

Eluned Morgan MS

Minister for Mental Health, Wellbeing, and the Welsh Language

20 January 2021

Dear Eluned,

Nutrition Related Labelling, Composition and Standards Provisional Common Framework

I am writing to provide you with the Committee's conclusions, following its consideration of the Nutrition labelling, composition and standards provisional Framework Outline Agreement.

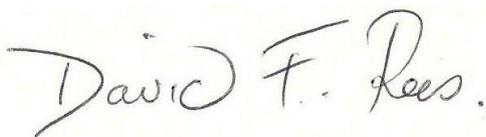
Enclosed with this letter is a short paper outlining our conclusions. This paper also includes a number of points on which we would welcome a response.

I would like to thank you and your officials for the open and constructive manner with which you have responded to our scrutiny of this provisional Framework to date.

In light of the limited time left to us in the current Senedd, I would be grateful for a response to this letter by 22 February 2021.

I have copied this correspondence to the Chair of the House of Lords Common Frameworks Scrutiny Committee, the Chair of the Northern Ireland Assembly's Committee for the Executive Office, and the Convener of the Scottish Parliament's Health and Sport Committee.

Yours sincerely,



David Rees MS

Chair of the External Affairs and Additional Legislation Committee



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External Affairs and Additional Legislation Committee's view on the Nutrition Related Labelling, Composition and Standards Provisional Common Framework

Introduction

1. This paper provides the External Affairs and Additional Legislation Committee's view on the Nutrition Related Labelling, Composition and Standards Provisional Common Framework following initial scrutiny.
2. It is addressed to the Minister for Mental Health, Wellbeing, and the Welsh Language.

Scrutiny of this framework

3. We are grateful for your appearance before the Committee on 10 December 2020 and for the efforts of your officials to assist us with scrutiny of the Nutrition Related Labelling, Composition and Standards Provisional Common Framework ("the provisional Framework").
4. Scrutinising this provisional Framework has been complicated by the fact that sections of the provisional Framework remain subject to ongoing intergovernmental negotiation. Additionally, significant political developments have occurred during the period within which we have been considering this provisional Framework.
5. **Whilst we understand the need to have a provisional framework agreed, we would caution the Welsh Government against finally confirming the Framework until:**
 - the areas of the provisional Framework that are subject to ongoing discussion have been resolved; and
 - the implications of recent developments (such as the UK-EU Trade and Cooperation Agreement, and the UK Internal Market Act 2020) have been thoroughly assessed and the provisional Framework amended accordingly.
6. **Given the likely need for significant changes to the provisional Framework, we believe it should be re-opened for scrutiny once the above points have been addressed and prior to final confirmation.**
7. We address this further under the "Future scrutiny" section below.

Expert Committees



8. At our meeting on 10 December 2020, we questioned the absence of direct Welsh representation on the UK Nutrition and Health Claims Committee (UKNHCC) i.e. no member of the committee came from a Welsh institution.
9. You explained that this was a consequence of no applications being received from Wales-based individuals and that membership is not based on geographic representation.
10. We accept the point you make about membership not being on a geographic basis. Nevertheless, **we believe it important that every effort is made in future to publicise recruitment to this committee and to draw it to the attention of relevant Wales-based experts.**
11. The Welsh Government has confirmed that it is considering how it will contribute to funding the UKNHCC in future years.
12. **It is important to ensure that the work of the UKNHCC is as transparent as possible and we ask that the Welsh Government provides further details of how the work of the UKNHCC will be transparently communicated to the Senedd in future.**

Executive competence

13. The provisional Framework appears, in practice, to reduce the competence of the Welsh Ministers in its approach to approvals for nutrition and health claims, compared to the Nutrition (Amendment etc) (EU Exit) Regulations 2019 (“the 2019 regulations”).
14. The 2019 regulations provide that the appropriate authority for applications for new nutrition and health claims is the Welsh Ministers, or the Secretary of State with their consent. They provide that when a business makes an application for a nutrition or health claim in one part of Great Britain, the authority in that part of GB should make a decision on that application after consulting authorities in other parts of GB. When a business makes an application for a nutrition or health claim to be approved across GB, all authorities must consult each other and agree before the claim is approved.
15. However, the provisional Framework appears to create a presumption that even when a business has only made an application in one part of GB, the governments must determine whether a common approach is needed. If they do not agree, the dispute resolution process is triggered. If no agreement is reached through the dispute resolution process, the final decision is for the Secretary of State.



16. The provisional Framework also appears to reduce the practical effect of the competence of the Welsh Ministers to make policy changes in scope of the framework by regulations or to make amendments to relevant lists and registers in Wales.
17. The 2019 regulations enable the Welsh Ministers, or the Secretary of State with their consent, to make such changes.
18. However, the Framework requires such decisions to be made through the joint decision-making process. If the governments disagree on whether divergence is acceptable, the dispute resolution process is triggered. The final step of the dispute resolution mechanism would provide for the Secretary of State to make a decision on behalf of the whole of GB. It appears this would apply even if the devolved governments had not given their consent.
19. **We are concerned that this arrangement creates an imbalance in favour of the UK Secretary of State, who acts for England only in this area of policy.**
20. **We would be grateful for a further explanation of your understanding of how the provisional Framework affects the competence of the Welsh Ministers in practice.**

Future scrutiny

21. The provisional Framework, due to the timing of its drafting, does not take account of significant material developments, such as the enactment of the UK Internal Market Act 2020, the UK-EU Trade and Cooperation Agreement, the European Union (Future Relationship) Act 2020, and on-going negotiation around reference to UK international obligations in framework documents.
22. These developments necessitate an almost immediate revision of the provisional framework, to the extent that it calls into question the utility of scrutinising the version of the provisional Framework that we have been considering.
23. Additionally, a number of areas of the provisional Framework are subject to ongoing intergovernmental discussion, for example in relation to international relations and policy.
24. In our 2019 report on Senedd scrutiny of common frameworks, we recommended that each framework included a post-agreement implementation plan, that an annual report on progress against that plan be laid before the Senedd, and that the Senedd be notified of any changes to a framework by Written Statement.
25. In light of the significant revisions now needed to the provisional Framework, it is vital that the Senedd is afforded an opportunity to scrutinise the revised version of the provisional Framework once it has been provisionally agreed by the JMC EN (or an equivalent



intergovernmental forum) but, crucially, before this revised version of the Framework is finally agreed.

26. This is an additional step to those recommended in our 2019 report.
27. That said, we reiterate our commitment to our original 2019 recommendation, as it relates to this Framework. We expect the Senedd to be informed of any review of the Framework, and the outcome of any review. This applies to the review points specified in the provisional Framework and any other review that might take place.¹
28. We support the recommendations made by committees in the House of Lords and the Scottish Parliament to their respective Ministers for the NLCS policy group annual report to be laid and we welcome your confirmation that you have requested that the annual report be shared with the relevant Senedd Committees.

¹ The provisional Framework states that the Framework “[...] will be formally reviewed six months, one year, and three years after implementation; and thereafter at three-yearly intervals from the end of the TP”.



29. We would be grateful if you could outline, in reply to this letter:

- progress towards obtaining intergovernmental agreement to laying the annual report of the NLCS policy group before the Senedd;
 - your response to our view that a revised version of the provisional Framework is provided to the Senedd for further scrutiny once consideration of recent developments have been incorporated (in the terms described in paragraph 25 above) and a timescale for any revision; and
 - how you will inform the Senedd of the outcome of each future review of the Framework.
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