with the parties to the frameworks agreeing a common approach that works for consumers and businesses. Every framework contains a review and amendment mechanism that allows the framework to be reviewed should a substantial issue be flagged.

The UK Government has worked with the Devolved Administration to agree a delivery plan for UK Common Frameworks. Whilst legislatures may have differing interests in individual frameworks, they will all be given the same opportunity to scrutinise frameworks relating to their nation.

Regarding treaty and trade negotiations, international relations remain a reserved matter and it is for the UK Government to negotiate on behalf of the UK as a whole. The UK Government has worked closely with the devolved administrations throughout our negotiations with the EU. The UK Government will continue to engage at both ministerial and official level, and we greatly value input from the Northern Ireland Executive, and all the devolved administrations. As you will know, JMC(EN) served as the principal route for devolved administration ministers collectively to input into the UK's approach to negotiations. We also continue to engage the devolved administrations, including the Northern Ireland Executive, at all levels as we take forward Protocol implementation.

Turning to inter-governmental relations (IGR), I am pleased by the progress all Administrations have made in developing a package of reforms for IGR and we are close to concluding that review. In August and September, my colleague, the Minister for Constitution and Devolution met with her counterparts to discuss a proposal for dispute avoidance and resolution, options for machinery to improve the existing Joint Ministerial Committee structures, secretariat and transparency arrangements, and a proposed delivery plan to conclude the review. All parties endorsed the direction of travel and, since then, work has progressed at official-level during the

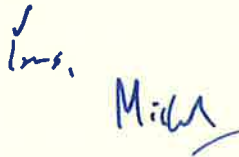
final stages of developing a package of reforms. I discussed progress on the IGR Review at JMC(EN) on 3 December and all administrations agreed to accelerate this work.

In the context of wider events, it has not been possible to do that before the end of the year. Our ambition of course remains to conclude the IGR review at the earliest opportunity, and publish that alongside the Dunlop Report.

The Government also announced measures to improve reporting by the UK Government on inter-governmental activity on GOV.UK and to the UK Parliament.

More broadly, our approach to IGR is to create a system that secures strategic cooperation on all cross-cutting domestic issues, which includes those relating to the UK internal market. We welcome discussions with the devolved administrations. Specifically in relation to the consultation requirements that, following Government amendments, are now attached to powers in the UK Internal Market Bill, the Government has already proposed a regular meeting with the devolved administrations to consider the UK internal market system once in operation.

With every good wish,

A handwritten signature in blue ink, appearing to read 'Ms. Michael', with a stylized flourish at the end.

**Rt Hon Michael Gove MP
Chancellor of the Duchy of Lancaster
and Minister for the Cabinet Office**

COUNCIL DECISION (EU) 2020/1599**of 23 October 2020**

on the position to be taken on behalf of the European Union in the Joint Consultative Working Group established by the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community as regards the adoption of its rules of procedure

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 50(2) thereof,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (the 'Withdrawal Agreement') was concluded by Council Decision (EU) 2020/135 ⁽¹⁾ and entered into force on 1 February 2020.
- (2) The Joint Consultative Working Group (the 'working group') was established by Article 15(1) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement ('the Protocol') to serve as a forum for the exchange of information and mutual consultation on the implementation of the Protocol.
- (3) Pursuant to Article 15(2) of the Protocol, the working group is to be composed of representatives of the Union and the United Kingdom and is to carry out its functions under the supervision of the Specialised Committee on issues related to the implementation of the Protocol, established by Article 165(1), point (c), of the Withdrawal Agreement, to which it is to report.
- (4) Pursuant to Article 15(6) of the Protocol, the working group is to adopt its own rules of procedure by mutual consent.
- (5) In view of the purpose and composition of the working group and its relation with the Specialised Committee on issues related to the implementation of the Protocol, the rules of procedure should be similar to the rules of procedure provided for in Annex VIII to the Withdrawal Agreement as regards the Specialised Committees established by Article 165(1) of the Withdrawal Agreement.
- (6) It is therefore appropriate to establish the position to be taken on the Union's behalf in the working group.
- (7) In order to allow for the prompt application of the measures provided for in this Decision, this Decision should enter into force on the date of its adoption,

HAS ADOPTED THIS DECISION:

Article 1

The position to be adopted on the Union's behalf in the working group established by Article 15(1) of the Protocol as regards the adoption of the rules of procedure of the working group pursuant to Article 15(6) thereof shall be based on the draft decision of the working group attached to this Decision.

Article 2

The decision of the working group shall be published in the *Official Journal of the European Union*.

⁽¹⁾ Council Decision (EU) 2020/135 of 30 January 2020 on the conclusion of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29, 31.1.2020, p. 1).

Article 3

This Decision shall enter into force on the date of its adoption.

Done at Luxembourg, 23 October 2020.

For the Council
The President
S. SCHULZE

ANNEX

**DECISION NO .../2020 OF THE JOINT CONSULTATIVE WORKING GROUP ESTABLISHED BY
THE AGREEMENT ON THE WITHDRAWAL OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND FROM THE EUROPEAN UNION AND THE EUROPEAN ATOMIC
ENERGY COMMUNITY**

of ...

adopting its rules of procedure

THE JOINT CONSULTATIVE WORKING GROUP,

Having regard to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ⁽¹⁾ (the 'Withdrawal Agreement'), and in particular Article 15(6) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement ('the Protocol'),

Whereas:

- (1) Pursuant to Article 15(6) of the Protocol, the Joint Consultative Working Group (the 'working group') is to adopt its own rules of procedure by mutual consent.
- (2) In view of the purpose and composition of the working group and its relation with the Specialised Committee on issues related to the implementation of the Protocol, the rules of procedure of the working group should be similar to the rules of procedure provided for in Annex VIII to the Withdrawal Agreement as regards the Specialised Committees established under Article 165 of the Withdrawal Agreement,

HAS ADOPTED THIS DECISION:

Article 1

The work of the Joint Consultative Working Group established by Article 15(1) of the Protocol on Ireland/Northern Ireland to the Withdrawal Agreement shall be governed by the rules of procedure set out in the Annex to this Decision.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at ...,

*For the Joint Consultative
Working Group
The Co-chairs*

⁽¹⁾ OJ L 29, 31.1.2020, p. 7.

ANNEX

RULES OF PROCEDURE OF THE JOINT CONSULTATIVE WORKING GROUP

*Rule 1***Chair**

1. The Joint Consultative Working Group (the 'working group') shall be co-chaired by a representative designated by the European Commission and by a representative designated by the Government of the United Kingdom. The European Union and the United Kingdom shall notify each other in writing of the designated representatives.
2. A co-chair who is unable to attend a meeting may be replaced for that meeting by a designated alternate. Alternates designated by the European Commission or by the Government of the United Kingdom shall inform the other co-chair and the Secretariat of the working group in writing of their designation as early as possible.
3. The designated alternate of the co-chair shall exercise the rights of that co-chair to the extent of the designation. Any reference in these Rules of Procedure to the co-chairs shall be understood to include designated alternates.

*Rule 2***Secretariat**

The Secretariat of the working group (the 'Secretariat') shall be composed of an official of the European Commission and an official of the Government of the United Kingdom. The Secretariat shall, under the authority of the co-chairs, perform the tasks conferred on it by these Rules of Procedure.

*Rule 3***Participation in meetings**

1. Before each meeting, the Union and the United Kingdom shall inform each other through the Secretariat of the intended composition of the delegations.
2. Where appropriate and by decision of the co-chairs, experts or other persons who are not members of delegations may be invited to attend meetings of the working group in order to provide information on a particular subject.

*Rule 4***Meetings**

1. The working group shall hold its meetings alternately in Brussels and the United Kingdom, unless the co-chairs decide otherwise.
2. By way of derogation from paragraph 1, the co-chairs may decide that a meeting of the working group be held by videoconference or teleconference.
3. Each meeting of the working group shall be convened by the Secretariat at a date and place decided by the co-chairs. Where either the Union or the United Kingdom has made a request for a meeting, the working group shall endeavour to meet within 15 days of such request. In cases of urgency it shall endeavour to meet sooner.

*Rule 5***Documents**

Written documents exchanged formally within the working group, whether at or in between meetings, shall be numbered and circulated to the Union and the United Kingdom by the Secretariat as documents of the working group.

*Rule 6***Correspondence**

1. The Union and the United Kingdom shall send their correspondence addressed to the working group to the Secretariat. Such correspondence may be sent in any form of written communication, including by electronic mail.
2. The Secretariat shall ensure that correspondence addressed to the working group is forwarded to the co-chairs and is circulated, where appropriate, in accordance with Rule 5.
3. All correspondence from or addressed directly to the co-chairs shall be forwarded to the Secretariat and shall be circulated, where appropriate, in accordance with Rule 5.

*Rule 7***Agenda for the meetings**

1. For each meeting a draft provisional agenda shall be drawn up by the Secretariat. It shall be transmitted, together with the relevant documents, to the co-chairs no later than 5 days before the date of the meeting.
2. The provisional agenda shall include those items, the inclusion of which in the agenda has been requested by the Union or the United Kingdom. Any such request, together with any relevant document, shall be submitted to the Secretariat no later than 7 days before the beginning of the meeting.
3. No later than 3 days before the date of the meeting, the co-chairs shall decide on the provisional agenda for a meeting. They may decide to make that provisional agenda, or any part thereof, public before the beginning of the meeting.
4. The agenda shall be adopted by the working group at the beginning of each meeting. On request by the Union or the United Kingdom an item other than those included in the provisional agenda may be included in the agenda by decision of the working group.
5. The co-chairs may decide to derogate from the time limits specified in paragraphs 1, 2 and 3.

*Rule 8***Minutes**

1. Draft minutes of each meeting shall be drawn up by the Secretariat, within 5 days from the end of the meeting, unless the co-chairs decide otherwise. The Secretariat shall also prepare a summary of the minutes.
2. The minutes shall, as a rule, summarise each item on the agenda, specifying where applicable:
 - (a) the documents submitted to the working group;
 - (b) any statement that one of the co-chairs requested to be entered in the minutes; and
 - (c) operational conclusions adopted on specific items.
3. The minutes shall include a list of the names, titles and capacity of all individuals who attended the meeting.
4. Co-chairs may request the amendment of the draft minutes or summary within 5 days of their circulation by the Secretariat in accordance with paragraph 1. The minutes and summary shall be considered as approved by the co-chairs upon expiry of that period if no amendments were requested. If a co-chair requests an amendment within that period, the minutes and summary shall be considered as approved once the other co-chair has agreed to the requested amendment.
5. Once approved, electronic copies of the minutes shall be signed by the members of the Secretariat and transmitted to the Union and to the United Kingdom, as well as to the Specialised Committee on issues related to the implementation of the Protocol on Ireland / Northern Ireland. The co-chairs may then decide to make the summary of the minutes public.

*Rule 9***Decisions**

1. The decisions of the co-chairs provided for by these rules of procedure shall be taken by mutual consent.
2. In the period between meetings, the co-chairs may take decisions by written communication through an exchange of electronic notes between the co-chairs. The Secretariat shall inform the parties of any such decisions by the co-chairs.

*Rule 10***Confidentiality**

1. Unless otherwise decided by the co-chairs, the meetings of the working group shall be confidential.
2. Where the Union or the United Kingdom submits information considered as confidential or protected from disclosure under its laws and regulations to the working group, the other party shall treat that information received as confidential.

*Rule 11***Working language**

The working language of the working group shall be English. Unless otherwise decided by the co-chairs, the working group shall base its deliberations on documents prepared in English.

*Rule 12***Expenses**

1. The Union and the United Kingdom shall each meet any expenses they incur as a result of participating in the meetings of the working group.
2. Expenditure in connection with the organisation of meetings and reproduction of documents shall be borne by the Union for meetings held in Brussels, and by the United Kingdom for meetings held in the United Kingdom.
3. Expenditure in connection with interpretation to and from the working language of the working group at meetings shall be borne by the party requesting such interpretation.

*Rule 13***Annual report to the Specialised Committee**

1. The Secretariat shall draw up a report on the work of the working group each calendar year. The report shall be drawn up by 1 February of the following year.
2. Each report shall be adopted and signed by the co-chairs and shall be sent to the Specialised Committee on issues related to the implementation of the Protocol on Ireland / Northern Ireland immediately after the signature.



Northern Ireland
Assembly

Committee for the Executive Office

The Rt Hon. Michael Gove MP Chancellor of the Duchy of Lancaster and
Minister for the Cabinet Office
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11 November 2020

Dear Michael

FUTURE RELATIONSHIP WITH THE EUROPEAN UNION

Thank you for your response to my letter dated 10 July 2020, inviting you to attend a Committee for the Executive Office meeting to update Members on negotiations on the future relationship with the European Union; engagement with the devolved administrations; and plans for the implementation of the Protocol on Ireland/Northern Ireland (Protocol).

The Committee considered your response at its meeting on 11 November 2020, and noted that while you are not in a position to give evidence on the work of the Northern Ireland Executive, you would be happy to provide written evidence on issues related to the future relationship with the European Union.

The Committee agreed to request written evidence on the following themes:

- **Governance of the Withdrawal Agreement post-transition:** The Committee welcomes the [commitment](#) you gave to the Chairperson of the House of Lords European Union Committee, that officials will work with Parliamentary scrutiny committees, and the Northern Ireland Executive and the Assembly as the overall governance process for the Withdrawal Agreement and Protocol post-transition period is being designed. The Committee would therefore appreciate clarity on the mechanisms that are being considered to allow for transparency and

scrutiny of the work of the Withdrawal Agreement Joint Committee, the Specialised Committee on the Protocol and the Joint Consultative Working Group from 1 January 2021 onwards.

- **Joint Consultative Working Group:** The Committee believes that the Joint Consultative Working Group is an extremely important structure for the exchange of information and mutual consultation between the UK and the EU and has expressed some concern that the Group has not yet met. The Committee would therefore appreciate confirmation of when the group will meet, details of its composition including whether membership will be static or rotational, and, details of the planned dedicated session on Article 2 of the Protocol.
- **Dynamic alignment with the Protocol:** There is significant uncertainty around how dynamic alignment will work in practice in relation to the EU Directives listed in Annex 1 to the Protocol. The Committee would therefore appreciate information on the process that will be implemented to monitor changes to the relevant Directives and the means of scrutiny.
- **Influencing EU policy:** Having the ability to influence EU policy which will apply to Northern Ireland is vital. The Committee would therefore appreciate detailed information on how the UK Government will seek to influence EU policy that will apply to Northern Ireland under the Protocol and how any proposals/policy changes will be monitored and communicated.
- **Common Frameworks:** It is unclear how the common frameworks process will provide for the special and specific circumstances of Northern Ireland with respect to adherence to the Protocol and potential conflict with intra UK common frameworks. The Committee would therefore appreciate clarity on this issue, information on how common frameworks will be reviewed following implementation, and, an outline of the opportunities for parliamentary scrutiny.
- **Treaty and trade negotiations:** The Committee acknowledges that treaty-making is a reserved competence, however it recognises that devolved administrations are responsible for implementing treaty obligations in areas of devolved competence. Information would therefore be appreciated on how compliance with the Protocol will be ensured and the mechanisms that will be put in place to consult devolved administrations and allow them to influence treaty or trade negotiations which touch on devolved competences.
- **Inter- Governmental Relations (IGR):** The Committee notes that your [letter](#) to Mr Mike Russell MSP, dated 15 July 2020, referred to “restarting” work on the review of IGR, and in a similar [letter](#) of the same date to Jeremy Miles MS, you said that you hoped “to accelerate this over the summer.” The Committee would therefore appreciate the timeline for publishing both the Dunlop report and the outcome of the review of IGR commissioned by the Joint Committee. The Committee would also be interested to hear your views on the calls from the House of Lords for Government to consult /seek consent from the devolved administrations in relation to the exercise of powers in the UKIMB, and your assessment of how important inter-governmental relations will be in relation to the implementation of the provisions contained in the UKIMB.

I should be grateful for a response at your earliest convenience.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Colin McGrath', written in a cursive style.

Colin McGrath MLA
Chairperson, Committee for the Executive Office

Agenda Item 4.2



Committee for the Executive Office

David Rees MS
Chair
External Affairs & Additional Legislation Committee
Welsh Parliament
Cardiff Bay
CF99 1SN

SeneddEAAL@senedd.wales

14 January 2021

Dear David

CORRESPONDENCE FROM THE COMMITTEE FOR THE EXECUTIVE OFFICE

At its meeting on 13 January 2021, the Committee for the Executive Office agreed to forward a copy of the attached correspondence from the First Minister and deputy First Minister to the Welsh Parliament External Affairs and Additional Legislation Committee for information.

Yours sincerely

Colin McGrath MLA
Chairperson, Committee for the Executive Office

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Colin McGrath MLA
Chairperson,
Committee for the Executive Office,
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Our Ref: CORR: 2423:2020
13 January 2021

Dear Colin

Committee Scrutiny of Common Frameworks

Thank you for your letter of 16 December highlighting the concerns of the Committee for the Executive Office in relation to the scrutiny of Common Frameworks by the Assembly.

Cross-Administration guidance on the process for submitting Common Frameworks for scrutiny by legislatures was developed in October in conjunction with the Common Frameworks Project Board. Further Assembly specific guidance was developed by TEO officials and issued through the NICS Common Frameworks Forum on 4 November for distribution to individual Departmental policy leads. A copy of this guidance is attached at Annex A.

It is apparent from the issues highlighted in your correspondence, that there remains some confusion over the process to be followed. Therefore, our officials will engage with the relevant Departments at the earliest opportunity in 2021 to reinforce the guidance and encourage policy teams to coordinate the scrutiny process with their counterparts in the other Administrations.

Monitoring of whether Common Frameworks recognises the economic and social linkages between Northern Ireland and Ireland; and adherence to the Belfast/Good Friday Agreement took place as part of the review and assessment process for all Frameworks during October and November 2020. A further review will take place in 2021 following scrutiny by the relevant legislatures and before implementation. It is anticipated that ongoing monitoring of any impacts will be carried out by Departments and Assembly Committees as part of the normal policy development process.

Yours sincerely,



**THE RT HON ARLENE FOSTER MLA
FIRST MINISTER**



**MICHELLE O'NEILL MLA
DEPUTY FIRST MINISTER**

Guidance on Assembly Engagement

Background

In October 2018, the Joint Ministerial Committee (EU Negotiations) (JMC(EN)) agreed that the UK Government (UKG) and Devolved Administration (DA) officials should seek out opportunities to jointly engage with the stakeholder community where Ministers agree that this would be appropriate. Engagement comprises of three main elements:

- **High level programme engagement.** This outlines the overarching Common Frameworks programme to a broad audience of stakeholders, including academics and umbrella organisations. Programme engagement is usually completed by each respective administration separately;
- **Technical engagement.** This is completed by policy teams. Technical stakeholder engagement tests provisional policy conclusions with sector specific bodies and organisations in individual framework areas;
- **Parliamentary engagement.** Officials engage with the UK Parliament, NI Assembly, Scottish Parliament and Senedd Cymru both on the overarching Common Frameworks programme and specific framework areas.

Additional guidance relating to programme and technical stakeholder engagement has been developed by the Frameworks Project Team who are coordinating and providing support to policy teams across the four nations.

This guidance aims to provide further clarity to policy teams on parliamentary engagement. It should be noted that whilst the Frameworks Project Team continue to work together to ensure project delivery progresses simultaneously, parliamentary scrutiny processes may differ slightly across the legislatures. The Common Frameworks Project Team will encourage policy teams to engage with their respective parliaments/ legislatures at similar stages during framework delivery, and ensure that parliamentary recommendations are agreed jointly once scrutiny is complete.

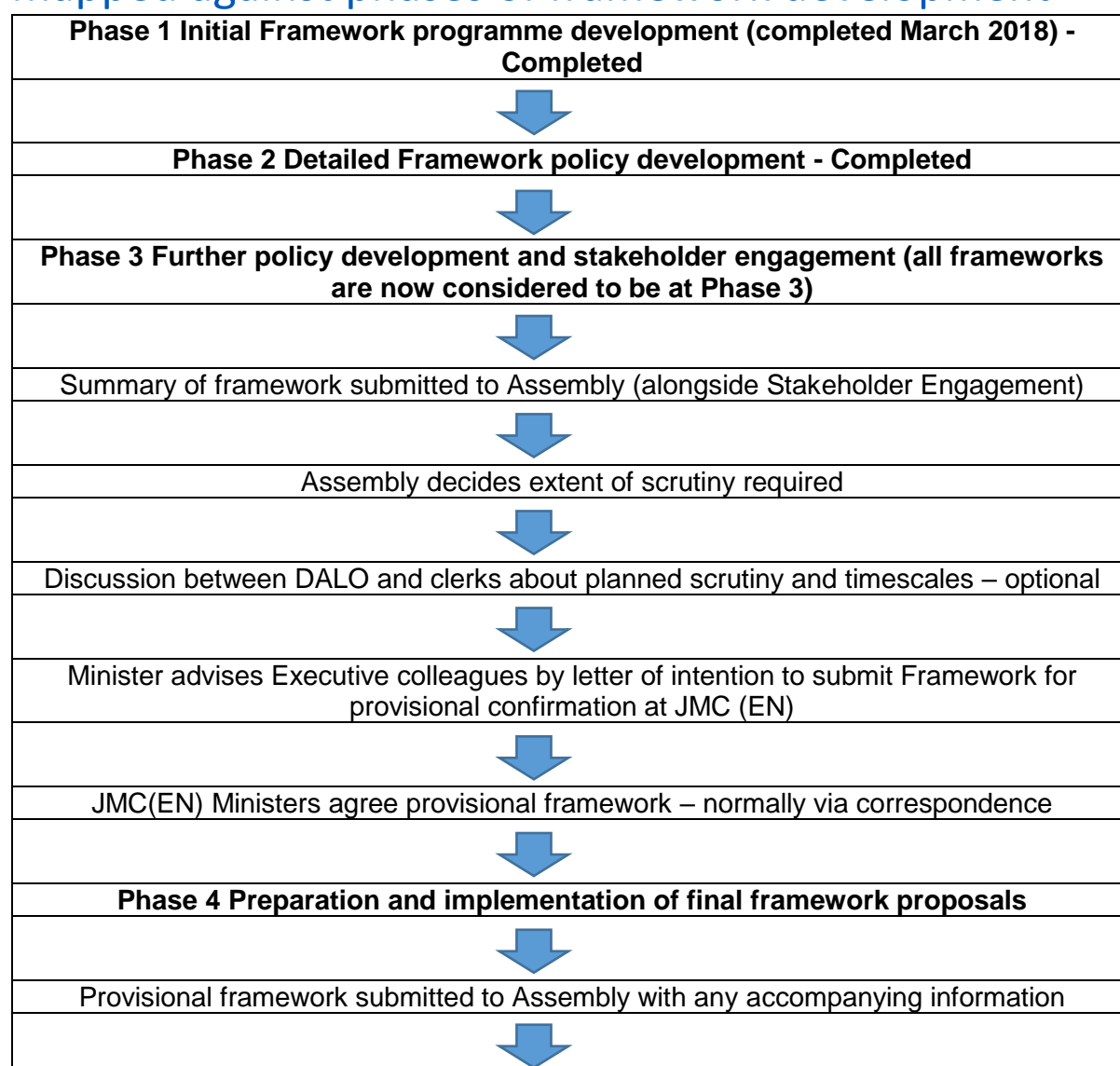
Parliamentary Engagement

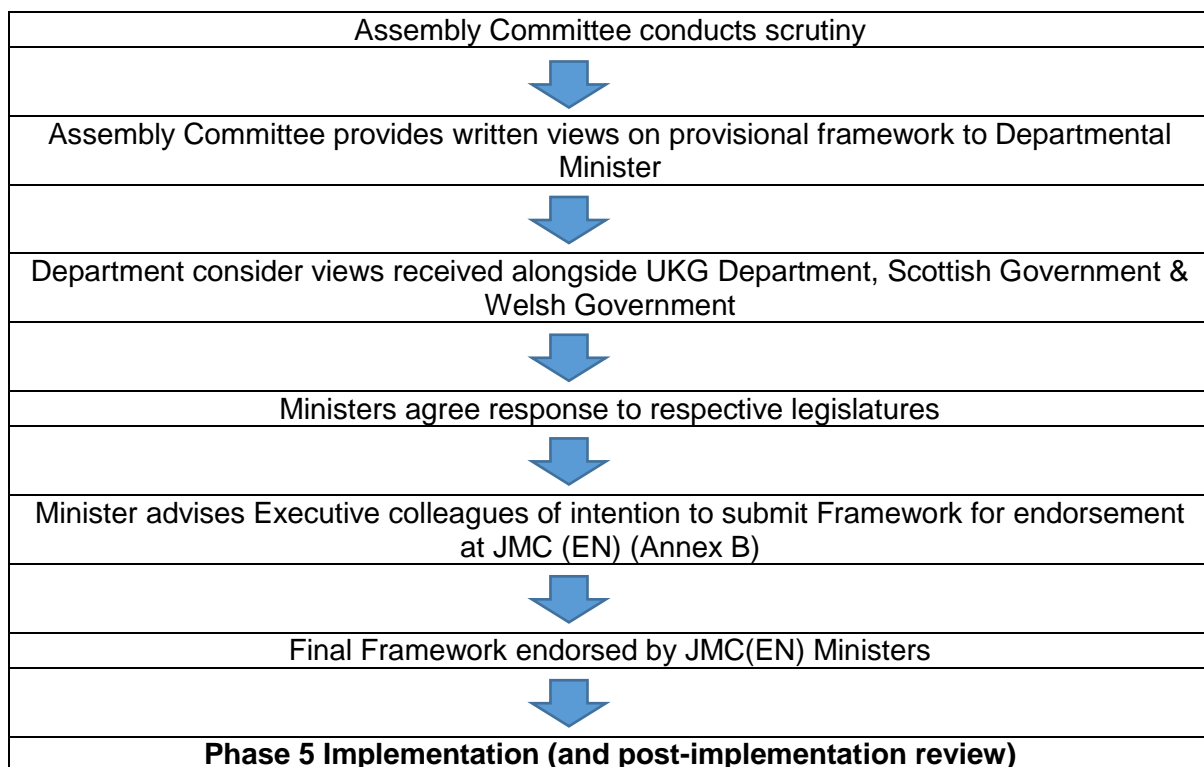
Where a framework is being established across the UK Government and devolved administrations, the provisional framework must be shared with the respective legislatures, namely the UK Parliament - both the House of Commons and the House of Lords, the Scottish Parliament, the Senedd Cymru and the Northern Ireland Assembly. All frameworks must be shared with legislatures to allow committees to decide if they should wish to conduct scrutiny. It is likely committees will elect to scrutinise some frameworks but not all.

Purpose

The purpose of this proposal is to align the process of scrutiny of frameworks across the legislatures, and to allow legislatures to input into the development of frameworks while minimising the impact this may have on delivery timelines.

Common Framework scrutiny process flowchart - mapped against phases of framework development





Detailed step by step process

1. Prepare summary

A summary of the provisional framework will have been produced to allow for technical stakeholder engagement. A letter to the committee Chairs and a cover note (at annex A) should also be prepared. Policy teams are advised to prepare all documents for Ministerial clearance at the same time.

2. Share summary

Once the summary is cleared by the policy Minister the summary should be sent, by Ministerial letter (template supplied at annex A), along with a cover note to the relevant committee. Whilst the letters should be addressed to the committee chairs, it should issue via your Departmental Assembly Liaison Officer. The provisional framework summaries are being shared at this time for information only, to allow committees time to fully prepare for potential upcoming scrutiny. Summaries are not being shared to allow for early scrutiny, this would be premature as the content is subject to change prior to scrutiny. As per the cover note, committees should be advised that this document is not for public consumption and should not be published, but is a tool to support individual committees' preparation in advance of full scrutiny.

3. Preparatory conversations

The cover letter you shared with committees (in point 2) provides some useful questions to encourage preparatory conversations. It would be helpful at this point to understand which committees (if any) are planning to scrutinise the framework, though this issue is only likely to be relevant for cross-cutting issues. Policy teams are asked to agree timings for scrutiny. As you should have an idea of when JMC(EN) provisional approval is expected, you should be able to confirm/suggest the expected date that you expect to lay the framework for scrutiny. Policy teams are advised to agree on the date recommendations should be received. We advise 21 sitting days as standard for scrutiny of UK Common Frameworks, however committees may request a longer time frame, which policy teams can negotiate keeping in mind your delivery timeline.

4. Sharing frameworks

After the Joint Ministerial Committee (European Negotiations) (JMC(EN)) agrees the provisional framework, each of the administrations will share the provisional framework, together with any related implementation products such as any concordat associated with the framework, with its respective parliament. Policy teams are advised to contact their Departmental Assembly Liaison Officer will assist with arrangements to share the framework the relevant Assembly Committee.

5. Scrutiny takes place

Committee members in each legislature will decide the approach they wish to take to the scrutiny of the framework, including whether they wish to take evidence from Ministers, officials or stakeholders. Committee members may choose to write to Ministers on the content of these summaries, which Ministers should be prepared for.

6. Receive and review recommendations

Once a committee has scrutinised a provisional framework the committee should set out its views on the provisional framework in writing, highlighting any issues, concerns or suggestions it might have. The committee must send its views to the respective Minister within the previously agreed deadline for recommendations to allow for consideration by individual administrations. Policy teams should consider recommendations received.

7. Review recommendations jointly (UKG/DA)

If any administration decides any of their committees' recommendations have merit they will need to represent the views to the other administrations, and jointly agree to any revisions of the provisional framework, in line with earlier framework policy development. The policy team will jointly revise the provisional framework to take account of any jointly agreed adjustments.

8. Respond to committees

Later, once UK Government and devolved administration portfolio Ministers have reviewed and approved the revised framework agreement, the provisional framework will then be referred back to JMC(EN) for endorsement and approval for implementation as a final framework. Policy ministers should then write to their legislatures with a response to the committee recommendations and share a final version of the framework. It is advised that policy officials continue to engage with

parliamentary officials to offer clarity on when the final framework and response to committees should be expected.

Annexes

Template Ministerial letter to share summary with UKP committees

Cover page for sharing summary with committee

Dear *Committee Chair*,

I am pleased to share a summary of *X framework* with you.

My officials, together with their counterparts in [*Scottish Government, Welsh Government and the UK Government Department*] have been working jointly to develop *X framework*. I am sharing a summary of this framework for your committee to review, to assist with committee preparations for scrutiny of the provisional framework. Should you wish to scrutinise, my officials will provide further evidence to the Committee. The provisional framework is due to be shared with your committee *in the coming weeks* following Provisional Confirmation by JMC (EN).

Please find attached a cover letter, outlining some of the practical details to enable scrutiny of the provisional framework, alongside the summary prepared by my officials. I understand my counterparts across the devolved administrations will be taking similar steps to engage with their respective parliaments.

Yours
Minister



Committee for the Executive Office

Arlene Foster MLA and Michelle O'Neill MLA
First Minister and deputy First Minister
The Executive Office
Stormont Castle
Ballymiscaw
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16 December 2020

Dear Arlene and Michelle

COMMITTEE SCRUTINY OF COMMON FRAMEWORKS

In recent months Assembly Committees have been engaging in the scrutiny process for common frameworks. As you are aware, this scrutiny is crucial for the development of the frameworks system, and the sharing of framework summaries and provisional frameworks with committees is key to the transparency of the system.

You will also be aware that Chloe Smith MP, Minister of State in the Cabinet Office, has responsibility for the common framework programme. In correspondence to the House of Lords Liaison Committee on 1 June 2020, the Minister shared the process developed by officials across the UK Government and devolved administrations to enable parliamentary scrutiny of common frameworks to happen in parallel across legislatures. A copy of the Minister's correspondence is attached for information.

Key points from the scrutiny process outlined by the Minister include:

- Throughout the scrutiny process the administrations will be sharing the same information at the same time with their own legislatures;
- At the same time as it is sent to stakeholders, the summary of the framework will be sent by the department responsible for the framework in each administration to their respective legislature for their information. This will be accompanied by an offer of a technical briefing by the policy team to answer any questions committee members might have at this stage. This will help inform preparation for future parliamentary scrutiny when the policy content of the agreement is more comprehensively developed. At this point the policy team responsible for the framework will consult with their respective committee clerks and discuss timings for the scrutiny process;

- After Joint Ministerial Committee (European Negotiations) (JMC(EN)) Ministers agree the provisional framework via correspondence, the policy teams responsible for the framework in each of the administrations will lay the provisional framework, together with any related implementation products such as any concordat associated with the framework, in its respective legislature.

While the expectations of this process are clear, Assembly committees have encountered difficulties as the process has not been followed by Executive departments. These difficulties have presented challenges to the scrutiny process and the ability of committees to scrutinise the frameworks in accordance with the agreed phases.

Examples of the issues experienced include:

- The Committee for Health received the Food and Feed Safety and Hygiene provisional framework documents almost two weeks after they were published on the UK Government website. This was also the case for the Nutrition Labelling, Composition and Standards provisional framework. We understand the Joint Ministerial Committee gave provisional confirmation to the latter framework more than a month prior to its publication.
- Regarding two further common frameworks for the Committee for Health (Blood Safety and Quality; and Organs, Tissues and Cells), we understand these were received by the Lords Common Frameworks Scrutiny Committee on 30 November but have yet to be received by the Committee for Health.
- The Committee for Finance received the Public Procurement provisional framework on 2 December. However, at this stage the Committee still had not received the summary framework document, despite this summary being issued to stakeholders in October.
- The Chemicals and Pesticides framework falls under the scope of two Committees; the Committee for Agriculture, Environment and Rural Affairs (CAERA) is the lead Committee, while the Committee for Economy is also engaged in the scrutiny process. The Committee for Economy received the provisional framework documents ahead of CAERA, which has still not received the documents, although it has already scrutinised the summary.
- Multiple frameworks will be considered by the Committee for Agriculture, Environment and Rural Affairs. The Committee is also scrutinising a high volume of secondary legislation relating to EU Exit. Much of the legislation the Committee has already considered relates to specific common frameworks, and often the Committee has undertaken this scrutiny without knowing that a piece of legislation is part of a common framework, which framework it corresponds to, and without having seen the framework.
- CAERA has also noted that stakeholders have published summaries e.g. for the Ozone depleting substances and F-gases framework, while the Committee has been instructed that it should not share or publish the framework documents it receives.
- The Committee for Infrastructure will scrutinise the Hazardous Substances Planning framework. This was published by the UK Government and sent to the Lords Common Framework Scrutiny Committee on 23 November. We

understand the corresponding Senedd Committee received the provisional frameworks document on 15 October, yet this was only received by the Committee for Infrastructure on 9 December.

- The Committee for Infrastructure received provisional framework documents for five transport-related common frameworks on 9 December. The summaries relating to these frameworks had been received by the Commons Transport Committee on 15 October, and the Lords Common Frameworks Scrutiny Committee on 27 October. However, to date, the Committee for Infrastructure has not received any of these summary documents.

It is important that the process for scrutiny of common frameworks is facilitated by departmental officials following the outlined process, including in relation to timely sharing of information across all institutions; in provision of summary documents and timely provision of provisional frameworks. It is also important that Assembly committees should be notified where any legislation brought forward to the committee relates to a common framework.

The Committee for the Executive Office would be grateful if you could clarify how the common frameworks scrutiny system should be working; why these issues have arisen; and the steps the Executive Office will take to ensure that all departments are following the Cabinet Office guidance issued in June 2020.

In relation to the third principle for the development of common frameworks, the Committee would also be grateful for details of how the Executive Office will monitor whether common frameworks recognise the economic and social linkages between Northern Ireland and Ireland; and adherence to the Belfast/Good Friday Agreement.

A copy of this correspondence will be sent to the House of Commons Public Administration and Constitutional Affairs Committee; the House of Lords Common Frameworks Scrutiny Committee; the Scottish Parliament Finance and Constitution Committee; and the Senedd European Affairs and Additional Legislation Committee.

Yours sincerely



Colin McGrath MLA
Chairperson, Committee for the Executive Office

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The Rt Hon Simon Hart MP
Secretary of State for Wales

21 January 2021

Dear Simon

The Sewel Convention

As you will be aware, we are undertaking an inquiry on Wales' Changing Constitution. As we conclude our inquiry, we would like to consider the application of the Sewel Convention to the United Kingdom Internal Market Bill ("the Bill").

We wrote to you on **18 September 2020** asking whether the UK Government would seek to pass the Bill without the consent of the Senedd. You will be aware that this question was asked within the context of the evidence you provided to the Committee on **9 March 2020** in relation to the European Union (Withdrawal Agreement) Bill, during which you said "in this particular instance, 'not normal' emerged as the theme as it became more obvious that the LCM wouldn't get through this place [the Senedd]".

You responded on **3 October 2020** and stated that the UK Government remains "fully committed to the convention on legislative consent". You also said that "...the Bill's explanatory notes state clearly that we are seeking consent in relation to all parts of the Bill [and] the UK government ministers responsible for the Bill wrote... ahead of the Bill's introduction to set this position out in detail".

Prior to the Bill becoming an Act, the Minister for London and Parliamentary Under Secretary of State, Paul Scully MP made a **statement** on 17 December 2020. He stated that:

The Sewel Convention envisages situations where the UK Parliament may need to legislate for the whole country [...]. The exceptional circumstances of our departure from the EU, and the need to provide a UK-wide legal underpinning for the internal market, is clearly one such situation.

We share the view of the Senedd's External Affairs and Additional Legislation Committee, expressed in its report **UK Internal Market Bill Legislative Consent**, that the circumstances relating to the UK internal market are fundamentally different from the circumstances of our departure from the European Union.



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The Bill should not, in our view, have been captured by the “not normal” aspect of the Sewel Convention and the Senedd’s refusal of consent should have been respected by the UK Government. Our position that the UK-wide Bill as drafted was a preferred course of action by the UK Government, not a required one, is supported by the UK Government’s own acknowledgement in the JMC communique of October 2017 that a UK internal market could be delivered through legislative and non-legislative common frameworks. This is something that we highlighted in our report on The Welsh Government’s Legislative Consent Memorandum on the United Kingdom Internal Market Bill.

Our report also highlighted that, at the same time as all four governments of the UK were collaborating on common frameworks, the Welsh Government (along with other devolved governments) was being excluded from involvement in the Bill’s development prior to its introduction to the UK Parliament. We were therefore surprised to see the UK Government say in the statement, “At every stage, we have followed the spirit and letter of the devolution settlement and worked hard to secure legislative consent.” We consider that collaboration and engagement with the Welsh Government prior to the introduction of a constitutional Bill that impacts on the Senedd’s legislative competence is an essential part of the legislative consent process. Such an approach would be in line with the UK Government’s own guidance contained in Devolution Guidance Note: Parliamentary and Assembly Primary Legislation Affecting Wales.

In light of our observations, we would be grateful for your responses to the following questions:

1. Why did the UK Government not involve the Welsh Government in the preparation of the Bill prior to its introduction?
2. Your response of 3 October 2020 references the Explanatory Notes to the Bill (as introduced to the House of Commons), which state:

87 There is a convention that the UK Government will not normally legislate with regard to matters that affect or are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.

88 The Government has therefore sought legislative consent for the clauses contained in this Bill.

If the circumstances of the Bill were “not normal”, meaning the Sewel Convention did not apply, why did the UK Government seek consent in the first instance?

3. When did the UK Government decide that the circumstances of the Bill were “not normal” for the purposes of the Sewel Convention?
4. Did the UK Government make its final decision after consent was refused by the Senedd?
5. What, if anything, did you do differently when seeking consent for the Bill when compared to the process you followed for the EU (Withdrawal Agreement) Bill, consent for which was also refused by the Senedd?
6. What role does the UK Government consider the UK Parliament should play in the Sewel Convention in respect of each UK Bill for which consent is sought from the Senedd?



7. How could the processes surrounding the Sewel Convention be improved so that it operates clearly and more effectively?

I look forward to hearing from you by 17 February 2021.

Yours sincerely,



Mick Antoniw MS

Chair of the Legislation, Justice and Constitution Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.
We welcome correspondence in Welsh or English.

cc.

The Rt Hon Kwasi Kwarteng MP, Secretary of State for Business, Energy and Industrial Strategy

Paul Scully MP, Minister for London and Parliamentary Under Secretary of State (Minister for Small Business, Consumers and Labour Markets)

David Rees MS, External Affairs and Additional Legislation Committee, Senedd Cymru

Bruce Crawford MSP, Finance and Constitution Committee, Scottish Parliament

Colin McGrath MLA, Committee for the Executive Office, Northern Ireland Assembly

Rt Hon Stephen Crabb MP, Welsh Affairs Committee, House of Commons

William Wragg MP, Public Administration and Constitutional Affairs Committee, House of Commons

Rt Hon the Baroness Taylor of Bolton, Constitution Committee, House of Lords

