

Julie James MS
Minister for Climate Change

3 March 2023

Dear Minister,

Provisional common framework for resources and waste

The Committee considered the provisional common framework in relation to resources and waste in its meeting on 9 February. The Committee agreed that I should write to you concerning several issues that arose during our discussions.

Purpose of the framework

The framework has been in operation on an interim basis since the end of the transition period on 31 December 2020 but was not published until 4 January 2023.

Although the Welsh Government says that the framework will not affect the Senedd's competence, the practical effect of this new process on legislation and policy-making in the Senedd is unclear. We note that the framework will initially focus on devolved policy areas where a UK-wide approach has already been adopted. However, it may also serve as a mechanism to consider or facilitate a UK-wide or multi-nation approach.

The Welsh Government has outlined two types of policy decisions to be taken within the framework: 'policy creation' decisions and 'policy operational' decisions. However, the role of the Senedd and stakeholders in this process is yet to be defined.

1. Can you clarify the position of the Welsh Government on the framework and its effect on the Senedd's competence? Are you satisfied that the framework does not constrain the Senedd's competence?
2. Can you provide further details on the two types of policy decisions that will be taken within the framework and what role the Senedd or stakeholders will play in the decision-making process?

Divergence

The framework has been created with the aim of managing policy divergence across the UK and sets parameters for determining acceptable levels of divergence. The framework states that it will provide dispute resolution in cases where diverging approaches could have a "demonstrable impact" on another party. However, it does not clarify what constitutes a demonstrable impact or provide any criteria for determining acceptable levels of divergence. As a result, it is unclear what divergence will be deemed acceptable and what could lead to a dispute under this framework.

- 3.** Can you provide a definition or criteria for what would be considered a "demonstrable impact" under the framework for the purposes of dispute resolution?
- 4.** Can you provide any examples of Welsh Government policies that are expected to be introduced during this Senedd term under this framework which might have a "demonstrable impact" on another party?

New structures

The framework outlines new structures for decision-making, including establishing a resources and waste working group of policy officials who will make day-to-day decisions and report to senior officials and relevant government ministers. The working group will initially meet monthly, then quarterly, but the change in frequency is not explained.

The framework mentions the possibility of sub-groups and a joint project board and technical adaptation committee but provides no further details on their membership or purpose.

- 5.** Can you explain the role of the resources and waste working group? Can you provide the rationale for the change in the frequency of the working group meetings and when this change will occur?
- 6.** Can you provide further details on the purpose and membership of the sub-groups, joint project board, and technical adaptation committee established by the working group?

UK Legislation

The UK Internal Market Act sets market access principles to ensure goods and services sold in one part of the UK can be sold in any other part. However, the framework does not reference the process for considering and agreeing to exclusions from the UK Internal Market Act.

The framework states it is underpinned by retained EU law and minimum standards. It is unclear what impact the Retained EU Law Bill will have on the framework, in particular where the consequences of the Bill lead to divergence.

7. Can you explain how the provisions of the UK Internal Market Act will interact with the framework and whether the framework will be updated to reference the exclusion process agreed upon in December 2021?
8. Can you elaborate on the implications of the Retained EU Law Bill on the framework?

International obligations

The framework includes references to the UK and Welsh governments' international obligations. The management of these obligations is based on the Devolution MoU and its accompanying International Relations Concordat. The framework provides an opportunity to consider the impact of international trade, but it is unclear how it will specifically interact with international trade negotiations.

9. Can you explain how the framework will interact with international trade negotiations and whether relevant provisions being agreed upon in trade negotiations would be subject to this common framework process?

Stakeholder engagement

The framework does not mention how stakeholders were engaged in the development process or what their views were. The framework says that the "interface with regulatory bodies will continue to be developed", but it does not explain the relationship with regulators.

The framework treats engagement with parliaments and stakeholders differently, saying that legislatures will be engaged in developing legislation and stakeholders in developing policy. The reason for this distinction is not explained.

This Committee has previously recommended that the Welsh Government should routinely involve stakeholders in developing frameworks.

10. Can you provide information on how stakeholders, including Natural Resources Wales, were involved in developing the framework?
11. Can you clarify the process for external stakeholder engagement outlined in the framework and explain why there is a distinction between engagement with parliaments and stakeholders in developing legislation and policy?

Reporting and transparency

The framework has been operating for over three years but has only recently been published. The reason for the delay in publication is unclear.

The UK and Welsh governments have agreed to report on the framework and other common frameworks, but the specifics of when and how reporting will take place have yet to be finalized.

There is currently no clear plan for how parliaments and stakeholders will receive updates on the operation of the framework.

12. Can you explain the delayed publication of the framework?

13. When will regular reporting on the functioning of the framework begin?

Review and amendment of the framework

The framework outlines a review process that will occur after six months, after one year, and then three years. The reason for these specific timescales is not explained in the framework. The Welsh Government has agreed to notify the Senedd and stakeholders and to consider their recommendations before concluding a review. However, this commitment is not yet reflected in the text of the framework.

This Committee previously recommended in its report on the air quality and chemicals and pesticides frameworks that the Welsh Government should work with the UK Government towards providing a defined role for UK parliaments in reviewing common frameworks. This view was supported by the Senedd's ETRA Committee and the House of Lords Common Frameworks Scrutiny Committee.


14. Could you explain the reasoning behind the timescales specified in the framework for reviews to take place after six months, one year, and three years?

15. Could you explain how you will ensure the text of the framework will reflect your commitment to notify the Senedd and stakeholders and to consider their recommendations before concluding a review?

16. Could you update the Committee on the steps you have taken to seek an inter-governmental agreement to provide a clearly defined role for UK parliaments in reviewing common frameworks?

I would be grateful if you could provide a response within 30 working days, by 19 April 2023 at the latest.

Yours sincerely,



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

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