

## CONSTITUTION, EUROPE, EXTERNAL AFFAIRS AND CULTURE COMMITTEE

9<sup>th</sup> Meeting, 2023, Session 6

16 March 2023

**How is Devolution Changing Post-EU?**

1. The Committee concluded in its report on [The Impact of Brexit on Devolution](#) that there are fundamental concerns which need to be addressed in relation to how devolution works outside the EU.
2. The operation of the Sewel Convention, which the Committee views as being 'under strain', and the use of delegated powers in devolved areas are two significant areas in which the Committee believes devolution has begun to evolve following Brexit.
3. The Committee's recent scrutiny of Legislative Consent Memorandums (LCMs) for the [Northern Ireland Protocol Bill](#) and [Retained EU Law \(Revocation and Reform\) Bill](#) has highlighted the need to re-set the constitutional arrangements within the UK following EU withdrawal, both in respect of relations between the UK Government and the devolved governments and between the four legislatures and governments across the UK. The Committee's view is these relations are clearly not working as well as they should and this needs to be addressed.
4. Furthermore, the Committee's report on [The UK Internal Market](#) concluded that while the UK Internal Market Act has sought to address the tension between open trade and regulatory divergence within the UK that has arisen from the UK leaving the EU, it has led to tensions within the devolution settlement.
5. The Committee recognises that Common Frameworks have the potential to resolve the tensions within the devolved settlement through managing regulatory divergence on a consensual basis while facilitating open trade within the UK internal market. But the Committee believes there is a risk that the emphasis on managing regulatory divergence at an inter-governmental level may lead to less transparency and Ministerial accountability and tension in the balance of relations between the Executive and the Legislature. The Committee is concerned that this may result in reduced democratic oversight of the Executive and a less consultative policy-making process.
6. Through its inquiry [How is Devolution Changing Post-EU?](#) the Committee is now looking to explore how devolution is changing, and, importantly, how devolution should now evolve to meet the challenges and opportunities of the new constitutional landscape.

7. The [call for views](#) on this inquiry closed on 30 November 2022. It focused on the following questions, which the Committee will explore through the course of its inquiry—
- How is devolution now working following the UK’s departure from the EU, including the policy-making and legislative processes?
  - How should devolution evolve post EU exit, to meet the challenges and opportunities of the new constitutional landscape?
  - How much scope there is for regulatory divergence in areas such as environmental standards, food standards and animal welfare between each of the four parts of the UK;
  - Are there sufficient safeguards to allow regulatory divergence across the four parts of the UK in areas where there are disagreements between governments?
  - Are there sufficient safeguards to ensure an open and transparent policy-making and legislative process in determining the post-EU exit regulatory environment within Scotland and how it relates to the rest of the UK?
8. At this meeting, the Committee will take evidence from—
- **Professor Nicola McEwen**, Professor of Territorial Politics, University of Edinburgh;
  - **Akash Paun**, Senior Fellow, Institute for Government;
  - **Professor John Denham**, Professorial Research Fellow in the Department of Politics and International Relations, University of Southampton, and Director of the Centre for English Identity and Politics; and
  - **Professor Jo Hunt**, Professor in Law, Cardiff University.
9. The following papers may be of interest to the Committee for this session—
- [Written submission from Professor John Denham to the How is Devolution Changing Post-EU? inquiry](#) and a [submission to the Public Administration and Constitutional Affairs Committee \(PACAC\) on English Devolution](#);
  - [Written submission from Professor Nicola McEwen, Professor Jo Hunt, and colleagues to the Committee’s inquiry on the UK Internal Market](#);
  - Written submissions from [Professor Nicola McEwen](#) and [the Institute for Government](#) on Legislative Consent after Brexit;
  - [“Legislating by consent: How to revive the Sewel Convention”](#) (Institute for Government, 2020)