

**Pwyllgor Newid Hinsawdd,
yr Amgylchedd a Seilwaith**

**Climate Change, Environment,
and Infrastructure Committee**

Julie James MS
Minister for Climate Change

18 May 2022

Dear Minister,

Provisional Common Frameworks for Air Quality, and Chemicals and Pesticides

Thank you for your letter, dated 5 April 2022, in relation to the provisional Common Frameworks for Air Quality, and Chemicals and Pesticides.

I am pleased to attach a copy of the Committee's report, Common Frameworks - Report 1: Provisional Common Frameworks for Air Quality, and Chemicals and Pesticides, which has been laid before the Senedd today.

I hope you will be able to accept our recommendations and pursue the necessary changes with your counterparts in the other UK governments before finalising the Frameworks.

I look forward to receiving a response from you in due course.

I am copying this letter to Huw Irranca-Davies MS, Chair of the Legislation, Justice and Constitution Committee.

Regards,



Llyr Gruffydd MS,
Chair, Climate Change, Environment and Infrastructure Committee

Croesewir gohebiaeth yn Gymraeg neu Saesneg | We welcome correspondence in Welsh or English.

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Common Frameworks – Report 1

Provisional Common Frameworks for Air Quality, and Chemicals and Pesticides

1. Background

1. Following the UK's decision to leave the European Union, the UK Government and the devolved governments in Wales, Scotland and Northern Ireland agreed to create common UK wide approaches - or 'Common Frameworks' (hereafter referred to as 'Frameworks') - in policy areas previously governed by EU law, but that are within the competence of the devolved governments or legislatures.
2. Once Frameworks have been provisionally approved by the UK and devolved governments, they are shared with relevant committees to enable scrutiny. Following scrutiny, Frameworks will be reviewed, updated, and receive final clearance by the UK and devolved governments.
3. Since the end of the transition period on 31 December 2020, most Frameworks have operated on an interim basis across the UK at official level.

Our approach

4. In January 2022, the Committee agreed its approach to scrutiny of Frameworks that fall within its remit. Based on initial analysis of the Framework summaries and on-going policy developments, the Committee chose to prioritise scrutiny of the following provisional Frameworks: Air Quality, Chemicals and Pesticides, Resources and Waste, and UK Emissions Trading System.
5. The Committee took evidence from the Minister for Climate Change ('the Minister') on the provisional Frameworks for Air Quality, and for Chemicals and Pesticides, at its meeting on 17 February 2022. The Committee subsequently wrote to the Minister seeking further information



and/or clarification on a number of issues. The exchange in correspondence can be found on [Senedd Cymru's website](#).

6. At the time of writing this report, the provisional Frameworks for Resources and Waste and for the UK Emissions Trading System have yet to be published.

2. Development of the Frameworks

7. The Committee was pleased to hear that the Minister's experience, and that of her officials, that the intergovernmental development of the Frameworks has been positive. In particular, we welcome the Minister's comments that the Frameworks "have been very useful in bringing together policy officials from across the four Governments in areas where there's previously been very little dialogue, and, in some cases, it's really improved intergovernmental relations". We hope this will continue throughout the ongoing operation of the Frameworks.

Stakeholder engagement

8. In giving evidence, the Minister said the "Department for Environment, Food and Rural Affairs consulted a wide range of stakeholders from each nation on behalf of us all". She provided examples of stakeholders in Wales who had been consulted during the development of Frameworks.

9. When asked why a summary of responses had not been published to help improve transparency, the Minister said, "Responses provided to the stakeholder engagement exercises were on a confidential basis. Any release of this date [sic] would be subject to four-government agreement and obtaining consent of respondents". It is unclear why the decision was taken for these engagement exercises to be held on a confidential basis.

Drafting matters

10. We acknowledge the Frameworks are intergovernmental agreements, which have been written with policy practitioners in mind, and are necessarily technical in places. As a result, they do not make for easy reading for the wider audience. In parts the Frameworks are difficult to follow and lack clarity. This does not help transparency or aid wider audience understanding of how future decisions on policy and law that may impact them will be made. We would like the Minister to make every effort to secure improvements in accessibility of the Frameworks before they are finalised.

11. We note that parts of the Air Quality Framework have not been updated to reflect UK-EU arrangements, agreed in December 2020. Reference is made to the risk of a no deal Brexit, to

updates being required to reflect future arrangements, if any are agreed, and to the end of the transition period as a future date. In addition, both Frameworks will need to be updated to reflect the outcome of the intergovernmental relations review. We trust the necessary updates will be made to the Frameworks before they are finalised.

Recommendation 1. The Welsh Government should explain the rationale for holding the stakeholder engagement exercises to inform the development of the Frameworks on a confidential basis. It should also explain to what extent this is common practice within the Welsh Government.

3. Impact of the Frameworks on future Welsh policy and laws

12. In giving evidence, the Minister asserted the Frameworks do not impact on the Welsh Government's plans or devolved competence. The Minister said they do not impinge upon the Welsh Government's ability to make separate policy or laws for Wales and that "divergence between the four nations will continue to be possible".

13. While that may be the case, the Frameworks form part of the UK's post-Brexit constitutional arrangements and provide for joint decision-making between the four governments. If disagreements arise, a dispute can be raised which, in practice, could limit the ways Welsh Government and Senedd can exercise powers to make laws for Wales, and how Welsh stakeholders can influence law making.

14. The Frameworks have also yet to be stress tested. It is not possible, at this stage, to determine the appetite for divergence in the future or the degree of divergence that will be acceptable to all four governments. Nor is it possible to determine how successful the Frameworks will be in managing divergence or resolving disagreements and disputes in a timely manner. We intend to keep a watching brief over these matters during the course of this Senedd, informed by the reports on the functioning of the Frameworks, which the Welsh Government has committed to (see paragraph 29).

Scope of the frameworks

15. The principles for common frameworks state that they should maintain, as a minimum, equivalent flexibility for tailoring policies to the specific needs of each territory as afforded by EU rules. In written correspondence, the Minister states that:

"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."

16. However, the Frameworks do not make this clear.

Parliamentary developments

17. In her letter, the Minister said where "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." This refers to decisions made by governments, but ignores the fact that decisions are also made by parliaments, for example, by amending Bills. In the case of a Clean Air (Wales) Bill, for example, the Senedd might agree amendments that impact on "matters of mutual interest". It is unclear whether decisions by one parliament take precedence over intergovernmental decisions, or how the Frameworks address conflicting parliamentary decisions on "matters of mutual interest".

Clear Air (Wales) Bill

18. During our scrutiny of the Minister, we sought clarification on whether and how the Air Quality Framework will impact on the Welsh Government's planned Clean Air (Wales) Bill ('the Bill'). The Minister explained the provision within the Bill which relates to air quality targets falls within the scope of the Framework. She added, "However, the power to set targets is within the executive competence of the Welsh Ministers and within legislative competence of the Senedd". The Minister provided assurance that the Framework "will not have a limiting impact on the content of the Clean Air Bill" and had no bearing on the timing of the introduction of the Bill.

19. In February 2022, the First Minister indicated his intention to introduce the Bill no later than summer 2023. We remain frustrated by the time taken to bring forward the Bill. We note the Welsh Government's summary of responses to its consultation on the White Paper on the Bill has yet to be made available.

Recommendation 2. The Welsh Government should explain how it will ensure the Senedd's ability to influence future Welsh policy and law will not be limited by intergovernmental decisions made under the Frameworks.

Recommendation 3. The Welsh Government should seek intergovernmental agreement to clarify the scope of the Frameworks. The Frameworks should more clearly set that only changes

to law and policy in areas where previously decided at EU level will be bound by requirements for joint decision making and the dispute resolution process.

Recommendation 4. The Welsh Government should explain the process to be used, and potential impact of a decision made by the Senedd which is incompatible with intergovernmental decisions made under the Frameworks. It should also explain how the Frameworks address conflicting parliamentary decisions on “matters of mutual interest”.

Recommendation 5. The Welsh Government should confirm its intention to introduce the Clean Air (Wales) Bill no later than summer 2023. It should also commit to publishing the summary of responses to the White Paper on the Bill as soon as possible, and before the end of this summer term at the latest.

4. The ongoing functioning of the Frameworks

Prospects for future divergence

20. On 31 January 2022, the UK Government announced plans to make it easier to amend or remove retained EU law. This raises potential concerns regarding the Welsh Government’s ambitions to maintain or exceed standards currently in place. The Committee welcomes the UK Government’s commitment to take any such changes through the common frameworks process.

21. In giving evidence, the Minister advised that the UK Government’s plans could not lead to a “bonfire of regulations” in Wales, Scotland and Northern Ireland, and that the Framework “would still hold” if that were to happen in England. While we welcome the Minister’s assurances, we remain concerned of the potential impact of such actions on future Welsh policy and legislation, and the risk of intergovernmental disagreements as outlined by the Minister.

Dispute resolution

22. The Frameworks set out a process for resolving disagreements and disputes between the UK governments. Where disputes cannot be resolved at official level, they can be escalated until they reach Ministerial level. The Frameworks provide Ministerial disputes can be escalated to intergovernmental structures as a method of last resort.

23. In giving evidence, the Minister explained that she would expect a dispute to halt the activities of the government causing the dispute while the matter is resolved. In her letter, the Minister added that, “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."

24. In certain circumstances, the Frameworks permit the governments to "agree to disagree" unless this leads to disruption, has a detrimental effect or negatively impacts the ability to meet Framework principles. Alternative views on this may also be escalated to the dispute resolution process.

25. We are concerned that the combined impact of this could potentially lead to delays to the introduction of Welsh policy and legislation in practice.

26. We welcome the Welsh Government's commitment to notify the Senedd of any disputes raised under the Framework. When asked to clarify at what stage and how the Welsh Government will inform the Committee/the Senedd of disputes, the Minister told us "the post-finalisation reporting mechanism being devised for the frameworks includes the reporting of any disputes raised under a framework". The exact arrangements for reporting disputes remain unclear.

27. As a minimum, we expect the Senedd to be notified of any disputes that are escalated to Ministerial level. Notification should be provided as soon as practicable following escalation. We also expect the Senedd to be notified of the outcome of any such disputes.

Reporting to parliaments

28. Since the start of the Common Framework programme, much emphasis has been placed on the key role of parliamentary scrutiny in the development of Frameworks. We believe parliamentary scrutiny of the ongoing functioning of the Frameworks is equally important. We are disappointed, therefore, that the Frameworks fail to take account of this. There is no reference to ongoing parliamentary engagement and no mechanism to support scrutiny of the Frameworks once they are fully operational.

29. Notwithstanding the above, we note the Welsh Government has committed to reporting annually to the Senedd on the ongoing functioning of the Frameworks. This is a welcome development. We also note that the four governments are considering how best to report on the operation of each framework, but we are not aware of any agreement being reached.

Role of parliaments in reviewing the Frameworks

30. Both Frameworks set out the process for reviewing and amending the Frameworks (referred to as the Review and Amendment Mechanism, or 'RAM'). They provide for a regular

review every 3 years, or sooner if a ‘significant issue’ arises. There is no reference to the role of parliaments in the review process.

31. The Minister’s evidence, and that of the Counsel General to the Legislation, Constitution and Justice Committee, suggests the Welsh Government is willing to provide an active role for the Senedd in reviewing the Frameworks. We note the Welsh Government has committed to notify the Senedd of the review points and to consider recommendations made by the Senedd before the review process concludes. We welcome this. We are not aware of similar commitments being given by the other UK governments to their respective legislatures.

Recommendation 6. The Welsh Government should commit to ensuring that annual reports on the ongoing functioning of the Frameworks include, as a minimum:

- any changes or proposed changes in policy or law made within the policy area covered by the Framework;
- an assessment of whether divergence has taken place and of any impacts on the policy area covered by the Framework;
- an assessment of whether the Frameworks have imposed constraints, including practical constraints, on the exercise of devolved competence within the policy area covered by the Framework;
- an assessment of on-going compliance with international obligations, including between the UK and EU; and
- an assessment of the impact of the UK Internal Market Act 2020 on Welsh legislation in the Framework areas.

Recommendation 7. The Welsh Government should provide further explanation of the circumstances under which a policy may be considered “damaging”.

Recommendation 8. The Welsh Government should seek intergovernmental agreement to formally notify UK parliaments of any disputes that are escalated to Ministerial level, and of the outcomes of those disputes. The Frameworks should be amended to reflect this. In the case of the Senedd, notifications should be provided via Written Statements.

Recommendation 9. The Welsh Government should confirm it will lay annual reports on the ongoing functioning of the Frameworks before the Senedd.

Recommendation 10. The Welsh Government should seek intergovernmental agreement on a clearly defined role for UK parliaments in reviewing the Frameworks. This should include commitments to:

- notify parliaments of the review points;
- seek the views of parliaments on any proposed changes to the Frameworks;
- consider recommendations of parliaments before the review process concludes; and
- report back to parliaments on the outcome of reviews.

The Frameworks should be amended to reflect these commitments.

5. Ongoing stakeholder communication and engagement

32. The Frameworks include limited reference to ongoing communication and engagement with external stakeholders. Both Frameworks commit the UK governments “to deliver timely and consistent messages to stakeholders by utilising current methods of stakeholder engagement”. However, they provide no indication of when and how stakeholders will feed into the decision making processes set out in the Framework.

33. In evidence to the Committee, the Minister told us “stakeholders will continue to be consulted on developments in policy in the usual way”. Nonetheless, we are concerned there is a risk that the Frameworks may make it more difficult for stakeholders to positively influence the development of policy and law in areas covered by these Frameworks. We seek assurance from the Minister in relation to this.

34. The Minister’s letter said that “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.” It would be useful to know whether and how that feedback will inform future Welsh Government policy.

35. Given our concerns outlined above, we believe it is important that stakeholders are able to feed into the review process for the Frameworks. We welcome the Welsh Government’s commitment to notify stakeholders of the review points and of any recommendations made by the Senedd during the review process. However, there remains a lack of clarity on whether the

Welsh Government intends to undertake meaningful consultation with stakeholders as part of the review process to enable them to inform the outcome of reviews.

Recommendation 11. The Welsh Government should further explain when and how stakeholders will feed into the decision making process set out in the Frameworks. It should also explain how it will ensure that the Frameworks do not limit the role of stakeholders in the development of policy and law in areas covered by those Frameworks.

Recommendation 12. The Welsh Government should explain whether and how the feedback on matters relating to chemicals and pesticides policy received from stakeholders during the development of the Framework will be used to inform future Welsh Government policy in this area.

Recommendation 13. The Welsh Government should seek intergovernmental agreement to meaningful consultation with stakeholders as part of the review process. It should also seek agreement for a summary of responses to all consultation to be made publicly available in order to enhance transparency. The Frameworks should be amended to reflect this.

6. Regulatory standards: chemicals and pesticides

36. In commenting on whether the Welsh Government intends to keep pace with EU standards on chemicals, the Minister said, “[its] 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.” She added the Welsh Government is “determined that UK REACH should meet its core aim”, but “it will take time to make the legislation we inherited fully fit for purpose in a GB context”.

37. The European Commission is in the process of revising EU REACH as part of its [Chemicals Strategy for Sustainability](#) and has recently published a [Restrictions Roadmap](#), which sets out planned restrictions. When asked whether the Welsh Government plans to follow suit, the Minister said “We are working with the other administrations under the Common Framework to prioritise improvements to UK REACH, focusing on areas most in need of attention in a GB context following EU Exit”.

Recommendation 14. The Welsh Government should set out:

- the risk associated with having UK REACH legislation that is not yet “fully fit for purpose in a GB context” and

- the timescales governments are working towards to deliver UK REACH legislation that is “fully fit for purpose”.

Recommendation 15. The Welsh Government should report back to the Committee on any emerging issues following the creation of UK REACH, in particular in relation to its impact on manufacturers and businesses in Wales.

Recommendation 16. The Welsh Government should provide details of any work that is being undertaken by governments, or that they plan to undertake, to determine the impact of changes to EU REACH on the UK.