



Ein cyf; MA/EM/3691/20

David Rees MS  
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Welsh Parliament  
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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.

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 NCLCS 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) Communique 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