

SCOTTISH PARLIAMENT FINANCE AND CONSTITUTION COMMITTEE: COMMON UK FRAMEWORKS

Summary

- Since before the referendum, the Royal Society of Edinburgh (RSE) has been engaged in the debate on the UK's membership of the EU. After the referendum the RSE launched an EU Strategy Group, Chaired by Sir John Elvidge. This group oversees the work of four subgroups on Constitutional Law and Government, Economics and Public Finance, Research and Innovation, and Migration and Rights. Each of these groups has published position papers and other responses which are referenced in the response.
- The RSE understands the need to develop common frameworks across the UK post-Brexit in order to harmonise UK policy and maintain the internal market. This response does not seek to define the UK internal market but recommends a way forward in which common frameworks can be developed, agreed and established.
- Currently there is no clear institutional body or arrangement which could effectively facilitate the development and oversight of common frameworks. Therefore the Society agrees with the suggestion from the House of Commons Public Administration and Constitutional Affairs Committee (PACAC) that an Independent Secretariat body should be created to handle the development and oversight of common frameworks.
- An Independent Secretariat should have statutory power, would be made up of civil servants that come from all legislatures in the UK and would represent the UK interest. The body would have the power to conduct its own research, to help set agendas and solve disputes. The RSE believes that funding for the body should be ringfenced with each government contributing proportionally and some meetings could be attended by high level ministers.
- The RSE proposes that the body should be fully transparent and accountable to all parliaments. It should be the decision of each parliament on how they wish to scrutinise the body but there is also an opportunity for inter-parliamentary cooperation.
- The RSE believes that common frameworks will require a set of key principles that will help them be effective and maintain the UK internal market. These are that all frameworks should be reached by consensus, the Independent Secretariat should provide evidence based decision making, frameworks should not be intrusive and they should operate in a 'two-way street'.

Introduction

- 1 The RSE welcomes the opportunity to respond to the Scottish Parliament's Finance and Constitution Committee inquiry into common UK frameworks post-Brexit.
- 2 Following the decision by the UK to leave the EU, the RSE has been engaged in the debate on Brexit through our EU Strategy Group, chaired by Sir John Elvidge, which oversees the work of 4 subgroups covering Constitutional Law & Government (RSE, 2017a); Economy, Public Finance & Industrial Strategy (RSE, 2017b); Research & Innovation (RSE, 2017c); and Migration & Rights (RSE, 2017d). These groups produced position papers last year and continue to engage in debates through direct responses to calls for evidence and consultations.
- 3 Through the EU Strategy subgroups, the RSE has previously submitted two responses to the Committee on the Impact of Brexit on the Scottish Budget (RSE, 2017e) and, more recently, on the Funding of EU Competences post-Brexit (RSE, 2018).

- 4 It is widely accepted that common frameworks across the UK will need to be developed, agreed and established post-Brexit to harmonise policy and strengthen the UK internal market. The RSE understands that work has been done by the UK Government and devolved Governments to identify where common frameworks will be required.
- 5 The recent report from the PACAC (PACAC, 2018) indicates that the UK Government does not have a unified approach on how common frameworks should be established, operated and monitored. Structures are currently being left to individual departments, which may not result in a coherent approach to frameworks in general.
- 6 The UK Government's framework analysis identifies 24 policy areas that will be subject to more detailed discussion on whether common framework arrangements may be needed and a further 82 policy areas which may be required. It is clear that establishing and agreeing common frameworks will with be a significant complex exercise and there will be more work required to define the UK internal market. Through our EU Strategy Group the RSE will continue to be involved in the discussion to provide advice and expertise around common frameworks.

Common Frameworks Institutional Arrangements

Structure and Internal Market

- 7 Firstly, the RSE acknowledges the level of complexity involved in establishing and agreeing common frameworks, quite apart from defining and understanding what the UK internal market is. Therefore, with this response we do not intend to define the UK internal market but would encourage more work to be done to elucidate this issue.
- 8 The current UK devolution settlement is a reserved powers model; reserved powers to Westminster are specified, while other powers go to the devolved administrations. Within this there is no hierarchy of laws; meaning that the UK Parliament retains the right to legislate in devolved areas and, if necessary, they can also legislate to take back devolved powers. However, there is a very strong constitutional convention that the UK Parliament will not normally legislate in devolved areas without the consent of the relevant devolved legislatures.
- 9 The report from the PACAC indicates that Brexit has exposed inconsistencies and inadequacies in Whitehall departments' conceptualisation of devolution. Additionally, the Committee notes that the mechanisms for inter-governmental relations in the UK are not fit for purpose. The RSE considers it important that there should be cooperation across all levels of Government and with devolved Governments to ensure frameworks are developed under a coherent strategy and are successful.
- 10 Common frameworks will operate across institutions including parliaments, governments and agencies, so the structure of these and how these will operate are important. Therefore the UK Government as well as devolved Governments will need to identify what kind of institutions we need in order to make the internal market work successfully. New institutions may be necessary and research may be required to identify what an institutional inter-governmental framework will look like.

Current Institutions & Arrangements

- 11 Within the current constitutional structure there are examples which could inform the development of common frameworks.
- 12 The Cabinet Office method of coordination may be the best model – however the development of these frameworks should be left to the individual departments within Whitehall and devolved administrations. Principles need to be articulated and application monitored at a central level.
- 13 The Joint Ministerial Committee could serve as a starting point for a new model of inter-governmental relations, with the European sub-committees providing effective examples. However, these committees do not have any significant power.
- 14 The model of the British Irish Council could also be looked at, but this Council is not geared to solving policy disputes as it is a loose collaborative structure.

15 Lastly, there are institutional arrangements within other states in the EU which agree common frameworks and handle dispute resolution, such as the German Länder and the Autonomous Communities of Spain. Concepts and principles from these examples could be used in the UK context.

New Model & Considerations

16 The RSE does not believe that, within the constitutional architecture of the UK there is an obvious mechanism to address common frameworks. We therefore recommend that a new, Independent Secretariat be established to handle the development, agreement and maintaining of common frameworks. In this regard, we are building on the recommendation of the PACAC.

17 As common frameworks are expected to be areas of significant complexity, we recommend that an Independent Secretariat have the statutory duty and powers to oversee all the common frameworks..

The main objective of the Secretariat would be to ensure the agreement, establishment and maintenance of common frameworks. It is pivotal that the body be seen as impartial, acting completely in the interest of the UK as a whole and recruiting expertise and experience from all the governments in the UK, to ensure a sophisticated understanding of the UK constitutional settlement. Its civil servants will be required to represent the UK interest and not that of devolved legislatures or UK Government departments.

18 The Secretariat must command the confidence of the UK Government and the devolved administrations that it will give evidence based, independent and fair advice on how the common frameworks should operate and are operating. Not all the expertise that is required need be internal; some expertise may be externally contracted to other institutions such as universities, in the same way that some parliamentary committees use expertise.

19 The Secretariat exercising a common UK Interest is particularly important as it will help to bring the governments to an agreement and to resolve disputes. The Secretariat should have a role in

helping the UK Government to co-ordinate its negotiating stance on international treaties with the relevant devolved administrations when the implementation of the Treaty could impinge on devolved competences. The aim should always be to reach an agreed negotiating position on matters that impinge on devolved competences and the Secretariat could facilitate the achievement of that aim.

20 The UK Parliament may use its power to ensure agreement; this, however, would be an unconstructive approach and could damage intergovernmental relations. Therefore, the model suggested above would help to reach agreement and resolve disputes, in turn benefiting intergovernmental relations.

21 With the agreement of common frameworks and the evolution of the current devolution settlement, there will likely be disputes between the Governments. The RSE recommends that there be more work on the structures for dispute resolution, given the view of the PACAC that the current MoU is not fit for purpose for new developments such as the common frameworks.

22 Additionally, it is important that the Secretariat has its own institutional identity that commands respect from all Governments. To reinforce this the body should have a research capacity, which could be similar to the Office of Budget Responsibility. Having research capacity would allow the body to take an initiative to set agendas, but could also help if there are disputes, as it can undertake research to find resolutions. This may draw the Governments together to deal with difficult and complex issues earlier than originally would have been possible. The Secretariat should have the power to call meetings of the UK Government and the devolved administrations and to propose the agenda. The UK Government and the devolved administrations should have the opportunity to add items to the agenda. This would guarantee that the common frameworks do not rely on Whitehall and that the independent Secretariat has the appropriate level of influence in the institutional arrangement.

- 23** Having this influence will help the Secretariat to enable the UK Government and devolved administrations to create and sustain consistent and successful common frameworks. The UK constitutional settlement works best when the different governments agree common positions. Having the relevant powers will help the Secretariat to organise regular, well-prepared meetings in which positions are agreed.
- 24** In undertaking research, the Secretariat could have subgroups which would deal with issues in specific areas.
- 25** Some areas will require subgroups more than others. For example, given their complexity, international agreements may require subgroups with wide representation more than other areas. There will be policy areas of international agreements which may affect some devolved nations more than others, e.g., fisheries in Scotland. Proper cooperation with devolved administrations will be required in which an agreed position is the main outcome; this could be facilitated through the subgroups.
- 26** Statutory power is important for the Secretariat to be successful, but the resourcing of the body will also be vitally important. Powers will be meaningless if the body is not properly funded. The RSE recommends that a financial framework be developed and agreed. This should secure ringfenced funding to which all governments contribute proportionally. If funding is not ringfenced then there is a risk that the body may be undermined and become weak.
- 27** Included in the statutory powers should be a requirement for meetings of the main group which the Prime Minister and First Ministers (or other high-level Ministers) attend. There should be working groups at official level that would meet regularly, focusing on the detail that would then feed into the main meetings of Ministers.
- 28** It is important the process which is designed does not expire after 7 years once all powers are released but that it continues to deal with new issues and protect/maintain the internal market. With constant changes in the economy and technology the permanent arrangement must be flexible to deal with issues such as regulation and further devolution.
- 29** In relation to representing the UK interest, it is important that the UK Government differentiate between UK and English interests. The RSE would encourage the UK Government has demonstrated its ability to find mechanisms to do this. This is clearly necessary and the RSE would encourage the UK Government to look at mechanisms to implement this.

Transparency, Accountability and Parliamentary Engagement

- 30** The Secretariat would report to all parliaments and position papers would go into the public domain, but only after decisions are made. Other research such as impact assessments could go live in the public domain immediately to show the need for common frameworks and the best viable way forward.
- 31** High level meetings should be attended by Ministers, ideally the Prime Minister and the First Ministers of the devolved Governments. Minutes of these meetings and other working group meetings would go into the public domain.
- 32** The body will be accountable to all parliaments, but it will be a matter for the individual parliaments to determine the accountability mechanisms. Parliaments have an important role in this structure, not simply on their individual oversight but potentially in designing and agreeing an inter-parliamentary process. The British–Irish Parliamentary Assembly could be an example to build on.

Guiding Principles

- 33** The development of common frameworks will require a set of key principles that will help them to be effective and maintain the UK internal market. Principles will also help underpin a stable constitutional settlement which is beneficial for the UK Government and devolved administrations.

- 34** The current model which the UK is part of in the EU is based on the principle of four freedoms: goods, services, capital and labour plus harmonisation of certain major policies eg competition, state aids and public procurement. This model could be adopted in the UK internal market post-Brexit. However, the current EU policy arrangement does not match the current UK devolution settlement. Any changes to the UK devolution settlement to redesign the UK internal market need to be carefully thought through and achieved by political consent in the different parts of the UK.
- 35** The RSE believes that there should be 4 main principles that help the development of common frameworks.
- 36** First, all decisions on common frameworks should be reached by consensus between the UK Government and the relevant devolved administrations.
- 37** Second, the Secretariat should have an independent statutory role to prepare evidence based decision making processes on common frameworks by doing and commissioning research, agenda setting and using its influence to help the governments to arrive at consensus.
- 38** Third, common frameworks should be no more intrusive into constraining devolved competences than they need to be to serve their purpose. The subsidiarity and proportionality principles could be adapted for the UK context, acknowledging the freedom of the devolved nations.
- 39** Fourth, the RSE accepts the case for common frameworks around areas that would otherwise be wholly devolved. Some of the areas that are currently reserved in the devolution legislation might be better agreed through UK common frameworks. Common frameworks could give the opportunity for movement at both ends of the devolution system. The current criteria in the MoU of the EU Withdrawal Bill from A-F (UK Government, 2018) would indicate that reserved areas will be considered in common frameworks. Given the principles outlined above it will probably require the power of the UK Parliament to be limited in certain areas of reserved powers. This underpins the need for a two-way street on common frameworks, as it appears that the current criteria already articulated lead to this conclusion.

Conclusion

- 40** In this response we present our recommendations for the future arrangements on common UK frameworks. We believe that establishing an Independent Secretariat body is the best way forward to develop and maintain frameworks across Brexit. We believe that it is pivotal for the body to have statutory powers and ring fenced funding to ensure its success and to reduce any risk that it is undermined. The body should look to continue after all devolved powers are passed to governments as it is likely issues will continue to come up over time which could affect common frameworks. In our recommendations we believe that this is the best way to handle common frameworks to ensure fairness across all levels of government, maintaining the UK internal market and protecting a UK interest with which all governments agree.

References

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Additional Information

This Advice Paper has been signed off by the General Secretary of the RSE.

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