

Vaughan Gething MS  
Minister for Health and Social Services

22 March 2021

Dear Vaughan

**Food and Feed Safety and Hygiene Provisional Framework**

I am writing to provide you with the Committee's conclusions, following its consideration of the Food and Feed Safety and Hygiene provisional Framework Outline Agreement.

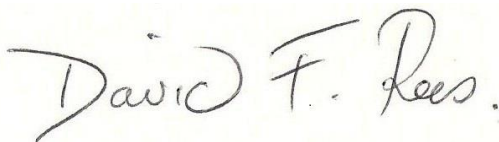
Enclosed with this letter is a short paper outlining our conclusions. This paper also includes a number of points on which we would welcome a response.

I would like to thank the Welsh Government and the Food Standards Agency for the open and constructive manner with which they 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 31 March 2021 if possible.

I have copied this correspondence to the Chief Executive of the Food Standards Agency, the Chair of the House of Lords Common Frameworks Scrutiny Committee, the Chair of the House of Commons Environment, Food and Rural Affairs Committee, the Convener of the Scottish Parliament Health and Sport Committee, and the Chair of the Northern Ireland Assembly's Committee for the Executive Office.

Yours sincerely,



David Rees MS

Chair of the External Affairs and Additional Legislation Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg.

We welcome correspondence in Welsh or English.



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# Annex A

## Introduction

1. This paper provides the External Affairs and Additional Legislation Committee's view on the Food and Feed Safety and Hygiene Framework following initial scrutiny.
2. We comment first on the process of scrutinising the framework, before turning to its substance.

## Scrutiny of this framework

3. We are grateful to the Welsh Government and the Food Standards Agency (FSA) for engaging constructively with our scrutiny of the provisional Framework.
4. The provisional Framework 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 ongoing negotiation around reference to UK international obligations in framework documents.
5. We note that the FSA has acknowledged that the framework will need to be revised to take these developments into account.
6. We wish to raise our particular concern about the impact of the Internal Market Act on the framework. As things stand, the market access principles in the Act would apply to divergent policies agreed through this framework in certain cases. This is not consistent with the principle agreed by the JMC (EN) that common frameworks should enable the functioning of the internal market while acknowledging policy divergence. We note that the FSA has suggested that the framework may need to include an additional step to allow consideration of whether the market access principles should apply in instances where divergent policies are proposed. We consider this essential.
7. While we understand the need to have a provisional framework agreed, we would caution the Welsh Government against finally confirming the Framework until the implications of these developments have been assessed and the framework revised accordingly.



8. Given the need for significant changes to the provisional Framework, we believe the Senedd should be afforded an opportunity to scrutinise the revised version of the Framework once it has been provisionally agreed by the JMC (EN) (or an equivalent intergovernmental forum), but before this revised version is finally agreed.
9. We also 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.
10. We support the recommendations made by committees in the House of Lords and the Scottish Parliament to their respective Ministers that the framework should explicitly provide for the annual report of the Frameworks Management Group to be published.
11. We would be grateful if you could outline:
  - **progress towards agreement to amend the framework to provide for the annual report of the Frameworks Management Group to be laid before the Senedd;**
  - **your response to our view that a revised version of the provisional Framework should be provided to the Senedd for further scrutiny once consideration of recent developments has been incorporated and a timescale for any revision; and**
  - **how you will inform the Senedd of the outcome of each future review of the Framework.**
12. Nevertheless, we can make some observations about the framework itself on the basis of our initial scrutiny. We now turn to these.

## Transparency

13. The framework sets out how governments and food safety bodies will work together to make decisions in its scope. These decisions will have significant and far-reaching implications for people and businesses in Wales.
14. The framework recognises that it should operate transparently. However, it does not clearly explain how stakeholders and citizens will be able to provide input into the decision-making processes that it sets out.
15. We believe that the framework should set out how stakeholders and citizens will be able to feed into the decision-making processes that it establishes.



## Operation and governance

16. The FSA has taken on significant new functions in Wales following the UK's withdrawal from the EU.
17. The framework provides for the FSA to make risk management recommendations for Wales for common or divergent approaches. If a dispute arises at official level over whether divergence between Wales and other parts of the UK is appropriate, this can be escalated to the Welsh Ministers.
18. The FSA is a non-ministerial department of the UK Government. Most members of the Board of the FSA are appointed by the UK Government's Secretary of State for Health. The Welsh Government has the power to appoint one member to its Board. The Board Member for Wales chairs the Welsh Food Advisory Committee.
19. We would be grateful if you could explain:
  - **how the Welsh Government has been assured that the FSA has sufficient capacity and independence to make appropriate risk management recommendations for Wales; and**
  - **how the Welsh Government will work with the FSA to determine where policy divergence is appropriate.**

## Legislative and executive competence

20. EU legislation corrected under the EU (Withdrawal) Act provides powers to the Welsh Ministers on food and feed safety and hygiene, rather than concurrent powers.
21. Although the framework is non-legislative, in practice it places additional requirements on the exercise of both legislative and executive competence, in that it subjects proposed changes to the processes that it sets out.
22. The framework also states that the governments are considering granting powers to allow the Secretary of State to make regulations in specific areas of FFSH policy, with the consent of the Welsh Ministers. Such concurrent powers would constitute functions of a Minister of the Crown for the purposes of Schedule 7B to Government of Wales Act 2006, restricting the legislative competence of the Senedd.



23. We would be grateful if you could set out your view on whether there is a need for concurrent powers in this policy area.

