



The Scottish Parliament
Pàrlamaid na h-Alba

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

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By email to: MinisterLGHP@gov.scot

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Dear Kevin,

Hazardous Substance Planning Provisional Common Framework

Thank you for providing evidence on the above on 16 December and for the associated correspondence.

This is the first time this Committee has commented on a provisional Framework under this new process before it is signed off for formal use. It is important that legislatures in the UK have this opportunity. It is also important that Parliamentary committees have adequate opportunity for considered scrutiny.

To that end, I am grateful that you were able to agree to a consideration period slightly longer than the 28 days initially proposed. Whilst this Framework did not prove to be contentious, the Committee can envisage instances where Parliamentary committees and stakeholders would need sufficient time to consider the full implications and impact of a Framework touching on complex or more controversial issues, and we hope this is borne in mind by administrations over the coming months.

Turning to the substance of the Framework, we agree with your assessment that, overall, it raises no contentious issues, and that it can be operated without restriction of devolved powers, with little scope for market impact. We note that, whilst a number of stakeholders were given an opportunity by the Committee to comment on the Framework, few chose to do so, and (with one exception, as set out below), no objections were raised.

Following on from our discussion of the 16 December, there are three matters in relation to which we would welcome your consideration before the Framework is signed off:

(1) Is it envisaged that administrations will periodically report to legislatures on how effectively the Framework is operating and on any elements of it that, on the basis of experience, require to be revised? We think this Framework –and Frameworks in general– would benefit from such a commitment, and the opportunity it would provide for stakeholders to provide informed commentary on how the agreement has bedded in. If this is agreed, we suggest that parties consider writing it into the Framework itself, to underwrite this commitment.

There might be merit in there being a report to legislatures within the first, say, 18 months of the Framework becoming operational. Thereafter, reports could be spaced more widely apart, perhaps once every three years.

(2) We did not discern any express commitment in the Framework to the principle of jointly keeping pace with any relevant international agreements the UK may agree to after the Framework becomes operational. Is this a matter that ought to be covered in the Framework?

(3) The overall approach to dispute resolution set out in the Framework seems sensible, including recognition that at times parties may “agree to disagree” rather than escalate matters. The only criterion in such case is, impliedly, that the matter is not important enough to merit escalation.

We would welcome assurances that no party would cite this provision in circumstances where it has lowered hitherto agreed minimum standards in relation to hazardous substance planning, and other parties have legitimate concerns that this might have significant implications; by raising the risk of harm to public safety within their jurisdiction. We note that concerns of this nature were also set out in a response to our call for views by an experienced former senior town planner.¹

We appreciate that the Framework is not a legal document and that a degree of flexibility in its interpretation is inevitable. However, is there a need for it to be spelled out more clearly what matters are *not* covered by the “agree to disagree” provision?

In conclusion, I reiterate comments made in my letter of 4 December 2020 to Bruce Crawford, Convener of the Finance & Constitution Committee. This was a response to a request for views on Scottish Parliamentary scrutiny of “repatriated” matters in the post-Withdrawal Agreement period, including scrutiny of common frameworks. I said:

“...for the avoidance of doubt, the Committee is clear that the coming into force of a common framework in no way limits the right of a Parliamentary committee, or the Parliament as a whole, to scrutinise and debate operational matters dealt with under a framework that are within its remit or competency, where there is a public interest in doing so.”

I hope these comments are helpful and look forward to receiving your response. This letter is copied to Chairs of counterpart committees in the other UK legislatures.

¹ https://www.parliament.scot/S5_Local_Gov/HSP.V1FINAL.pdf

Yours sincerely

James Dornan MSP

Convener of the Local Government and Communities Committee