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Llywodraeth Cymru
Welsh Government

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Dear Llyr

Provisional Common Frameworks for Air Quality, and Chemicals and Pesticides

Thank you for your letter of 11 March requesting further information and/or clarification on a number of matters relating to provisional Common Frameworks for Air Quality, and Chemicals and Pesticides. Responses to the questions posed by the Committee are set out below.

General

1. Can you clarify the process for determining whether a proposed policy change would be in scope of the Frameworks?

Where one or more of the Welsh Government, UK Government, or the Scottish Government propose to change rules in a way that has policy or regulatory implications for the rest of the UK, or where rules in Northern Ireland change in alignment with the European Union (EU), the Framework provides the governance structures and consensus-based processes for considering and managing the impact of these changes. The Air Quality Framework sets out specific returning powers that are within scope.

2. Can you confirm whether changes to domestic policy and law that do not change relevant retained EU law will be in scope of the Frameworks? In particular, can you confirm whether the planned Clean Air (Wales) Bill will be in scope of the Air Quality Common Framework?

Domestic policies and law which do not change relevant retained EU law are not within scope of these Common Frameworks. If a policy development in Wales was thought to impact upon the other nations then it would, however, be discussed via the Framework and vice versa.

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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.

The provision within the Clean Air Bill which relates to setting air quality targets (including Particulate Matter) falls within the scope of the Air Quality Common Framework. However, the power to set targets is within the executive competence of the Welsh Ministers and within legislative competence of the Senedd.

3. Can you confirm that the Air Quality Framework will not in any way limit the provisions you would to include in the Clean Air (Wales) Bill?

The majority of air quality functions fall within the devolved competence of Welsh Ministers. The Framework as a whole acknowledges where executive functions are exercisable by Welsh Ministers and wholly respects the legislative competence of the Senedd. The Framework delineates where independent decision-making capabilities can be exercised in line with the statutory and executive freedom of each Government. For these reasons, the provisions contained within the Air Quality Common Framework will not have a limiting impact on the content of the Clean Air Bill.

4. Can you set out your understanding of the practical effects of these Frameworks on the exercise of devolved competence?

The Frameworks do not impinge upon the ability of Welsh Government to make separate policy or legislation for Wales. Divergence in policy or legislation in devolved areas will continue to be possible, and the Frameworks will provide a more formal route for early discussion of either joint or separate policy making. However, the dispute resolution mechanism can be utilised should a government consider another government's policy to be damaging e.g. not compliant with international standards or have significant deleterious impacts in other countries.

Stakeholder engagement

5. Can you provide a detailed explanation of how the views of stakeholders in Wales (who responded to the DEFRA consultation) have been taken into account in the development of the Frameworks? What involvement did the Welsh Government have in this process?

Much of the returned feedback from stakeholders on the Chemicals and Pesticides provisional Framework in the initial round of engagement was policy specific rather than framework related, therefore not relevant to the development of the framework. Officials from all four nations considered the framework specific comments and jointly prepared a response document in a question and answer format. This was issued in March 2021 to the 12 industry and NGO stakeholders who returned feedback on the intergovernmental working arrangements set out in the Framework. A further stakeholder engagement exercise was launched on 3 February 2022.

On 9 December 2020, the four Governments jointly invited a wide range of stakeholders from each nation to respond with comments/views on the provisional Air Quality Common Framework. Stakeholders in Wales included the WLGA, Local Authorities, Health Boards, third sector organisations (such as Healthy Air Cymru), NRW, the National Farmers' Union and PHW. The consultation remained open until the New Year but elicited only two responses, neither of which provided substantial feedback. A further stakeholder engagement exercise was launched in early February 2022.

6. A summary of stakeholders' responses to the DEFRA consultation has not been published. What is your position on this, and do you consider that publishing responses would help improve transparency?

We consider stakeholder responses as key to further improving the framework. Responses provided to the stakeholder engagement exercises were on a confidential basis. Any release of this date would be subject to four-government agreement and obtaining the consent of respondents.

7. The Frameworks provide for the governments to take joint approaches to developing law and policy. How you will ensure that this does not limit the role of the Senedd or stakeholders in Wales in shaping Welsh law and policy?

The Frameworks require each Government to consider how any changes in their part might impact on the other three parts of the UK, and where possible agree common approaches. The Frameworks accept a common approach may not always be suitable and therefore they do not change the ability of a Government to consider and respond to individual factors and priorities. This is a welcome and necessary step to ensure open dialogue between the four nations.

The Air Quality Common Framework, for example, acknowledges the statutory and executive freedom of each Government to take different decisions for their nations. There is acknowledgement that, for the areas in scope of this framework, differences in regulation across the UK (including between GB and NI) will mean that decisions will be taken in various contexts, such as: where those decisions relate solely to matters reserved/devolved (whichever the case may be) to each Government, such decisions will be made independently by each Government in accordance with the relevant constitutional law(s). Where those decisions concern matters of mutual interest, such decisions will be made jointly while respecting the legislative and executive freedoms where they exist of each of the Governments. In these ways, the role of the Senedd, including the relevant stakeholders in Wales, in shaping future policies and laws will be guaranteed and respected.

Review and amendment

8. You told the Committee that the Senedd and external partners will have an opportunity to engage with the review process for the Frameworks.

- **Is it the intention that all Parties will agree a common approach to Parliamentary engagement in the review process?**
- **How do you envisage this will work in practice?**
- **Why is this not reflected in the Frameworks?**

Discussions are currently underway to agree the process for the monitoring and governance of Common Frameworks following their finalisation. This includes development of a standard template for reporting to be used across all frameworks. This will be part of the recently published [Intergovernmental Relations Review](#) and involve the new Inter-ministerial Standing Committee (IMSC) with Ministers from the four nations.

Stakeholders will continue to be consulted on developments in policy in the usual way. The Welsh Government commits to notifying stakeholders of the upcoming review points of Common Frameworks and of any recommendations by the Senedd.

Dispute resolution

9. Can you clarify at what stage and how you will inform the Committee/the Senedd of disputes under the Frameworks?

The post-finalisation reporting mechanism being devised for the frameworks includes the reporting of any disputes raised under a framework.

UK Internal Market Act

10. You said that the Frameworks would not be impacted by the UK Internal Market Act and went on to suggest that they “override” the Act. Can you provide further explanation of this?

The presence of a Common Framework will not override the UKIMA, however the full effect of the UKIMA will not apply to certain goods specified in Schedule 1 to that Act. The Schedule describes (among other things) the cases where chemicals and pesticides are exempt, meaning the market access principles in the UKIMA will not apply in those circumstances. The presence of an exclusion already listed takes elements of this policy area out of the scope of the UKIMA.

Regulatory standards and Review of Retained EU Law (REUL)

11. Can you confirm if the Welsh Government intends to keep pace with EU standards on chemicals and air quality?

In relation to air quality, our policy is to maintain and, where possible, exceed EU standards. This is evidenced by our work relating to setting air quality targets, including for Particulate Matter, which will take full account of the recently published WHO Air Quality Guidelines and the latest scientific evidence.

On chemicals, the Welsh Government’s aim is for UK REACH to come to provide as high a level of protection for human health and the environment in Wales as EU REACH did when we were a member state, as quickly as possible. Similarly for pesticides, the UK Government and devolved governments are committed to ensuring that existing environmental and human health standards are maintained.

12. How do you respond to the suggestion that the UK has not kept pace with new EU REACH regulations, and that the speed of regulation under UK REACH is slower?

The EU REACH Regulation was drafted to work for a territory the size of the European Economic Area. The resources available to authorities under EU REACH for proposing regulatory controls on chemicals are the combined resources of the European Chemicals Agency and all EU Member States.

UK REACH came into effect in Great Britain in 2021, as a consequence of the European Union (Withdrawal) Act. The amending powers under that Act were limited and prohibited policy changes. Therefore, when UK REACH was created as a standalone system, the governments of the UK could only make those amendments necessary to make the EU Regulation legally coherent in a GB-only context. These limited amendments did not make adjustments for scale of the market to which it would now apply or scale of GB public sector resources.

The Welsh Government is determined that UK REACH should meet its core aim of providing a high level of protection of human health and the environment in Wales, just as EU REACH did. However, it will take time to make the legislation we inherited fully fit for purpose in a GB context.

The Environment Act 2021 contains amending powers designed to help make a chemicals regime originally designed for the European Union function effectively at the scale of Great

Britain. All parties to the Common Framework are continuing discussions on how best to utilise those powers to make UK REACH work better.

13. The EU is in the process of revising REACH as part of its new Chemicals Strategy for Sustainability. What plans does the Welsh Government and/or the four nations have to do the same?

We are working with the other administrations under the Common Framework to prioritise improvements to UK REACH, focusing first on areas most in need of attention in a GB context following EU Exit.

14. How do you respond to concerns that regulatory standards in the UK are likely to be lower than in the EU, at least in the early phases of the UK REACH programme? What are the implications of this?

During EU Exit negotiations, the Welsh Government called for continued UK membership of the European Chemicals Agency and dynamic alignment with EU REACH, but this position was not supported by the UK Government. We have inherited a system that requires authorities in Great Britain to follow processes designed for the EU to reach regulatory decisions in Great Britain, with only a fraction of the EU's resources to take that work forward. We are working with the other administrations to seek improvements to the legislation we inherited, with the aim of making those processes more efficient in GB going forward. In some instances, this may involve applying information coming out of EU REACH in a different way for a GB context.

Until then, the UK's limited regulatory resources are being focused quite rightly on reaching conclusions for those chemicals that are considered to pose the greatest risks in Great Britain.

15. You said that any proposals for deregulation in England arising from the UK Government's Review of Retained EU Law would be discussed through the Frameworks. You suggested that the Frameworks offer protection from the UK Government imposing deregulation in Wales (or the other devolved nations). Can you provide further explanation of this?

We are still at an early stage of the Review of Retained EU Law (REUL). The process of potential divergence and clarification is being sought. The UK Government has clearly stated that it is committed in the REUL process to the *'proper use of Common Frameworks and will not seek to make changes to retained EU law within Common Frameworks without following the ministerially agreed processes in each framework'*.

International obligations

16. You said that the Welsh Government has asked for a seat at some international groups. Can you provide a list of these groups to aid the Committee's understanding of the potential opportunities afforded to the Welsh Government by the Frameworks?

The Frameworks are not intended as tools to influence international policy. However, we expect Common Frameworks policy teams will assert Welsh interests in these areas through the Frameworks groups. The development of Frameworks has increased the scope for interaction between the relevant policy teams of the four Governments.

In relation to the UK-EU Trade and Cooperation Agreement, we understand that where a UK-EU meeting agenda includes an item concerning implementation in an area of devolved competence, then UK Government should facilitate devolved government attendance of a

similar level to that of the UK Government representatives with final discretion as to the UK delegation a matter for the UK co-chair. We also understand that UK Government should engage the devolved governments as fully as possible in preparation for these meetings (such as meetings of the Specialised Committees) regardless of attendance, and on all relevant implementation matters.

In relation to air quality, Defra will continue to represent the UK at meetings of the United Nations Economic Commission for Europe (UNECE) Convention on Long Range Transboundary Air Pollution, including meetings of the Kiev Protocol on Pollutant Release and Transfer Registers under the UNECE Aarhus Convention. All Governments will be fully involved in the formulation of UK policy in this area and will work collaboratively, seeking to agree a UK position in accordance with the Devolution Memorandum of Understanding between the Governments; the International Relations Concordat; and the wider outcomes of the Intergovernmental Review of Relations.

Similar arrangements exist for UK representation at meetings relating to the Stockholm Convention on persistent organic pollutants and the Minamata Convention on mercury.

For pesticides an International Working Group has been set up which meets regularly to consider the relevance of international developments regarding the regulation of pesticides and to recommend appropriate responses. This includes consideration and discussion of EU regulatory developments and policies, work plans and technical guidance developed by the Organisation for Economic Co-operation and Development, European and Mediterranean Plant Protection Organisation and Codex Alimentarius Commission and other relevant international bodies.

I hope you find this information helpful.

Yours sincerely



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