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Llywodraeth Cymru
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Mike Hedges AS/MS
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Welsh Parliament
Cardiff Bay
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Dear Mike

Thank you for your letter of 26 October requesting further information on a number of points in relation to the Hazardous Substances Draft Framework. The following information responds to the questions put forward in your letter:

Development of the common framework

1. Can you explain why you believe a framework is necessary in this policy area?

The primary focus of this specific Framework Agreement is to ensure appropriate evidence and expert advice is applied to consideration of what substances and quantities form part of the hazardous substances consent and related land use planning regimes across the UK. The proposed framework sets out ways of co-operating when developing policy, respecting the ability of administrations to pursue diverging policy agendas.

There is a theoretical possibility of a damaging 'race to the bottom' for standards of hazardous substances controls. As explained in the outline framework, the risk of this is low, but the existence of a policy co-operation framework will help avoid such a scenario or at least mitigate the effects of change. The industry has many businesses operating across the UK so the real benefit of a framework in this policy area is it will help policy development learn from and accommodate the different pressures business have across the administrations. While the environmental aspects of the policy area have separate advisory bodies, the health and safety advice and expertise relies on a common source for England, Scotland and Wales; the Health and Safety Executive (HSE). Co-operation on policy development allows the cost for the assembly and use of common evidence to be reduced for each administration and promotes co-ordinated use of HSE resources, benefiting their operational efficiency.

The framework arrangements seek to maintain the existing co-operation of officials over the past two decades taking forward transposition of the various Seveso Directives. The common goals set out in the Directives have been implemented using the different planning

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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.

and hazardous substances controls in each administration, with co-operation, information sharing and general support provided by the officials involved.

2. Can you expand on why the UK administrations chose to pursue a non-legislative framework?

Different approaches by the administrations can and are accommodated within this topic area. Adopting a legislative approach would be unnecessary and inflexible. A non-legislative framework maintains flexibility to accommodate different approaches but provides the basis for managing and maintaining co-operation in policy development which may be otherwise lost as the attention given to the topic area varies as administrations change their policy priorities.

3. Can you outline how you have engaged Welsh stakeholders, including industry, Local Planning Authorities and Natural Resources Wales in the development of the framework?

Given the limited consequences of the framework proposals, engagement with stakeholders has been similarly limited. Key stakeholders were engaged at a roundtable event on 19 March 2019, held jointly with other administrations. This was used to confirm whether a non-legislative approach was appropriate. Stakeholders relevant to Wales included the Health and Safety Executive, Chemical Industries Association, Tank Storage Association, UK Petroleum Industry Association and the Chemical Business Association.

We sent the outline framework document to stakeholders in Wales at the start of October, including to all hazardous substances authorities and fire and rescue authorities. Stakeholders were encouraged to contact my officials if they had concerns about the framework. No comments have been received to date.

4. Can you outline the key issues raised by Welsh stakeholders and how these been reflected in the framework?

Industry generally wanted consistency in the regulatory regime (which in itself was valued) and would therefore not like a divergence in policy between administrations. Maintaining the opportunity for policy divergence, however, gives the public of Wales a greater say in how policy on land use planning for major accident hazards is developed going forward and allows flexibility for hazardous substances planning to adapt to wider changes within the Welsh planning and environment protection regimes.

Interaction with domestic and international law, and international agreements

5. Can you clarify whether and how the framework interacts with existing domestic legislation, other than that already listed in Section 1 of the draft FOA?

The legislation set out in the FOA provides the framework for the system of hazardous substances consent required to store chemicals which are major accident hazards, which is administered by hazardous substances authorities, subject to advice primarily provided by the Health and Safety Executive and Natural Resources Wales. The legislation listed is also the basis for mandatory consultation of the Health and Safety Executive in relation to development proposals around establishments storing hazardous substances.

Hazardous substances planning is concerned with mitigating the effects of a major accident by keeping sensitive development away from establishments storing dangerous substances. The legislation which seeks to prevent the accidents in the first place are the Control of Major Accident Hazards Regulations 2015 ("the COMAH Regulations"). The competent

authority for the purpose of these regulations in Wales is the Health and Safety Executive and Natural Resources Wales acting jointly. It is not subject to a framework agreement.

Legislation not listed includes the Town and Country Planning (Local Development Plan) Regulations 2005 which require the preparation of local development plans to have regard to the objectives of preventing major accidents and limiting the consequences of such accidents for human health and the environment

6. The UK is signatory to two international agreements relevant to the hazardous substances regime: the Aarhus Convention and the Convention of the Transboundary Effects of Industrial Accidents. Can you expand on how the framework will ensure compliance with these Conventions?

Hazardous Substances planning is a very specialised topic with limited numbers of professional staff involved. The framework will therefore facilitate the sharing of best practice and provide peer review opportunities in respect of how the international conventions are implemented across administrations.

7. Can you clarify whether and how the outcome of the on-going EU-UK negotiations on the Future Relationship will impact on the framework?

Through discussions we have not identified any differences between administrations on hazardous substances that would have an impact on the UK's ability to negotiate (etc.) trade agreements and treaties. Negotiation of any new trade agreements or treaties would in any event need to take account of where devolved competence means there are, or could be, divergence across the UK in matters pertinent to that particular treaty or agreement. The terms on which the UK leaves the European Union, and any future UK arrangements with the EU, may incorporate certain commitments which could have implications for the hazardous substances regime (e.g. on environmental standards). In this scenario the ability of administrations to diverge may be reduced, although it is considered that the best practice ways of working as set out in this framework will still prove a positive basis for sharing of information etc. and as such the framework will remain unchanged.

8. Can you clarify whether and how the UK Government's Internal Market Bill will impact on the framework?

See answer to 7 above.

Scrutiny process and timelines

9. Can you confirm that the framework will comprise the provisional FOA, the Concordat and the updated MOU referred to in the draft FOA?

The MoU referred to in the provisional FOA relates to the COMAH Regulations which is not part of this framework. We are in the process of discussing with the other administrations what exact documents the full framework will comprise of. We are happy to update the committee on this as soon as it is confirmed.

10. Can you clarify whether the Concordat and the updated MOU will be available for Senedd scrutiny?

We are discussing this with the other administrations to ensure that we have a consistent approach to further parliamentary scrutiny. We are happy to update the committee on this as soon as it is confirmed.

11. Can you clarify the timeline for Senedd scrutiny of the provisional FOA and associated documents?

We are discussing this with the other administrations to ensure that we have a consistent approach to further parliamentary scrutiny. We are happy to update the committee on this as soon as it is confirmed.

Monitoring and review arrangements for the framework

12. Can you explain why the UK administrations have chosen not to establish a more formal mechanism for monitoring the implementation of the framework?

After an initial review a more permanent arrangement for recurring meetings on this framework will be decided based around a timeframe that is considered appropriate. The decision not to impose a more formal monitoring programme at this point has been reached by agreement between the four administrations and is based on the relative importance of subject area and a desire to not over-burden the simple working arrangements that have been successful so far. The position is that any monitoring and review process needs to be proportionate to the policy area.

13. Can you clarify whether a report of the review meeting between the UK administrations will be made publicly available?

We are in the process of finalising the details of the review meetings process with the other administrations and will be happy to update the committee further once agreement has been reached.

14. Can you explain in what circumstances would it not be appropriate to involve stakeholders in the review process for the framework?

We are in the process of finalising the details of the review meetings process with the other administrations and will be happy to update the committee further once agreement has been reached.

15. Can you confirm whether and how the Senedd will be able to contribute to the review process for the framework?

We are in the process of finalising the details of the review meetings process with the other administrations and will be happy to update the committee further once agreement has been reached.

Background to the common framework

16. Can you outline the 'minimum requirements' of the Seveso III Directive in relation to hazardous substances planning, which are common across the UK?

Very broadly the land use planning related minimum requirements of the Seveso III Directive are;

- a) for consent to be issued by a competent authority before substances, over the quantity specified in Directive can be stored in an establishment;
- b) for the preparation of planning policies to take into account the aims and objectives of the Directive to preventing major accidents and limiting the consequences of such

accidents for human health and the environment by maintaining appropriate safety distances; and

- c) to consider any major accident hazard issues before they grant planning permission for developments in the vicinity of establishments, to certain types of development near such establishments, and hazardous substances consent
- d) for hazardous substances authorities and local planning authorities to provide information and consult the public in relation the above activities.

17. Can you provide further details on the scope for divergence under the current hazardous substances planning regime?

There is scope for divergence in terms of the substances and their quantities which fall under the control of the regime. There is also scope for further divergence in how procedures and timescales differ in respect of granting hazardous substances consent and for differences in respect of how the different planning systems interact with the objective of maintaining safe distances from establishments.

The post-EU Exit hazardous substances planning regime

18. Can you clarify whether any of the current ‘key restrictions’ will be maintained at a UK-wide level post-EU Exit? How will this be reflected in the framework?

There is no formal political agreement to retain the same definitions across the UK but there is a recognition that because hazardous substances planning existed in the UK before the Seveso Directive was introduced for strong safety and environmental reasons, there is little appetite for change. The current system is based on significant and reliable HSE evidence resulting in current UK controls for some substances being more rigorous than those in the directive and there is very little pressure from stakeholders for amendments to the system. The Framework deals with the lack of formal agreement by requiring administrations to bring to the attention of other jurisdictions any changes they plan to make so that any implications across administrations can be planned for in advance

19. What consideration has been given to maintaining common minimum requirements, including, for example, minimum standards on what constitutes a hazardous substance?

Discussions so far have respected that these issues are devolved and there is an ability to set different substances and quantities. Discussions have also recognised however divergence is unlikely because the minimum standards are there for safety reasons based on a common evidence base led by HSE and other safety regulators.

20. What are the potential risks and opportunities associated with not maintaining common minimum requirements and with widening the scope for divergence?

The main risks would be general confusion across the industry about when consent is required and possibly the UK population being exposed to higher risk of major accidents. It must be remembered however that the current system is set up to allow different areas to decide for themselves, through their hazardous substances authority, what level of risk they are prepared to live with when planning for new establishments and for development around them.

- 21. To what extent are you satisfied that the chosen approach in this policy area, i.e. a non-legislative framework, will not result in a lowering of standards and a reduction in the levels of protection for human health and the environment?**

The UK has always had a strong health and safety culture even before controls were standardised by the EU through the Seveso Directive. I believe there is a genuine political and professional desire to maintain high standards.

- 22. To what extent does the framework align with the Welsh Government's commitment to non-regression of environmental standards?**

The Framework does align with the commitment to non-regression of environmental standards. There is no appetite for change, and certainly not regression, in the area due to the safety culture within the sector. The Framework architecture has been developed to be proportionate to the policy area and certainly does not undermine any non-regression commitment.

Proposals for future changes to the hazardous substances planning regime

- 23. Can you clarify whether the Welsh Government has undertaken any work on proposals for the reform of the hazardous substances planning regime since the above consultation?**

There are few hazardous substances made in Wales so officers at hazardous substances authorities have limited experience of dealing with applications. This did prompt a question from a respondent to our last consultation on regulation changes on whether authorities were best placed to discharge the function. While we acknowledge a lack of staff with skills and experience, a comprehensive review of how the system operates is not something industry or regulators are widely asking for at this time. We have therefore not progressed work on a review since the regulations were replaced in 2015.

- 24. Can you clarify whether the Welsh Government has any immediate or future plans to review the hazardous substances planning regime?**

There are no immediate plans to review the hazardous substances planning regime but for the reasons set out in the answer to question 23, it is something which will be considered in the future.

- 25. In what circumstances would the Welsh Government consider proposals to reduce controls below the current minimum requirements, for example, on the level of substances that can be held, or in relation to the consent process?**

The only circumstances that the Welsh Government would reduce control below the minimum requirements would be if we were advised by either the Health and Safety Executive or Natural Resources Wales that the current controls were excessive and if this could be supported by scientific evidence.

- 26. Can you clarify whether changes to the current minimum requirements would be subject to public consultation and Senedd approval?**

Yes any proposed changes to the minimum requirements would require a change to legislation and therefore the commitment to public consultation and Senedd scrutiny of the legislation would be required.

27. To what extent are you satisfied that there is sufficient technical expertise at a Wales or UK level to replace that currently available at an EU level in this policy area?

Expertise used to inform policy development at both national and European levels has always been held within member states, so the continuing advice of Health and Safety Executive and Natural Resources Wales is sufficient and welcomed going forward.

28. In the absence of new or revised EU requirements in relation to hazardous substances planning applying to the UK, what arrangements will be put in place to review domestic requirements, taking account of developments elsewhere?

No formal review mechanism is proposed beyond that contained in the Framework. The existence of the Framework will facilitate reviews of best practice and lessons learned from developments in other administrations countries, which can be used to highlight when a formal review of the hazardous substances processes in Wales should be undertaken.

I hope the above responses provide you with additional information to assist in the scrutiny of the Draft Framework. Please be assured that when we have reached a decision collaboratively with the other administrations regarding the framework review process and the final format of the Framework, the Committee will be updated.

Yours sincerely



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