

Agenda – External Affairs and Additional Legislation Committee

Meeting Venue:

Video conference via Zoom

Meeting date: 12 November 2020

Meeting time: 14.00

For further information contact:

Alun Davidson

Committee Clerk

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

(14.00)

2 UK Internal Market Bill: Lord True, Minister of State at the Cabinet Office

(14.00–15.00)

(Pages 1 – 50)

3 Papers to note

(15.00–15.05)

3.1 Paper to note 1: Supplementary Legislative Consent Memorandum (Memorandum No 2) Trade Bill

(Pages 51 – 54)

3.2 Paper to note 2: Correspondence from the Counsel General and Minister for European Transition to the Chair regarding the UK–Japan Comprehensive Economic Partnership Agreement – 9 November 2020

(Page 55)



3.3 Paper to note 3: Correspondence from the Minister for Mental Health, Wellbeing and Welsh Language to the Chair regarding the Nutrition Labelling Composition and Standards Provisional Common Framework – 9 November 2020

(Pages 56 – 64)

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

(15.05)

5 UK Internal Market Bill: Lord True – consideration of evidence

(15.05–15.20)

6 UK Internal Market Bill – approach to reporting

(15.20–15.35)

7 International agreements

(15.35–15.50)

(Pages 65 – 68)

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By virtue of paragraph(s) vi of Standing Order 17.42

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SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM

(MEMORANDUM NO 2)

TRADE BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29(iii)(a) prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the Senedd if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Trade Bill (“the Bill”) was introduced in the House of Commons on 19 March 2020. The Bill completed Committee stage in the House of Lords on 15 October 2020. The Bill can be found at: [Bill documents - Trade Bill 2019-21 - UK Parliament](#)

Policy Objectives

3. The UK Government’s stated policy objectives are to provide continuity for businesses, workers and consumers across the UK and establish the UK as an independent global trading nation. To support this the Bill makes provision about the implementation of international trade agreements with third countries that have pre-existing trade agreements with the EU; establishing a Trade Remedies Authority (TRA) and conferring functions on it; and makes provision about the collection and disclosure of information relating to trade.

Summary of the Bill

4. The Bill is sponsored by the Department for International Trade.
5. The Bill has four main functions:
 - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement the Agreement on Government Procurement in the event that the UK is an independent member of that Agreement after the end of the transition period;
 - It confers regulation making powers on a Minister of the Crown and devolved authorities to implement international trade agreements with third countries who have pre-existing trade agreements with the EU;
 - It establishes a TRA to deliver the new UK trade remedies framework;
 - It establishes a data sharing gateway between Her Majesty’s Revenue and Customs and other public and private bodies.

6. The provisions in the Bill of particular relevance to Wales are:
- Part 1, Clause 1 – (implementation of the Agreement on Government Procurement).
 - Part 1, Clause 2 – (implementation of international trade agreements with third countries who have pre-existing trade agreements with the EU).
 - Part 2 – (establishing the TRA) – The Welsh Government does not believe that the provisions in Part 2 of the Bill relating to the TRA are making provision for any purpose within, or which modifies the legislative competence of the Senedd. However, the establishment of a TRA could have an impact on devolved areas such as agriculture and fisheries.
 - Part 3 – (Collection and sharing of trade information).

Provisions in the Bill for which consent is required

7. The Welsh Government laid a legislative consent memorandum on 2 April 2020, based on the Bill as introduced into Parliament on 19 March 2020. That legislative consent memorandum covered Part 1, Clauses 1 to 4 and Schedules 1, 2 and 3 of the Bill. The Welsh Government did not consider that the provisions in Parts 2 or 3 of the Bill as introduced engaged SO29.

Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required

8. The following amendments, which make provision in relation to Wales and contain provision within the Senedd's legislative competence, were made to Part 3 of the Bill at House of Commons Report Stage.
9. **Part 3, Clause 9** – Clause 9(1) confers a power on specified public authorities to disclose information to a Minister of the Crown for the purposes of facilitating the exercise of a Minister of the Crown's functions relating to trade. The specified public authorities in clause 9(3) that may disclose information to a Minister of the Crown are a Secretary of State, the Minister for the Cabinet Office, a strategic highways company appointed under section 1 of the Infrastructure Act 2015 and a port health authority constituted under section 2 of the Public Health (Control of Disease) Act 1984. Most of the specified authorities falling within this data-sharing gateway are reserved authorities. However, the definition of a port health authority captures Welsh port health authorities that exercise functions in relation to Wales and is broad enough to enable such authorities to disclose information relating to non-reserved matters to a Minister of the Crown.
10. Clause 9(9) also confers a regulation making power on a Minister of the Crown which enables the list of specified authorities in clause 9(3) to be amended. That power is capable of being exercised to add or remove devolved Welsh authorities from the list.

11. **Part 3, Clause 10** – A new clause has been included which would make it a criminal offence for a person to disclose identifiable personal information in breach of the requirements in clause 9 in certain specified situations. Such an offence is punishable by a fine and/or a term of imprisonment of up to a period of two years on indictment or up to 12 months on summary conviction. As this provision needs to be considered alongside clause 9, we consider that consent is also required for this provision.

Reasons for making these provisions for Wales in the UK Trade Bill

12. The UK Government requires a legal mechanism to enable it to request access to, and share information held by a wide range of public authorities. Gaining access to a wider range of devolved and reserved data could improve the UK Government's capability to respond to border issues, design traffic management initiatives and enhance trade flows.
13. The Welsh Government is supportive of the rationale for the amendments. However, to ensure benefits can be accrued in Wales, we have sought assurances that;
 - a) The UK Government will share any analysis relevant to the delivery of devolved responsibilities with the Welsh Ministers. Clause 9(5) is relevant in this context because it makes provision for the onward disclosure of data by a Minister of the Crown, with the consent of the public authority from which that data had been obtained. This could enable a Minister of the Crown to disclose data to the Welsh Ministers in circumstances where the data is relevant to the Welsh Ministers' devolved functions relating to trade, such as traffic management around key ports;
 - b) The UK Government will consult with the Welsh Ministers before adding or removing any Welsh public authorities from the data sharing gateway in clause 9.
14. The Welsh Government considers that it has received sufficient assurances from the UK Government in response to these requests.
15. In addition, two despatch box commitments were made at House of Lords Committee stage on 15 October:

‘First, the data shared under Clause 9 will be used by the border impact centre and the Cabinet Office to develop strategic insights. They are committed to sharing strategic analysis related to flow of trade, where it will support the more effective management of flow through the border.

I understand that Cabinet Office officials have been working closely with counterparts in the devolved Administrations to ensure that relevant analysis and information relating to trade and management of the border can be shared to support devolved functions. Examples of the types of information that the border impact centre intends to share with relevant parties in the devolved nations are flow patterns through ports.

The Cabinet Office will continue to work with the devolved Administrations to ensure that the border impact centre provides strategic benefit to management of flow through key ports.

Secondly, the UK Government commit to consulting the devolved administrations before any devolved authorities are added to, or removed from, the list of specified authorities that can share data under Clause 9.'

16. We believe the assurances provided are sufficient to ensure that the Welsh Ministers will be able to access more detailed information to increase border management capabilities and enhance trade flow data, benefitting Wales.
17. On this basis, we would recommend that the Senedd grants legislative consent.

Financial implications

18. While there are no direct financial implications for the Welsh Government or the Senedd arising from the powers under the Bill, there will be significant financial implications for Wales from our future trade relationships in its overall economic effect.

Conclusion

19. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as the Bill covers both devolved and non-devolved matters. In terms of coherence, the Welsh Government considers that legislating via a UK-wide Bill is the most effective and proportionate legislative vehicle for creating an independent trade policy for the UK following the transition period. Devolved areas may be heavily impacted by future trade agreements therefore it is important Welsh interests are adequately reflected in the Trade Bill.

Jeremy Miles MS

Counsel General and Minister for European Transition

November 2020

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition**

Agenda Item 3.2



David Rees MS

Chair of External Affairs and Additional Legislation Committee
Senedd Cymru
Cardiff Bay
CF99 1NA

**Llywodraeth Cymru
Welsh Government**

9 November 2020

Dear David,

Thank you for your letter of 27 October. I advised you at the Committee meeting last week that we are conducting an assessment of the UK-Japan Comprehensive Economic Partnership Agreement (CEPA), including how it differs from the EU-Japan Economic Partnership Agreement. However in order to ensure that this analysis is robust I am proposing that we provide the information you have requested no later than 16 November. The final scrubbed text on CEPA was only very recently received by officials (at the same time other Government Departments received the text) and in areas that are reserved this is the first time we have seen the text.

I look forward to sharing our assessment shortly.

Yours sincerely,

Jeremy Miles AS/MS

**Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition**

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

YPCCGB@llyw.cymru PSCGMET@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.



Llywodraeth Cymru
Welsh Government

Ein cyf; MA/EM/3691/20

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

SeneddEAAL@senedd.wales

9 November 2020

Dear Dai,

On 23 October you wrote to the Minister for Health and Social Service regarding the scrutiny by the External Affairs and Additional Legislation Committee of the Nutrition Labelling Composition and Standards Provisional Common Framework. This policy now sits with me and I therefore have been asked to respond.

In your letter you ask a number of questions, answer to which are required prior to full scrutiny of the framework by the committee. Please see the following response.

What the framework is

1. What form does the framework take, i.e. is it a Memorandum of Understanding, a concordat, a legislative framework or a combination of documents?

The Nutrition Labelling Composition and Standards (NLCS) Provisional Common Framework (the framework) takes the form of a non-legislative framework and concordat.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Gohebiaeth.Eluned.Morgan@llyw.cymru
Correspondence.Eluned.Morgan@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

2. On what basis has the form for the framework been chosen?

Adopting a non-legislative approach allows for maximum flexibility to adapt the framework as necessary and maintain a degree of trust and goodwill between the four administrations. The concordat provides the basis for managing and maintaining commonality in approach and minimum standards as well as surveillance and sharing of information.

3. Have all relevant framework documents (including documents that will be used by governments to apply and interpret the framework) been published?

The provisional framework (with concordat annexed) is published on the UK Government website <https://www.gov.uk/government/publications/nutrition-labelling-composition-and-standards-provisional-common-framework-command-paper>

Whilst it is still subject to amendment there are no plans to publish on the Welsh Government website. This is likely to change once the document is fully implemented post phase 5.

4. Will the framework require any further legislation in future?

The arrangements within this agreement do not require additional legislation. This framework sets out general provisions in relation to the policy. It is not intended to constitute a legally enforceable contract or create any rights or obligations which are legally enforceable.

5. What impact will the form chosen have on the framework's operation?

The non-legislative approach allows for flexibility and opportunity to review and refine where appropriate and where all parties agree without the need for further legislation

6. How have the governments ensured the framework will be clear and accessible for citizens and Members?

See answer to question 3.

What the framework does

7. Why is a framework needed for this policy area?

Currently agri-food goods can be marketed and sold throughout the UK so long as they are compliant with existing EU regulations. Now and going forward, all parties to the framework agree that a level of commonality across NLCS policy is beneficial, particularly for those businesses who operate across UK borders. The agreements as set out within the framework therefore provide for close collaboration with consistency of approach across all four nations always being sought in the first instance, whilst recognising that the opportunity for divergence should remain where it is agreed that it is necessary and appropriate.

8. The Joint Ministerial Committee agreed principles for when frameworks would be necessary in 2017, including enabling the functioning of the UK internal market and ensuring compliance with international obligations. Which of these principles apply to this framework?

All, specifically:

- enable the functioning of the UK internal market, while acknowledging policy divergence
 - ensure compliance with international obligations
 - ensure the UK can negotiate, enter into and implement new trade agreements and international treaties
 - enable the management of common resources
 - administer and provide access to justice in cases with a cross-border element
 - safeguard the security of the UK
9. What does EU law and policy in this area currently do? Does the framework replicate this/these function(s) in full or in part?

EU legislation on nutrition-related labelling, composition, and standards, covers the following areas: nutrition and health claims made on foods; the addition of vitamins, minerals, and certain other substances to foods; the composition and labelling of food supplements; the composition and labelling of food intended for infants and young children, food special medical purposes, and total diet replacement for weight control; and the mandatory nutrition declaration (food labelling), including additional forms of expression and presentation in which it may be given. The framework sets out replacement procedures and mechanisms for all these areas.

10. What are the policy objectives of the framework?

This framework focuses on replacing mechanisms which support current EU functions, necessary to maintain current standards, such as those related to: the authorisation of new claims; the amendment of lists and registers; or the notification of infant formula and medical foods.

11. In what ways does the framework change the Welsh Government's executive competence? How is this different from the position under EU law?

Responsibilities, powers, and or functions currently held by Member States or EU bodies will be transferred to Ministers.

12. In what ways does the framework change the Senedd's legislative competence? How is this different from the position under EU law?

NLCS policy is governed by harmonised EU derived legislation (set out Appendix II of the framework). The EU Regulations are directly applicable across the whole of the UK. The enforcement of these Regulations is delegated to local authorities and powers for enforcement are provided by domestic legislation in each of the four UK nations. Applicable Directives have been implemented through domestic legislation in each of the four UK nations.

13. What scope for divergence will the framework allow? Is this wider or narrower than the scope for divergence under EU law?

There is already some allowance for limited divergence in this area under EU law. The framework allows for divergence in one or more of the territories, where risk assessments demonstrate it to be necessary and proportionate to protect consumers and enable the functioning of the Internal Market.

If a common recommendation supporting policy divergence is agreed, officials will provide Ministers with an explanation of the differing approaches and a summary rationale setting out why it is appropriate to diverge (Appendix IV Tables I, II, III). The secretariat of the official level policy group is preparing common recommendation templates which could be used to record, in detail, the recommendation and relevant factors with the intention of this document being submitted to all Ministers to ensure consistency.

14. If the scope for divergence is different from the scope for divergence under EU law, why is that?

There is now the opportunity to diverge if risk assessments demonstrate it to be necessary and proportionate and, can ensure consumer protection and the functioning of the Internal Market can be maintained. This approach recognises the new powers transferred to Ministers and respects and reflects Devolution settlements.

15. Will the framework have any impact on existing or planned Welsh legislation and/or policies?

Nothing is foreseen.

16. What will the financial implications of the framework be?

UKNHCC costs to date have come from EXIT funding - this cost is currently being considered as part of the latest DHSC bid: consideration will need to be given to how the Welsh Government will contribute in future years.

How the framework was developed

17. How did the governments engage with stakeholders in preparing the outline framework?

A technical engagement session was held with representatives of the food industry (including representation from Wales) and a presentation given at the BEIS Business Expert Group. All engagement was carried out jointly between UK Government and Devolved Administrations.

18. As part of that process, how did the Welsh Government itself engage with stakeholders?

An invitation was circulated by Welsh Government officials to the engagement session a notification of the Business Expert Group session.

19. How does the framework reflect the responses of stakeholders, including stakeholders in Wales?

Stakeholders (including those from Wales) were supportive of the purpose and principles of the framework but expressed a desire for greater levels of co-ordination between departments on food frameworks; communications with stakeholders; clear engagement processes post exit and increased levels of consultation.

Stakeholders advised that they also felt reassured by the proposals for joint decision making and dispute resolution mechanisms. The framework was refined as a consequence of the feedback received.

20. Are there any ongoing negotiations in relation to any elements of the framework?

Reference to international obligations is still under consideration. Relevant sections will be considered further and populated prior to the framework being presented to the Joint Ministerial Committee (EN) for final approval and implementation.

Interaction with domestic law and policy

21. How does the framework interact with existing domestic legislation?

NLCS policy is governed by harmonised EU derived legislation. The EU Regulations are directly applicable across the whole of the UK. The enforcement of these Regulations is delegated to local authorities and powers for enforcement are provided by domestic legislation in each of the four UK nations. Applicable Directives have been implemented through domestic legislation in each of the four UK nations. Whilst NLCS policy is an area of devolved competence, negotiation of international trade agreements remains reserved. This creates an area of overlapping interests where the negotiation of trade agreements may intersect with aspects of devolved policy areas

22. How does the framework interact with retained EU law in this policy area?

It sets out new mechanisms and processes put in place to replace those previously set out and delivered by the EU.

23. Does the framework interact with any existing intergovernmental agreements?

It is recognised that there are links with other government departments, such as the FSA and DEFRA, and future governance around decision making related to modifications to retained EU law is necessary. Arrangements in this framework link to/reflect other relevant frameworks relating to general food labelling and composition, for example those which cover: Regulation (EU) No. 1169/2011 on the provision of food information to consumers; Regulation (EC) No. 396/2005; Regulation (EU) No. 2015/228 on maximum residue level of pesticides in or on food and feed of plant and animal origin.

Interaction with international law and international agreements

24. Does the framework interact with any existing international obligations or agreements?

There are no existing international obligations relevant to NLCS policy. Should any arise in the future the framework will be reviewed.

25. If so, does the framework 'ensure compliance with international obligations'? How?

Conversations on how to tackle this cross cutting policy issue are ongoing.

26. How will the framework interact with or be impacted by any future UK negotiations on trade or in other areas?

Welsh Government and Cabinet Office officials continue to discuss specific sections in relation to the international policy and relations.

27. How does the framework interact with the Ireland and Northern Ireland Protocol?

Officials in all four administrations acknowledge that during Phases 4 and 5 a reappraisal of framework agreements will be required as a consequence of developments of any negotiated deal with the EU on cross-cutting issues such as Future Partnership, Internal Market and the Ireland/Northern Ireland Protocol. The NI Protocol will continue to be considered in future phases of development of framework, once the impacts/changes required are known, and once decisions have been made at departmental level on the work required to ensure that the Protocol can, if required, be enforced. Higher level decisions will be required to see how the Protocol links in with/has implications on the framework.

28. What would happen if the framework conflicted with an international agreement?

Conversations on how to tackle this cross-cutting policy issue are ongoing

29. If the framework needs to be amended to reflect a new international agreement, what revision process will be engaged?

As part of the usual review process (further details are provided in later questions).

30. How will the Senedd be able to contribute to that revision process?

Currently there is no commitment in the framework to invite Senedd (or equivalent parliaments of the UK) to consider or contribute to the review and revision process. Officials will consider this additional requirement going forward.

Interaction with the Internal Market Bill

31. What impact would the UK Government's Internal Market Bill (i.e. to enshrine in law the principles of mutual recognition and non-discrimination) have on the framework?

Decisions taken on NLCS policy within this framework have the potential to impact on the Internal Market in so far as they relate to the labelling, composition, and standards of foods sold across the UK. This framework therefore acknowledges the principles set out in the Joint Ministerial Committee's (EU Negotiations) Communiqué October 2017 (Part B Section 2.5/Part C Section 1). Common recommendations agreed by the official level policy group will also take account of potential impacts on the function of the Internal Market (Part C Section 5.4) during the risk management process. The framework, and governance processes contained within the NCLS framework, makes adequate provision for policy divergence that simultaneously considers the impact on the Internal Market (Part C Section 6).

Potential for divergence must continue to be acknowledged by the framework. In each instance policy proposals will be considered on a four nation basis via the four-nation policy group established through the framework, with the impact on not just each individual nation, but on the UK internal market (UKIM) being considered. If divergence occurred between UK nations [GB subject to NIP] the current UKIM Bill would provide for goods made and labelled in any of the UK nations to be recognised and sold in any of the others [GB subject to NIP] without discrimination.

Operation

32. What will the roles of the different governments in the operation of the framework be?

All Governments across the UK will have equal roles in the delivery of the framework. Policy teams will work together via the newly established NLCS Policy Group (see Part D Section 1) to develop common approaches for changes to NLCS policy within scope of this framework and agree common recommendations. Where consensus cannot be reached at official level regarding a common recommendation (whether that is agreement to a UK wide approach or to diverge) the dispute resolution process (see Part D Section 6) would be triggered and Minister's involved as necessary.

33. Will any other bodies, public or otherwise, be involved in the operation of the framework?

The framework provides for third parties/experts to participate in the regular UK policy group meetings. This could where necessary include industry or public representative bodies.

Governance and dispute resolution

34. What will the roles of the governments be in the oversight and governance of the framework?

A detailed governance and dispute resolution structure is set out in the framework at Appendix IV.

35. What will the roles of any other bodies be in the oversight and governance of the framework?

Currently there is no commitment in the framework to invite other bodies in the oversight and governance of the framework. Officials will consider this additional requirement going forward.

36. What is the dispute resolution mechanism for the framework? How does it compare to dispute resolution mechanisms in other frameworks?

A step-by-step dispute resolution mechanism is provided in the framework which set out clearly roles and responsibilities for officials and Ministers. It is difficult to assess how this framework compares to other given that most aren't at the same stage of development.

37. Do you consider the dispute resolution mechanism to be robust enough for its intended purpose?

Yes, the framework clearly sets out joint decision-making, dispute avoidance, and dispute resolution processes. It reflects and is in line with guidance provided and has been used as an example to follow for other policy areas.

Review and revision

38. What arrangements for regular review and revision of the framework will there be?

We have committed to UKG and DA officials convening, through the NLCS Policy Group established via the arrangements set out in the framework, to review the framework at the stated intervals. At each point there will be retrospective assessment, using information collected via quarterly reports, to establish whether it is achieving its stated goals, and supporting efficient administration of the relevant processes required by law; or whether it requires further refinement/revision.

39. How will continued adherence to the framework principles be measured?

Adherence will be considered as part of the period review of both the framework and concordat of which all UK parties will be part of.

40. How will the Senedd be able to contribute to the review and revision process for the framework?

Minister will receive an annual report. Currently there is no commitment in the framework to invite Senedd (or equivalent parliaments of the UK) to consider or contribute to the review and revision process. Officials will consider this additional requirement going forward.

41. How will stakeholders be able to contribute to the review and revision process for the framework?

Currently there is no commitment in the framework to involve stakeholder in the review and revision process. Officials will consider this additional requirement going forward.

42. What is the process for discussing and agreeing any future changes to the framework?

Officials across the UK will formally review both the framework and concordat every six months, one year, and three years after implementation; and thereafter at three-yearly intervals from the end of the TP.

43. If changes are made in future, how will the Senedd be notified? What scrutiny procedures will apply to the changes?

Minister will receive an annual report. Currently there is no commitment in the framework to invite Senedd (or equivalent parliaments of the UK) to consider or contribute to the review and revision process. Officials will consider this additional requirement going forward

I hope the information provided provides the clarity the EAAL committee require in order to scrutinise the framework.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

Eluned Morgan AS/MS

Y Gweinidog Iechyd Meddwl, Llesiant a'r Gymraeg

Minister for Mental Health, Wellbeing and Welsh Language

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